

## The complaint

Mr and Mrs H say that the National House-Building Council (NHBC) unfairly declined a claim under their building warranties policy.

## What happened

Mr and Mrs H hold a building warranty for their property which began in May 2013. In August 2018, they contacted NHBC as they noticed that the flooring had started to warp and lift in some areas.

NHBC attended the property and agreed there was damage where the screed had broken up and failed to bond the flooring. But it concluded any repair work required wouldn't meet the Minimum Claim Value (MCV) of the policy. So it rejected Mr and Mrs H's claim. As part of the investigation NHBC said it was aware Mr and Mrs H felt the whole of the kitchen/dining room floor was affected. It said that if further damage was present then Mr and Mrs H needed to provide photos of the damage for it to review the claim.

Mr and Mrs H disagreed with NHBC's findings and complained. NHBC maintained its position to decline the claim.

Unhappy with NHBC's response, Mr and Mrs H referred the complaint to our service. They provided an independent report from a flooring expert (who I'll refer to as S) which said that the problem runs throughout the ground floor of the house. As such, they wanted the entire floor re-screed, re-levelled, and the flooring refitted or replaced as necessary.

Our investigator looked at everything and recommended the complaint be upheld. She found the report provided by Mr and Mrs H was persuasive in determining the cause of the screed failing. She found it wasn't reasonable for NHBC to conclude that repairs were only required to a small area of the floor. So she said NHBC should either repair the whole of the ground floor as suggested in S' report, or, re-assess the whole ground floor and cost of repair. And if it was found the costs met the MCV to accept and deal with the claim.

Mr and Mrs H accepted our investigator's opinion. NHBC disagreed. It said the reports it had considered didn't show that Physical Damage was present in other areas of the ground floor – which would be required in order to provide cover under the policy. It said it had limited its own inspection to where areas of physical damage (i.e. the floor lifting) had been reported. So, as the remainder of the floor was not currently failing to perform, it shouldn't be covered under the policy as it would be preventative work.

NHBC asked for an opportunity to reconsider S' report. And having done so it made an offer to settle the claim. It said it was prepared to extend the scope of repair to the whole of the kitchen/dining room floor to a natural break point. NHBC said this was because it was satisfied S' report showed evidence of physical damage to the flooring and screed in this area. It proposed to offer a cash settlement in line with what it would have cost it to do the repair.

Following a further recommendation by our investigator, NHBC also agreed to offer £200 for the distress and inconvenience caused to Mr and Mrs H.

Mr and Mrs H didn't accept NHBC's offer. They said the policy didn't state that physical damage needed to be in the other rooms in the house. They said it was evident the defect runs throughout the ground floor of the house, so any repair done would not be long-lasting or effective. And they said they believed the hollow sound coming from the other areas of the flooring to be physical damage. Mr and Mrs H said they now believed the floor was starting to lift in the hallway too and provided a photo of the area.

The complaint was passed to me and on 11 January 2021 I set out in my provisional decision why I felt NHBC needed to do more to resolve the complaint. I've included an extract below.

*"It is not for me to decide whether the flooring itself or how it was built meets general building regulations. Instead, it is to see if NHBC has acted fairly or not in how it has assessed the claim under its policy terms.*

*In order to do this, I will consider the evidence provided by both parties about the condition of the floor against the terms and conditions of the policy. But first, I've looked at what Mr and Mrs H's policy actually covers them for in the circumstances of this case.*

*Mr and Mrs H's policy covers problems with a newly constructed home that can be linked to a breach by the builder of one or more of NHBC's technical requirements. And the value of a claim needs to exceed the MCV of the policy. At the time Mr and Mrs H raised the claim the MCV on the policy was £1,630.*

*NHBC's own technical requirements are not the same as the building regulations, so it will be the technical requirements on which I base my decision.*

*I've considered the policy document that relates to Mr and Mrs H's policy. The policy terms in Section 3, (which cover years 3 to 10 after the property is completed) state what NHBC will pay for:*

*"1) We will pay you the full Cost, if it is more than £1,000 indexed, of putting right any Damage in any of the following parts of the house, bungalow, maisonette or flat..."*

*The term goes on to cover "j) staircases and internal floor decking and screeds where these fail to support normal loads."*

*The policy defines Damage as "Physical damage to a Home caused by a Defect". And it defines a Defect as "The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means."*

*So based on this, I now need to consider if the evidence I've been provided with satisfies all of the above criteria.*

*I've considered both the reports completed by S and NHBC. The report provided by S is detailed in explaining how the screed has come to fail. And the recommendations it makes to replace the flooring are based on an assumption that the remaining screed will fail over time. There's no dispute in either report that the screed is defective. But Mr and Mrs H's policy provides cover for physical damage caused by a defect, not the defect itself.*

*Mr and Mrs H say that the hollow sound coming from other areas is physical damage. I've carefully considered the point they are making here. And S' report states the hollow sound means the screed is not sufficiently bonded to the floor. But I think what this shows is that the screed is defective. It doesn't necessarily follow that the entire floor is damaged. NHBC say that the damage is limited to where the floor itself has warped and raised up. And on balance I think the warping and raising of the floor is what meets the policy definition of damage.*

