

The complaint

Miss H and Mr S have complained about their building warranty provider National House-Building Council because it won't accept there's a defect with their roof which is causing condensation and damage.

Miss H has mainly dealt with the claim and complaint. So for ease of reading I'll refer mainly only to her.

What happened

In 2018 Miss H was concerned to find staining on the render at the front of her property. She made a claim to NHBC and following various correspondence, in 2022 NHBC said that staining wasn't covered. Miss H said she felt the render was being affected by the way the roof was built (a structural defect). NHBC maintained the staining was not covered.

Miss H subsequently sought legal advice and obtained a surveyor's report. The report identified condensation within the roof void, and high moisture levels of the roof timbers, as well as mould in the area of a roof valley. The surveyor concluded the roof had been built with insufficient ventilation, in breach of NHBC building standards. Detail of costs to re-roof the property were obtained (around £16,000). The surveyor concluded the staining had also been caused by a breach in the building standards.

NHBC reviewed the report. It noted the new issue of condensation and mould identified by the surveyor and sent an assessor to view the property. The assessor found no evidence of condensation during his visit. He concluded that the roof was adequately ventilated – such that normally occurring condensation evaporated. He noted the area of mould and concluded that was being caused by the valley not having been built in line with its building standards. NHBC accepted a claim in respect of that damage – it said it could do the work to reinstate the valley, or Miss H could provide costs for the work it accepted was necessary to do this and it would consider that. But it maintained its view that the staining was not covered and wasn't persuaded, in respect of condensation, that there was a defect causing damage. Miss H complained to the Financial Ombudsman Service.

Our Investigator noted the warranty didn't cover staining. He considered the available evidence about the roof void. He wasn't persuaded there was any sign of visible damage, other than in the area of the valley. He felt NHBC had acted fairly and reasonably in declining liability regarding condensation whilst accepting the claim for the valley. In respect of a request Miss H had made for NHBC to reimburse her legal fees and surveyor's costs, he said he didn't think it was fair to make NHBC do this.

Miss H said she felt the surveyor's report had been ignored. She said the surveyor had used a moisture meter to determine the roof timbers were wetter than they should be – which, she said, in itself is damage. Miss H pointed out that NHBC's assessor did not take any moisture readings. She said that the surveyor's report also highlighted the implications of increased moisture levels in the timbers, which she feels are already prematurely degraded. She pointed out that the surveyor disagreed that moisture in the void was caused by a leak. Miss H said that between 2018 and 2022 NHBC had had plenty of opportunity to inspect her

roof but had not done so, which had left her no choice but to take legal advice and appoint a surveyor. So she felt it should be reimbursing her these costs.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, with regret for the disappointment I know this will cause Miss H and Mr S, I find my view on the complaint is the same as that shared by our Investigator.

The warranty

NHBC isn't an insurer in the conventional sense. Rather the warranty offers certain cover for when certain things are found to be defective or go wrong during the first ten-years after the build is complete.

During the first two years of the warranty NHBC provides a dispute resolution service. This is intended to help the developer and the homeowner resolve any differences they may have in that period where defects in the build have been identified. The primary responsibility for putting right defects during this time lies with the developer. But NHBC will sometimes become involved if things can't be resolved. Importantly though defects that are found outside of the first two years aren't subject to that same level of cover.

In years three to ten of the warranty (section 3) there is cover for physical damage caused by defects. Rather than there being cover for a defect itself. But the cover is limited. So it isn't the case that any damage which is caused by a defect in years three to ten will be covered.

Render

I can see the render at the front of the property is blackened. I accept, and NHBC acknowledges, that, over time, water dripping like this down the facade of the property, and possibly behind the render, has the potential to cause damage. This point is made by the surveyor. But I haven't seen anything which, at the minute, shows the render *is* damaged. "Staining" is not covered by section 3 of the warranty. I'm satisfied NHBC acted fairly and reasonably in declining liability for staining of the render, including it not visiting the property between 2018 and 2022 to further assess the roof.

Condensation

As highlighted above, even if there is a defect in a property, for cover under section 3, there also has to be damage caused by that defect. So whilst I note the surveyor's view that the roof was not built in line with standards, only if there was then damage caused as a result of that, would NHBC have to act. And, strictly speaking, it would only have to act to resolve the damage, not the defect itself.

