

The complaint

Mr B and Ms S complain about National House-Building Council's ('NHBC's) handling of a claim made under their building warranty.

Mr B and Ms S are represented by Mr P.

What happened

Mr B and Ms S are leaseholders of a flat, and hold a ten-year building warranty with NHBC. They made a claim to NHBC for damage to the roof, as this was allowing water ingress into their flat ('flat 10'), as well as another ('flat 11').

NHBC arranged for its claims inspector to look at the roof. It then arranged a second inspection with a roofing consultant (that I'll call 'A').

Mr P complained to NHBC about the time taken to make a claims decision. NHBC responded to say its claims inspector thought the reason for the water ingress was due to a defective application of the roof covering and the solar paint. However, it had decided further investigation was needed. NHBC said A had found an open joint between the asphalt and the render on the upstand. It confirmed A was in the process of arranging a water test, and it would confirm the validity of the claim after this had been done.

Mr P brought a complaint to the Financial Ombudsman Service on Mr B and Ms S's behalf. Matters then moved on. After the water test took place, NHBC accepted that part of the damage to the roof would be considered a defect and was therefore covered by the warranty. It paid £7,786 for the repairs to all the affected leaseholders. Mr P was unhappy with this and wanted us to consider the matter.

Our investigator didn't recommend the complaint be upheld. She thought the damage to the main roof was due to a failure to carry out appropriate maintenance. She noted NHBC had accepted there was a defect to one side of the roof. As Mr P had questioned why the other side of the roof wasn't covered, she said there was no evidence that the other side was causing damage.

I issued a provisional decision on 13 March 2024. Here's what I said:

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

Mr B and Ms S's claim is for remedial work to the roof, which is a common part of the building. That means that other leaseholders have been affected. However, I'm only considering what Mr B and Ms S are entitled to under their individual warranty.'

Although the complaint made to NHBC was about the claims delay, it hasn't objected to us considering its later claims decision. I'll therefore consider both within this decision.'

Claims decision

Section three of the warranty applies here. This says that NHBC will pay the cost of putting right any physical damage which is caused by a defect in respect of certain parts of the home, which includes load-bearing parts of the roof, and roof coverings.

'Defect' is defined in the policy as:

'The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder.'

I've considered the report by A. They made the following observations:

- The water ingress into flat 10 was to the ceilings. They said there was water ingress along the same line of the wall in the kitchen/living room, as well as near to an external wall, and in the store cupboard.*
- The roof is weathered using a mastic asphalt system, with weathered solar reflective paint.*
- The silver solar paint has become worn and very weathered. There were a number of areas where surface crazing had occurred, and small blisters have appeared in numerous areas. There were also some splits within the asphalt.*
- A gully that runs adjacent to the parapet wall over flat 10 had blisters and large undulations within the asphalt. One of the blisters had split and a probe could be fully inserted. It was noted that the split correlated with the water staining noted in flat 10 (the area close to the external wall).*
- A temporary repair had been carried out to the main area of the roof, which correlated with the larger water stain seen in flat 10 (in the kitchen/living room). The repair wasn't removed as A didn't want to make the water ingress worse.*
- Another temporary repair had been carried out to an area where there was water ingress into flat 11. Again, A didn't remove this repair as they didn't want to make the water ingress worse.*
- Along the gully areas, the asphalt was taken up the height of the upstand, then stopped under a bell bead. In places, the open end of the asphalt was visible and vulnerable to driving rain. The other parapet walls had the asphalt taken up the height of the upstand and terminated with a metal capping. They noticed the joints in the metal capping flashings had been taped over, using a flash band tape which had deteriorated. They were able to insert a probe through the joint, indicating they were unsealed. The timber batten beneath was visible.*

The following conclusions were then reached by A:

- The mastic asphalt covering was in a relatively poor condition given its age, which was only nine years. They said asphalt is known to have proven durability well in excess of 50 years.*
- The solar paint had failed and was no longer providing a suitable defence against UV rays etc. This paint should be applied every three to five years to provide suitable protection and prevent premature deterioration caused by crazing, splits and blisters. Asphalt roofs should also be inspected every two to three years to ensure they are in good order and determine if any repairs are needed.*
- The blisters that were seen starting to split are generally caused by trapped moisture under the asphalt, which could have happened when the works were being undertaken, or any moisture that finds its way in through splits, holes etc.*
- Any splits or cracks in the asphalt is generally caused by thermal movement, moisture trapped under the asphalt or impact damage.*
- The most likely cause of the water ingress into flat 10 was the blister that was seen,*

and the cause of water ingress into flat 11 would be the result of what has occurred under the temporary repairs, which would likely a blister or split.

- The drawings received showed the property to have a cold roof construction. The roof should be ventilated at the upstands. However, they noted there was no ventilation provision at the upstands. They said if the roof was a cold roof and hadn't been constructed with ventilation, this could be a contributing factor for its premature failure.*

NHBC later asked A to carry out a water test where there was an open joint between the asphalt and render on the upstand. This involved spraying that area continuously with water and plumber's dye for ten to 15 minutes. Although no water ingress was immediately apparent in the below flats, the leaseholders later sent photos to show that further water ingress had happened.

NHBC therefore accepted there was a defect to that area of the upstand causing damage, and based its settlement on the cost of repairs to that area only.

