

## **complaint**

Mr and Mrs B complain that National House-Building Council ('NHBC') has incorrectly declined a claim for damage to their home under their building warranty policy.

## **background**

In 2018 Mr and Mrs B discovered water coming through the light fitting in their bathroom. They contacted NHBC to report the damage and to make a claim under their building warranty policy. NHBC arranged an inspection and reported that the damage was caused by either wind driven rain or snow entering in or around the roof vent. NHBC said that the roof vent would not be considered as a defect within the construction of the property and, as the policy only provided cover for the damage if a defect was detected, it refused the claim. However, it also stated that, even if the damage was shown to be caused by a defect, the cost of the repairs would be less than the minimum claim value required for a claim for damage caused by a defect and therefore the claim would not succeed.

Unhappy with this response, Mr and Mrs B brought their complaint to this service. They referred to statutory Building Regulations and NHBC technical requirements which state roofs should not allow water to penetrate the property – as water had entered their home, they say the building has not been built to the correct standard and it is therefore a latent defect. As there are three such roof vents, Mr and Mrs B say NHBC needs to repair not only the damage caused in this incident but also rectify the other sub-standard work. They also disputed the claim value, with Mr B providing his own schedule of works, which he said would exceed the minimum claim value.

Our investigator looked into this matter but didn't uphold the complaint. He found that the policy only provided cover for physical damage caused by a defect and so any claim would only be for the damage caused by this water ingress, not to rectify any other areas. He pointed out that the policy terms are clear in stating the minimum claim value is calculated based on the cost to NHBC for repairing the damage. He found that there wasn't enough evidence to show that things included in the costings by Mr B, such as the replacement of plasterboard and insulation, were required and so he was satisfied the costs put forward by NHBC were fair and reasonable. In relation to Mr and Mrs B's argument about the building regulations, he said that it was reasonable to suggest that the roof does comply by protecting against precipitation as this appears to have been an isolated incident. But in any event, as the minimum claim value hadn't been exceeded this meant the claim had been fairly declined.

Mr and Mrs B disagreed with our investigator. They stated that irrespective of the damage caused in this incident, as the construction doesn't comply with building standards NHBC needs to fix the issue with the other two roof vents. Mr B also provided his comments on the schedule of works provided by NHBC and referred to areas where he felt the calculations were incorrect. His new costing of this work took the total to approximately £500 over the minimum claim value.

In January 2021 I issued my provisional decision. In it I said:

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

*We're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr and Mrs B. Rather it reflects the informal nature of our service, it's remit and my role in it.*

*Mr and Mrs B have made a number of comments in relation to Building Regulations and why they feel the construction doesn't comply with the required standards. They think the building certificate, confirming the building has been built to correct standards, should not have been issued. Mr B is clearly very knowledgeable in this area, which I understand is due to his previous occupation. Whilst I understand the arguments raised, this service doesn't have the authority to decide on this issue. The crux of this complaint is whether there is a valid claim under the warranty for this damage - what I need to consider is whether NHBC has fairly declined the claim.*

*The building warranty provides different cover depending on the length of time that has passed since the property was built. As it has been more than two years since the completion of their home, any claim for damage would generally fall under section three of the policy. This section applies if there is physical damage to the property because the builder failed to build parts to comply with NHBC requirements. There is a list of the relevant parts covered and this includes roofs. It goes on to state that NHBC 'will take responsibility for having the work done to put right the physical damage...if the cost to us is above the minimum claim value'.*

*When this complaint was first made to our service, NHBC said that the water ingress to the property was not caused by a failure to build the roof correctly but more likely through wind driven rain or snow and, as there wasn't a defect, there was no valid claim. Mr and Mrs B disputed this, saying that the roof was allowing water into the property so there must be a defect. NHBC has reviewed this matter again and said that, whilst the roof vent isn't defective, the underlay had been fitted incorrectly around the vent. It says the underlay should be fitted tightly around the ventilator pipe in such a way to deflect water, but it was turned downwards which allowed the water to enter the roof space. NHBC has confirmed that it does consider this to be a defect. Based on this new information I'm satisfied the physical damage caused to Mr and Mrs B's home was as a result of a defect.*

