

## The complaint

Mr and Mrs Y complain that NHBC hasn't resolved the issues they've had with the builder of their new house. In particular, Mr Y said that NHBC were proving to be very little help in relation to a number of outstanding issues that the builder kept failing to rectify correctly. He believes NHBC should have stepped in, within a 'reasonable time' and completed the works necessary to repair the defects in their house and garden. Instead, Mr Y feels they've been left to 'keep going around in circles with NHBC and the builder'. Mr and Mrs Y have said NHBC's actions have caused their family to suffer significant distress and inconvenience over a lengthy period of time.

## What happened

I issued a provisional decision on this complaint on 28 May 2021, explaining why I was not intending to uphold Mr and Mrs Y's complaint.

Here's what I said in my provisional decision:

### What happened

*Mr and Mrs Y moved into their new home in September 2014. Since that time, they've had a number of problems with the property, including the rear garden being waterlogged, the front door being draughty, the heating system being noisy, and they've had issues with the roof.*

*Over the last six years, NHBC has attended the property on a number of occasions to inspect the defects claimed for and the remedial work carried out by the builder, and a number of resolution reports have been issued. Mr and Mrs Y have been frustrated with the time it's taken to repair the outstanding defects and have complained to NHBC on a number of different occasions, about their concerns. I will address the outstanding issues, in greater detail, in the "What I've provisionally decided – and why" section below.*

*Mr and Mrs Y referred their complaint to our service on 20 August 2019. Our investigator looked into Mr and Mrs Y's complaint and issued her view upholding part of the complaint on 17 April 2020. She explained why we, under our rules, we could only consider part of Mr and Mrs Y's complaint, which they accepted. Our investigator awarded an additional £500 for the distress and inconvenience Mr and Mrs Y had suffered as a result of NHBC not stepping in to complete the works carried out by the builder, with regard to the water-logged garden, as soon as it became apparent that the builder hadn't remedied the defect. However, with regard to the complaint about the roof claim, because the repair works didn't meet the minimum claim value, she concluded that NHBC had fairly declined the claim. NHBC didn't accept our investigator's view, as they said it wasn't clear what they were being asked to do. NHBC requested an ombudsman's decision on the complaint.*

*After our investigator's view was issued, Mr Y complained to NHBC about the way his claim in relation to defects with the front door had been handled, and the customer service they'd received overall. NHBC issued a further final response letter on 5 May 2020, offering a goodwill payment of £200 to apologise for the delay in the claims team arranging an appointment. Our investigator didn't give a view on this element of Mr Y's complaint, however, NHBC have agreed that I may cover this recent complaint, in my provisional decision, so that a complete response can be provided to Mr and Mrs Y.*

#### *What I've provisionally 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.*

*In this provisional decision, I will consider the four key issues of concern raised by Mr Y and Mrs Y with NHBC, that were addressed in the final response letters dated 8 August 2019, 5 May 2020 and 7 December 2020. In doing so, I will refer to the background and relevant evidence, including the resolution reports, and give my provisional decision on each of the four material issues, under the following headings: Waterlogged rear garden; Damage to the roof; Issues with the heating / plumbing system; and Fitting of front door.*

#### *Waterlogged rear garden*

*Mr and Mrs Y told us they've had problems with waterlogging in their rear garden since they first moved into the property in 2014. Mr Y says that in January 2018, NHBC's claims investigator said that if the builder didn't resolve the problem, NHBC would take over the work and bill the costs back to him. However, when Mr and Mrs Y referred their complaint to our service in August 2019 the issues still hadn't been resolved. In April 2021, Mr Y contacted our service to say further works have been done to the garden to try and resolve the flooding which he hopes will have worked as the area has now been flagged. However, he remained of the view that NHBC should have stepped in a lot sooner to carry out the repair works, rather than leave it to the builder to rectify the issue.*

