

The complaint

Mr and Mrs E are unhappy with the way National House-Building Council (NHBC) has settled a claim they made on their NHBC Buildmark warranty.

Mr E has dealt with the claim and complaint throughout, so I'll refer to him only.

What happened

Mr E bought a new home which was covered by a ten-year NHBC warranty. He got in touch with NHBC about a problem with the mortar in the brickwork of his home.

As the claim was made within the first two years of the warranty, NHBC considered it under section 2 and offered its Resolution Service. NHBC agreed there was 'crumbling mortar on all elevations' that did not meet its technical requirements. As a result, it asked the builder of the home to carry out work to certain areas of the mortar.

The builder didn't fulfil the requirements set out by NHBC. So, in line with section 2 of the warranty, NHBC took over responsibility for the claim. It considered a partial repair of the mortar would put the problem right and offered Mr E around £9,000 to settle the claim. This was based on the amount it would cost NHBC to carry out the partial repair scheme.

Mr E got in touch with two local builders. They both quoted around £11,000-£12,000 to repair all the mortar. Mr E said the builders were unwilling to carry out the partial repair NHBC had recommended. NHBC said it was unnecessary to repair all the mortar in order to comply with its technical requirements and didn't agree to increase its settlement offer.

Unhappy with this, Mr E referred his complaint to this service. NHBC provided details of two other builders near to Mr E that may be able to help. Mr E got in touch with them – and a fifth builder – but none of the builders offered to quote for the partial repair. The investigator shared this information with NHBC and suggested NHBC either arrange the partial repair work itself or increase the cash settlement offer in line with the quotes Mr E had received. NHBC disagreed and so the complaint has been passed to me.

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.

NHBC has accepted the claim for the crumbling mortar under section 2 of the warranty. Within that section it says how NHBC will settle claims. In summary it says NHBC will pay the cost of any work required by a Resolution Report, which the builder doesn't complete in accordance with NHBC requirements. Alternatively, NHBC may arrange to get that work done at its own expense.

The Resolution Report set out the work NHBC considered was needed in order to meet its technical requirements. Broadly speaking that was to repair all the mortar on two elevations

of the house and carry out more localised repairs on the other two elevations. NHBC's schedule of work, and associated cost, was based on this partial repair scheme.

The Resolution Service, including the report, isn't within my power to consider as it doesn't amount to an insurance activity. My power to consider how NHBC has acted in this case begins when it took over responsibility for the work. So, I can't consider NHBC's view on the extent of work required under the warranty.

I agree with NHBC that the warranty gives it the right to choose whether to settle the claim by arranging the work or paying for it. When making that choice, NHBC must ensure the settlement is fair to Mr E. That includes providing a lasting and effective repair of the damage NHBC has accepted is covered by the warranty.

Mr E has been in touch with five different builders. None of them has quoted for the partial repair scheme specified by NHBC. That's three companies he'd found himself and the two recommended by NHBC. Two quoted to replace all the mortar on all elevations, both of which cost more than the settlement offered by NHBC. The investigator suggested NHBC arrange to carry out the work, but it declined to do so.

This means Mr E can't find anyone willing to carry out the repairs NHBC have specified – including NHBC itself. And if he were to have a greater schedule of work carried out, NHBC's settlement offer wouldn't cover the cost. So, Mr E is unable to get NHBC's repair scheme carried out for NHBC's offer. Because of that I'm not satisfied the offer is fair.

NHBC has questioned whether the builders *could* carry out the partial repair scheme but would *prefer* to carry out the more extensive work. I've considered the information Mr E has provided from the builders.

One expressed a concern that the two elevations NHBC had scheduled for repairs to localised sections only would ultimately fail and the visual result would be poor. They said: "*total elevation repointing is the ONLY way of solving this issue*".

Another said: "*the simple fact is, so much of the mortar has failed, experience indicates bigger fundamental issues with the work... we would advise a minimum to repoint one full elevation at a time*".

A third builder said they agreed with the comments of the others and would only be willing to repair entire elevations.

Neither of the builders recommended by NHBC gave comments to Mr E. And I haven't seen any evidence from NHBC that any other builder would see things differently to the three above and would be prepared to carry out its repair scheme. Mr E has tried five different builders and none of them have been prepared to quote for the partial repair. Based on the comments above, I'm satisfied this is because they don't think the partial repair will bring about a lasting and effective solution to the mortar problem. Overall, I'm persuaded the evidence shows Mr E can't find a builder willing to carry out the partial repair work, despite making reasonable attempts to do so.

One option to solve this problem would be for NHBC to arrange to carry out its partial repair scheme. NHBC includes this option in the terms of the warranty. The investigator has suggested this to NHBC, but it hasn't agreed to do so. As neither of the builders it recommended to Mr E were prepared to quote for the work, it may encounter the same difficulties Mr E has. And given what the three builders have said, there's a risk that NHBC's repair scheme won't provide a lasting and effective repair of the damage covered by the warranty. So, I'm not satisfied this option is likely to bring about a fair resolution.

The alternative is for NHBC to increase its cash offer to enable Mr E to get the work done through one of the builders he contacted. NHBC maintains it's unnecessary to repair all four elevations in order to meet its technical requirements. But this is the only way Mr E can get the work covered by the warranty carried out without being out of pocket. NHBC hasn't put forward any other ways of settling the claim. I'm satisfied this is a fair way to resolve this complaint.

One of the builders Mr E was in touch with during the claim quoted £9,950 plus VAT in early 2019. I understand they're prepared to standby that quote still. So, I'll be requiring NHBC to increase its offer to £9,950 and pay this amount to Mr E to settle this complaint. And once he shows he's liable to pay the VAT element of £1,990, NHBC should pay him this amount too.

My final decision

I uphold this complaint.

For the reasons above, I require National House-Building Council to:

- Pay Mr and Mrs E £9,950;
- Once Mr and Mrs E have shown they're liable to pay the VAT element, pay an additional £1,990.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 23 March 2021.

James Neville
Ombudsman