

## **The complaint**

X complains about repairs carried out by National House-Building Council (NHBC) under his buildings warranty.

## **What happened**

X has a buildings warranty with NHBC which covers his home. The warranty was taken out in 2014. X took it over in 2019 after he bought the house.

X contacted NHBC when he was having trouble with his downstairs toilet, which wasn't flushing properly.

NHBC carried out an inspection and found that the drainage pipes from the downstairs toilet weren't installed correctly. And on that basis, they accepted X's claim and arranged for contractors to carry out the necessary repairs.

X says that whilst the work was being carried out, the contractors appointed by NHBC contacted him to say they would need to dig through the tarmac driveway immediately outside his home to correct the problem with the pipes.

X says he agreed to this on the basis that the driveway would be properly restored afterwards.

When the work on the pipes was finished, the contractors asked X to decide about how he'd like his driveway repaired.

After some discussion, NHBC have offered to: fill the holes with tarmac; put paving slabs over the affected area; put paviours over the area; or give X a cash settlement to have the repairs carried out himself.

X wasn't happy with any of those options. He says NHBC should restore the drive to the state it was in before the work was carried out. He's been told by the contractors that if they fill the holes with new tarmac, this won't completely match the existing tarmac in the drive, which has weathered over a number of years.

X believes this will affect the price of his house, which he says he's intending to sell. So, he complained to NHBC asking them to replace the whole of his drive with a new tarmac surface.

NHBC didn't uphold X's complaint. They continued to offer the options they'd previously offered for the repairs. So, X brought his complaint to us.

Our investigator looked into it and didn't think NHBC had done anything wrong.

X disagreed and 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.

It's worth just clarifying at the outset that there's no dispute here that X made an appropriate claim under the warranty and that NHBC accepted it and dealt with it. The drainage pipes are fixed, the toilet flushes.

The issue is entirely about the way in which NHBC are proposing to finish the job – by filling in the holes dug in X's drive to enable the repairs to be carried out.

I think it's also important to be clear that the contractors' view was that it was necessary to dig the holes in the drive to carry out the repairs to the drainage pipes. And I can't see any reason or evidence to contradict their view.

X says he agreed to the work only on condition that the drive would be restored to its former appearance. I think there's a degree of subjectivity in what that might mean. I'm reasonably sure the contractors wouldn't have agreed to re-surface the whole drive. But in any case, I think if X hadn't agreed to the excavations in the drive, he'd still have a non-working downstairs toilet.

So, the issue I have to consider is whether NHBC are obliged, under the terms of the warranty and in all fairness, to replace X's drive entirely – so that, in effect, it appears as if the repair work had never happened.

I can see X's point of view. He bought a relatively new house, with a warranty which essentially covers failures by the builder to comply with certain building standards. The builder failed to comply with those standards by fitting defective drainage. That's been resolved, but the result is that the aesthetic appearance of his property has been affected – and that might affect the sell-on price.

I know this will disappoint X, but I don't think NHBC have acted unfairly or unreasonably in the way they've offered to repair the drive, bearing in mind the terms and intent of the warranty.

I'll explain why, but it's worth mentioning first that I have to bear in mind that NHBC didn't sell the warranty to X. He 'inherited' it when he bought the house. So, there's no issue here about X being deceived or mis-led by NHBC about what the warranty does.

Taken as a whole, I think the intent of the warranty is clearly set out in the policy documentation. It's clear (at Section 3) NHBC will cover physical damage caused by defects in the building of certain structural parts of the home. Those parts include underground drainage, which is why X's claim was accepted.

NHBC have done that in this case. The damage was the non-working toilet and pipes. It was caused by poor installation of the drainage pipes. It's been put right by NHBC. They've met their obligations under the warranty.

The policy is also clear that NHBC aren't intending to cover issues with the aesthetic appearance of the property. It says the customer can't claim for:

*“.. changes in the colour, or texture of, or staining to, external features.”*

And it says NHBC will not pay:

*“... to replace an undamaged item because a replacement does not match the undamaged item in appearance.”*

I'm aware the drive wasn't the part of the property that suffered the damage which NHBC covered – that was the drainage pipes. The drive has been impacted by the repair itself, not the original building defect. So, the policy terms quoted above aren't directly applicable in this situation.

However, I think they do give a clear indication of the intent of the policy and what NHBC are obliged to do under its terms. In short, they undertake to repair damage resulting from the structure of your house not being soundly built.

But what they won't do is guarantee the aesthetic appearance of the property. And – by implication at least – it's clear NHBC wouldn't intend to guarantee that any repairs are essentially 'invisible'.

As an example, I don't think anyone, having read those policy terms – would expect NHBC to replace a whole roof just because a few tiles needed replacing and the replacements couldn't be made to match the remaining tiles.

I don't think it's unreasonable, in that context, for NHBC to tell X that they won't be replacing the whole of his drive in order to make the repair work 'invisible'.

I know X is concerned about the possible impact on the value of his house.

I would imagine that's very marginal, at worst. But I also take into account the fact that the warranty documentation is again clear that NHBC won't cover any reduction in the value of the property as a direct or indirect consequence of the defects in the original build (this is covered in the section entitled *Things Buildmark does not protect you against*).

I'm also satisfied that NHBC have offered X a number of possible options for repair of the holes in the drive. They've been clear that replacing the tarmac will result in a mis-match (which will however fade with weathering) and so have offered to pave the affected area (with slabs or pavements). They've also offered a cash settlement so that X can deal with the drive in the way he chooses.

In short, I don't think it would be fair or reasonable to ask NHBC to replace the whole drive. And I'm satisfied that they've attempted to offer X every option short of that to maintain the appearance of his house.

**My final decision**

For the reasons set out above, I don't uphold X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 23 December 2020.

Neil Marshall  
**Ombudsman**