

The complaint

Ms H and Mr H complain that National House-Building Council (“NHBC”) unfairly declined a claim for what they believe to be a defect in their property that has caused damage.

What happened

In November 2023, Ms H and Mr H made a claim under their ten-year new build “Buildmark” warranty with NHBC, when they noticed the coping stones on their roof had become loose.

NHBC sent its claims investigator to the property to assess the problem, and the report that was produced confirmed that there was hairline cracking under the stones. But it didn’t conclude that there was any evidence of slippage or movement of the stones from their original positions. So NHBC declined the claim.

Ms H and Mr H didn’t accept the report, nor did they accept NHBC’s decision to decline the claim. They said the damage would cost thousands of pounds to put right and they were unhappy that NHBC didn’t conduct a secondary visit after a complaint was raised, and simply looked at existing documents to reiterate its findings. Ms H and Mr H said, with reference to photos, that the copings were “tenting” next to each other.

In its response to their complaint, NHBC told Ms H and Mr H that the evidence suggested that the cracking was due to shrinkage and thermal movement between the different materials used. And that there was slight mortar loss between the top two copings at the rear elevation, but that this was due to minor erosion and could be fixed with normal maintenance.

Ms H and Mr H remained unhappy, so they referred their complaint to this service. Our Investigator considered it, but didn’t think it should be upheld and agreed with NHBC’s assessment of the issue. As Ms H and Mr H disagreed with our Investigator, 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.

As this is an informal service, I’m not going to respond here to every point or piece of evidence Ms H and Mr H or NHBC have provided. Instead, I’ve focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have considered everything submitted. And having done so, I’m not upholding this complaint. I’ll explain why.

Section 3 of Ms H and Mr H’s Buildmark policy provides cover during years 3-10 of the ten-year warranty period. As Ms H and Mr H made their claim during the ninth year of the policy period, it’s this section that the claim was considered under. Section 3 covers damage to the home due to a part of the property that’s listed in the policy not complying with NHBC’s mandatory build requirements. The policy states:

“What NHBC will do

1) We will pay you the full Cost if it is more than £1,200 Indexed of putting right any physical damage to your Home which is caused by a Defect in respect of any of the following parts of your house, bungalow, maisonette or flat, or its garage or other permanent outbuildings:

- a) foundations;
- b) load-bearing walls;
- c) non load-bearing partition walls;
- d) wet-applied wall plaster;
- e) external cladding, curtain walling, external render and external vertical tile hanging;
- f) load-bearing parts of the roof;
- g) roof coverings;
- h) ceilings; load-bearing parts of the floors;
- i) 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.”

The term “Defect” is defined at the start of the policy booklet as:

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

The policy makes clear that if there’s physical damage without a defect, or a defect without physical damage, then NHBC isn’t required to settle the claim. Physical damage, however, is not defined. So I’ve used the ordinary meaning of this, which I consider to be visible and identifiable loss or destruction that one can see or feel, or that affects its value or function.

In Ms H and Mr H’s original claim form, they told NHBC that the coping stone tiles either side of the peak of the roof were loose. I’ve looked carefully at all the photos provided and whilst I can see some cracking underneath the copings, I haven’t been provided with sufficient evidence that the stones are loose or that the issue is caused by a defect.

I’ve also relied on the expert report provided by NHBC’s claims investigator. Having weighed this up against the photos to see if the commentary is consistent with what I can see in the photographs, I think the photos do support the claims investigator’s comments, because they don’t show loosened stones or visible damage as a result of a confirmed defect.

I’ve considered whether the cracking or anything else constitutes physical damage caused by a defect. Whilst there’s reference in the report to the hairline cracks, HNBC says the cracking is more of a maintenance issue and it’s explained this is normal thermal movement or shrinkage which can happen over time. I find this explanation plausible. So I’m not satisfied that the cracks are due to a defect.

Ms H and Mr H refer to missing mortar constituting a defect. NHBC has said that based on its investigations there is some slight mortar loss between the top two copings at the rear elevation, but that this is due to minor erosion and can be made good with routine maintenance. I don’t find this unusual as this can happen over time due to exposure to the elements. The report and photos provided persuaded me that the mortar loss has most likely happened gradually over time and isn’t due to an initial build defect. And whilst Mr H has

said he thinks the issue is due to defective or failed works, I've also not seen enough to suggest that the builder failed to meet NHBC's technical requirements in respect of the coping stones, from the evidence that's been provided to me.

Mr H has said, in response to our Investigator's view, that he's personally inspected the coping stones and that they are loose. If he has video evidence of this, as well as any evidence to show that the cracking or loss of mortar is indeed a defect and not a maintenance issue, then this should be sent to NHBC for its consideration. I'd expect NHBC to consider any additional evidence Ms H and Mr H provide in relation to the coping stones and to do so under the existing claim. But I'm afraid that, based on the information and evidence I've seen, I'm not persuaded that there's a defect here that's caused physical damage which is covered by Ms H and Mr H's policy, so I don't consider NHBC has acted unfairly by declining the claim.

My final decision

For the reasons I've given, 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 H and Mr H to accept or reject my decision before 19 March 2025.

Ifrah Malik
Ombudsman