

## **complaint**

Mr M is unhappy with the provider of his building warranty, National House-Building Council (NHBC) in relation to a claim he made to it in 2015.

## **background**

In 2015 Mr M noticed a problem with the render at his home. NHBC considered the matter under section 3 of the warranty. An assessment of the property was undertaken in April 2015. There was some delay in a report being issued following the visit but it was ultimately decided that the house needed to be re-rendered.

Re-rendering work was completed in July 2016. Mr M was unhappy with the completed work; there were various render splashes, the drive hadn't been cleaned and things hadn't been reinstated as they should have been.

Mr M began trying to get NHBC to complete work. Some agreements were reached but then promises for contractors to call and do work were broken. In 2017 NHBC issued three final responses to Mr M. It accepted there had been delays and poor communication. It offered a total of £1,150 compensation.

Mr M complained to us but he and NHBC continued negotiating the outstanding elements of snagging. In November 2018 NHBC and Mr M agreed to settle for all but one area of repair in cash. NHBC also paid a further £300 compensation for further upset that had occurred.

The area of repair left outstanding was cracked render around the window and door reveals. Mr M had noted after the re-rendering work completed in July 2016 that the render around the windows and doors was cracked. He believes this was because it wasn't installed properly (no bonding agent was used). NHBC accepted that the cracking needed resolving. Its technician said that the render wasn't so damaged it needed removing and replacing, and to do that would likely entail major work to the render on the main facades of the property too (because that'd be damage during its removal). The technician said the render could be painted with a specialist resin-based paint, from the render manufacturers, that fills and covers cracks.

Mr M didn't believe that painting the render was sufficient he said it was likely already damaged from having been susceptible, due to the cracks, to the elements for an extended period of time. He said the only way to resolve the issue, in his view, was for the render to be removed and replaced. Mr M noted that the render was coming away from the wall in places and that some bits had fallen off.

Our investigator felt NHBC had failed Mr M during the course of the claim. He said a total of £1,850 compensation was fairly due. He also felt that NHBC should re-do the reveal render.

NHBC maintained that painting the reveal render, with specialist paint was acceptable. Mr M sent a photo to us showing a chip in an area of render around either the back door or a window (with a security light shown to the left of the opening).

The complaint was passed to me for a decision to be made. I didn't think NHBC should have to re-do the render or pay any further compensation. I issued a provisional decision to explain my initial findings, I said.

“reveals

*The remedial work to re-render the property completed (although I appreciate there was a lot of snagging) in July 2016. Into early 2017 reference started to appear to issues with the render. It isn't always clear from comments made whether the issues being discussed are regarding the window reveals (smooth render) or the façade finish (pebbled render). In any event the most damage I see as accepted as being present at that time was “cracking, mottling blemishes and minor blemishes”. And Mr M was told at that time that this was only felt to be cosmetic, it wasn't letting water in or compromising the protective finish of the render. I've not seen any photos from this time.*

*Into September a further review of the reveals was undertaken and it was accepted that at least some of the cracking was in breach of NHBC's technical guidelines, so it was felt that something needed to be done to resolve the issue. In October NHBC put forward a solution; to paint the render. The paint chosen was one specifically designed for filling cracks in render (it is resin based). It is provided by the same manufacturer that produced the render used on the reveals. Details of this were passed to Mr M.*

*Into late November I see that Mr M told NHBC that he was considering its plan for the render. A lot of communication occurred during October, November and December 2017 but apart from this one letter I don't see any further comment from Mr M regarding the reveals. All of his focus seemed to be on the other snagging issues. NHBC though, in a few emails did reiterate the plan for the render and stated that it had been put forward following careful consideration. NHBC's position was that this was appropriate and the best way forwards.*

*The next note I saw from Mr M regarding the reveals was in April 2018 when he told us there was a stalemate regarding the reveals. In August 2018 Mr M said “reveals (back door) are starting to come off the wall”. Photos were provided. But I can't see in these photos that the reveals are starting to come away.*

