

The complaint

Mr L and Ms R are unhappy National House-Building Council (NHBC) has partially declined a claim made under their building warranty.

What happened

Mr L and Ms R purchased a home which came with a ten-year NHBC building warranty.

In 2021 Mr L and Ms R noticed issues with the gable end of their house and garage. So, they contacted NHBC to make a claim.

NHBC declined the claim on the basis they said there was no physical damage. As Mr L and Ms R didn't agree, they commissioned their own surveys into both damp and the brickwork in 2022. They then sent the reports to NHBC.

NHBC arranged for a claims investigator to inspect their property. During this, NHBC identified an issue with the coping stones, and accepted there was a valid claim for these. But they didn't accept there were any other issues which were covered under the policy.

NHBC offered a cash settlement for the coping stones, and later said that if this wasn't sufficient, Mr L and Ms R should provide evidence that it was insufficient and they'd consider making a higher payment.

As Mr L and Ms R remained unhappy that the claim hadn't been fully accepted, they approached this service.

One of our investigators looked into the complaint but she didn't uphold it. She said she was satisfied NHBC's position was reasonable, so she didn't recommend they do anything further.

Mr L and Ms R didn't agree and asked for a final decision from an ombudsman.

I reached a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said;

“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 our investigator on part of the claim and complaint. So, I’m issuing a provisional decision, to give both parties an opportunity to comment on my initial findings, before I reach my final decision.

Mr L and Ms R’s ten-year building warranty with NHBC is split into different sections of cover, and what section applies is dependent on when the claim was made. As the claim was made in years three to ten of the policy, section three of the cover applies.

This section outlines:

“This section applies if there is physical damage to your home because the builder failed to build the following parts of your home to comply with the NHBC requirements:

- Foundations, walls, external cladding, curtain walling, external render and external vertical tile hanging, roofs, ceilings, balconies, load-bearing parts of the floors, flues, chimneys and access steps, to the main structure.*
- Staircases, floor decking and screeds, to the inside of the main structure, if they fail to support normal loads.*
- Retaining walls, if they are necessary for the structural stability of the main structure.*
- Double- or triple-glazing panes to outside windows and outside doors, to the main structure, if newly installed at the completion date.*
- Below-ground drainage for which you are responsible.”*

So, in summary, the policy covers physical damage to a listed area of the property where the builder failed to build the home to comply with NHBC requirements. And the claim needs to reach a certain value before it is covered.

There were four issues which Mr L and Ms R reported to NHBC:

- Insufficient insulation*
- Lateral deviation of the gable brickwork*
- Incorrect size/placement of the coping stones – and consequential mortar and brick damage*
- Garage dry verge – and consequential mortar and brick damage*

I’ll address each of the reported issues separately.

Insulation

Mr L and Ms R reported that their property didn’t have sufficient insulation on the second floor. NHBC declined that part of the claim as they say it isn’t covered under section three of the policy.

I don't think NHBC has acted unfairly by declining this part of Mr L and Ms R's claim. This is because insulation isn't one of the covered areas under section three of the policy. So, I don't intend on asking NHBC to do anything further regarding this point.

Lateral deviation of the brickwork

Mr L and Ms R's brickwork survey determined there was lateral deviation of the brickwork, and it was out of plumb by up to 60mm. NHBC declined this part of the claim as they say isn't covered under section three of the policy.

In line with the terms of the policy I've outlined, walls are an area which is covered. However, for a claim to be covered, there needs to be physical damage.

Although there may be lateral deviation present, this isn't physical damage in itself. So as the requirements for a successful section three claim haven't been met, I don't think NHBC has acted unfairly by declining this part of the claim.

Coping stones, brickwork and mortar

After Mr L and Ms R commissioned their own damp and brickwork surveys, NHBC carried out an inspection and concluded:

"The homeowner has reported Mortar erosion to gable wall & around coping stones

There is evidence of some mortar erosion under the coping stones and to the bricks at the bottom of the coping stones on the kneeler. It was also noted that some movement of the coping stones had taken place, as shown in the photographs.

The damage is consistent with the incorrect installation of the coping stones.

