

## **complaint**

Miss D and Mr P have complained that National House-Building Council (NHBC) carried out poor repairs to the render on their property when settling a previous claim.

## **background**

I issued a provisional decision on this complaint in March 2019. I explained that I was intending to uphold Miss D and Mr P's complaint in part.

Here's what I said in my provisional decision:

### ***“background***

*Miss D and Mr P bought a new build property in 2007 which was covered by a NHBC Buildmark policy for 10 years. In 2015 Miss D and Mr P raised issues with the rendering and NHBC had this replaced in August 2016. But Miss D and Mr P weren't happy with the repair. NHBC thought the issues were cosmetic but paid £750 to recognise delays and disruption.*

*In 2017 Miss D and Mr P sent NHBC a surveyor's report which identified three main issues and what was needed to put them right – a complete re-render. The issues were;*

- inconsistent thickness of the render – creating a weakness and potential for water ingress*
- poor quality finishing at the interface between different materials – creating a potential for water ingress*
- cracking/crazing at the smooth window reveals*

*NHBC disagreed. Its expert said the issues were cosmetic and wouldn't affect the performance of the render. He said the remedial works should be;*

- inconsistencies in thickness of render – seal with polysulphide mastic bead*
- finishing at different interfaces – tidying up the junctions and cleaning down the ventilation strips*
- cracking/crazing – reveals rubbed down and painted with suitable masonry paint*

*He also commented on some internal cracking at the property, saying it was down to normal shrinkage/movement and not covered by the policy.*

*Miss D and Mr P's surveyor commented on this report. He said the inconsistencies in the render thickness were at critical locations, and were further exacerbated by the poor finishing at different material interfaces. He said these junctions should be sealed with mastic sealant. He also said the cracking and crazing wasn't minor and he suspected the wrong type of render had been used for the reveals.*

*NHBC said it was prepared to settle the claim in line with the recommendations of its expert. It accepted that painting the window reveals would create a maintenance issue, so it offered to cover the cost of repainting the window reveals once after a period of 10 years.*

*Miss D and Mr P weren't happy with NHBC's proposed resolution. They brought their complaint to our service where it was looked at by one of our investigators. Our investigator thought;*

- *applying the mastic sealant was an appropriate resolution for the issues with the consistency of the render*
- *tidying up the junctions wasn't enough, NHBC should apply mastic sealant at all junctions in line with Miss D and Mr P's report*
- *he hadn't seen evidence that painting the reveals with masonry paint wouldn't resolve the issue, so he thought it was a suitable resolution*
- *the internal damage was most likely caused by normal shrinkage and so wasn't covered under their policy*

*He also addressed some other issues raised by Miss D and Mr P. These were:*

- *discolouration at the gable end of their property*
- *a telephone wire that had been improperly imbedded in the render*
- *damage to some lead flashing*
- *the cost of their second survey*
- *the level of compensation*

*NHBC didn't agree that our service could consider the compensation award as it was made more than six months before the complaint was brought to us. It said it would accept the recommendation regarding the finishing at different interfaces, but it couldn't guarantee the quality of the finishing. It asked that Miss D and Mr P accept this before it carried out any work or said it would calculate a cash settlement so they could employ their own contractor.*

*No agreement on how the complaint should be settled has been reached, so it has been passed to me to decide.*

### ***my provisional findings***

*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 intending to partially uphold it. I'll explain why in more detail below.*

*NHBC produces a set of technical requirements which builders should follow when building a property. They're not necessarily the same as building regulations. The Buildmark Policy provides cover where it can be shown the quality of the work amounts to a breach of NHBC's own technical requirements.*

*Miss D and Mr P's policy states that NHBC will put right (or meet the cost of putting right) any damage caused by a defect. The policy defines damage as "physical damage to the home caused by a defect". And it defines defect as "[a] breach of any mandatory NHBC Requirement by the Builder or anyone employed by him or acting for him."*

*This means I need to consider whether or not a requirement exists – in the NHBC technical requirements – for the type of claim being made. If one does, I can then*

