

The complaint

Mr and Mrs F complain that National House-Building Council (“NHBC”) has unfairly declined a claim under their Buildmark warranty.

Any reference to Mr and Mrs F or NHBC includes respective agents or representatives.

What happened

The background of this complaint is well known between the parties, so I've summarised events.

- Mr and Mrs F hold an NHBC ten-year Buildmark warranty for their property. They sought to claim under this policy for issues related to their roof which they say had caused an ingress of water.
- NHBC considered this claim under Section 3 of its warranty. It proposed a repair which included removing the existing flashing installed over a roof valley, installing new tiling and lining to the valley and a lead saddle flashing. NHBC said this would resolve the flashing and water ingress issues.
- Mr and Mrs F disagreed with this proposed repair, stating this would not resolve all of the issues present within their roof, and that NHBC's proposal would amount to only a “*patch repair*”, which was not sufficient and unfair.
- NHBC said the policy would only cover repairs that exceeded the minimum claim value (“MCV”) which was £1,900, and here this hadn't been met as its scope of repairs amounted to £1,655.20.
- Mr and Mrs F provided a quote of over £2,000 for repairs to the roof. NHBC recognised this quote was above the MCV but said this included works to correct other defects with the roof that were not causing damage, and therefore were not covered by the policy. NHBC stood by its claim outcome but agreed it did mismanage the expectations of Mr and Mrs F by inviting them to provide evidence which wouldn't impact the outcome of the claim. It offered £250 in compensation to recognise the distress and inconvenience this had caused.
- Our Investigator looked at what happened and didn't uphold the complaint, saying:
 - The policy would only provide cover in the event of physical damage to the home. And here there was no dispute the water ingress amounted to physical damage to the home.
 - The evidence available persuaded him that the method of repair would most likely resolve the physical damage to the home – therefore was a sufficient repair under the policy.
 - While it was evident there were other issues with the roof, these would not be covered by the policy unless it could be shown they were causing physical damage to the home. So, while Mr and Mrs F's own expert had put forward more extensive repairs, the roofer's objective was to resolve all roof issues, but NHBC's obligation only extended to the matters that caused physical

damage to the home – and this was in line with the policy.

- The Investigator acknowledged Mr and Mrs F had concerns about the sign off of the roof – but this wasn't a matter he could consider in this case as the scope was limited to the insurance claim itself. The Investigator agreed the sum of £250 compensation was fair and reasonable in the circumstances.
- Mr and Mrs F disagreed, saying:
 - The defect in this case was the roof itself – not the flashing which shouldn't have been there at all and had been put in place to remedy the roofer's poor workmanship to begin with. They said their independent roofing contractor confirmed the roof was built out-of-gauge leading to misaligned tiling and this was masked by use of the flashing to disguise this defect. They said NHBC's treatment of the water ingress as a flashing problem ignored the core defect.
 - NHBC's own technical standards had not been met – and they quoted 7.2.18 which states "*Roof coverings shall be of a suitable quality and durability to protect the building from weather.*" So, they said the patch repair would not bring the whole roof up to standard.
 - The £250 compensation was unrelated to the outcome of the claim, as it related to poor communication and handling of their complaint, not issues related to the roof. And it was unfair and undermined the purpose of the Buildmark warranty for NHBC to walk away from this claim due to its proposed fix being below the MCV.
- Mr and Mrs F provided a copy of a statement from an experienced roofer ("Mr M") that said the failing flashing should never have been present in the first place, and NHBC's proposed repair did not rectify the fundamental defect of the incorrectly installed roof structure. And without correcting the present misalignment water ingress would continue.
- NHBC reviewed Mr M's comments and reiterated it believed it had met the obligation of the Buildmark policy by rectifying the area of non-compliance which was causing physical damage. It said the policy was not intended to provide cover for preventative investigation or measures to be carried out – and it would not widen the scope of its remedy unless there was any evidence of other non-compliances within the roof leading to damage (water ingress) to the property.
- Our Investigator looked again and didn't change his mind. He said the evidence available supported that NHBC's proposed remedy would provide an effecting and lasting repair for the issue that had caused the water ingress. And while it wasn't in dispute there may be other areas of the roof that were not installed correctly or is out-of-gauge, this policy does not provide cover to bring a property up to standard. As there was no other evidence of damage being caused – and this being a requirement of the policy – he was satisfied NHBC's remedy was fair and reasonable in the circumstances. And because the proposed works fell below the MCV there was nothing further for NHBC to do.
- Mr and Mrs F still disagreed, saying the temporary flashing Mr and Mrs F had paid was the reason the further damage hadn't occurred. And they believed their early intervention to prevent further damage was now being used to penalise them. And it appeared both NHBC and the Financial Ombudsman Service were satisfied with a roof that presented a potential risk to their family. They also said NHBC had sought to redefine "*watertight*" and it was unfair for it to say it has fulfilled its warranty responsibility because the leak had stopped due to Mr and Mrs F's temporary repair.