To repair the damage the coping stones should be removed cleaned and replaced with a damp proof course below the coping stones which are bedded on suitable mortar and mechanically fixed. The bricks where identified with mortar erosion should be re pointed to the brick kneelers.

The homeowner also noted there is some staining and efflorescence to the bricks which may have made them porous. This would not be something covered under section 3 of the Buildmark policy. As shown in conditions and limitations under section 3 of the Buildmark policy, under items you cannot claim for - changes in the colour or texture of, or staining to, external finishes."

Therefore, NHBC accepted there was a valid claim for the coping stones under the policy, and they offered a cash settlement of £4,506.66. Mr L and Ms R have said this isn't sufficient, so NHBC said they would review any quotations provided if they were for higher than their scope of works and calculated costs.

However, I don't think NHBC's offer of settlement is reasonable here. And for more than one reason. I'll explain why.

Firstly, the inspection concluded the coping stones needed removing, cleaning and re-bedding, along with the bricks with mortar erosion immediately below being repointed. Having seen the scope of works that the cash settlement is based on, this only includes taking up and refitting of the coping stones. It doesn't include repointing of the brickwork immediately below the coping stones, despite this being determined as having physical damage due to the incorrect placement of the coping stones, and being accepted under the claim.

However, I don't think just recalculating the schedule of works to include repointing of the brickwork below is sufficient in resolving this part of the claim. I'll explain why.

NHBC has said there was no other physical damage to the brickwork or mortar when they inspected. And NHBC has said that staining itself isn't covered:

"You cannot claim for:

- Changes in the colour or texture of, or staining to, external finishes."*

And they also say mortar erosion isn't covered unless the structural stability or weather tightness is impacted in line with the following exclusion:

"You cannot claim for:

- cracking, spalling or mortar erosion, which does not impair the structural stability or weather tightness of your home."*

However, NHBC's inspection was very limited, from the ground three floors below. Before NHBC carried out their inspection, Mr L and Ms R commissioned a damp survey (which they provided to NHBC), and this concluded (I've highlighted the key points):

"Prior to arrival on site a scaffold has been erected and several bricks removed to examine the cavity and inner blockwork.

*Inspection carried out revealed with the use of a protimeter moisture meter revealed moisture reading of between **22% to 28% moisture readings to the external Brickwork and inner blockwork**, (14% moisture recommend levels). Inspection of the cavity insulation revealed this was moist to touch. Further inspection revealed severe staining and salt deposits of the brickwork and **mortar joints which are now beginning to perish**, upon inspecting the copings on the parapet wall it is quite **clear the water penetration is soaking through the missing mortar joints**, also the overhang of the copings is not sufficient to allow the water to drip from the underside drip channel (capillary joint) this allowing the water to run down the wall of which is causing the staining."*

And:

"It was also noted that areas of the external brickwork will require re-pointing any such works should be carried out with a recommended mix to match the existing mortar."

And Mr L and Ms R also commissioned a brick survey, and this concluded (again I've highlighted the key points):

"Parapet Coping Stones and Flashings

- The Parapet coping stones inadequately project the external leaf of the brickwork, resulting in no distance between the capillary groove of the coping stones and the external brickwork. Water is not shedding off the brickwork face causing water saturation, salt build up and **degradation of the bricks and mortar**.
- Parapet flashings visible externally to underside of coping stones. This should be buried within the mortar to fulfil its function.

Gable Brickwork and Mortar

- **Mortar missing in numerous places between bricks and coping stones**. Where present **it is crumbling to the touch and disintegrating**. No resistance when drilled through.
- **Bricks** show white discoloration (mineral leak), **degradation** and are excessively porous in comparison to how bricks should be at this age (like drilling through chalk)."

And:

"It is my opinion that these problems are due to poor construction not wear and tear expected of a building of this age: Primarily the incorrect size and placement of the coping stones, poor building of the gable to allow such deviation and incorrect installation of the insulation between the cavity walls. The result of the incorrect size and placement of the coping stones such that there is no space between the external wall and the groove is leading to saturation and **degradation of the bricks and mortar of the gable and between the coping stones, allowing the ingress of water**. This is **causing the building to lose its structural integrity**. If it is not corrected there will be **continued accelerated degradation** of the coping stones, **bricks and mortar** on all sides of the house (**degradation can also be seen on the front and back corners of the house associated with the coping stones**). The structure will eventually fail and require rebuilding. In addition the level of water ingress will continue to rise due to progressive structural and weatherproofing failure causing damp and internal degradation.