*I understand the point Mr and Mrs H are making when they say that repairs will be required to prevent other areas of the ground floor from raising up and warping. But the policy terms and insurance don't cover for damage that hasn't yet happened. As such, were other areas of the floor to raise and warp, it would need to be considered by NHBC as a separate matter.*

*NHBC has now accepted the damage to the kitchen/dining room floor based on the evidence provided. I think this is reasonable. And it has offered a cash settlement based on what it would cost it to do the repairs. Mr and Mrs H's policy says, "for claims under items 1(a) to (m)...we will pay you your portion of the cost of the necessary work or, at our option, arrange to get the necessary work done at our expense".*

*I haven't seen any evidence that Mr and Mrs H have asked for the claim to be settled in cash, so it doesn't seem reasonable for NHBC to settle at its own cost here. I think a fair settlement means that NHBC should settle at the cost to Mr and Mrs H, subject to a reasonable quote being provided. Alternatively, if Mr and Mrs H wish NHBC to repair the affected area only, then this should also be an option available to them.*

*Mr and Mrs H also paid £655 for S' report which identified the further damage. Usually, if a report shows there is a valid claim, then we would ask for the insurer to reimburse the cost of the report. But in this case I need to consider NHBC's obligations under the initial claim, which were to inspect the damage on a small area of raised flooring. S' report is detailed and includes a full survey of the ground floor, which I wouldn't expect NHBC to have done. But NHBC did ask Mr and Mrs H to provide evidence of further damage which they did, and this evidence was subsequently accepted. So I think it would be reasonable for NHBC to make a contribution of 50% towards the costs of S' report to reflect this.*

*Our investigator recommended NHBC pay Mr and Mrs H £200 compensation for the distress and inconvenience caused. Having considered everything, I agree there was some delay caused by NHBC not considering S' report sooner when Mr and Mrs H originally submitted it. So I think a payment of £200 is fair and reasonable in the circumstances."*

## **Developments**

NHBC responded and accepted my provisional findings. It had nothing further to add to this complaint. Mr and Mrs H responded to my findings and in summary they said:

- There were further areas of physical damage now in the property which included the kitchen doorway, hallway, and downstairs cloakroom. Mr and Mrs H provided photographs of the raised flooring in these areas;
- Does the policy cover a major defect in the construction of their property?;
- What would happen if there was further damage once the policy lapsed after the 10-year period?;
- There is no real natural break point in the flooring as it runs throughout the ground floor.
- Any contractor who did the work would need to find a point where the screed was still bonded to the flooring – a ‘hard edge’. Mr and Mrs H have been told this would be the biggest challenge in any repair;
- No consideration has been made for any alternative accommodation whilst the repair works are carried out;
- They would prefer to get the work done themselves.

## **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 reconsidered everything, including Mr and Mrs H’s latest response, I find myself coming to the same conclusions as reached in my provisional decision. And I’ll explain why Mr and Mrs H’s comments haven’t changed my mind about what I’ve seen.

I’ve seen the photographs provided by Mr and Mrs H which they say shows new areas of the floor raising. But I think this needs to be considered by NHBC as a new matter as it doesn’t form part of the original complaint to our service. Our service will do what it can to finalise matters for the parties, but we can’t run a complaint alongside a claim. And it wouldn’t be fair for me to decide on whether this new damage meets the terms of the policy without giving NHBC an opportunity to consider it and amend its settlement offer if necessary.

In regard to Mr and Mrs H’s comments about the policy cover, I refer back to my provisional findings where I set out what the policy covers in the circumstances of this case. Having reviewed the policy documents again, I find no further information relevant to this complaint or regarding cover for major defects within the property. And any matters arising after the 10-year warranty period lapses would most likely fall outside of the jurisdiction of our service, so I can’t offer any further comments on this here.

I’ve considered Mr and Mrs H’s comments about the scope of repairs, and the requirement for a contractor to find a ‘hard edge’ to replace a section of the flooring. But Mr and Mrs H have also said they’d prefer the repair work to be done themselves. So if they do choose to do this, NHBC’s liability for the claim would end when they make the cash settlement. And this would include any provision for alternative accommodation within the policy. Any issues about the scope or quality of repair work would then be between Mr and Mrs H and their appointed contractor.

However, if repairs are arranged through NHBC following my final decision, then it would be required to do an effective and lasting repair, taking into account the layout of the floor. And this would include alternative accommodation if necessary, in line with the policy terms.

So having reviewed everything again, I find either option a fair way to resolve this complaint for the reasons above, and in addition to the reasons set out in my provisional decision.

### **Putting things right**

In order to put things right for Mr and Mrs H, NHBC should:

- Settle the claim for the kitchen/dining room floor at the reasonable cost to Mr and Mrs H, subject to receipt of an acceptable quote or;
- Arrange for repairs to be done to the kitchen/dining room floor at its own expense;
- Pay 50% of the cost of the report Mr and Mrs H submitted, totalling £327.50;
- Pay 8% simple interest on this sum, from the date the report was completed, to the date of settlement;
- Pay Mr and Mrs H £200 compensation for the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold this complaint. National House-Building Council must put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 24 February 2021.

Dan Preveatt  
**Ombudsman**