*consider whether it has been breached. If there has been no breach, there is no "defect" and so there is no cover.*

*Since the complaint has been with me, NHBC has realised the correct technical requirements that apply are from 2004 – when the property was registered for construction – and not 2016 as it previously said. So it's these requirements I've considered when reaching my provisional findings.*

*Miss D and Mr P and NHBC have both had reports completed. And both have commented on whether the work amounts to a defect. In each of the reports and in our investigator's assessment, the issues outstanding have been broken down into items and addressed separately. For ease of reference I'll do the same.*

#### *inconsistencies in the thickness of the render*

*From what I've seen all parties are in agreement that there are inconsistencies in the thickness of the render, and that this could cause a risk of water ingress. What remains in dispute is what should be done to put it right.*

*The independent report says that the inconsistencies amount to an inherent defect. But Miss D and Mr P's policy states that, "Failure to follow guidance supporting the NHBC Requirements does not in itself amount to a Defect, as there may be other ways that the required performance can be achieved."*

*Both experts seem to agree that application of the sealant will prevent water ingress. So I think applying the mastic sealant is a suitable resolution for this issue as it will result in the required performance being achieved.*

*I've thought about the fact that applying the mastic sealant will create a maintenance issue. According to the technical data sheets for several brands of polysulphide based sealants, they have a life expectancy of around 15 to 20 years. The life expectancy of the render used on Miss D and Mr P's property is 30 years. So, I think NHBC should calculate the cost of reapplying the sealant once, and pay this amount to Miss D and Mr P.*

*I've also considered Miss D and Mr P's point that this repair could affect the resale value of their house. But NHBC's obligation under the policy is to deliver an effective and lasting repair, and I think the above resolution will deliver this. Also the terms and conditions of the policy contain a specific exclusion for any loss or reduction in value of the property. So any loss in value isn't covered by their policy.*

#### *finishing at interfaces of different materials*

*Both sides seem to agree with sealing the junctions, with suitable sealant, as a suitable remedy for this issue. But NHBC has concerns about the quality of the finish.*

*Miss D and Mr P have raised several concerns about the aesthetic appearance of some of the work and the resale value of their property being affected. But their policy states that damage which is purely cosmetic and which doesn't impair the structural stability or weather tightness of the property isn't covered. The inspector's report indicates that applying sealant at all junctions will address the weather tightness. So I think this is suitable remedy that is in line with the terms of the policy. NHBC must though cover the cost of reapplying the sealant once, in line with what I've said above.*

*cracking/crazing at smooth render reveals*

*NHBC's technical standards 2004 (Chapter 6.1 (d) – cracking and crazing) explain that render should be free from significant cracking and crazing. This guidance doesn't specifically define 'significant'. But later versions of the guidelines allow for a tolerance of 0.2mm. Several of the crazing lines on Miss D and Mr P's property are bordering on this allowable tolerance and NHBC has agreed that some remedial work is required at these locations.*

*The independent inspector has said that the wrong material was used for the window reveals. He said that instead of using the correct product for smooth render finish, the contractor used the receiver coat for the dry dash render used on the main walls. He said this compromises the durability of the finish and is what has led to the widespread cracking.*

*However, as part of his report the inspector contacted a technical representative from the render manufacturer. They advised that the render could be used in this way, provided it was painted with a suitable masonry paint – which is what NHBC is suggesting it will do to address the issues.*

*Taking into account the render manufacturer's expert view, I haven't seen any evidence to suggest that – other than creating a maintenance issue – the masonry paint won't provide an effective and lasting repair.*

*NHBC has conceded that this will result in a maintenance issue, and has offered to cover the cost of repainting the reveals after a period of 10 years, which is the life expectancy of the paint. But as mentioned, the life expectancy of the render is 30 years. So I don't think paying for one reapplication is enough to deliver a lasting repair. I think it would be fair for NHBC to pay the cost of two reapplications of the masonry paint.*

