

The complaint

Mr and Mrs C are unhappy National House-Building Council (NHBC) has declined a claim they made on their NHBC Buildmark warranty.

What happened

Mr and Mrs C bought a new home. It was covered by a ten-year NHBC warranty which began in December 2014.

In September 2019 Mr and Mrs C made a claim to NHBC for a problem with their flooring. NHBC initially declined the claim based on the photos Mr and Mrs C had sent them. Mr and Mrs C asked NHBC to visit their home and inspect the problem. NHBC did that and reported on what it found. In summary, it said the claim was declined because the flooring hadn't been completed by the builder of the new home – it had been completed by tradesmen that Mr and Mrs C had asked to do the work.

Mr and Mrs C didn't think the written report accurately reflected the conversation they'd had with the NHBC inspector. They also said all the work, including the flooring, had been carried out with the builder's agreement, the builder had paid for it, and it was all done prior to completion of the property and the handover to Mr and Mrs C. They complained.

NHBC said the warranty provided cover for putting right any physical damage to the home caused by a defect. It accepted this is what had happened. But it agreed with the reason in the report for declining the claim. It invited Mr and Mrs C to provide evidence to confirm the flooring was installed by the builder.

Mr and Mrs C referred their complaint to this service and provided us with e-mails to show communication between the various parties involved during the build. The investigator considered the complaint. He was satisfied NHBC had acted fairly because he didn't think the evidence showed the builder had installed the flooring or had been responsible for the tradesmen who did.

Mr and Mrs C thought this conclusion was unfair and made a number of points. In summary they questioned whether the flooring was the cause of the problem. They said they had taken advice which suggested it wasn't. In their view the builder had overall responsibility for completing the building work at the property – including work done by other tradesmen prior to completion. So they thought the builder was responsible for the flooring and their claim should be covered.

The investigator wasn't persuaded to change his view and so the complaint has been passed to me to make a final decision.

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, I think NHBC has acted fairly, so I won't be asking it to do anything further. I'll explain why.

The problem Mr and Mrs C have claimed for is damage to a tiled floor. NHBC's report shows a floor tile was lifted. NHBC's inspector considered the underside of it revealed inadequate adhesion had left the tile free to move. And that movement had gradually caused the grout between the tiles to become damaged. The report shows how the grout has deteriorated and allowed the tiles to become loose. In summary, NHBC considers the problem has been caused by the way the tiles were laid, including the adhesive.

Mr and Mrs C have questioned whether this a fair assessment of the cause of the problem. They have mentioned taking advice from two experts – one a floor specialist and the other a surveyor. Mr and Mrs C say both experts consider the problem might not be with the tiling itself and might be to do with the sub-floor which supports the tiling. Mr and Mrs C have been unable to obtain a written report or comments from either expert. As a result neither NHBC nor this service has been able to consider their expert opinions.

NHBC are experts in house building and the defects that can arise. Without any expert opinion to challenge what NHBC has found during its inspection, I accept NHBC's opinion that the cause of the problem is the tiling and adhesive.

I know Mr and Mrs C say NHBC's report isn't an accurate reflection of the discussion had during the inspection. They have provided a recording of some of that discussion. I've listened to it and I'm satisfied it's consistent with the report – the NHBC inspector can be heard saying the problem is 'definitely the adhesive'. I appreciate the discussion continued after the recording ended. But without evidence of what was said, I'm not persuaded it would be fair for me to conclude the report is inaccurate.

Because the claim was made more than three years into the policy, NHBC has considered it under Section 3. There are a number of terms within that section of the warranty but the key one for this complaint is that NHBC will cover the cost of putting right physical damage caused by a 'Defect' in the home.

The warranty defines the word 'Defect' to mean:

The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder

The warranty defines the word 'Builder' to mean:

The firm or company named in a Buildmark Offer who is responsible for building the home

The Builder in this case is a company who I'll refer to as P.

NHBC has accepted there's been physical damage to the tiling and grout. And it seems to have accepted there's been a breach of its requirements. For the claim to be covered, the breach must have been by P itself, anyone employed by P or anyone acting for P. NHBC doesn't think this was the case, which is why it has declined the claim.

It seems to be accepted that P didn't carry out this work itself. Mr and Mrs C have explained that company A provided tiling and adhesive materials. And company J carried out the tiling work. They've also explained that the amount they paid P for the new home included an allowance for, amongst other things, flooring finishes. From that allowance P paid A and J.

Mr and Mrs C have said they had P's authority to use other suppliers and tradesmen, including A and J. From the e-mails I've seen, I'm satisfied P agreed for Mr and Mrs C to use companies A and J to supply and fit the flooring. And I've seen invoices from each company made out directly to P. But that doesn't necessarily mean either company was employed by or acting for P.

To be satisfied one party was employed by or acting for another party, I would usually expect to see some kind of contract or arrangement between the two parties to set out the terms of their relationship. Or that one party behaves in a way which shows they control or influence the other party and have effectively taken responsibility for them.

I've looked at the e-mails Mr and Mrs C have provided and I've thought carefully about the way they've described what happened. They refer to J as the "tiler that we suggested" and provided P with details of A and J's contact information, quote references and anticipated notice times for beginning work. They asked P how payments would be organised and P said "when you know who you are going with, we can sort out payments".

I'm satisfied Mr and Mrs C chose to use A and J and introduced them to P. There doesn't seem to have been any direct relationship between P and A or J before or during the work to build Mr and Mrs C's home. I haven't seen anything to suggest P negotiated the schedule of work or the cost involved with A or J. Rather, Mr and Mrs C told P how much of the allowance they were spending with A and J and what it was for. P agreed to accommodate those companies into the scheduled building work and pay the amounts out of the allowance.

Based on the information I've seen, I'm not satisfied A or J was employed by or acting for P. And as P didn't carry out the tiling work, I'm satisfied it was fair for NHBC to decline the claim based on the policy terms noted above.

Mr and Mrs C have said P was the building expert and had overall responsibility for all work done within the property prior to completion and handover to Mr and Mrs C – regardless of who carried that work out. They aren't building professionals themselves, so they consider that if P allowed them to introduce tradesmen of their choosing, that was or ought to have been at P's risk. And that's a risk the NHBC warranty should cover.

This complaint is against NHBC – not P. So I can't make any findings about P or what P may have been responsible for. NHBC isn't responsible for P. It's responsible for fulfilling the terms and conditions of the warranty held by Mr and Mrs C. That includes the terms above. And I think they're clear that in this situation they don't cover any breach of the NHBC Requirements that may have been caused by A or J.

If Mr and Mrs C are able to obtain a report from either of the experts they've mentioned about the cause of the problem – or any other they chose to seek advice from – they're entitled to provide that new evidence to NHBC. And I would expect NHBC to consider it.

My final decision

My final decision is that I don't uphold Mr and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 7 January 2021.

James Neville
Ombudsman