The Investigator considered these points but didn't change his mind, reiterating his position.

So, the matter was passed to me for an Ombudsman's final decision.

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'm satisfied NHBC's offer of £250 compensation is fair and reasonable in the circumstances, and I'm not directing it to do anything further. I'll explain why.

In this case all parties are in agreement there are issues with Mr and Mrs F's roof.

NHBC has accepted parts of the damage under the policy in principle. The first dispute here lies in the proposed remedy that NHBC put forward and a disagreement about the extent of the necessary repairs required under the policy. The second arises with NHBC's application of a term regarding the MCV. I'll consider these matters in turn.

Mr and Mrs F have put forward evidence (including evidence from Mr M) that they say shows the roof was incorrectly installed and defective since it was built. They've said the roof is out-of-gauge and the flashing that was installed was put there by the builder to mask the lack of alignment with the roof tiles. And it is this flashing (used to mask the defective build) that has deteriorated and resulted in the leak into Mr and Mrs F's home. And they say NHBC's proposal is a "*patch repair*" that fails to amend underlying issues.

Mr and Mrs F have raised concerns about the sign off process, saying their home was not built to the required standard. And they've said NHBC's warranty and final certificate was based on NHBC's own inspections of the builder's work which misled them into believing the home had passed its NHBC's quality standards. This sign off process simply sits outside of the scope of the complaint I am able to consider. Our jurisdiction limits me to only be able to consider the outcome and handling of the insurance claim itself.

So, I'll begin with the claim, which requires me first to consider the policy terms.

In summary, this Buildmark policy provides cover for ten years.

Section 2 of Mr and Mrs F's policy provides cover where the builder has failed to meet NHBC requirements when they built the home during the first two years after the home is built (builder's warranty period).

Section 3 of the NHBC policy is an insurance after the builder's warranty period has ended during the eight years that follow. It is under this part of the cover Mr and Mrs F's claim was made. This section says:

"This section protects you if there is physical damage to your home because the builder failed to build the following parts of your home to meet the NHBC requirements"

It goes on to list a number of different parts of the home including "*roofs*" amongst others.

So, on its face, it appears to me *if* there was physical damage to Mr and Mrs F's home as a result of the builder's failure to build part of the roof in line with NHBC requirements, this policy would respond.

I think it is worth noting here the presence of physical damage as a result of the failure to build the property in line with NHBC requirements is necessary for a claim to succeed. This

means an issue with the build without corresponding physical damage wouldn't be covered.

Below this, under the heading "*What is not covered under this section – conditions and exclusions*" the terms say:

"You cannot claim for the following:

- Damage to the roof covering (including any underlays, fixings, mortar and weatherproofing details) unless the damage results in water getting into your home, so this item is not covered by your policy."*

I think this makes clear that the damage to the roof covering requires water entering the home and causing damage. So, I've looked at the available evidence to determine whether the issues with Mr and Mrs F's roof should be covered by this policy.