*lead flashing*

*The independent report highlighted that an area of lead flashing on the right hand side of the pitched roof above the front door was damaged. It said the flashing would've needed to be removed for the re-rendering to take place, so it was likely damaged by NHBC's contractors.*

*NHBC has said the flashing wouldn't have been touched by the contractors as part of the re-render. It has also provided photos from before the re-render took place, and pointed to a large dark patch in the area where damage has been reported. It says this indicates the damage was there before – so it doesn't accept responsibility for this damage.*

*Our investigator considered this issue. He said he hadn't seen any evidence that the damage was caused by NHBC's contractors. He said he'd be prepared to reconsider this if Miss D and Mr P provided further evidence, such as more photos.*

*Miss D and Mr P have provided some more photos for me to consider. But I still can't make out the damage referred to in the inspectors report. The photos NHBC has provided from 2015 are of a poor resolution so I don't think I can rely on them to say whether the area they're referring to is the same area referred to in the report.*

*I've made several attempts to contact the inspector Miss D and Mr P instructed, to discuss his thoughts on this issue. But unfortunately I haven't been able to reach him. In order for me to consider finding that NHBC are responsible for correcting any damage to the flashing, I'll need the inspector to provide a photo of the pitched roof with the damage circled. And for him to provide some explanation of why he believes the flashing would've had to be removed in order for the render to be applied, as this directly contradicts what NHBC says.*

#### *discolouration at gable end*

*Miss D and Mr P have complained that there is significant discolouration of the render at the gable end of their property. NHBC sent a claims investigator to assess the damage. It has provided three photographs of the discolouration and said, "The staining on the garage gable appears to be coming from the brickwork. The third photograph shows stains on the main house right hand gable which appear to be coinciding with the main roof trim joints above. All these issues are cosmetic and do not affect the performance of the render."*

*From what I've seen, neither the NHBC technical guidance or Miss D and Mr P's policy contain a provision for discolouration of render. And neither of the expert reports has said that the discolouration is an indication that the render is not performing. It follows that I don't think this amounts to a defect as described in the policy. So I don't think NHBC needs to do anything about this issue.*

#### *telephone wire*

*Miss D and Mr P's phone wire had been imbedded in the render. NHBC carried out a repair, but Miss D and Mr P weren't happy because the same type of render wasn't used. NHBC has offered to apply a topcoat to the work, but Miss D and Mr P don't want any further work carried out until I've finished my decision on their complaint.*

*I appreciate Miss D and Mr P might've been expecting a different material to be used. But if the repair addresses the potential weakness identified by the report, then I think it no longer amounts to a defect, as described in the policy. And I'm satisfied that the remedial work here will, on balance, provide a lasting and effective repair.*

*When this repair was carried out, the contractors caused some damage to Miss D and Mr P's flowerbed. They've said NHBC has offered to pay them £250 to recognise this, but they feel £500 is more appropriate.*

*I've seen a photograph of the damaged flowerbed. It doesn't appear that the contractors took much care, and it's clear that they caused some damage. However, it looks like quite a small flowerbed and it doesn't look like there was a great deal of plants or flowers in it. So overall I think NHBC's offer of £250 is fair to cover the damage caused.*

#### *drying time and undercoat*

*Miss D and Mr P's inspection report says that the brand of render used on their property required 48 hours drying time between application of the basecoat and primer. The report said it was understood this amount of time wasn't given. It said it was difficult to know exactly what the implications of this would be, but the inspector felt that it was a departure from the approved application and as such the application was compromised.*

*Miss D and Mr P have also said that the relevant certification to the type of render used states that a particular type of primer needed to be used. They say it wasn't and they would like NHBC to prove that it was.*

*NHBC has said that any manufacturer's guidance is only guidance. It says it has inspected the render on several occasions and it is performing. So it doesn't agree that there has been a breach of the NHBC technical requirements.*

*As mentioned above, Miss D and Mr P's policy states that, "Failure to follow guidance supporting the NHBC Requirements does not in itself amount to a Defect, as there may be other ways that the required performance can be achieved."*