*In October 2019 Mr M told us that bits of the reveal render had started to drop off. A photo was provided. I hadn't seen this photo previously as part of either NHBC's file submissions or any that Mr M had sent to us.*

*I've included a lot of background detail here in my findings because I think it's relevant that in none of the earlier discussions about the reveals is it reported that the reveals are coming away or that they are “chipped” (for want of a better phrase). I don't believe the chipping damage in the photo Mr M has sent us this month is indicative of “mottling or minor blemishes”. And I've seen no early reports about bonding agents not being used or any expert reports saying that such should have been and without it the render is likely to fail.*

*I fully understand the concerns Mr M raised in early 2017 regarding cracking leaving render susceptible to damage. I see cases relating to freeze-thaw action of water in render and cement and similar materials quite a lot. But, at the time the cracking was noted and accepted by NHBC as being an issue, there was no sign (that I have seen) that the render was suffering the effects of long-term exposure to the elements. As I say nothing appears to have been falling off at that time. And, following a few months of debate, before the next winter came around, NHBC did put forward a plan for resolving the cracking.*

*I've read the details of the paint product put forward by NHBC. Taking everything into account I think that it was a reasonable suggestion. And whilst I can understand that, at that*

*time Mr M had doubts about its efficacy, I don't think it was reasonable to refuse NHBC a chance to carry out that work. The work would have been guaranteed and if it didn't work NHBC would have had to resolve the problem. Instead Mr M, having concerns about the long-term effects of water penetration, refused the option and left the reveal susceptible to more damage over time whilst the reveal and other issues were debated. If other damage has happened since, such as the render starting to chip, I don't think I can reasonably blame NHBC for that.*

*If the reveals as a whole are coming away from the walls, and this, by expert opinion, is shown to be caused due to a de-bonding agent not having been used during installation, then I think NHBC should resolve that problem. I can't say what resolution would be needed in that respect – but I am satisfied it couldn't be sorted by painting the reveals, even using the product suggested. But based on what I've seen here, I'm not going to make NHBC do anything at this time.*

*I do think NHBC should still arrange to paint the reveals – unless the debonding issue is first proven to it and then it will decide what needs to be done to resolve that. That is because the cracking does still need resolving. I'm not clear at this stage whether the chipping is more extensive than shown on the one photo Mr M has provided (to demonstrate that issue). If it isn't then NHBC may well be able to fill this (one chip) when it carries out the paintwork. And the painting would cover the filled in area. If it is a bigger job then NHBC may need Mr M to repair the chips before it carries out the paintwork.*

#### *compensation*

*I do think NHBC handled this claim poorly. It shouldn't have taken as long as it did to resolve. In saying that I note that in 2017 the same list of snagging works was in issue as NHBC has only recently settled for with Mr M. And I think, considering the nature of the snagging, far better care should have been taken by the contractors during the initial works. I see there were broken promises and Mr M had to spend a lot of time to try and get things sorted; most of which would have been avoided if work had been done more carefully.*

*That being said I note that NHBC has accepted it failed Mr M during this claim. It has paid £1,450 compensation to make up for the upset caused in that respect. Whilst I don't wish to disappoint Mr M, I think that's fair and reasonable. I don't doubt that Mr M has been severely disrupted and frustrated by everything that has gone on. But I bear in mind that he hasn't been put to financial stress or had to move out of his home, and the living space within his home hasn't been materially affected by the issues. I don't think it would be fair and reasonable to require NHBC to pay anything more.*

#### *outcome*

*NHBC has been willing, since 2017, to paint the reveals, and it's paid £1,450 compensation for upset caused by delays. I'm satisfied that both are fair and reasonable responses to the issues at hand. Therefore, I'm not intending to uphold Mr M's complaint."*

NHBC said it had no comments to make. Mr M was unhappy with my findings.