It's not clear to me why a water test also wasn't carried out to the area where the asphalt is taken to the height of the upstand and terminated with metal capping. The tape used to cover the joints in that area had deteriorated, and the timber batten below was visible. Given that the properties below have various areas of water staining, this could be another cause of the water ingress, as was the case with the other upstand area. So I think NHBC should arrange for a water test to take place in this area.

I've also considered the damage to the main roof. A thought the main cause of the water ingress to the below flats was due to blisters or splits in the asphalt, which they said are generally caused by thermal movement, trapped moisture, or impact damage. They also said the solar paint had failed and was no longer providing a suitable defence, and it should be applied every three to five years to prevent premature deterioration caused by splits and blisters.

So it seems that the failure of the solar paint could well have caused or contributed to the deterioration of the roof (blisters and splits). However, A also said that if the property has a cold roof construction, there should be ventilation in the upstands, which wasn't the case. They thought this could be a contributing factor for the roof's premature failure.

We've checked with NHBC, and it's confirmed that if the roof is a cold roof construction, then the lack of ventilation would be a breach of its technical requirements.

I think a reasonable way forward here would be for NHBC to establish whether the roof is a cold roof construction. If not, then I don't require it to do anything further with regards to the main roof, as it's reasonable to say in that case that the failure of the main roof was most likely due to a maintenance issue (in other words, the failure to regularly apply the solar paint).

However, if the roof is a cold roof construction, I think NHBC should establish with A if the lack of ventilation could have caused or contributed to the splits and blisters (which in turn led to the water ingress). NHBC should then reconsider the claim.

Delays

Mr B and Ms S are also unhappy with the time it took NHBC to make a claims decision.

I see that after a claim was made in August 2022, there was some confusion around the number of properties on the plot. NHBC asked Mr P for more information about this, and this

was provided. A was then appointed, and an inspection took place in November 2022. I note that A made enquiries with various parties to establish the original roof specification, though I understand these weren't successful.

In January 2023, NHBC wanted to know if the open join mentioned in A's report could be causing the water ingress. It was suggested by A that a water test take place to establish this. They couldn't do the test at that time, and asked NHBC to find another local contractor to do this. I understand NHBC were in the process of arranging this, but A later confirmed they could do it. There were discussions between the parties around a suitable date, as NHBC wanted A to have access to the two affected flats, to see if the water entered them after the water test. There was a delay here whilst a date was arranged, and in the end, this took place on 5 May 2023. NHBC made a claims decision the following month.

Overall, I don't think NHBC caused unnecessary delays here. The water test would have been done a lot sooner if there hadn't been problems around the availability of all the parties. I can understand why, ideally, NHBC wanted A to have access to the affected flats before and after the water test. It's also the case that temporary repairs had taken place to the main roof, and I understand these prevented further water ingress. So I don't think the leaseholders were particularly impacted by the delay in any event.'

I asked both parties for any further comments they wanted to make before I made a final decision.

Mr P responded and made the following main points:

- NHBC told him they have no documents for the build of the property, so they won't be able to confirm anything about the roof build.
- He thinks there's no need for any more tests, and this is money that could be better spent on the roof repairs.
- NHBC's roofing consultant thought it was a cold roof system, so we should rely on this. The report confirmed the upstands are installed incorrectly, so they will need to be repaired.
- He accepts the roof wasn't maintained as well as it should have been, and thinks a fair way to resolve the matter is for NHBC to pay for the upstand to be repaired all around the roof, as well as 50% of the new roof repair.

NHBC responded to say it accepted with my provisional findings.

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.

I've addressed Mr P's points below.

- If NHBC can't determine if the roof is a cold roof construction from the available documents, I'd expect it to arrange for the roof to be inspected in order to establish this.

- NHBC's roofing consultant ('A') only said that the drawings showed the property to have a cold roof construction. I think it's apparent from A's report that they didn't know whether or not this was the case.
- I accept that A thought there were issues with the upstands, but this would only be covered under the warranty if it was causing physical damage to the property. NHBC has already accepted that the defective upstand to one side of the roof was allowing water ingress. I remain satisfied that it would be appropriate for a water test to take place to the other side of the roof (the area where the upstand has metal capping) to see if this area is also allowing water ingress. NHBC can then reconsider this aspect of the claim.
- Even if the property does have a cold roof, we don't know if the lack of ventilation could have caused or contributed to the splits and blisters which led to the water ingress. So it wouldn't be appropriate for me, at this stage, to require NHBC to pay towards the roof repair. I remain of the view that NHBC should establish if the property does have a cold roof, and if so, find out if the lack of ventilation (which would be a breach of its technical requirements) has led to the water ingress. NHBC can then reconsider the claim.

My final decision

My final decision is that I uphold this complaint. I require National House-Building Council to do the following:

- Arrange a water test to the area of upstand which is terminated with metal capping. It should reconsider the claim for this area once it has the results of the test.
- Determine whether the roof is a cold roof construction. If so, it should establish with A if the lack of ventilation could have caused or contributed to the splits and blisters in the main roof which caused the water ingress. NHBC should then reconsider the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms S to accept or reject my decision before 25 April 2024.

Chantelle Hurn-Ryan
Ombudsman