*Mr Y has requested an explanation of what a reasonable time is, for NHBC to give the builder to resolve the issue with the property, before stepping in and doing the works themselves. Mr and Mrs Y have also explained to us the impact the ongoing delays in resolving the issues with their property have had on them and their family.*

*Before I can consider whether any compensation is due to Mr and Mrs Y, for the way NHBC has handled their claim, I first need to decide whether NHBC have done anything wrong.*

*As Mr Y explained, the issue with the waterlogged garden has been ongoing since 2014, which, if the most recent works have finally resolved the issue, means it has taken approximately six and a half years to rectify. On the face of it, I agree that is a long time for Mr and Mrs Y to live with a garden that didn't function in the way they reasonably expected it to. And I appreciate that this would have caused them inconvenience over the years, especially with three young children, spending a lot of time at home over the last year or so.*

*However, before I can conclude that NHBC is responsible for the delay in rectifying the issue, I need to be satisfied that they acted unreasonably during that time. To form my view on this I've considered both the policy terms and conditions, and the timeline of events, which I've set out in some detail below.*

*The issue with the waterlogged garden was notified to the builder and NHBC within the first two years of the policy term, so is covered under section 2 of the Buildmark policy terms and conditions. Section 2 says:*

- 1) Within a reasonable time, at its own expense, in a workmanlike manner and in accordance with NHBC Requirements, the Builder will put right or repair any Defect or Damage notified to it during the relevant notification period. This includes, when Damage is notified, repairing or putting right the Defect that caused the damage”*

*The terms go on to say:*

*“If notified within the relevant notification period, the Builder remains liable under this part of this section even after the relevant notification period has ended”.*

*In this case, the builder was notified within the relevant period, so was required under the policy terms and conditions to put right the defect or damage and remained liable until such time as the damage or defect was put right.*

*Section two also sets out what NHBC will do:*

*“What NHBC will do*

- 1) We will pay you the Cost of any test, investigation or work that is required by a Resolution Report that you accept in full, which the Builder does not complete in a workmanlike manner and in accordance with NHBC Requirements within the time set in the Resolution Report. Alternatively, we may at our option arrange to get that test, investigation or work done at our expense”*

*Part 3 of section two says that if the Builder is notified of a Defect or Damage to the policyholder’s home, and doesn’t fulfil its obligations under this section, then NHBC may provide a Resolution Service.*

*Where NHBC offers the Resolution Service, the terms and conditions say they will “issue a ‘Resolution Report’ informing both you and the Builder of any tests, investigations or work that the Builder must do to fulfil its obligations under part 1 of this section”*

*The terms go on to say that:*

*“If you accept the findings of a Resolution Report in full, then:*

- 1) The Builder must carry out any tests, investigations or work referred to in the Resolution Report at its own expense, in a workmanlike manner and in accordance with NHBC Requirement, within a reasonable period of time that will be set by NHBC;*
- 2) You must allow the Builder access to your Home during normal working hours to fulfil the requirements of the Resolution Report;*
- 3) If the Builder does not carry out the tests, investigations or work satisfactorily and within the time set, we will deal with the matter as a claim against NHBC under part 2 of this section....”*

*I’ve set out these terms of the policy in detail, as all of the defects that Mr and Mrs Y have complained about, were included in various resolution reports issued by NHBC during the period of their claim.*

*The waterlogging issue was first included in the June 2015 resolution report. At that time, NHBC said that the builder should consider arranging for the rear garden to be rotovated, look at the drainage, and remove old obstructions and debris from the ground. The works were to start by 30 July 2015 and finish by 28 August 2015.*

*The waterlogging issue was next addressed in the resolution report dated 4 November 2016. NHBC said that the builder should consider providing additional land drainage, so that the land drains provided are interconnected, similar to a herringbone style, to as to ensure waterlogging doesn't occur within three metres of the home. The builder was also directed to ensure that the outfall from the land drains was correctly connected and running freely. These works needed to finish by 19 December 2016.*

