

complaint

Mr B is unhappy that National House-Building Council (NHBC) won't pay his claim under his building warranty because it said it doesn't exceed the minimum claim value (MCV).

background

In March 2019 Mr B made a claim to NHBC under part 3 of his building warranty, which covers NHBC'S liability in years 3 – 10 of the warranty. He was suffering water coming in to his kitchen through the balcony above. NHBC sent out an investigator who determined that the damage was caused by a defect covered under the warranty, namely poor detailing at the corners of the flat roof, requiring patching. It was determined that to put right the damage would cost £972. Under the warranty the claim must exceed the MCV as indexed annually, for it to be paid. At the time of the claim this was £1,630. So NHBC said it wouldn't pay for the damage.

Mr B said this was unfair. His neighbour had had exactly the same problem, with similar damage, and NHBC had paid for that. He also felt that a patch repair wasn't sufficient, as his neighbour was having the whole damp proof membrane replaced. NHBC reviewed the matter and agreed that it would be fair to have the whole membrane replaced rather than do a patch repair. It estimated this would cost £1,409, still below the MCV.

Mr B subsequently made a claim on his home insurance. He was advised that as the damage was due to a defect, his home insurance wouldn't cover it. The surveyor thought there was evidence of leaking into the cavity wall. He put this to NHBC who said there was no evidence to suggest the leaks related to the cavity trays, it felt the defect still lay with the balcony deck/roof covering/flashings.

Mr B's neighbour gave consent for his investigation report from NHBC to be considered in connection with Mr B's claim. The main difference between the proposed work related to the cavity trays, which in Mr B's neighbour's case were found to be poorly fitted but not in Mr B's case. Also in Mr B's case NHBC said the damage came from a different part of the balcony and needed less repair.

On referral to this service our investigator thought that NHBC had acted reasonably. She said that there was a difference between the work carried out at the neighbour's property and that proposed to be carried out at Mr B's property.

Mr B disagreed – he thought the damage in his and his neighbour's property was identical and in the same area. He showed us photos to demonstrate that the damage had got worse.

The matter has been referred to me for further consideration.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The warranty, in years 3-10, acts as an insurance policy against damage caused by certain defects. It doesn't warrant that the property is free from defects and doesn't cover damage caused by all defects. And when a repair is assessed at being below the MCV, NHBC won't pay for the cost of repair. NHBC's liability is to pay for "*The full Cost, if it is more than £1,000*

Indexed, of putting right any actual physical Damage caused by a Defect.” Whilst there may be the same defect in two properties the damage caused won’t necessarily be the same.

Mr B says the damage to his and his neighbour’s property is identical so NHBC should be carrying out the same work as it has for his neighbour. In assessing such cases we have to rely on the expert evidence provided – this service doesn’t carry out expert appraisals. Here the evidence from both reports carried out by NHBC’s investigators and subsequent responses to queries from Mr B is that:

- For Mr B’s property the damage is consistent with poor detailing at the corners of the flat roof. For the neighbour. water may be entering the cavity wall construction via the parapet walls and this may be due to incorrectly fitted cavity trays to the parapet walls.
- In the neighbour’s case, it was considered that the cavity tray detailing around the balustrade was contributing to the water ingress based on where the water staining was inside the property as the staining was substantially below the location of the parapet wall.
- The water staining at Mr B’s property was not in the same area and it was directly below the flashing and membrane detail and the repair here would correctly be to address the issue with the flashing/membrane in that area.

I think it reasonable to rely on the expert assessment that the main difference between the two areas of damage at the two properties is related in the neighbour’s case to the cavity trays. NHBC has confirmed to us that the costs relating to the cavity trays would have brought it over the MCV.

Mr B has pointed out the letter from his home insurer’s surveyor where she said: “*Given the pattern of the water on the ceiling, the roof could have failed causing water to breach the cavity*”. We raised this with NHBC who has explained that there’s no dispute that water is leaking into the cavity, in Mr B’s case it says there is no evidence to suggest the leak relates to the cavity trays (which is the damp proof course that crosses the cavity).

So I think that overall NHBC has explained why the proposed repairs to Mr B’s and his neighbour’s properties are different, and why Mr B’s the cost of the repairs falls below the MCV. I understand the problem with Mr B’s property is getting worse though that wouldn’t be surprising given the length of time the area has needed repair. I can only suggest he gets the repairs done according to NHBC’s assessment of the work needed, and if further problems are identified he refer them back to NHBC. I should point out though it is Mr B’s responsibility under the policy to take all reasonable steps to reduce damage to his home, so he shouldn’t expect NHBC to pay if the damage becomes so bad from being neglected ath it brings the cost of repair over the MCV.

my final decision

I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 30 August 2020.

Ray Lawley
ombudsman

