

The complaint

Mr M and Miss C are unhappy National House-Building Council (NHBC) declined a claim made under their building warranty.

What happened

In March 2019 Mr M and Miss C purchased a new build home which came with a ten-year NHBC building warranty.

In February 2020 a tile from the roof was dislodged and this was repaired by the original developer. In November 2022 another tile, in a different area, was dislodged. Mr M and Miss C arranged for this to be repaired.

As Mr M and Miss C had concerns about the construction of their roof, they also contacted NHBC in November 2022. NHBC considered the issue under section three of the policy, which applied in years three to ten of the cover. But NHBC said there was an exclusion that the policy didn't provide cover for roof coverings where water hadn't entered the property, so they declined the claim.

However, NHBC said they understood that the issue may have been reported to the developer within the first two years of the warranty. So, they said that if Mr M and Miss C could provide evidence of this, they might be able to assist under section two of the policy. Mr M and Miss C brought their complaint to this service.

Our investigator didn't uphold the complaint. She said that section three of the policy didn't provide cover based on the exclusion NHBC had relied on, so she thought NHBC had fairly declined the claim.

The investigator also confirmed NHBC hadn't received the proof they'd asked for of Mr M and Miss C contacting the builder in the first two years, so she said NHBC's request for this to be supplied wasn't unreasonable. The investigator noted that this had later been provided, and received by NHBC, but as this was after the final response had been issued, she said she couldn't consider what happened later as part of this complaint.

Mr M and Miss C asked for a final decision from an ombudsman.

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.

Having done so, and whilst I appreciate it'll come as a disappointment to Mr M and Miss C, I've reached the same outcome as our investigator.

One of the arguments presented by Mr M and Miss C is that they don't think their roof has been constructed by the developer in line with British Standard 5534, and they want this service to determine whether the builder has complied with British Standards during construction.

However, my remit here isn't about the builder and the construction methods they used. Instead, my consideration here is about the warranty provided by NHBC, the policy terms and conditions, and whether NHBC have acted fairly and reasonably by declining the claim based on the reasons they have given.

As the tile issues were initially reported to NHBC in November 2022, this was in years three to ten of the policy – section three of cover. This is how NHBC initially considered the claim.

Section three provides cover (subject to the minimum claim value being reached) for physical damage to a number of listed areas, of relevance here:

“What you are covered for

This section protects you if there is physical damage to your home because the builder failed to build the following parts of your home to meet the NHBC requirements.

- ... roofs...”

However, there is also an exclusion under this section of the policy which says:

“What is not covered under this section – conditions and exclusions

You cannot claim for the following.

- *Damage to the roof covering (including any underlays, fixings, mortar and weatherproofing details) unless the damage results in water getting into your home”*

As water didn't enter the home, and there was no physical damage, I don't think NHBC acted unfairly by declining the claim on the basis of this exclusion.

However, NHBC also said that the builder would still remain responsible if issues had been reported within the first two years of the cover under section two of the warranty. And it would be the builder's responsibility, in the first instance, to repair physical damage resulting from a failure to comply with NHBC technical requirements. But for NHBC to consider things further under section two of the warranty, they said Mr M and Miss C would need to provide evidence of them contacting the developer in the first two years of cover.

Mr M and Miss C have provided a copy of an email to NHBC in which they forwarded this information, just before NHBC's final response was issued. However, NHBC confirmed they didn't receive it, so Mr M and Miss C forwarded it again after NHBC issued its final response.

If NHBC didn't receive it when it was originally sent, then I can't hold them responsible for this, as they would be unable to act on information they hadn't received. But even if they had received it, NHBC would always have needed time to review things in order to decide the next steps.

However, at the point of NHBC's final response on 23 February 2023, as they'd confirmed they hadn't received the requested proof from Mr M and Miss C, I don't think they acted unreasonably by asking for another copy to be sent, so they could consider next steps under section two of the warranty.

There has been some more recent communication between NHBC and Mr M and Miss C after they provided another copy. However, I can't consider this as part of this complaint as this happened after NHBC issued its final response on 23 February 2023, and NHBC haven't given a new final response on matters, taking into account this new information.

I can also see that Mr M and Miss C have also emailed the developer (who took over from the previous developer) on 14 March 2023, which is following the next steps NHBC advised them to take. If since then Mr M and Miss C haven't received a response, they should go back to NHBC to see if they can assist further under section two of the cover.

If Mr M and Miss C remain unhappy with the decision that is ultimately reached by NHBC about the section two cover, they may be able to raise a new separate complaint with NHBC. They then may be able to approach this service again with NHBC's latest final position, having taken into account all the additional information they provided, which NHBC didn't have when issuing their final response on 23 February 2023.

However, I should also add, to manage Mr M and Miss C's expectations, that not all activities carried out by NHBC under section two are regulated activities, and that is one of the requirements for us to be able to look into a complaint. So, whether we have jurisdiction to look into the new complaint would need to be considered if and when that new complaint was brought to us.

Based on the above, I don't think NHBC acted unfairly by declining the claim under section three of the policy. And I don't think NHBC acted unreasonably by asking for proof of the issue being reported to the developer in their final response, to consider next steps under section two of the policy.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss C to accept or reject my decision before 8 August 2023.

Callum Milne
Ombudsman