Recommendation

- **All affected brickwork requires removal and replacement** on all faces of the building.
- Replace coping stones with correct size, ensuring correct placement.
- Replace parapet flashing ensuring it is buried in mortar.
- Placement of missing insulation in wall cavity of second floor.
- Correction of lateral gable wall deviation while replacing brickwork."

So, these reports both conclude there is degradation of the mortar and brickwork, along with water ingress as a result. Therefore, this concludes there is both physical damage, as the mortar has degraded, and water ingress via the degraded joints, so I don't think the exclusion NHBC has mentioned surrounding mortar applies on at least one, if not both, counts.

Mr L and Ms R's surveys were also completed from scaffolding at height at the areas of alleged damage, and also included removing bricks to establish any issues. Compared with NHBC's inspection from ground level, three floors below, I find Mr L and Ms R's surveys both more comprehensive and more persuasive.

However, Mr L and Ms R's survey has mentioned multiple areas of damage to the mortar, but not been specific in the location, or how many areas. So, on the face of it, it certainly does seem there are additional areas that NHBC didn't identify during their limited inspection, which likely are areas of physical damage caused by the incorrect placement of the coping stones, and therefore should be covered under the policy.

However, I also have to keep in mind that the policy covers physical damage, so only those specific areas of damaged brickwork or mortar would be covered. But there isn't sufficient information for me to say exactly what areas should be covered and need to be included within the claim.

With this in mind, unless anything changes as a result of the responses to my provisional decision, I think the only way forward at this stage would be for NHBC to reattend and carry out a more detailed, comprehensive and thorough inspection, to determine whether there are additional areas of mortar or brickwork which should also be covered and added to the claim.

Once NHBC has carried out that inspection, and if Mr L and Ms R are unhappy with the position NHBC ultimately reaches, we may be able to consider that as a new complaint.

Garage dry verge

NHBC declined to cover the garage as they inspected it and concluded:

"There is evidence of water staining and moss to the external brickwork along with some efflorescence to the brickwork on the garage walls, as shown in the photographs.

The staining is consistent with water wetting the garage walls.

Garages are constructed for the storage of a motor vehicle. As such the walls are not built the same as walls to habitable parts of the home. Garage walls are typically 100mm thick, constructed of a single skin of brickwork. Sometimes rain may penetrate the external walls of the garage if they become wet enough and may show signs of damp.

The walls becoming wet, efflorescence and moss is not something which is covered under section 3 of the Buildmark policy. As shown in conditions and limitations under section 3 of the Buildmark policy, under items you cannot claim for - changes in the colour or texture of, or staining to, external finishes."

However, Mr L and Ms R's report outlined (I've highlighted the key points):

*"The dry verge system on both sides of the building are inappropriate or been incorrectly fitted (would require removal for differentiation). Although this building is of a single brick construction and therefore has different building criteria to that of the house, this **is not structurally sound and again causing accelerated degradation of the bricks and mortar** which will lead to structural failure. In addition there is a concern that the electrics (installed at the time of building) are becoming wet due to this which is a safety as well as a functional concern.*

Recommendation

*Removal and replacement of dry verge system and **affected bricks and mortar**."*

So again, I think this shows that there is physical damage to the brickwork and mortar as a result of the dry verge installation, and not just staining as NHBC concluded. Therefore, I also think NHBC should carry out a more comprehensive inspection of the garage to establish if there has been physical damage caused to the brickwork and mortar, and whether there is a valid claim.

Again, once NHBC has done this, if Mr L and Ms R are unhappy with the decision NHBC ultimately reaches, we may be able to consider that as a new complaint.

