

## **The complaint**

Ms O and Mr U complain that National House-Building Council (“NHBC”) has treated them unfairly in its handling of claims made under their building warranty.

## **What happened**

Ms O and Mr U held a ten-year self-build warranty with NHBC. Towards the end of 2020, they noticed water coming into the lounge through the ceiling. Other issues became apparent such as cracking to multiple areas of the home, and damaged tiles. They arranged for an inspection to take place into the likely cause of the damage.

The report they obtained suggested the water damage was due to a failure in the flat roof balcony. The report said the roof was structurally compromised, with sagging and protruding roof joists visible through the surface of the roof felt. It also said the decking of the roof appeared to be saturated and the large cracks in the property suggested a potential issue with movement. Ms O and Mr U raised the issues with NHBC during their final year of cover.

NHBC investigated, but didn’t accept the claim. It said, in its report dated February 2021, that Section B of the policy provided cover if there was damage to a part of the property listed in the policy that had been caused by non-compliance with NHBC’s mandatory requirements – but that there were exclusions and limitations to this, one of which was that only damage to pitched roofs was covered, and there was no cover for flat roofs.

It said in relation to the cracks, that these appeared to be consistent with thermal shrinkage and drying out of the property following construction. And that any damage caused by shrinkage, thermal movement, movement between different types of materials and purely cosmetic damage such as minor cracking, wasn’t covered by the policy – as it didn’t impair the structural stability or weather tightness of the home.

Ms O and Mr U disagreed with NHBC. They arranged for their own surveyor to inspect the damage. The surveyor provided a report dated April 2021 which confirmed that there were several instances of poor workmanship and various issues of concern which needed further investigation. The surveyor recommended an invasive survey by a structural engineer. Ms O and Mr U made a complaint to NHBC, saying there had been an inadequate investigation into their concerns, that NHBC had carried out a poor assessment of the roof (which they felt was a load-bearing structure) and that it had dismissed their health and safety concerns. They also said NHBC had applied the policy terms unfairly when compared to the neighbouring property’s claim.

In its responses to the complaint, NHBC said it didn’t agree that the flat roof membrane was a load-bearing structure and that there was no cover for a flat roof. It said in relation to the neighbouring property that each case was considered on its own merits and the neighbour’s claim couldn’t be discussed.

NHBC also said that the broken tiles weren’t covered as this was superficial damage and not structural damage that the policy provided cover for. It maintained its decision to decline the claim.

Ms O and Mr U made a complaint to this service, highlighting the instances of poor workmanship that had been identified, and detailing the inadequacies in NHBC's investigation and decision. The Investigator who considered the complaint upheld it, telling NHBC it needed to carry out further tests to ensure the property's stability and to assess whether there was any policy coverage.

NHBC provided an additional report following further investigation, but again declined the claim, saying neither the water ingress from the flat roof nor the broken tiles were covered. Ms O and Mr U raised a further complaint with NHBC and said it was discriminating against them on the grounds of their race. In its response, NHBC accepted that its investigations didn't go far enough to fully understand the issues, and that it would be sending an engineering team to conduct a full structural review. It also offered £600 for the distress and inconvenience it had caused due to its poor handling of the claim.

In April 2023, assessment reports were prepared following the structural review of the house, in which NHBC accepted the claim for damaged tiles and offered a settlement. But it said it still rejected the claim for the flat roof and it referred some issues for ongoing investigation.

Ms O and Mr U remained unhappy with NHBC's response, particularly its calculation of the settlement for the damaged tiles. They asked NHBC for further clarification. In its response, NHBC explained why the claim wasn't covered for the roof with reference to the policy wording, and it explained in more detail the offer for the damaged tiles.

Ms O and Mr U responded to NHBC, saying the policy should cover what they felt was a load-bearing part of the floor and a load-bearing part of the roof. They said NHBC's conclusions were inaccurate because the structural integrity of the roof was compromised. And that they needed more information about how the offer for the damaged tiles had been calculated, because the visibly cracked tiles only represented a portion of the overall defect, which affected all the tiles and therefore required full replacement of all the tiles.

NHBC issued its final response, dated 11 July 2023. It maintained its position regarding both the roof and the tiles. So Ms O and Mr U referred their complaint to this service for an independent review.

