

The complaint

Mr P is unhappy with how National House-Building Council have dealt with a claim he made under his Buildmark warranty policy.

What happened

The details of this complaint are well known to both parties, so I will only provide a summary of the main issues below.

Mr P purchased a new build property which came with a 10-year warranty. There were some issues with it, which he reported to the builder and NHBC. Among other things, the waste pipe to the sink in the bathroom wasn't connected properly which caused water to leak into the bathroom and down the walls into the room below causing damage.

The builder fixed some of the issues but NHBC later stepped in and took over the builder's responsibility for the repairs. Mr P and NHBC disagree about what items should be on the schedule of works and whether the amount NHBC has attributed to the repairs is sufficient. Mr P also wants NHBC to fix additional issues he has noticed with the property.

This service has already considered a complaint from Mr P under a different reference about the level of service he has received from NHBC. Under that complaint Mr P was awarded £650 compensation. This complaint concerns issues that happened between the final responses issued on 9 September 2019 and 15 November 2019.

My provisional findings

I issued my provisional findings on this complaint on 16 March 2021. I said I intended to uphold the complaint in part, for the following reasons:

I have explained separately to Mr P that in this decision I can only consider issues which NHBC listed as requiring action in its resolution report dated 28 February 2019. I'm aware there are other issues with the property that Mr P and NHBC disagree on whether they need fixing and, there are also issues that are still with the builder to put right. However, I will not be considering those here.

Having reviewed everything, I intend to uphold this complaint in part. For ease I'll address each issue under a separate heading.

What NHBC is required to do

The concerns Mr P has raised are being dealt with under section 2 of the Buildmark policy. This covers the first two years after the completion of the property and is called the 'builder warranty period'. If the builder is made aware of issues but doesn't take action to put them right or repair them, NHBC can take over the builder's responsibilities. It will only do this, where it finds the builder hasn't complied with NHBC's requirements when building the property.

The policy says NHBC will either do the work on behalf of the builder or it will pay what it would have cost it to have the work done.

Thermostats

NHBC has agreed to replace the thermostats and pay for an electrician and plumber to stay for two hours to ensure the system is working. I think this is a reasonable proposal.

Wash basin wastewater pipe leak – all related damage to be fixed

- Weeping pipe, NHBC has now agreed to uplift SoW to repair this. I think this is reasonable.

- Tiles in the Bathroom, I can see that NHBC has altered the cost of the SoW to take into account the dimensions Mr P provided to it. NHBC proposes to only replace the tiles that have been damaged and those needed around to boxing to the pipe.

Mr P has said the tiles are no longer produced and are of a good quality. Therefore, as they can't be matched he thinks all of the tiles should be changed. NHBC has offered a 50% contribution to the cost of the undamaged tiles if the matter is cash settled.

I understand there is a further issue with the pipework which has been raised with the builder which may require further tiles in the bathroom to be removed for it to be fixed. I'd questioned NHBC previously around this work and whether it would therefore make sense, assuming the work is likely needed, that it covers the cost of all of the bathroom tiles now.

NHBC has however explained as the matter is something that is still with the builder and it hasn't yet assessed if this is something it will take responsibility for in the future. It won't therefore change current position regarding the tiles because of this.

Given as I've explained previously, I can only consider matters that NHBC have taken responsibility for overall, I think NHBC's current position on the bathroom tiles is reasonable.

The amount of tiles required has been based on the dimensions Mr P provided and the cost of the tiles is similar to the brand Mr P has at the moment. Where items can no longer be matched, we would usually expect an insurer to offer to contribute 50% of the cost of replacing the undamaged items. As NHBC is prepared to do this, I don't think it is acting unreasonably.

- Bathroom floor, Mr P has said the bathroom floor has started to move. And, while there is no visible damage at the moment, he is certain some was caused by the water that leaked down the wall seeping into the bathroom floor as well. NHBC has said there is no damage to the floor and therefore it won't be including any cost to repair that in the SoW.

I haven't seen anything further which suggests there is damage to the bathroom floor caused by the leak, and I note this was not mentioned in Mr P's surveyor's report. I won't be asking NHBC to do anything further here.

- Decoration in kitchen, NHBC has included costs to decorate areas of the kitchen impacted by the initial damage and repairs. I won't therefore be asking it to alter this.