*The inspection report didn't highlight that these apparent departures from the manufacturer's guidelines have caused any weakness or damage, and neither of the reports have suggested that the render isn't performing as it should do. Based on the evidence I've seen I think the render is performing, and has provided a lasting and effective repair. So I don't think NHBC needs to do anything more to address this issue.*

#### *cracking inside the property*

*Miss D and Mr P have also highlighted areas of cracking inside their property, which they say were not there prior to the re-render. NHBC's report said this damage was caused by normal shrinkage movement, and so is not the result of a defect.*

*The policy states that damage caused by shrinkage, thermal movement or movement between different types of material are not covered. And from what I've seen, the independent inspector didn't comment on this damage.*

*Based on what I've seen, I think it's most likely the cracks have been caused by normal shrinkage/movement. So I don't think NHBC is responsible for correcting any of the internal cracking.*

independent survey and compensation

*NHBC reimbursed Miss D and Mr P the cost of their first expert report because it accepted that further remedial work was required. Our investigator recommended that NHBC should also refund them the cost of the second report, which amounted to £570.*

*NHBC said that Miss D and Mr P didn't request reimbursement of the second survey until after it provided its last final response in October 2017. But it confirmed that it would reconsider the second survey if its position changed following the review from our service.*

*Our investigator recommended that some remedial work was required to the finishing at interfaces of different materials, based in part on Miss D and Mr P's surveyor's response. NHBC accepted that it would do the work. It follows that I think NHBC's position changed following the second report and as such, it should reimburse the £570 Miss D and Mr P paid the surveyor.*

*Our investigator recommended that NHBC increase the compensation offered in its final response letter from £750 to £1500. In response, NHBC said it made the gesture over six months before Miss D and Mr P brought their complaint to our service – so it didn't agree that we have the authority to consider it.*

*I've discussed this with NHBC and clarified that our investigator wasn't recommending further compensation for the period its final response letter appears to address. Our investigator felt that delays between Miss D and Mr P raising the claim in 2015 and the work commencing in 2016 hadn't been covered in that final response. NHBC agreed that this period wasn't addressed in its final response.*

*It does appear that there were some unnecessary delays prior to the re-render work commencing. The claim was made in 2015, but NHBC doesn't seem to have had the damage inspected for several months. And after accepting that work needed doing, remedial work didn't commence for almost a year. I agree with our investigator that these delays are significant and would've caused Miss D and Mr P understandable distress. So I think NHBC should pay a further £750 for the delays not covered in its initial offer.*

*Since NHBC made the offer of £750 Miss D and Mr P's complaint has continued for almost two years. During this time, its contractors have attended the property without permission and caused damage to some of the property – for example damage to their garden gate and the flowerbed near the telephone wire.*

*NHBC has already paid £100 to fix the gate, and has offered £250 for the damage to the flowerbed – which I think is fair. But I don't think the fact that NHBC has paid to correct the errors means it has done enough to address the understandable frustration these issues, or the amount of time that their complaint has been ongoing, will have caused. To recognise the trouble and upset Miss D and Mr P have continued to be caused, I think NHBC should pay them a further £500."*

I asked everyone to send me any further evidence or arguments they wanted me to consider before I reached my final decision.

Miss D and Mr P didn't agree with my provisional decision. They provided several comments for me to consider before I reach my final decision. To summarise, these were:

- they never received the £750 payment from NHBC in recognition of delays and disruption – which I said they had done in my provisional decision
- they don't accept painting the reveals will repair the damage as it won't fix the fact that they are "boss" – the render is not sticking to the wall correctly
- NHBC previously agreed to redo the window reveals but then appointed a new surveyor
- I've incorrectly relied on later technical guidance on the size of cracks/crazing in my provisional decision
- a neighbour of theirs is getting all of their reveals redone – they'd like me to comment on this
- if NHBC don't repair their window reveals they'll put in a claim under the six year guarantee they have with the re-rendering
- they won't accept mastic sealant as a remedy to the other issues as it discolours in the sun and becomes brittle and unsightly
- it's important for them to know whether primer was used on their property – if NHBC are confident it makes no difference to the performance why can't it say whether it was or wasn't used
- they didn't have stains or discolouration before the re-render
- the repairs to the telephone wire was a 'botch job' that was then covered up with plastic covering
- the media has reported recently on poor standards of new builds including a lack of skills, lack of supervision and they have had the same issues with NHBC

NHBC also responded to my provisional decision. It broadly agreed with my recommendations, barring the increased compensation for delays and disruption offered in its March 2017 final response.