Our Investigator considered the complaint, but didn't think it should be upheld. He said he accepted NHBC's argument that the defect was in the flat roof membrane, which wasn't one of the specifically listed parts of the home that was covered, and that the rotted decking within the flat roof was a consequence of the defective membrane and not a defect itself. Our Investigator also accepted NHBC's explanation about the tile settlement and said it was in line with our approach to these types of complaints. The Investigator didn't comment on any issues of racial discrimination or the claim progression prior to February 2023 as he said that those particular complaints weren't brought to us in time.

Because Ms O and Mr U didn't agree with our Investigator's assessment, the complaint has now come to me to decide.

### **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, I've decided not to uphold this complaint. I'll explain why.

When a home is built or converted, and it's covered by an NHBC warranty, the builder must

make sure they've complied with NHBC's technical requirements. NHBC publishes these requirements in the NHBC Standards, which can be found on its website.

The version of the Standards that applies in each particular claim will be the one that was in force when the builder began the construction of the foundations or when they started construction work on any pre-existing foundations.

Ms O and Mr U's policy provides cover if there's damage to the home that's been caused because the builder didn't comply with NHBC's requirements when they built the parts of the home listed in Section B of the policy booklet.

Section B of the policy booklet lists the following parts of the home, in which the defect must be found in order for there to be a valid claim:

- Foundations
- Load-bearing walls
- Non load-bearing partition walls
- Wet-applied wall plaster
- External render and external vertical tile hanging
- Load-bearing parts of the roof
- Tile and slate coverings to pitched roofs
- Ceilings
- Load-bearing parts of the floors
- Staircases and internal floor decking and screeds where these fail to support normal loads
- Newly built retaining walls necessary for the structural stability of the Home
- Double or triple glazing panes to external windows and doors
- Newly built below-ground drainage for which you are responsible

So I've considered what this means for each part of the claim in respect of which Ms O and Mr U have made a complaint.

#### *Balcony flat roof membrane*

In relation to the problems with the balcony roof, Ms O and Mr U have said that the two relevant areas listed in the policy are "load-bearing parts of the roof" and "load-bearing parts of the floors". They've said that the roof serves a dual function as both a flat roof and a load-bearing balcony floor. But, whilst I agree that the balcony itself comprises load-bearing elements, the defect is specifically within the roof membrane. And I don't agree that the membrane is a load-bearing structure, because for it to be considered load-bearing it would need to be an aspect of the building that supports the weight of the structure. And I've seen no evidence that the roof membrane performed this function.

I've considered the list of NHBC technical requirements that Ms O and Mr U have said have been breached. But even if all of those requirements had been breached, in order for there to be a valid claim, the defect must be in one of the parts listed above. And I don't think it was, because the problem wasn't within a load-bearing part of the floor or roof. I've considered both parties' arguments about this, and ultimately I'm more persuaded by NHBC's explanation. It's said the membrane is placed over the roof structure for weather protection and that removal of the membrane wouldn't compromise the load-bearing capability of the roof. I also note that the temporary repair of the roof membrane seemed to stop any further water ingress. So, overall, I'm satisfied that the issue was solely with the membrane and that the membrane isn't a load-bearing structure.

It follows that any other parts of the balcony that were affected by the failure of the roof

membrane also wouldn't be covered under the policy, as that damage was a direct consequence of the faulty membrane, and not caused by a defect in a part of the home listed in the relevant section of the policy.

### *Damaged tiles*

I've considered what Ms O and Mr U have said about the calculation for their damaged tiles. I had some concerns about the settlement when compared with what I was told about their neighbour's claim. Ms O told me their neighbours had been offered over £40,000 for their damaged tiles, compared to the offer of over £8,000 for Ms O and Mr U.

