

complaint

Mrs M complains that National House-Building Council (NHBC) have unfairly declined a claim she brought under her building warranty policy

background

I issued a provisional decision in November 2020 and set out the background of the case as:-

"Mrs M tells us she contacted NHBC in January 2018 as she was concerned at the poor quality of the "roughcast" (sometimes referred to as "render") on her property.

NHBC tell us it arranged an inspection and produced a report in March 2018 providing a copy to Mrs M. This report advised that the claim had been rejected. There was further dialogue between Mrs M and NHBC and a final response letter was issued on 5 June 2018. In this letter NHBC confirmed to Mrs M that their claims investigator acknowledged some damage to the top coat of the render but as it was cosmetic damage and didn't affect the water tightness of the property there wasn't a valid claim.

Mrs M wasn't satisfied with NHBC's decision to decline the claim and provided photographic evidence of the quality of the roughcast. And she obtained a report from a local firm who specialised in roughcast work. This report said the roughcast was found to be defective. It went on to say "...Topcoat could be removed by slight pressure of hand due to either poor mix of materials or applied in unsuitable weather conditions". They concluded that the render will need to be removed and reapplied with a suitable two coat render system.

NHBC issued a further FRL in December 2018, it agreed the top coat of the render was crumbling but said the structural stability and weathertightness of the building wasn't affected and therefore the damage was cosmetic and excluded from the policy. As Mrs M had advised them the condition of the rendering had worsened, it agreed to a further inspection of the property. This inspection took place in late January 2019 and a further report was issued on 5 March 2019.

This report advised that the claim wasn't accepted. It said whilst there may be some variance in the consistency of the render there was nothing to suggest it will not continue to perform. The report went on to say, "Although there is damage to the home, having considered the current condition of the render it is unlikely to impair the structural stability or weather tightness of the Home and as such it is not deemed to be a valid claim under the policy".

A further final response letter was issued dated 22 March 2019. In it NHBC advised it'd given further consideration to the claim and apologised for the delays. It went on to say it was satisfied it had fairly assessed the claim and were unable to assist at this time. Mrs M remained unhappy and brought her complaint to this service.

Mrs M provided videos of the stone chippings coming loose when she brushed her hand over the roughcast. And provided copies of NHBC reports from neighbours who'd also complained about the quality of their roughcast, and whose claims had been accepted. Our investigator upheld Mrs M's complaint. She felt there'd been a significant loss of chippings from the roughcast and didn't consider this to be normal. She was also concerned with the ease the chippings fell away when brushed with a hand. She didn't think it was fair

for NHBC to decline the claim on the grounds that the issues with the roughcast hadn't yet become severe enough to compromise the water integrity of the property.

NHBC disagreed with the investigators view. It felt the issues with the neighbouring properties were not relevant as those properties had significantly worse issues than Mrs M's home. It maintained that the issues with Mrs M's roughcast is purely cosmetic, pointing out that the property is now 10 years old and there is no water ingress apparent. NHBC have asked that an ombudsman decide the case."

And I set out my reasoning as follows:-

"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've reached a different outcome to that of our investigator.

I have to decide the case taking account of the policy terms and conditions and whether NHBC has acted fairly when applying the terms and conditions. The claim was considered under section 3 of the Buildmark policy. And this sets out that NHBC will pay:-

"The full Cost, if it is more than £1000 Indexed, of putting right any actual physical Damage caused by a Defect in any of the following parts of the house, bungalow, maisonette or flat and its garage or other permanent outbuilding, or its Common Parts..."

The policy then lists the different parts of the building covered and this includes external render.

The policy, in common with most insurance policies has exclusions, and section 3 of the Buildmark policy sets out what NHBC will not pay. The relevant section being:-

"cosmetic damage such as minor cracking, spalling or mortar erosion to brickwork, which does not impair the structural stability or weather tightness of the Home or which only affects decorations."

I've considered the report Mrs M provided from the roughcast specialist, and the photographs and videos she's submitted. I'm satisfied that there is damage to the render but have to consider if the extent of the damage is such that the exclusion applies.

I've also considered the 2 NHBC reports on Mrs M's property, these reports were based on visual inspections and "tap testing" to see if the render has debonded. The reports suggest there has been some minor cracking, but the render hasn't debonded. The most recent report says:-

"Whilst there may be some variance in the consistency of the render there is nothing to suggest that it will not continue to perform when subjected to normal weathering.

Although there is damage to the home, having considered the current condition of the render it is unlikely to impair the structural stability or weather tightness of the Home and as such it is not deemed to be a valid claim under the policy."

The first report says the "homeowner has not experienced any water ingress internally to the property resultant from the loss of render chips and the home remains weathertight". And suggests the render should be redecorated as part of the owner's normal maintenance. I'm satisfied from these reports that the water tightness of the building hasn't been compromised.

I considered the NHBC report Mrs M provided on a nearby property but given less weight to

this. Each case is different and considered at on its own merits. There are some similarities to the description of the damage, and there are also some differences. I'm mindful that the same claims investigator that visited Mrs M's home also produced the report on the nearby property. So, I'm satisfied there was a consistent approach taken.

This is a finely balanced case and I'm more persuaded that the damage, whilst visible, hasn't compromised the water tightness of the building. And, in the circumstances of this case can be fairly described as cosmetic as it doesn't impact the buildings structural stability or water tightness.

The policy isn't designed to cover every eventuality and I'm satisfied that NHBC have correctly applied the exclusion."

I invited both parties to let me have their further comments.

replies to the provisional findings

Neither party had any further comments for me to consider.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, and without further information to consider, I see no reason to reach a different outcome to that in provisional decision.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 22 January 2021.

Martyn Tomkins
ombudsman