

complaint

Mr and Mrs R say the National House-Building Council hasn't dealt effectively with a claim they made on their building warranty and insurance policy.

Any references to NHBC include any acts or omissions by its agents.

background

Mr and Mrs R completed on the purchase of their home in 2006. At the same time they were provided with an NHBC warranty and insurance policy. In 2016 they reported some issues with their property. NHBC accepted their claim. After an investigation it found the external rendering of the property was cracking. It appointed contractors to put things right.

Unfortunately things didn't go according to plan. Mr and Mrs R say the works were of poor quality. They say the contractors caused other problems such as scratching to some of their windows. And now they're worried about water ingress. Overall, Mr and Mrs R have been frustrated by NHBC's handling of their claim.

NHBC accepts not everything has gone as it should've. It's offered three separate payments to Mr and Mrs R totalling £900. This was in recognition of the trouble and upset caused by various delays and problems with the workmanship of its contractor.

NHBC accepts it's responsible for rectifying the rendering on Mr and Mrs R's property. But there's been some disagreement between the parties about how that should be done. There's also a difference about how other matters like the scratches to windows should be resolved.

The investigator agreed with NHBC's proposals for putting things right. Mr and Mrs R disagreed and so their complaint came to me to consider. I issued my provisional decision in November.

Neither party has provided further arguments or evidence so I see no reason to depart from my initial conclusions. I've had some thoughts from Mr and Mrs R and NHBC in relation to the approach to redress and I will incorporate these as I think appropriate.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm partially upholding Mr and Mrs R's complaint. I'll explain why.

the insurance policy

I think it's helpful to start by reflecting on certain important principles associated with insurance and the approach of this Service. These frame my decision.

The purpose of an insurance contract is to *indemnify* the policyholder should an insured event occur. That means Mr and Mrs R should be put back in the position they were in prior to the problem with the rendering arising or *as near as reasonably possible*.

In this case there's no dispute about whether or not the policy covered Mr and Mrs R's claim. But there are important terms and conditions which need to be borne in mind. For example, in the section about general exclusions their policy says it wouldn't cover:

"Costs or expenses greater than would have been paid or incurred by a reasonable person in the position of the owner spending his or her own money."

By choosing to deal with Mr and Mrs R's claim by making a repair, we'd expect NHBC to indemnify them by carrying out an *effective and lasting repair*. This isn't something that's always written into a policy but we think it's a fair and reasonable approach.

To be effective the repair must fully put right the damage. And to be lasting it must do so for an appropriate amount of time. What's appropriate will depend on what's being repaired. So in this case, we'd expect the rendering to Mr and Mrs R's home to be fit for purpose for many years.

It's agreed the repairs to Mr and Mrs R's home weren't carried out to the right standard. So this complaint is essentially about what should be done to put Mr and Mrs R back in the position they would've been in had things gone according to plan.

the rendering

While there appears to be a difference between the parties about how the works now required to the rendering should be carried out, I wonder if this is at least in part due to communication issues and misunderstandings.

NHBC proposed a scheme for making good the poor workmanship of its contractor and fixing the rendering properly. But Mr and Mrs R found this unacceptable. Their architect noted in his report from February 2018:

"I am led to believe by Mr and Mrs R that the suggested remedial works were to create smooth plaster borders around the perimeters of the external windows and doors to match in with the ingoes and neaten up the finish externally. However, this is not in accordance with the approved planning drawings and so would invalidate the planning approval and thus make the external elevations technically illegal."

"Therefore, although this would be a technical way of resolving these issues from a building warranty approval perspective, this would not be deemed desirable in terms of the clients' specification and expectations, and it would also be deemed illegal as far as planning approval would be concerned."

I've not seen anything from the local planning authority about whether there'd really be an objection to the works proposed by NHBC. I get a sense from what I've read Mr and Mrs R's main objection concerns aesthetics. It would be a significant change to the appearance of their home. And I don't downplay this given the age of the building, their investment and attachment.

Mr and Mrs R say that they were told by one of NHBC's contractors that to put the rendering right would require resurfacing the whole building. Their architect appears to lend some support to this position. He said:

"I would agree with Mr and Mrs R that the best way forward would be to remove the cement plaster to the ingoes and most, if not all, of the harling to the outside of the building and redo the whole lot to get a consistent finish and ensure the colours match throughout, to satisfy the clients' standards."

NHBC say that the scheme it initially put forward was simply one option. It says although one of its contractors may've mentioned resurfacing the whole property, this isn't necessary. Nor would it be covered by their policy. It hadn't ruled out the possibility of redoing - to the right standard - the original works. And that is what it now proposes.

Mr and Mrs R say having the whole property resurfaced wasn't their idea – they just wanted to be put back in the position they should've been in had the initial repairs been done properly.

I think the best way forward here is for NHBC to be given a final opportunity to carry out effective repairs. It should review the findings of its own investigation as well as those of Mr and Mrs R's architect.

NHBC must ensure that Mr and Mrs R are put back in the position they'd have been had the works been executed in a satisfactory manner. Remember, NHBC's liability in relation to this claim is to repair any damage caused by a defect and also to address any repairs required to cure that defect.