- Crack below the window sill in kitchen, NHBC say it is a shrinkage crack that would be

Mr P's responsibility to repair as it is normal maintenance. Mr P says it is related to the water leaking down the wall. Having reviewed the pictures provided by both parties and noting the fact NHBC are already proposing to cover the cost of repainting the window sill. I think it is

more likely that not, based on its location, that the crack is related to the leak from the bathroom and I'm therefore intending to ask NHBC to include this in the SoW.

- Kitchen floor, Mr P has said the flooring in the kitchen has started to lift between the joints, where the water from the leak pooled on the floor. NHBC has said no mention of this was made in the original report and it says the photos its surveyor took originally show the flooring the that particular area is continuous.

I've carefully reviewed the photos that have been provided and taken into account Mr P's surveyor's comments on the matter. Mr P's photos do show that there are joins in the flooring where the leak was and that the flooring is lifting slightly. I've also taken into consideration the flooring appears to be in front of the crack which I've mentioned above.

So, I think it is more likely than not the damage to the flooring is connected to the leak from the bathroom and therefore NHBC should fix this. NHBC is required only to fix/replace the section of floor that has been damaged. However, if an exact match isn't available to the existing floor. I would also expect NHBC to pay a 50% contribution towards the cost of replacing the floor in its entirety.

Front door needs adjustment

Mr P has said the front door has been adjusted to its limit and has provided a photo to show that is the case. NHBC says this hasn't been mentioned previously and comments Mr P's surveyor suggests the door can be adjusted.

I've looked at the information that has been provided and I'm conscious that what Mr P has said may be correct. Should Mr P take a cash settlement and NHBC not have costed for any further work required to alter the fitment of the door then Mr P would be at a disadvantage and NHBC will not have indemnified him fully.

If Mr P chooses a cash settlement and whomever he gets to undertake the works provides evidence additional work was required over and above what NHBC accounted for. NHBC should pay to Mr P what it would have cost it, should its contractor have undertaken the additional work.

Windows need adjustment and trickle vents need to be changed

NHBC confirms it will undertake work to ease and adjust the windows. It will also arrange for surface mounted trickle vents to be installed on the windows.

Mr P is concerned that the cost associated with the trickle vents would not be sufficient to cover their cost. NHBC has said it has costed them at £10 per vent which is more than reasonable based on what they can be purchased for on the internet. Having looked myself I can see vents themselves vary in cost and mainly are under this amount so I think it is more likely than not that would be the cost to NHBC to replace and fit them. I understand Mr P's concern that the vents required specifically for his window may cost more than this however I haven't seen any evidence of this.

Mr P's surveyor mentions that some of windows have reached their limit for adjustment and hinges and security bolts may now need to be changed to ensure the windows operate as intended. Again this leaves a situation similar to the front door where Mr P could be at a disadvantage and NHBC not fully indemnifying him. Therefore, I propose the same resolution:

If Mr P chooses a cash settlement and whomever he gets to undertake the works provides evidence additional work was required over and above what NHBC accounted for. NHBC should pay to Mr P what it would have cost it, should its contractor have undertaken the additional work.

Ensuite door

The door needs to be adjusted and damage to the surround fixed. NHBC has included this in the SoW but lists the door as being stained not veneered.

NHBC has agreed to add £150 to the schedule of work to account for this.

Patio door

This matter was fixed by the builder and is no longer outstanding.

Personnel door to garage

Mr P's surveyor comments the work done to the door has not resolved the issue of the glazing beads being loose.

NHBC has agreed to add £100 to the SoW to cover this repair.

Additional service issues.

NHBC have offered Mr P a further £100 compensation for incorrectly quoting the cash settlement amount and initially missing boxing and tiling from SoW. I appreciate the ongoing issues with the property is causing Mr P considerable distress and inconvenience however I am mindful that NHBC has already provided Mr P with compensation for this under a different complaint reference.

However I do think the fact NHBC asked Mr P to provide three separate quotes when it was only ever required to pay what it would cost it to have the work done put Mr P to inconvenience which could have been avoided.

Overall, I think a fair and reasonable amount of compensation would be £200.