#### **my findings**

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

Below I've summarised and set out Mr M's responses to my provisional findings, and I've provided my answers to each. For ease I've numbered the responses from Mr M:

- 1) NHBC asked for this case to be reviewed because of another complaint by a different homeowner affected in the same way as Mr M. Mr M, therefore, would like assurances that, as the cases have been found to be identical, any findings about the render in the other home owner's complaint be equally consistent in his.

NHBC had said it felt the two cases should receive the same outcome. But Mr M said the only similarity was that the properties are next door to each other, the work was carried out at different times by different contractors. Whilst I note Mr M has now asked to be assured that the findings on both complaints regarding the render will be the same, even where complaints have similar circumstances, I have to assess the complaint before me on its own merits. I've assessed Mr M's complaint based on the submissions made by him and NHBC about what happened at his property.

- 2) I shouldn't have asked for further information, such as up to date photos, as I was reviewing the decision made by the investigator, so I should only use evidence that had been available to him.

I understand Mr M's concern but that is not how this service works. An ombudsman's review isn't a "*marking*" exercise carried out to ratify the findings the investigator made. When a complaint is passed for an ombudsman's decision the ombudsman reviews the complaint from the top to reach their own findings about what is fair and reasonable in all of the circumstances. When the complaint came to me, I felt during my initial review of it that I needed more information to allow me to complete my findings, so I requested it.

- 3) I hadn't reviewed matters thoroughly enough as I hadn't taken anywhere near the amount of time the investigator had to complete my review.

I can assure Mr M that I reviewed his complaint, including all the submissions that both sides made, thoroughly before making and issuing my provisional decision. The ombudsman and investigator roles are entirely different. I took what time I needed to complete my assessment and issue my findings.

- 4) Mr M is staggered that I reached my provisional findings without speaking to him, instead placing great worth on material provided by NHBC and the developer.

I can assure Mr M that it is entirely within our normal process for an ombudsman to not speak with either party prior to a decision being reached. Rather both sides have ample opportunity to put their side of the case forwards and provide any evidence they wish to support their position. All of that information and evidence is then assessed by the ombudsman prior to a decision being reached. Whilst I appreciate this may be different to the way other complaint bodies and the courts operate their processes, which Mr M may have familiarity with, this is how we work.

- 5) Mr M said he resents being called obstinate and demanding, a comment which was made in an NHBC report containing photos that was sent to Mr M after he'd requested to see what photos I had seen.

I'm sorry Mr M saw those comments made by NHBC. But I can assure Mr M that I hadn't

paid heed to them, or placed any reliance on them, when I reached my provisional findings.

- 6) NHBC's reports contained poor quality pictures but contained comments favourable to Mr M's position, such as referring to "*everything needing to come off*". Further, the original schedule also said *all* render should be removed and replaced with render of the correct thickness. A second schedule commented specifically on the reveals and said where the render is de-bonded, replace it. This direction was then removed from a later schedule. Mr M would like to know my thoughts on what the reasons for the changing schedule was.

I accept that NHBC's reports contained poor quality pictures but I'm satisfied that reference to all render needing to be replaced with render of the correct thickness were made regarding the course finish render on the main walls. This finding lead to major work in respect of the external finish of Mr M's home. It was only after this that cracking in the smooth render of the reveals was identified as an issue. NHBC's files show it did initially intend to check for any areas of de-bonding of the smooth render and, where such was found, replace it. A schedule was issued in this respect. However, the file also shows that the contractor asked to complete that work had reservations. The matter was further reviewed, and it was subsequently decided that removing the render wasn't necessary.

- 7) Regarding NHBC's expert opinion that the render didn't need removing and replacing, Mr M would like to know who said this as he doesn't recall anyone coming to his property.

It was NHBC's assessor who initially determined that the render didn't need replacing and that it could be painted. The assessor had visited Mr M's property in August 2017, during NHBC's review of its initially intended repair mentioned above, and his report which was issued shortly after was shared with Mr M. I know Mr M doesn't trust this assessor and has provided detail about flawed findings he feels he has made. Whether or not those other findings are flawed, doesn't mean I can reasonably ignore this finding.