NHBC has argued that the policy doesn't allow for, and it isn't liable for, the render on Mr and Mrs R's property which is in good order. I agree that if only part of the render is damaged, and an effective repair can be undertaken by only replacing that part of the render, this is the extent of NHBC's liability in relation to the claim.

I recognise Mr and Mrs R's concerns about the aesthetic match of any new render to the rest of their property. But if the colour of the new render is such that any colour difference would not be readily noticeable; or if the new render would likely blend in over a reasonable period of time (because of natural weathering), then I think that'll mean NHBC will have delivered a satisfactory repair.

So NHBC will be undertaking repairs that would in normal circumstances be undertaken by a prudent homeowner. I think that's reasonable. And it meets the terms of Mr and Mrs R's policy which were clearly set out.

damaged windows and possible water ingress

There are other issues which may've arisen as a consequence of NHBC's contractors that haven't been dealt with satisfactorily. For example, Mr and Mrs R's concern in respect of scratches to their windows as a result of the attempted repairs to the external rendering hasn't been addressed.

I appreciate the difficulty in confirming who caused the damage to Mr and Mrs R's windows and when. The render repairs to Mr and Mrs R's home clearly presented a risk, and that's why a protection system was put in place. It's arguable the most likely cause of the scratching was NHBC's contractor.

The evidenced poor workmanship to Mr and Mrs R's rendering could reflect on the wider performance of NHBC's contractor. And presumably it would've recorded any pre-existing damage to protect its own position? I've seen no evidence this was done.

NHBC hasn't covered this issue its response letters to Mr and Mrs R of June, July and November last year. But I can see that it was aware of the problem and that damage was

evident. I understand that a schedule of works was compiled at one point. And there are notes on file which indicate NHBC's contract surveyor thought its contractor would need to address the matter.

I also note that Mr and Mrs R's architect's report from February this year noted:

"Also upon closer inspection, several windows in the side elevation in particular have large areas of scratching - apparently this occurred when the covering was removed from the windows following the remedial works to the jambs. This will need to be rectified by removing and replacing the glazing panes."

However, there may be other explanations for how the damage to Mr and Mrs R's windows occurred, for example the original installation, window cleaning or weathering. So I don't think it would be fair to either party for me to reach a conclusion based on the thin information I have.

I think NHBC should've done more to thoroughly investigate the situation. So, one option is for an independent expert report to be commissioned on the nature, extent, age and *most likely* cause of the damage to Mr and Mrs R's windows. The findings of that report - which will also include recommendations for putting things right – would be binding on both parties.

NHBC responded to my provisional decision saying that it could be difficult to obtain a definitive expert opinion about what caused the damage to Mr and Mrs R's windows. I can see there is a risk to both parties with a report that will have to provide a conclusion on about the most likely cause.

In order to conclude this particular matter, NHBC has proposed a cash settlement of around £3100 for the glazing which it says is in line with its scheduled rates. If both parties can agree this way forward I think it would represent a reasonable alternative approach to resolving this particular aspect of Mr and Mrs R's complaint.

More recently Mr and Mrs R have raised the issue of the potential water ingress in those areas where there were sub-standard repair works. This was another matter alluded to in their architects report.

Before works begin to make good the failed repairs it seems to me best practice for NHBC to carry out an investigation of the status of those repairs and whether they've caused any associated damage. If they have these things also need to be put right.

handling of the claim

NHBC accepts there have been problems with Mr and Mrs R's claim. These include significant delays and unresponsive communications, particularly with its contractor; and the repairs which weren't up to standard. It apologised and tried to put things right.

Mr and Mrs R have been caused unnecessary trouble and upset by what's happened. The question for me is whether or not the three payments already offered by NHBC totalling £900 are sufficient in the circumstances.

I think the awards made by NHBC have been of the right order of magnitude for the shortcomings it's acknowledged. The problem is, in particular with regard to Mr and Mrs R's damaged windows, a full investigation and response was lacking. So I think NHBC needs to make a further award of £200.

putting things right

For the reasons I've set out I'm partially upholding Mr and Mrs R's complaint. I require the National House-Building Council to:

- Have one final attempt to put Mr and Mrs R back in the position they'd have been in had the works to the external rendering of their property been executed in a satisfactory manner.
- This will include appropriate investigation of the sub-standard works previously undertaken to review and put right any problems and damage caused by these, including any water ingress. A full schedule of works to be shared with Mr and Mrs R.
- Either: (i) Commission and pay for an independent expert report on the nature, extent, age and *most likely* cause of the damage to the windows. Mr and Mrs R to have input to the selection of the expert employed. The findings of the report - which will also include recommendations for putting things right – will be binding on both parties; *alternatively* (ii) where both parties can agree, a cash settlement for this element of the complaint.
- Pay Mr and Mrs R an additional £200 for the trouble and upset they've been caused during the handling of their claim.

my final decision

For the reasons I've explained, I'm partially upholding Mr and Mrs R's complaint and require the National House-Building Council to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 28 January 2019.

Kevin Williamson
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