Mr P has also had to employ a surveyor to challenge some of the items on the SoW which should have been correct initially. I acknowledge some of the things noted by the surveyor in the report do not apply to this complaint however, I do think it has added value. I'm intending to propose that NHBC should reimburse Mr P 50% of the cost of obtaining this report, upon receipt of Mr P providing evidence of its cost to NHBC.

Putting things right

In addition to increasing the costs as already agreed, to put things right NHBC should:

- *Repair the crack in the kitchen wall.*
- *Fix/replace the lifting flooring in the kitchen. If an exact match isn't available to the existing flooring, NHBC should provide a 50% contribution to the cost of replacing the floor in its entirety.*
- *If Mr P chooses a cash settlement and whomever he gets to undertake the works provides evidence additional work was required over and above what NHBC accounted*

for to adjust the front door and windows. NHBC should pay to Mr P what it would have cost it, should its contractor have undertaken the additional work.

- *Pay Mr P a total amount of £200 compensation.*
- *Pay Mr P 50% of the cost of obtaining his surveyor's report on receipt of proof of the amount paid*

Mr P will then need to decide whether he wants NHBC's contractor to undertake all of the works or he wishes to receive a cash settlement.

Responses to my provisional decision

Both Mr P and NHBC provided further comments for me to consider. For ease I'll address these under the same headings as in my provisional decision in my findings below.

In addition, Mr P has said that his complaint does not concern negotiating a price that is acceptable to him, as he understands NHBC is able to cover the work at a lower cost than he could privately. However, he is more concerned about agreeing the method in which each repair is to be undertaken and the materials to be use as this is a critical factor determining the cost and quality of the work done. He believes he has provided sufficient evidence to demonstrate that the solutions provided by NHBC in its schedule of work ("SoW") has underestimated the damages, labour, work, materials and spare parts required. He believes the schedule should be more detailed and accurate so that all parties can understand the amount of work required and agree the next steps.

Mr P also raises the fact the builder has told him that rectifying the falls to the pipework should be included in NHBC's cost to repair the bathroom tiles.

He's offered to engage further professionals to provide their opinion on items such as the bathroom floor, windows and doors, on the understanding NHBC reimburse the cost if their opinion is positive.

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, my decision remains this case should be upheld in part. I explained in my provisional decision what NHBC is required to do in respect of the warranty policy, so I won't repeat that in detail again here.

My role here isn't to manage the claim moving forward, that is for the parties to work out between them so I won't be directing exactly how NHBC should undertake the repairs needed nor do I require it to provide me with this precise detail in order for me to make my final decision. I appreciate Mr P's offer to engage further professionals however my role here is an informal one and I must look to bring this complaint to a resolution. I feel each party has now had sufficient time to provide any further evidence for me to consider and I shall now make my final decision based on all the information available to me.

I set out in my provisional decision what I believe to be the fair and reasonable resolution to the complaint made. I have reconsidered all of the information each party has provided, as well as any new information, and the reasons for my final decision are detailed below:

Thermostats

Neither party has provided any further comment in relation to this. So my thoughts remain as my provisional decision. NHBC's proposal is reasonable.

Wash basin wastewater pipe leak – all related damage to be fixed

- Weeping pipe,

Mr P has mentioned that the pipe is weeping as when the builder fixed the original issue with the basin, it dislodged the pipe beneath and rotated it. He therefore expects this is to be corrected.

NHBC has agreed to uplift the SoW to take into account the cost of fixing the weep. It would seem reasonable to me that if the rotation of the pipe is causing the leak then this would be taken into account when the matter is put right. If it is a separate issue, then Mr P and NHBC will need to work together to have it addressed.

- Tiles in the Bathroom,

Mr P wants to know the precise tiles NHBC have costed for in its SoW as if these aren't like for like then it will change the cost of the SoW. He would also like to know the costs of the additional materials that will be required to terminate the tiles in the corners. And a breakdown of how the tiler proposes to remove and refit the tiling around the various sanitaryware in the bathroom. He's also pointed out the tiles are fixed to plasterboard and that is also likely to be damaged in the process of repairing the tiles.

NHBC have based the schedule of work on what it would cost to get its contractor to undertake the required work. It has its own internal rates and method of working out the total value which doesn't involve listing each step of the repair or all of the required materials. While I appreciate Mr P's concerns about the cost and content of the SoW I don't think NHBC is acting incorrectly here by using its normal method of calculation.