With regard to the delays, it said having considered my provisional decision it felt the final response letter in March 2017 did cover the full period of delays. It provided a timeline of its considerations from the time to show this. Based on this NHBC didn't agree the amount was within our service's power to consider because Miss D and Mr P didn't bring their complaint to us within six months of that final response letter.

In response to this Miss D and Mr P provided information to show that they had referred their complaint to our service within six months of the final response letter. NHBC accepted this, but it didn't agree that the £750 it offered should be doubled. It said that amount, coupled with the £500 I recommended for ongoing delays meant that the total level of compensation would be unfairly high.

### **my findings**

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable in the circumstances of this complaint. I've also carefully considered the additional comments from both sides. I'll set out my thoughts below.

### compensation for trouble and upset

I've considered NHBC's comments regarding the amount of compensation I suggested in my provisional decision. Having looked through the timeline it provided there seems to have been around a year's worth of mostly avoidable delays. During this time Miss D and Mr P had to chase for updates on several occasions, some of which were ignored. They were also told meetings would take place which then didn't and they asked that no contractors attend their property in their absence, which they then did. During all of this, the re-render was completed and there were issues with the quality of the work in some areas – which would've caused additional upset.

I've taken these issues into account alongside those highlighted in my provisional decision – the damage to their garden gate and flowerbed, and the length of time the claim has still been ongoing. I've also thought about everything Miss D and Mr P have said about the impact the issues have had on them. Based on everything I've seen I think the total amount of compensation I recommended in my provisional decision was fair.

I note that in my provisional decision I said NHBC had already paid £750 so needed to pay a further £1,250. But it's since become apparent that the initial £750 wasn't paid. So I think NHBC should pay Miss D and Mr P £2,000 compensation for trouble and upset.

### window reveals

Miss D and Mr P have raised several issues about the proposed repairs to their window reveals. Their main concern seems to be that the render is 'boss' or hollow.

I've reviewed and relied on expert opinions in order to reach my provisional findings. The report Miss D and Mr P had completed does refer to some areas of bossing. But it doesn't say that NHBC's proposed resolution wouldn't address the issue. The only concern it raises with painting the reveals is that it will create a maintenance issue.

NHBC's report also confirms that there are some localised areas of bossing. But it states that none were so excessive as to warrant removal and reapplication. Ultimately, neither of the expert reports appear to find that painting the reveals won't provide an effective and lasting repair. So based on the available evidence I think it painting the window reveals with suitable masonry paint, and paying the cost of having them repainted twice, is a suitable resolution to this issue and in line with the policy terms.

In terms of Miss D and Mr P's point about their neighbour's window reveals, I'm unable to comment. Our service looks at each case on its own facts. And based on the facts of Miss D and Mr P's complaint, I think painting the window reveals is a suitable resolution to this issue.

If Miss D and Mr P decide they wish to raise a new claim on the guarantee they have on the re-render they are free to do so.

### mastic sealant

In my provisional decision I explained the NHBC policy definition of a defect. I explained what this meant for the issues with the render consistency and the finishing at different interfaces. To summarise, both sets of experts agree that applying mastic sealant will address the weather tightness and reduce the risk of water ingress.

Miss D and Mr P are unhappy with the proposed resolution because they say mastic sealant is prone to weathering and becoming unsightly.

I accept that the life expectancy of mastic sealant is less than that of the render. This is why I explained in my provisional decision that I felt it would be fair for NHBC to also pay the cost of having the sealant reapplied once. This will allow Miss D and Mr P to replace the sealant when it starts to show signs of expiration.