Due to the large discrepancy in claim settlements for properties that were built by the same builder at the same time, I asked NHBC for an explanation. I'd already advised Ms O on the phone that it may be that NHBC wouldn't be able to discuss a separate claim with me in any detail. And I'm afraid I wasn't able to obtain any specific information to explain the large difference in settlements. But NHBC assured me that each claim was assessed on its merits and offers were calculated based on the amount of damage at the time of inspection. So I can only conclude from what it's said, that the damage to Ms O and Mr U's neighbour's property was greater. If Ms O and Mr U feel this isn't correct, they will need to obtain evidence from their neighbour directly as to the number of tiles that were damaged at their neighbour's property, the size of the area that was affected by damaged tiles at their neighbour's house, and the cost of their tiles, in order to put new information before NHBC so that it can reconsider this element of their claim.

If presented with new information and evidence which indicates that the scale of the damage at the neighbouring property was the same or similar to the tile damage at Ms O and Mr U's house, I'd expect NHBC to take another look at its calculations.

Without further evidence, I have to rely on the information provided in relation to the damaged tiles. And I can see NHBC has explained its calculations with reference to the number of tiles it counted which were damaged at the time of their visit. This resulted in an offer for 8.6m<sup>2</sup> of damaged tiles in the kitchen and 2.6m<sup>2</sup> of damaged tiles in the utility room. Whilst NHBC is only obliged to pay for the damaged tiles under the terms of the policy, I agree that it should also pay 50% of the cost of any undamaged tiles in case matching tiles aren't found. I appreciate that Ms O and Mr U's assessment of the overall area that's damaged is different, but they've not provided supporting evidence of this so I'm unable to say that the offer from NHBC is unfair.

Because of this, I'm satisfied that NHBC's offer for the damaged tiles is reasonable at present. But as I've said, if Ms O and Mr U obtain any further compelling evidence that the offer should be increased, such as information from their neighbour about the number of damaged tiles at the neighbour's property and supporting photographic evidence, for example, then they should submit this evidence to NHBC directly and I'd expect NHBC to consider it.

### *Racial discrimination*

Ms O and Mr U complained about NHBC treating them unfairly in comparison to their neighbour, and said that this indicated they were being discriminated against on the grounds of their race. NHBC responded to this in its letter dated 15 February 2023. But Ms O and Mr U didn't refer that complaint to this service until November 2023, over six months after the date of that particular final response letter.

Our Investigator asked Ms O and Mr U in an email dated 22 February 2024 whether there

were any exceptional circumstances which led to them referring the complaint about discrimination and poor claim progression to us late. As Ms O and Mr U didn't reply to this point, we can't consider the issue of racial discrimination and poor claim progression.

But I should point out that this service is unable to make a legal finding that the Equality Act 2010 has been breached or that a financial business's actions are tantamount to race discrimination. I've no doubt that Ms O and Mr U's concerns and feelings about this are valid, but the Act makes it clear that reaching a legal finding about discrimination is exclusively a matter for the courts.

### *Other Issues*

I've considered carefully Ms O and Mr U's most recent correspondence including their list of concerns. They've said there is a risk of structural collapse because of the defects, but as I've mentioned, I've seen no evidence of a structural defect that would be covered by this policy. Whilst the April 2021 report notes cracking and movement, and the surveyor mentions that the roof is a health and safety concern due to rot, I'm satisfied that the defective roof membrane caused this – rather than there being a structural defect within the load-bearing parts of the roof itself.

Ms O and Mr U mention a potential loss of value to their home, but claims for loss in value are specifically excluded under the policy, so I can't fairly conclude that NHBC is liable to remedy the issue because of a risk of the property's value diminishing.

In terms of electrical safety, mould growth or rot, whilst I accept these are very real concerns for Ms O and Mr U and represent hazards that need to be mitigated, issues caused by the water ingress would be for Ms O and Mr U to rectify, as they aren't covered by the policy for the reasons I've explained. Ms O and Mr U might be able to claim under any separate building insurance policy they have, for future instances of water ingress. But I'm afraid I'm not persuaded that these issues constitute structural defects that would be covered under their policy with NHBC.

In conclusion, I'm really sorry to disappoint Ms O and Mr U, but on the basis of all the evidence I've seen, I can't conclude that NHBC have treated them unfairly. The defect in the balcony roof membrane isn't covered by the policy and there's not enough evidence to suggest that NHBC has offered an unfair settlement in relation to the tiles.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O and Mr U to accept or reject my decision before 5 December 2024.

Ifrah Malik  
**Ombudsman**