

The complaint

Mr M complains that National House-Building Council (NHBC) declined a claim he tried to make under a Buildmark building warranty.

What happened

Mr M purchased a new build home and was given a NHBC Buildmark warranty, which provided cover for certain defects and damage to the property. The policy ran for a period of ten years between 2012 and 2022.

In 2021, Mr M reported to NHBC that there had been water ingress from the roof which had caused damage to the ensuite at the rear of his property. The claim was accepted by NHBC, and repairs carried out.

In December 2023, Mr M reported water ingress to a bedroom ceiling at the front of the property. NHBC arranged an investigation to see if the ingress was due to a failure of any previous works from 2021, but as it was in a different location, they concluded it wasn't failed repairs. And as the policy had expired nearly two years prior to this, they declined to do anything further.

Mr M complained to NHBC that his whole roof was defective so should have been replaced by them in 2021, rather than just localised repairs. Mr M said that as the ingress was caused by a defect which was present since construction, even though the policy had expired, he said NHBC should now replace his roof.

NHBC maintained the policy had expired so there was no cover for the new ingress. As Mr M remained unhappy, he approached the Financial Ombudsman Service.

One of our investigators looked into things but she didn't uphold the complaint. She said NHBC had acted in accordance with the policy terms by only dealing with the area of damage in 2021, rather than replacing the entire roof. As the new area of ingress and damage was reported after the policy had expired, she didn't think NHBC had acted unfairly by declining the claim.

The investigator also noted that more recently Mr M had reported an ingress of water to the area that was previously repaired in 2021, but as NHBC hadn't yet considered that, she said Mr M would need to raise this with NHBC in the first instance.

Mr M didn't agree and asked for a final decision from an ombudsman.

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, whilst I appreciate it'll come as a disappointment to Mr M, I've reached the same outcome as our investigator.

Following the reported water ingress in 2021, NHBC accepted the claim and carried out repairs. This included refixing the hip tiles and repairing any visible holes in the underlay. And following this (until very recently), there were no further issues reported. However, Mr M says that NHBC should have replaced the entire roof at the time, and if they had done so, he wouldn't have had the issues he's now experiencing in other areas of the roof, which only materialised after the policy expired. So, he says NHBC should now replace his roof, even though the policy has expired.

However, I don't think NHBC acted unfairly by carrying out localised repairs in 2021, rather than replacing the roof. I'll explain why.

The terms of Mr M's Buildmark warranty outline the policy coverage in years three to ten (the relevant period when the 2021 claim was made):

"What NHBC will do

1) We will pay you the full Cost, if it is more than £1,000 Indexed, of putting right any Damage in any of the following parts of the house, bungalow, maisonette or flat and its garage or other permanent outbuildings or its Common Parts:

- a) foundations;*
- b) load-bearing walls;*
- c) non load-bearing partition walls;*
- d) wet-applied wall plaster;*
- e) external render and external vertical tile hanging;*
- f) load-bearing parts of the roof;*
- g) roof coverings;*
- h) ceilings;*
- i) load-bearing parts of the floors;*
- j) staircases and internal floor decking and screeds where these fail to support normal loads;*
- k) retaining walls necessary for the structural stability of the house, bungalow, flat or maisonette, its garage or other permanent outbuilding;*
- l) double-glazing or triple-glazing panes to external windows and doors;*
- m) below-ground drainage for which you are responsible.*

Alternatively, we may at our option arrange to get the necessary work done at our expense."

And Damage is defined as:

"Physical damage to a Home caused by a Defect"

And Defect is defined as:

"The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means."

So, what this means is that there needs to be Damage (as defined) caused by a Defect (as defined) in order for a claim to be valid. And the policy covers putting right that Damage. Either Damage or a Defect in isolation without the other isn't sufficient for a valid claim to be made.

In other words, because the Damage (as defined) in 2021 was being caused by a Defect (as defined) in the hip system and roof underlays, Mr M had a valid claim for putting right that

Damage in isolation. Whilst the remainder of the roof may also have had the same Defect present, in the absence of Damage being present in other areas too, this wasn't sufficient for a valid claim for the rest of the roof. This means, under the policy terms, NHBC wasn't required to replace the whole roof even though there may have been defects with it and instead only needed to deal with the damaged area in isolation.

As NHBC dealt with the Damage caused by a Defect at that time, I don't think they acted outside of the policy terms or coverage by carrying out isolated repairs. And I understand that even though there was a slight change in repairs carried out to the underlay, no further issues presented at the time (until very recently – which I've talked about below), so I think NHBC met their obligations under the policy at that time.

When further ingress was reported in 2023, after the policy had expired, I think NHBC acted fairly by investigating whether the issue was a result of failed repairs from 2021. But as the new ingress was on a different elevation of the roof, it wasn't concluded to have been due to a failed repair. With this in mind, I don't think NHBC acted unfairly by considering the 2023 ingress separately to the 2021 claim and repairs, and as the policy had already expired, I don't think NHBC acted unfairly by declining the claim on this basis.

I do recognise Mr M has said a roof should last 20-30 years, his roofer has recommended replacing the entire roof, and if he doesn't do so, further areas of water ingress could happen in the future given the roof is defective. But the NHBC policy is a ten-year policy, it isn't a lifetime cover. And whilst a defect may cause damage outside of the ten-year policy period, as is the case here, there won't be a valid claim if the damage caused by a defect presents itself after the policy has expired.

I do note Mr M has said there has been further ingress in the same area as repairs were completed in 2021. As explained by our investigator, if he hasn't already done so, Mr M would need to raise this with NHBC in the first instance so they can consider further whether the repairs from 2021 were sufficient and/or if they have failed.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 August 2024.

Callum Milne
Ombudsman