I've reviewed all of the evidence provided by Mr and Mrs F including their roofer Mr M. In summary, Mr M says the issues present in Mr and Mrs F's roof is due to the roof's installation being out-of-gauge during construction. And this flashing system was added to cover up misaligned tiles and poor workmanship.

NHBC has provided its own technical opinions, including copies of its technical reports from January 2025. Within these NHBC's agents conclude the issues occurred due to an "*inconsistent gauge or setting out of the front and rear roof tiling which has caused a step at the junction with the upper part of the valley gutter, with a tear in the flashing provided.*" And they agreed this wasn't in line with the NHBC Technical Requirements. It proposed the following repair to repair the damage:

- "The installation of a short length of dry fixed valley/bonding gutter at the step in the roof line between the top of the valley gutter and ridge.*
- A new lead saddle is required at the junction between main roof and the tops of the roof valley to make a watertight junction."*

The conclusion of this report stated the cost of the repair would be under the £1,900 MCV so the policy wouldn't cover this claim. A second report from the same time concluded:

"There is evidence of a section of the front porch roof flashing having uplifted and parts of the front dry verge being insecure as shown the above photographs.

There was no evident water ingress observed from either area."

And while the damage was consistent with a failure to build the following parts of the roof to meet the NHBC Technical Requirements, there was an absence of any damage to the property. As a result, the policy wouldn't respond.

As our Investigator has outlined previously, I think all parties are in agreement there are issues with Mr and Mrs F's roof that go beyond the failing flashing that led to the water ingress. However, the policy *only* requires a repair to fix the part causing physical damage.

Mr and Mrs F have said this doesn't go far enough, and will leave them with issues within their roof. I agree with them that NHBC's proposal does not address all issues with their roof, but I am satisfied NHBC's proposal would address and resolve the cause of physical damage to their home (the water ingress) – and fulfil the policy terms. Mr and Mrs F say this fails to recognise the core defect – but whilst that may be so, that doesn't mean NHBC is required to go beyond the policy terms and pay for work which isn't covered by the policy.

I want to be clear, I sympathise with Mr and Mrs F's position. But simply, I'm not persuaded it would be fair nor reasonable to direct NHBC to act outside of the requirements of its policy terms, nor to change the purpose of the Buildmark policy into one that provides much more extensive cover than it was designed to.

Mr and Mrs F's policy includes a minimum claim value. The policy says this is because it does not apply a policy excess under any part of the Buildmark policy, meaning the policyholder doesn't have to pay an excess. And it says:

“...if the cost of the work you are claiming for is below the minimum claim value, we will not do the work or pay anything towards the cost.”

I think the terms are clear on this point. And in this case NHBC has evidenced the cost of the necessary flashing works its proposed would cost below the MCV of £1,900. Mr and Mrs F haven't disputed this point other than to say they think it's unfair. I respect their view on this point, but it doesn't persuade me to direct NHBC to waive this condition/term.

Mr and Mrs F have also said their intervention to carry out a temporary repair has led to their position being prejudiced. This is to say, the extent of the damage would've been greater had they just let it continue. Mr and Mrs F's policy, like most policies of this nature, requires them to take "*reasonable steps to minimise loss*". So, while I recognise their point, I can't see their actions were above and beyond what would be expected of a policyholder looking to mitigate the extent of damage to their home. As a result, this hasn't changed my mind.

NHBC has overall agreed it has made mistakes regarding its handling of this claim in places regarding communication and management of expectations. I agree that NHBC has made mistakes in these areas, and I'm satisfied the sum of £250 compensation for the distress and inconvenience caused is sufficient in the circumstances.

My final decision

For the above reasons, I'm directing National House-Building Council to pay Mr and Mrs F £250 in compensation in line with its previous offer (if this hasn't already been paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 2 January 2025.

Jack Baldry
Ombudsman