- 8) All the expert opinions Mr M has received about the render said it is "*Bose*". Mr M says his plasterer says it has to be replaced and the investigator must have accepted it was letting water in or he wouldn't have found as he did.

The photos Mr M has provided clearly show the render is damp in the area around the cracks. That doesn't necessarily mean water is behind the render. I'm aware Mr M has said the render needs replacing and that he has received expert opinions in this respect. But I've seen no expert report to support these comments. Whilst I know, as mentioned above, Mr M doesn't trust NHBC's assessor, I haven't seen any expert opinion that challenges his view and findings that the render doesn't need replacing and that painting it was a suitable resolution.

- 9) When the house was built the wrong type of brick was used which necessitated that in order to successfully apply render, a bonding agent would need to be used. An architect friend has said the house should really have been demolished and re-built with the correct brick.

I haven't seen this argument raised with NHBC previously. But nor I have seen expert evidence that says the incorrect type of brick was used. In any event, if Mr M's expert is correct and the wrong type of brick was used meaning any application of render needed a bonding agent to be used, then it seems to me that the reasonable course of action is to do

just that. Not to say the house must be knocked down and built again. Whether NHBC did or did not use a bonding agent remains unclear.

10) A neighbor reported seeing no empty bonding agent tins in the skip when Mr M's home was re-rendered, but did see some being used at a house down the street a few months later. Photos showing the render of this house, which is in good condition, have been provided. As have photos of the render on Mr M's garden room, where bonding agents are also understood to have been used, and which show this render is also in good condition. For comparison purposes recent photos were provided of the render on Mr M's home. Photos were also provided of various stages of the re-rendering work carried out at Mr M's home with a view to me assessing them in order to determine whether or not a bonding agent was used.

I accept that the photos provided show that there is a significant difference in the state of the render on the reveals of Mr M's home and that in place in the garden room and the home of Mr M's neighbour. I can see why Mr M feels that the reason for this difference is that bonding agents weren't used at his home. However, I can't tell from the photo's provided whether or not a bonding agent was used. And I've seen no expert evidence to show that the lack of a bonding agent would most likely result in damage like that showing in the reveals at Mr M's home.

Looking at the photos of current damage by themselves, I see that the render is very damp in places. Previous photos showed dampness too. But still I haven't seen anything that shows the render is generally coming away from the walls or that it is significantly "chipping/chipped". Nor have I seen an expert opinion on the state of the render or anything to make me think that any current damage most likely stems from exposure which occurred before NHBC made its offer to repair the reveals by painting them.

11) NHBC should be doing any and all work to restore the reveals – the reason nothing has been done to date is because of NHBC's and our delays. Including NHBC delaying its reply to our investigator's findings. On the note of NHBC's delays; there should be more detail in my background about its delay in issuing its report. Furthermore, whilst it's true that Mr M didn't respond to NHBC's option regarding painting the reveals, that is because he was waiting for us to assess and answer his complaint.

My background sets out a summary of events. Its purpose isn't to detail everything that happened. Nor is it a forum for me to set out my thoughts and views on pertinent issues. As I note in the background there was a delay in NHBC's report being issued. And I accept that the major work to the exterior of Mr M's property wasn't completed until around a year later (July 2016). I noted in my provisional findings that NHBC could have handled the claim better. But I'm satisfied that NHBC's delay at this time has no bearing on what happened later with the smooth render. The cracks with the smooth render weren't identified until after the major work was completed in July 2016, the first mention regarding further problems with render being made in early 2017.