*In order for NHBC to be liable for completing the works, the cost to rectify the physical damage caused must exceed the minimum claim value (MCV). I've noted Mr and Mrs B think that this defect may be replicated in other places in the roof where there are more tile vents and that these repairs should be included in the costs. But the policy is quite clear in stating it only provides cover under section three for the physical damage caused by a defect if the cost of that damage exceeds the MCV – there is no reference to rectifying any other areas which have not been damaged or not caused damage in the incident.*

*NHBC has provided a costed schedule of works that puts the total repair figure at several hundred pounds below the MCV. It reconsidered the costings following the recent identification of the defect, however, NHBC has said the schedule already included the removal of underlay around the vent and so there wouldn't be any alteration to the cost. It is important to note at this point that the policy refers to the cost of the work to NHBC. Mr B originally provided his own detailed schedule of works which included things such as the removal and storage of the bathroom cabinet and mirror, along with photographs and a wall feature from the access area. Whilst Mr B's schedule is clearly more detailed in this regard than the one provided by NHBC, I don't think that these types of activities would necessarily*

*add to the cost. I think it's more likely this would simply become part of the preparations and items would be moved to a room which was not impacted by these works.*

*Mr and Mrs B say the insulation and plasterboard in the loft area will need to be removed. They say there could be mould growth as a result of particles settling on the wet insulation and that the plasterboard will have been water damaged. NHBC responded to say the claims investigator's report stated that the insulation was dry and there was no indication of mould growth. It also said that mould spores in the air needed a combination of factors, one of which is moisture, to grow but if the insulation is dry then this cannot happen. And in relation to the plasterboard, NHBC said that, whilst there is water staining on the board, the main manufacturer states these should be replaced if there is bowing, de-lamination or where mould growth is visible. As this isn't the case in Mr and Mrs B's claim, NHBC has said it doesn't need to be replaced.*

*I've thought about this carefully, but I'm not persuaded that replacement of either of these two materials is necessary. The insulation has been reported as dry and there isn't any evidence to suggest that it has been or will be suffering from mould growth as a result of this incident. And whilst there isn't any doubt that the plasterboard has water staining, there doesn't appear to be any of the damage which would indicate it needs to be replaced at this point.*

*Mr B has also disputed other aspects of the schedule of works, such as the estimations for the amount of protection required both internally and externally. He says that both are inadequate for the area which would need to be protected – he has calculated 24m<sup>2</sup> as the minimum internally and says that externally a further 42m<sup>2</sup> is required for the driveway.*

*NHBC has said that internally it has allowed 40m<sup>2</sup> for dustsheets. It has also allowed for 12m<sup>2</sup> of a product called Multiguard which is a thicker type of protective covering. In terms of the Multiguard protection, it says the standard text used on this document is incorrect as this would be used just to cover the floor, rather than walls and this would have been measured for use on the stairs and landing. NHBC has also said it has allowed for the worst-case scenario by including this more expensive material, although this may not have actually been necessary. In relation to the external protection, NHBC has said that it would normally allow protection in external areas for the location of the works, such as where any scaffolding would be placed. In Mr and Mrs B's case, NHBC has said that only a small scaffold tower would be needed as it is only a small roof area that needs to be accessed. It says it wouldn't need to protect the whole driveway and therefore believes its figures are correct.*

*I appreciate Mr B's concerns in relation to the protection of his home whilst works are completed but, based on the information provided, I'm satisfied that NHBC has appropriately considered the requirements. The internal protection does appear to cover the area Mr B requires, albeit by using different materials, and the explanation given for the estimate externally is reasonable, so I'm not persuaded it needs to increase these calculations.*