Condensation, in itself, is not generally considered to be damage. And I see that even the surveyor notes that when the assessor visited, there was no condensation present, he explains this might likely be because of the temperature or weather conditions on that day. So clearly the condensation he saw on his earlier visit was not a permanent feature of the roof. Which all seems to concur with NHBC's explanation that, particularly during winter months, condensation might form which, if the roof is adequately ventilated, will evaporate naturally. I think it was fair and reasonable for NHBC to not view the condensation itself as

damage. The wider issue though is whether the timbers in the void have been damaged by increased moisture levels on account of condensation.

The surveyor took moisture readings, whereas NHBC's assessor did not. It would have been helpful to know what the timber moisture levels were in March 2023 when there was no condensation present. That would have allowed an easy comparison to be made with the readings the surveyor took in December when he found condensation. However, I don't think the findings of the assessor are flawed just because readings weren't taken.

Timber, by its nature, absorbs moisture from the air and then dries again. If this occurs slowly timber generally isn't damaged as a result. So just because, on one occasion, timbers have a higher moisture content than normal, does not necessarily mean they are damaged. However, where timber is damaged by moisture it shows in discoloration, mould and eventually, when there has been exposure to excess moisture for a prolonged period, rot.

The surveyor and assessor took multiple photos of the roof void. The assessor's photos included shots evidencing areas of ventilation. NHBC has said that had the roof been suffering excessive moisture content, on account of condensation, due to the roof being built nine-years before with insufficient ventilation, then the timbers throughout the roof-space would have been showing signs of extensive damage. I think that is a reasonable assessment. There's no sign in any of the photos, other than at the valley, of extensive damage. Regardless of any defect the surveyor may have identified, I'm satisfied that NHBC fairly and reasonably concluded no damage had occurred, meaning it has no liability under section 3.

The valley

The surveyor initially linked the damage in the area of the valley to the condensation/ventilation issue. NHBC said there were nails penetrating the valley board, allowing water in, which was causing the mould in that area. The surveyor said it was quite common for valley nails to miss joists – he didn't think that this would allow water ingress because the exterior of the valley, including the nail heads, should be covered. He maintained the roof timbers, even those not in the area of the valley had high moisture readings. I note Miss H has also questioned how the ply, above the penetrating nails could be mouldy as water would not travel upwards.

I appreciate Miss H's query. But I think it's fair to say that ply absorbs moisture, which spreads through the wood. So it isn't the case that NHBC is suggesting that water has got into the roof and moved upwards across the surface of the ply. I note the surveyor's view that the protective membrane of the valley should cover the nails – adding a waterproofing layer that should mitigate any route of water ingress caused by the nails. But I haven't seen that is the case here. Rather I think that the very nature of the damage present supports a reasonable conclusion that there is a leak in that valley. NHBC has offered to reinstate the valley, I think that is a fair and reasonable response.

As an alternative I note NHBC has offered to pay Miss H its cost to repair as a cash settlement. Or for Miss H to submit her costs for repair, in reference to the work it is accepting liability for. I note it's shared its repair schedule with her so she can get a quote for that work. NHBC's said it will consider those costs. I think NHBC has acted fairly and reasonably by offering these alternative settlement options.

Legal fees and surveyor's costs

As I noted above, when considering the stained render, I think NHBC acted fairly and reasonably in not assessing the roof itself. Miss H obtained legal advice and the surveyor's

report to challenge its decision to not cover the staining. Having received the report and completed further investigations, NHBC's position regarding the staining, which I have found was fair and reasonable, did not change.

In the course of the claim about staining, before Miss H obtained legal advice and the surveyor's report, NHBC had not been told of potential water ingress to the roof space, in the form of mould. I'm satisfied that had Miss H, without getting advice or an expert report, entered the roof space, found the mould and sent photos of that to NHBC, it would've acted.

In the circumstances, I'm not persuaded it would be fair or reasonable to require NHBC to reimburse the costs Miss H incurred when challenging NHBC's decline, or finding new damage she was able to make an additional claim for.

My final decision

I don't uphold this complaint. I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Mr S to accept or reject my decision before 16 February 2024.

Fiona Robinson
Ombudsman