As mentioned in my provisional decision, where items can no longer be matched, we would usually expect an insurer to offer to contribute 50% of the cost of replacing the undamaged items. As NHBC is prepared to do this for the tiles in the bathroom, should a match not be found, I think its proposed settlement is reasonable.

It is relevant to mention here that further work on the pipework will need to be undertaken before the tiles are repaired. Mr P mentions the builder has told him NHBC are undertaking this work alongside fixing the tiling. NHBC has said this is something that is logged with it under a different reference and is currently with the builder to put right. It points to the resolution report which I'm currently considering which says *"The Homeowner raised a separate issue relating to the falls on the pipe work to the toilet as effluent is failing to be removed. This is currently outside of the NHBC Resolution Service as it had not been raised prior to the visit; however Jarvis have agreed to get the plumber to investigate this issue prior to the reinstatement of the tiles, outside of the Resolution Service."*

I remain of the opinion that this is a matter which currently falls outside the jurisdiction of this service, as I've previously explained to Mr P. I won't therefore be making any determination on this issue in this decision. Apart from saying that I think both NHBC and Mr P should have an open dialogue about the progress of this repair and the checking of the pipework as it will inevitably hold up the work to the tiling taking place.

- Bathroom floor,

Mr P remains of the opinion the bathroom floor should be replaced. He has provided a photo

of the access hole that was cut into the ceiling of the kitchen exposing the boards making up the bathroom floor. While not clear he says this photo shows damage to the board. Mr P also makes reference to an email from the site manager which confirms the material isn't water proof.

NHBC remains of the opinion the bathroom floor doesn't need to be replaced as there is no apparent damage to it. It refers to the same email as Mr P and quotes the following "*The materials used for the walls are brick, block, and plaster. Those for the ceiling are timber, rockwool lagging, plasterboard, and plaster skim. Whilst these are not "waterproof", exposure to water for a limited period such as this, and subsequent drying, is not detrimental to their function or longevity*". NHBC has said the inspection holes were opened up to ascertain the condition of the structure within the ceiling void and this was found to be undamaged.

Where there is conflicting evidence such as this, I have to make my decision on the balance of probabilities. In this case it means I have to decide what version of events I am more persuaded by.

While I can understand Mr P's logic and why he would like the bathroom floor to be replaced. I am persuaded by the detail provided by NHBC. I think it's more likely than not based on the evidence available to me the bathroom floor is undamaged and therefore I won't be recommending NHBC replace it.

- Decoration in kitchen

Mr P has said the sill has been damaged by the water and needs to be replaced. He has provided evidence of the sill paintwork cracking where it joins with the wall and areas of the sill that have bubbled and have other blemishes.

NHBC has now agreed to replace the sill as part of the SoW. I think this is reasonable.

As mentioned in my provisional decision NHBC has included in the SoW costs to decorate areas of the kitchen impacted by the initial damage and repairs. I remain of the opinion this is fair and reasonable.

- Crack below the window sill in kitchen,

No further comments have been made in relation to this, so I'm not minded to change the findings I set out in my provisional decision. NHBC should include the cost of repairing the crack in its SoW.

- Kitchen floor,

NHBC questioned the evidence Mr P provided in relation to his flooring and in response Mr P provided further photos. Having reviewed all of the images I remain persuaded as in my provisional decision there is damage to the kitchen floor which NHBC needs to repair.

NHBC is required only to fix/replace the section of floor that has been damaged. However, if an exact match isn't available to the existing floor. I would expect NHBC to pay a 50% contribution towards the cost of replacing the floor.

Mr P has questioned as he has the same flooring in the hallway and living room if NHBC should also pay a 50% contribution towards that. I have let Mr P know that I wouldn't expect NHBC to make a further contribution as those areas are too far away from the original damage and it wouldn't be reasonable for it to do so.

Front door needs adjustment

In relation to the adjustment of the front door Mr P has said my proposal doesn't provide a clear solution for him and could result in a further battle with NHBC. He believes his surveyor said the front door couldn't be adjusted.