Service and additional costs

NHBC declined Mr L and Ms R's claim from the outset. This then resulted in them needing to obtain their own reports to support their position. And once they had provided those reports, NHBC agreed to carry out an inspection which ultimately resulted in part of the claim being accepted for the coping stones (putting aside what I've said about the other areas).

So, given it took Mr L and Ms R being required to obtain reports to support their position, which led to NHBC then inspecting and partially accepting the claim, I'm minded to conclude it would be fair and reasonable for NHBC to reimburse the costs Mr L and Ms R incurred in obtaining those reports (subject to evidence of costs being provided). I'm also minded to direct NHBC to add 8% simple interest from the date the reports were paid for, to the date of settlement.

As outlined, I also think NHBC should have done more based on the persuasive evidence Mr L and Ms R provided which gave comprehensive detail of the issues they had reported. Whilst it isn't known at this stage whether that will lead to additional reported issues being covered, at the least, NHBC could have explored this more comprehensively at a much earlier point rather than their limited inspection. So, in addition to carrying out the further inspections I've outlined, and reimbursing the costs of the reports, I'm also minded to direct NHBC to pay Mr L and Ms R £150 compensation for the inconvenience they've been caused."

So, I was minded to uphold the complaint in part and to direct NHBC to:

- Carry out a more detailed and comprehensive inspection of the gable walls to establish if there is physical damage to the brickwork and mortar
- Carry out a more detailed and comprehensive inspection of the garage to establish if there is physical damage to the brickwork and mortar
- Reimburse the costs Mr L and Ms R incurred in obtaining the damp and brickwork surveys (subject to evidence of costs being provided)
- Add 8% simple interest to the reimbursement of the reports from date of payment of the invoice for the reports to date of settlement
- Pay Mr L and Ms R £150 compensation

The responses to my provisional decision

NHBC responded and said they had no further comments to make.

Mr L and Ms R also responded. They said their only objective was to achieve a structurally sound, watertight and safe house which complies with regulations and standards.

They said they had concerns based on previous claims experience about the outcome NHBC may reach following reassessment of the reported areas. They've asked if there is any way for the next inspections to avoid this, as previously the inspection was very limited.

Mr L and Ms R also provided an updated report from the builder who originally carried out the brickwork inspection which clarifies the areas of brickwork and mortar damage.

What I've decided – and why

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

And I've thought carefully about the conclusions I came to in my provisional decision and the responses to it. Having done so, my final decision on all the points considered remains the same as my provisional decision, and for the same reasons.

I do note Mr L and Ms R's reservations about what may or may not happen when NHBC reinspects the walls and garage, based on their previous experience and NHBC's limited inspections. However, as outlined in my provisional decision, if after this has been carried out, and if Mr L and Ms R remain unhappy with NHBC's position, they would be free to raise a new complaint about the outcome of the inspections and the decision NHBC reaches.

Mr L and Ms R also provided an updated report from the builder who carried out the original brick survey, which provides further clarification on the areas the brickwork that they identified had issues previously.

My final decision is the same as my provisional decision in terms of what I think NHBC needs to do (carry out a more comprehensive inspection of the brickwork). If Mr L and Ms R accept my final decision, then they'll need to liaise directly with NHBC to arrange the inspections. At that point, it may be beneficial for Mr L and Ms R to provide this updated report to NHBC so it can take this into account when carrying out the inspection of the brickwork.

My final decision

It's my final decision that I uphold this complaint in part and direct National House-Building Council to:

- Carry out a more detailed and comprehensive inspection of the gable walls to establish if there is physical damage to the brickwork and mortar
- Carry out a more detailed and comprehensive inspection of the garage to establish if there is physical damage to the brickwork and mortar
- Reimburse the costs Mr L and Ms R incurred in obtaining the damp and brickwork surveys (subject to evidence of costs being provided)
- Add 8% simple interest* to the reimbursement of the reports from date of payment of the invoice for the reports to date of settlement
- Pay Mr L and Ms R £150 compensation

* If National House-Building Council considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L and Ms R how much it's taken off. It should also give Mr L and Ms R a tax deduction certificate 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 Mr L and Ms R to accept or reject my decision before 12 September 2023.

Callum Milne
Ombudsman