

## **The complaint**

Mr and Mrs C complain that National House Building Council (NHBC) has unfairly handled a claim made under their buildings guarantee insurance.

They feel the communication from the claims investigator has been poor and NHBC has unreasonably rejected a claim for damage to their property which they feel should be covered.

## **What happened**

A previous complaint was brought to this Service after NHBC declined Mr and Mrs C's claim for damage to their driveway and rear garden patio. NHBC was directed to reconsider the claim and whether the foundation in the affected areas met the required standards.

NHBC inspected the property and accepted damage to the driveway in front of the garage was caused by a defect and non-compliance of NHBC requirements. It said the cost of the repairs needed to rectify this, amounted to £1318.28.

It accepted the damage to the paved patio at the rear of the property was due to the non-compliance of the NHBC requirements, but it said the work required to put this right wasn't covered. This is because Mr and Mrs C had private works completed and the patio was changed from that installed by the builder when the property was built. It said private works completed by a third party after the completion of the property are not covered.

As a result, NHBC said it was declining the claim because the total cost was less than the minimum claim value of £1850.

Mr and Mrs C complained about the claim decision and said the patio and cost to repair this should be included. The patio was re-laid onto the existing foundation and had only subsided due to the defect with the foundation in place, installed by the builder. So, they felt it was unfair to exclude this when the cause to the rear patio was the same as the defect which caused the damage to the driveway.

Our investigator looked at this complaint and didn't think NHBC had acted fairly when declining to consider the cost of the repairs to the rear patio. They accepted the policy conditions limit the liability of NHBC when work has been completed privately and after the completion of the property. But they didn't think the work here had impacted the foundations which had been identified as being defective and it remained that this default was the cause of the damage.

NHBC hadn't demonstrated the damage wasn't because of the non-compliance with the NHBC technical requirements and the investigator asked that NHBC reconsider the cost of the claim with the rear patio and works needed here included. If this meant the claim value was in excess of the minimum claim value, the claim should be paid and settlement arranged promptly.

The investigator accepted there was some poor communication during the claim process but

felt the award of £50 made to recognise this was fair and they didn't ask NHBC to go further with this.

NHBC didn't agree with the outcome. It said the policy didn't provide cover to things completed post completion and the patio was installed after the property had been completed. The exclusion for this is set out in the general conditions and exclusions of the policy booklet on page 22. They also felt the contractor undertaking the remedial work to lay the patio should have considered the subbase and whether it was sufficient to have the new patio laid on it. NHBC also believed Mrs and Mr C said the patio was re-laid because the previous patio was sinking and this supported the position of the contractor needing to ensure the subbase was effective and lasting.

Our investigator said they remained of the opinion that NHBC needed to evidence the physical damage to the rear patio was the result of the patio being laid and not because of the non-compliance of the property builder with the NHBC requirements for the patio foundations. This had been accepted as the cause of the damage to the driveway and been said to be the same issue with the patio. So they didn't think NHBC was acting fairly when not considering the damage here and whether this impacted the minimum claim value.

NHBC maintained it didn't agree and the case was referred for decision at its request.

### **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 decided to uphold this complaint, for much the same reasons as our investigator. I appreciate NHBC will be disappointed by this but I'll explain why I think it is fair that consideration is given to the cost of the repair to the rear patio.

The crux of this complaint is whether NHBC has made a fair claim decision when declining to provide cover for the cost of the repair works to Mr and Mrs C's property. The claim is made under Section 3 of the policy which provides cover for physical damage if the builder has failed to build certain parts of the house in line with the NHBC requirements. For a claim to be accepted, the failure needs to be evidenced and the claim value needs to meet the minimum claim value which is £1850 for Mr and Mrs C based on the year the claim was made.

NHBC has accepted there has been a failure with the builder and the construction of the subbase below the driveway of the property and this has resulted in the damage. It doesn't think it is fair to accept this has caused the damage to the patio at the rear of the property and feels it is fair to rely on the exclusions within the policy. And with the claim value being less than the minimum claim value, with the patio damage not included, it has declined the claim.

The exclusions referred to and policy wording are known to both sides so I am not setting these out here, but I've considered if I think the application of these is fair.

While I understand why NHBC feels the exclusions can be relied on, I don't agree it is fair in the circumstances of this case. With the failure of the construction in the subbase being noted and accepted in the driveway, I think it is a fair expectation to see NHBC demonstrate the physical damage to the patio has not been caused by the non-compliance of the NHBC requirements. It is an area that flows on from the driveway and while there has been a new patio laid on top of the subbase, it hasn't been shown it was the new patio and its installation which is defective and not the failure to comply with the NHBC requirements by the builder

when the property was built.

Mr and Mrs C dispute that they had the patio installed because of damage being noted. I think with the claim being raised in 2024 when the driveway and patio were seen to be failing, its likely that Mr and Mrs C would have raised their concerns with NHBC as they have here, sooner had they been concerned about the patio and its finish. So, I am not persuaded there was damage present when the patio was re-laid by their builder.

Mr and Mrs C have said the patio was installed around 18 months after the existing patio had been put in place and there was no reason to believe the subbase had not been constructed properly and it was reasonable to lay the new patio on to this. I agree this is reasonable and this adds weight to my opinion that it was unlikely damage was present when the new patio was installed.

NHBC has not demonstrated the cause of the sinking to the patio area is not the same as the cause of the damage to the driveway and the failure to meet the NHBC requirements with the subbase. In the absence of this, while it is accepted private work has been completed, it is not shown that this is the cause of the damage to the patio now. And while the policy seeks to avoid liability where private work has been completed, there is nothing to show the subbase is not the original installed by the builder. With this and the lack of evidence to demonstrate the damage is not because of the failures to comply with the NHBC requirements, I don't think it is fair for NHBC to decline to consider this damage.

While I think NHBC needs to consider the claim and damage to the patio, I don't think it needs to do anything else to recognise the poor communication during the claim journey. Unfortunately, with the nature of claims like this, there is always a level of distress and inconvenience that can be expected. This will be added to when communication is not as prompt as it could be but NHBC has accepted there was things which could have been better here and it has offered £50 to compensate for this, which I feel is fair and reasonable.

However, NHBC needs to take steps to put right the claim as I've set out below.

### **Putting things right**

NHBC has not demonstrated the cause of the damage to the patio at the rear of Mr and Mrs C's property is not the result of the same failure causing the damage to the driveway. Because of this I don't think it has demonstrated it has fairly declined to cover this claim and it should do the following now.

- Consider the damage to the rear patio of the property as being caused by the same failure as the failure to the driveway and non-compliance with the NHBC requirements.
- Review the scope of work to include the costing to rectify the damage in line with the above.
- If the cost of the works for both the driveway and patio exceed the minimum claim value, it should arrange to settle this claim promptly.

### **My final decision**

For the reasons I've explained above, I uphold Mr C and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 27 March 2026.

Thomas Brissenden  
**Ombudsman**