Overall, Miss D and Mr P's concerns about the mastic sealant haven't changed my decision. Their policy states that damage which is purely cosmetic and which doesn't impair the structural stability or weather tightness of the property isn't covered. The expert reports indicate that applying sealant at all junctions will address the weather tightness. So I still think this is a suitable remedy that is in line with the terms of the policy, on the basis that NHBC also cover the cost of reapplying the sealant once.

#### discolouration and telephone wire

It isn't in dispute that there is some discolouration to the gable end of Miss D and Mr P's property. NHBC is of the view that the damage is purely cosmetic and isn't affecting the performance of the render.

As I explained in my provisional decision, neither the NHBC technical guidance nor Miss D and Mr P's policy contain a provision for discolouration of render. And as I haven't seen any expert evidence to say that the render isn't performing, I don't think the discolouration amounts to a defect. So I don't think NHBC needs to do anything to address it.

Similarly, while I appreciate Miss D and Mr P were expecting a different material to be used for the phone wire repair; I haven't seen any evidence that the current repair hasn't addressed the weakness. Based on the available evidence I'm satisfied that, on balance, the work will provide a lasting and effective repair. So I don't think NHBC needs to do anything more here.

I note that NHBC has previously offered to apply a top coat to the area. It's not clear whether that offer is still available. But I'll leave it for Miss D and Mr P to explore this with NHBC if they decide it's something they might now be interested in.

#### use of primer

I contacted NHBC about this issue and asked it to provide an answer on this point, as it is clearly very important to Miss D and Mr P. NHBC said that the contractor that completed the render work is no longer on its panel of approved contractors. It also says it understands that this contractor sub-contracted to another contractor who NHBC have no relationship with. Because of this it hasn't been able to obtain a record of the works.

NHBC says that the report supplied by Miss D and Mr P doesn't say for definite that primer wasn't used. It also says that the instruction NHBC issued to the contractors did say that the render should be applied in line with the manufacturer's guidelines. So it is unclear as to why Miss D and Mr P believe that no primer was used.

Given what NHBC has said about the contractor that completed the works, I think it's unlikely that we'll ever know for certain whether the correct primer was used. But ultimately I stand by the finding I reached in my provisional decision. That is, the inspection report didn't highlight that these *apparent* departures from the manufacturer's guidelines have caused any weakness or damage. And neither of the reports suggested that the render in this area isn't performing as it should do.

Based on the evidence I've seen I think the render is performing, and has provided a lasting and effective repair. So I don't think NHBC needs to do anything more to address this issue.

#### remaining issues

I covered several other issues in my provisional decision. These were:

- internal cracking
- damage to lead flashing
- damage to flower bed
- reimbursement of second survey

Neither side has offered additional comments on my findings for these issues. So in the absence of new evidence or arguments I've reached the same findings for these issues as I did in my provisional decision – for the same reasons.

#### **my final decision**

For the reasons I've explained above and in my provisional decision, I uphold Miss D and Mr P's complaint in part.

National House-Building Council should:

- address the issues with the inconsistencies of the render in line with its contract surveyor's recommendations – seal vulnerable junctions with polysulphide mastic bead – and pay Miss D and Mr P the cost of having this reapplied once
- address the issues of finishing at different interfaces in line with the independent inspection report – apply mastic sealant at all vulnerable junctions – and pay Miss D and Mr P the cost of having this reapplied once
- address the cracking/crazing in window reveals in line with its contract surveyor's recommendations – apply suitable masonry paint – and pay Miss D and Mr P the cost of having this reapplied twice
- reimburse the £570 Miss D and Mr P paid for their follow up survey and pay interest\* on the amount from the date they paid for the survey to the date of settlement
- pay £250 for the damage to the flower beds
- pay Miss D and Mr P a total of £2,000 compensation for trouble and upset

\*If National House-Building Council considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Miss D and Mr P, it should tell them how much it's taken off. It should also give Miss D and Mr P a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Mr P to accept or reject my decision before 24 July 2019.

Adam Golding  
**ombudsman**