NHBC has said it is happy with my proposed solution. It has said if Mr P has the work undertaken as proposed in its SoW and this does not resolve the issue, he should send it evidence from his contractor as to why further repairs are required so that this can be assessed for further costs to be agreed.

I appreciate Mr P's concerns however without adjustments first being tried it isn't possible to say with certainty they will be unsuccessful. I see no reason therefore to change the proposal I set out in my provisional decision.

Windows need adjustment and trickle vents need to be changed

Mr P has said this issue has been misunderstood. The issue with the trickle vents won't solve the issue of the windows being unable to open freely. While a flush trickle vent could possibly be installed, would not address the root cause of the issue being that the window frames are very thin and the windows' hinges are too close to the wall. He has been advised that a possible solution is to change the way the windows open.

NHBC has said it is confident changing the trickle vents will negate the current issue of the windows hitting the wall. Based on Mr P's comments however it has said that should NHBC undertake the work and this does not resolve the issue, it will investigate further. Similarly, should Mr P have the repairs undertaken and this doesn't resolve the issue, it would need to see evidence which specifically explains why the repair scheduled by NHBC was not successful/suitable before it will consider paying further costs.

The repair NHBC undertakes should be lasting and effective. At the moment it is unknown if replacing the trickle vents will be successful. I appreciate Mr P has put forward an alternative suggestion but at this moment I can't say what NHBC has proposed is unreasonable.

NHBC has said it will include in the SoW the cost of repairing the damage to the wall by the window. I think this is reasonable.

In relation to the window adjustment Mr P has said my proposal doesn't provide a clear solution for him and could result in a further battle with NHBC.

NHBC has said it is happy with my proposed solution. It has said if Mr P has the work undertaken as proposed in its SoW and this does not resolve the issue, he should send it evidence from his contractor as to why further repairs are required so that this can be assessed for further costs to be agreed.

I appreciate Mr P's concerns however without adjustments first being tried it isn't possible to say with certainty they will be unsuccessful.

Ensuite door

Mr P has said that NHBC should paint the whole wall surrounding the ensuite door. The scope of work says, "Cut back and fill minor cracking to architrave and wall as a result of the door not fitting correctly in preparation for paint finish" Based on this I'm satisfied that NHBC will be completing repairs to the affected part of the wall. I don't think it is reasonable to require NHBC to paint the whole wall in this instance.

As mentioned in my provisional decision NHBC has agreed to add £150 to the SoW to account for the fact the door is veneered.

Patio door

Mr P has said the repair to this is still outstanding, however it isn't noted in his surveyor's report. NHBC has provided an email from the builder that confirmed this has been repaired. Had the matter been outstanding I would have expected it to have been covered in the surveyor's report. As such I think on the balance of probabilities this repair has been completed. Based on the evidence available to me, I can't say there is anything further for NHBC to do here.

Personnel door to garage

No further comments have been provided in relation to this. I see no reason to change my provisional findings that the uplift of £100 to the SoW is fair and reasonable to address this issue.

Additional service issues.

In my provisional decision I said that NHBC should pay Mr P compensation of £200 in total to reflect the trouble and upset he'd been caused. I also said that NHBC should pay 50% of the cost of the surveyor's report Mr P obtained. Neither party has disputed those findings, so I see no reason to alter them.

Putting things right

In addition to increasing the costs in the schedule of work as already outlined and agreed above, to put things right NHBC should:

- Repair the crack in the kitchen wall.
- Fix/replace the lifting flooring in the kitchen. If an exact match isn't available to the existing flooring, NHBC should provide a 50% contribution to the cost of replacing the floor.
- Replace the window sill.
- If Mr P chooses a cash settlement and whomever he gets to undertake the works provides evidence additional work was required over and above what NHBC accounted for to adjust the front door and windows in the SoW. NHBC should pay to Mr P what it would have cost it, should its contractor have undertaken the additional work.
- Pay Mr P a total amount of £200 compensation.
- Pay Mr P 50% of the cost of obtaining his surveyor's report on receipt of proof of the amount paid

Mr P will then need to decide whether he wants NHBC's contractor to undertake all of the works or he wishes to receive a cash settlement.

My final decision

My final decision is that I uphold Mr P's complaint against National House-Building Council. I

direct it to put matters right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 June 2021.

Alison Gore
Ombudsman