*When taking everything into account, I'm persuaded that physical damage has occurred to the home of Mr and Mrs B as a result of non-compliance with NHBC requirements relating to the fitting of the underlay around the vent roof tile. So NHBC shouldn't have declined the claim on this basis. However, I'm not satisfied that there is enough evidence to show that the cost of completing the works would exceed the minimum claim value and therefore NHBC doesn't have to fund the claim.*

*Mr and Mrs B have referred to section four of the policy which they believe should cover the claim. Under this section there is cover for works if the builder failed to comply with certain Building Regulations when building the main structure of the home. Mr and Mrs B say there is a defect and so this should be covered under this section.*

*NHBC has disputed that the relevant Building Regulations have been breached, stating that it requires roofs to be adequately protected from interstitial condensation and this is what the tile vent was doing. It says there is no evidence of such condensation in this case so it wouldn't apply. However, it has also pointed out that this section only applies if there is an imminent danger to physical health or safety and this is not the case for the claim under Mr and Mrs B's policy. It wouldn't appear to me that the issue being claimed for does constitute any imminent danger to Mr and Mrs B and so I'm persuaded that this section wouldn't be applicable in these circumstances.*

NHBC has not responded to the provisional decision. Mr and Mrs B have replied to say they disagree with the outcome. They have said that section four of the policy states NHBC will take responsibility for having the work done to put right the failure of the builder to comply with the building regulations – so they believe their claim should be covered under this section. Mr B has provided detailed information about his expertise in this area and feels that we have failed to take into account the relevant laws and regulations regarding this.

Mr and Mrs B have also stated that the outcome fails to take into account good practice – which we say is our philosophy. Specifically, they have referred to the points relating to the plasterboard and insulation that they say needs replacing. Mr and Mrs B have also said we have failed to obtain an independent third-party specification including costs. And that the decision fails to ensure that the property would be put back into the condition they enjoyed before the incident and to ensure all known areas of contravention are rectified.

### **my findings**

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

Whilst I appreciate the comments made by Mr and Mrs B, I'm afraid they don't persuade me to alter my outcome. As mentioned previously, I'm unable to comment on the points made by Mr and Mrs B relating to the role of the Approved Inspector and the issuing of the building certificate on their property. I can only consider whether NHBC's decision to decline the claim made on the building warranty policy is fair and reasonable.

The cover under section four of the policy does include putting right the areas where it hasn't been built to comply with the required standards. However, this only comes into force if there is imminent danger to physical health or safety. I'm not of the opinion that the incident that has occurred can be considered as causing imminent danger. I'm satisfied that NHBC's decision not to consider a claim under this section is reasonable.

This leaves only section three of the policy which states NHBC will repair areas of physical damage only – there is no requirement under this section of the policy for NHBC to inspect the remainder of the property to look for other areas which may be non-compliant.

In relation to the independent evidence, it is not the role of this service to appoint experts. But both parties have been given the opportunity to provide information that they believe is important to the complaint, including reports from any other source they feel necessary. Mr B

provided his own commentary on both NHBC's report and also the schedule of works. His evidence, along with that provided by NHBC, has been considered but I'm not persuaded that NHBC's schedule of works isn't a fair representation of the repairs that would need completing or that its estimated costs to do this are unreasonable. The policy makes it clear that the costs are calculated based on the cost to NHBC, not Mr and Mrs B. And as the costs fall below the minimum claim value, I'm satisfied that is fair for NHBC to refuse the claim.

I did take into consideration the comments Mr B previously made in relation to the replacement of the plasterboard and insulation, including the information from relevant manufacturers that he has referred to. But as explained in my provisional decision, having weighed up the information provided by both parties, I found it reasonable for NHBC to conclude that it didn't need to replace either material.

I'm sorry to disappoint Mr and Mrs B, but I won't be recommending that NHBC has to do anything more.

**my final decision**

For the reasons stated above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 15 April 2021.

Jenny Giles  
**Ombudsman**