

## complaint

Mr S and Mrs H have complained about repairs carried out to their property by National House-Building Council (NHBC) under their building warranty.

## background

Mr S and Mrs H bought a new-build house in 2009. After they made a claim to NHBC for defects in their roof, NHBC carried out some repairs.

In 2016 NHBC repaired two slipped roof slates. Mr S and Mrs H went back to NHBC in 2017 because another slate had slipped. They think this is because NHBC hadn't carried out a proper repair previously.

NHBC said it couldn't be sure that the slate in question had slipped as a result of its contractor not repairing it properly. But it offered to pay Mr S and Mrs H £411, being the amount it would have cost NHBC to repair it.

Mr S and Mrs H didn't accept this offer. They were concerned that if they arranged the repair themselves and further damage appeared, it would be unclear who'd be responsible.

Mr S and Mrs H also complained about the state of their front paving which had previously been repaired by NHBC. Its investigator said that areas of mortar were starting to break up and buckle. NHBC said it wasn't liable for this as it was a result of the surrounding ground freezing and thawing. It thought this was a maintenance issue.

Mr S and Mrs H want NHBC to replace the slipped roof slate and repair the paving. They also think NHBC should pay for an independent surveyor to assess the roof and then carry out any repairs recommended by the surveyor.

I issued a provisional decision explaining why I was minded to uphold the complaint. An extract from my provisional decision is set out below:

*"I need to decide whether the slate that's slipped was previously repaired by NHBC and, if so, whether it's likely the roof slate has slipped because of a poor method of fixing by NHBC's contractor.*

*NHBC said:*

*"It is clear that the broken slate has been displaced at some point previously as there is evidence of glue where this has been re-fixed around the central hole ... However it is difficult to ascertain exactly when this slate was worked on, it may have been re-fixed during the original construction of the roof or during remedial work carried out by NHBC."*

*Mr S and Mrs H say that NHBC replaced over one hundred slates using a single fixing method. This involved punching a new single hole in the centre of the slate whereas originally they were attached with a double fixing. Since the slate which has slipped has a central hole and that's how NHBC's contractor carried out a previous repair, I think it's more likely than not that this slate has previously been repaired by NHBC.*

*NHBC suggested that the slates might have become loose and broken during bad weather. I think this is just speculation. There's no evidence that the property has suffered from storm damage. NHBC also said it couldn't confirm with any certainty how the damage occurred. Since I'm of the view that this slate was previously repaired by NHBC, I think it's likely that*

*the slate became loose because NHBC didn't carry out a lasting or effective repair in respect of it.*

*NHBC has offered to pay what it would have cost it to replace the slipped slate. The main reason Mr S and Mrs H have objected to the offer is that they want to be able to go back to NHBC if they have any more problems with the roof and to avoid NHBC denying liability in that situation on the basis that they've had works done that have contributed to the problem. I appreciate that concern because a number of different contractors have been working on the roof since the property was built and when a problem emerged, there was an issue about whether the contractor had been working on the section of the roof in question. In view of the history to date it seems to me quite likely that there might be more problems in future and so in order to treat Mr S and Mrs H fairly, NHBC should carry out the repair itself.*

*I might consider it reasonable to require NHBC to instruct an independent surveyor to assess the condition of Mr S and Mrs H's roof if there was evidence of defects or problems and the parties didn't agree on what had caused them. But there's nothing to show at this stage that there's anything wrong with Mr S and Mrs H's roof apart from one slipped slate. So there doesn't seem to me any justification to make NHBC have a roof survey carried out by an independent surveyor.*

*With regard to the path I understand this was investigated previously by NHBC. It found several loose paving slabs which hadn't been fitted on the correct bedding mix. It completed remedial works in 2015. When an insurer does a repair it has to be long-lasting and durable. That's an implied term of the repair contract. If the repair fails, it's only at that point it can be considered as to whether the repair had been long-lasting and durable or not as many factors will impact that decision.*

*For me to find in Mr S and Mrs H's favour on this point I'd need to be satisfied that their version of events is more likely to be correct than NHBC's version. They say that faults appeared in the path not long after the repair. They've sent photos which show how the mortar pointing to the path is breaking up into small pieces instead of continuous lines. NHBC says other sections of path haven't been affected and the mortar might be breaking up due to effect of weather. I accept that paving slabs will move around over time in response to all sorts of influences including expanding and contracting due to weather conditions. But I don't think NHBC can be said to have carried out a lasting repair if faults appeared so quickly – in this case almost immediately according to Mr S and Mrs H and in any event within three years. In order to treat Mr S and Mrs H fairly I think NHBC should carry out a lasting repair to the section of path which it repaired previously.”*

### **responses to my provisional findings**

Mr S and Mrs H accepted my provisional decision. In summary NHBC said:

- regarding the roof slate it wasn't possible to say with absolute certainty that there'd been a failed repair. It didn't think it should be liable to repair it based on the possibility (as opposed to evidence) that there'd been a failed repair.
- there also wasn't any evidence of a failed repair to the path.
- it should be allowed to pay the cost of the repairs as opposed to carrying out the works since the warranty gives NHBC that option.

### **my findings**

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

I agree that it's not possible to be completely sure that NHBC has carried out a failed repair to the roof slate in question and the path. But this service makes decisions based on what we think is fair and reasonable in the individual circumstances of each case. I've weighed up all the relevant facts and evidence before - deciding on the balance of probability – what I think is most likely to have happened. For the reasons explained above I think it's likely that NHBC has previously repaired the slipped roof slate and its repairs to that and the path have failed.

I also agree that under the warranty NHBC can choose how to go about settling a claim – by carrying out the repairs or making a cash settlement. But in this case things have moved on from that point. NHBC has settled the claims by carrying out repairs and it appears they weren't lasting and effective. I don't think it's fair for NHBC to step back now and leave Mr S and Mrs H to sort out the problems, even if it's at NHBC's expense. That's because, in the light of the history of this claim and particularly in the case of the roof, I can understand Mr S and Mrs H's concern that if there are any further problems, it may not be clear who's responsible.

### **my final decision**

I uphold this complaint in part and require National House-Building Council to replace Mr S and Mrs H's slipped roof slate and repair the section of path which it repaired previously.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs H to accept or reject my decision before 19 July 2019.

Elizabeth Grant  
**ombudsman**