As I noted provisionally, the reveal render was considered in a report in September 2017. As also noted provisionally, this was not the only issue Mr M had with NHBC following its work which completed in July 2016. Mr M and NHBC were corresponding on all points. On 4 October 2017 Mr M complained to us about all the points in dispute with NHBC. On 17 October 2017 NHBC put forward its suggestion for resolving the render issue. In November one letter was sent to NHBC regarding the render, in this Mr M said he was considering its plans. Meanwhile various correspondence occurred about all other issues

outstanding at the property – and all these issues were later settled without our involvement. So Mr M was prepared to pursue those issues with NHBC whilst our processes progressed. I'm sorry for any upset this causes Mr M but in all of the circumstances I don't think it was reasonable to do nothing regarding the render when winter was approaching and a possible way of protecting the render from further weather damage was made available by NHBC. I can't fairly find that NHBC is responsible for any further damage which has occurred.

12) He'd asked that photos were taken of the house before work commenced and that these were filed with NHBC. NHBC agreed this should have been done. The fact it hadn't had caused the claim to become protracted, requiring our intervention.

I'm not convinced that taking and filing of photos alone would have avoided all of the disputes that have occurred. But, in any event, NHBC has accepted the claim took too long and that it wasn't progressed as quickly as it should have been.

13) NHBC's assessor made a flawed finding about the state of their lawn. This was just one clear example of NHBC's mishandling of things. But other "shoddy" work included: tiles on the garden room roof were fitted poorly, gravel edging wasn't dispersed properly, the drainpipe wasn't sealed, a hole in the porch roof wasn't covered and the garden gate was poorly re-fitted.

I appreciate that Mr and Mrs M had real and justifiable concerns about some of the findings NHBC made during their claim and regarding some of the work that was carried out. But those failures don't impact on the issue of the reveal render and the remedial offer NHBC made in this respect. I've seen nothing to make me think this offer was flawed, even if other things NHBC said and did were unfair. And in my compensation assessment I have taken account of the poor work, the upset this caused and the delays.

14) It is surprising that my view on compensation could be so different to that of the investigator. Mr M believes this might be because the investigator knew what stress he was under and that I perhaps hadn't known that. He also said that I didn't seem to have taken account of how his health had been affected.

I can assure Mr M that I was and am aware of everything that's occurred and how this has affected him. I'm sorry for any upset that he's been caused because my view on fair compensation differs from that of our investigator but that does happen on occasion. As I've explained I review everything in order to reach my own view about what is fair and reasonable in the circumstances of the complaint before me.

15) Photos were provided of damaged ceilings – they did have to move out of their home for these to be resolved.

I did say provisionally that the fact Mr M hadn't had to move out of his home was a factor I'd taken into account in assessing my compensation award. Whilst I now understand that Mr M had to move out for the ceilings to be resolved, that wasn't part of this claim. So any upset or inconvenience that arose as a result of moving out for a time isn't something I can hold against NHBC within this complaint about the claim for external render.

16) A note on NHBC's file suggests that £300 of the compensation NHBC offered wouldn't affect any award made by the ombudsman – so it was wrong for me to take this figure into account when setting my compensation award. Mr M would like to know why I've

ignored that file note.

I'm sorry if Mr M understood that the compensation NHBC paid in November 2017 wouldn't be taken into account by this service. It is true to say that compensation offered by an insurer won't affect a complaint being made to and considered by this service. But my job is to determine whether the insurer has acted fairly and reasonably and, if it hasn't what it needs to do to put that right. If I feel an insurer should, for example, pay £100, but it's already paid £200, I can't fairly say it has to "*pay £100*" because that would mean the complainant is getting compensation totaling £300 – an unreasonable amount when I've determined £100 is due.

*overall*

I realise that everything that has happened has deeply upset Mr M. I understand that my findings on some key aspects will be upsetting for him too. I'm sorry for the upset my findings cause but I am satisfied they reflect a fair and reasonable outcome for this complaint when taking into account all of the circumstances. My provisional findings, as well as my findings set out above in regard to Mr M's responses, now form the findings of this, my final decision.

#### **my final decision**

I don't uphold this complaint. I don't make any award against National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 April 2020.

Fiona Robinson  
**ombudsman**