*NHBC's claims investigator re-visited the property in January 2017 and in the resolution report dated 31 January 2017 he confirmed that the builder had carried out works to provide additional drainage to the rear garden area which then needed to be monitored to determine whether the issue had been resolved. The reports said that the homeowner should monitor the situation and if waterlogging is still considered to be an issue should contact the builder and NHBC and further arrangements may be arranged.*

*The available information doesn't shed any light on what happened between this time and the date of the next resolution report, which was dated 13 August 2018, so I'm currently of the view that Mr and Mrs Y were most likely monitoring the situation.*

*In the 13 August 2018 resolution report, NHBC's claim investigator suggested that the land drains had been poorly constructed, and water may be perching on a hard pan layer close to the surface. The builder was instructed to investigate the situation and carry out remedial works to prevent waterlogging within three metres of the property. The works were to be completed by 26 October 2018.*

*Mr Y complained to NHBC in November and December 2018 to say that as the builder hadn't yet rectified the issue, NHBC should have stepped in and taken over the works. However, NHBC said the builder was willing to resolve the issues, and it wasn't their role to tell the builder how to do so.*

*A further resolution report was completed on 22 January 2019. This report said the property was wet but not waterlogged, but significant obstructions had been found 200mm below the surface. It confirmed that no works were needed to be done outside the three-metre boundary, but deep periodic forking needed to be carried out to ensure the natural drainage characteristics of the ground were maintained, and the works needed to be done by 3 May 2019.*

*Over the following months, further correspondence was entered into by Mr Y and NHBC, in relation to NHBC taking over the works, but NHBC maintained that as long as the builder was willing to do the works, they wouldn't take over his responsibilities.*

*A contractor who I'll call R, came to the property to advise on the works, but the builder decided not to use that contractor to carry out the works. Mr Y then denied the builder access to the property until August 2019, as he wanted the works to be done by R. NHBC explained that they wouldn't tell the builder who to use, or what works needed to be done, the builder just needed to bring the works up to the standards set out in their technical specification.*

*A year later, in September 2020 Mr Y contacted NHBC to say that problems with the garden persisted, and he sent videos to NHBC and the builder of the garden. NHBC's investigator visited the property and issued a further resolution report on 20 November 2020. In that report he observed that there seemed to be no flow from the land drains into the inspection chamber, which suggested there may be an issue with the land drains which requires further investigation by the builder to check for signs of blockages or defects in the land drains and determine the cause of the ongoing waterlogging to the rear garden.*

*Then, on 28 April 2021, Mr Y contacted our service to say that say further works have been done to the garden to try and resolve the flooding which he hopes will have worked as the area has now been flagged.*

*While I do understand Mr Y's frustration at the time it's taken to resolve this issue with his garden, the resolution reports I've seen, and referred to above, lead me to think NHBC has dealt with the claim reasonably under the terms of the warranty. Where the cause of damage or a defect isn't immediately clear, it's reasonable for a course of action to be taken, and then if that isn't successful, a different approach be considered.*

*In their final response letter to Mr Y dated 17 December 2018, NHBC explained that while they understood Mr Y's concerns that matters had been ongoing, it remains the primary responsibility of the builder to rectify the reported defects. Where the builder doesn't dispute their responsibility to resolve matters, appointing an NHBC contractor could potentially delay matters further.*

*Mr Y responded to NHBC to say that he felt he was entitled to have the opinion that the builder had failed to put the issues right within a reasonable time, four years had passed since they'd moved in. He also pointed out that the policy said in certain circumstances the NHBC guarantee to cover the work the builder should have done. He felt that their circumstances ought to be such circumstances.*

*While I appreciate Mr Y's strength of feeling about this, following the issuing of each resolution report, it seems to me that the builder was willing to, and did, carry out the recommended works to try and rectify the defect. And although there was mention of some of the works not being carried out as well as they could have been, while the builder was willing to address the issue, I think it was reasonable for NHBC to allow the builder the opportunity to do so. I also note that the resolution reports set out different works that needed to be done. If it was the same action the builder needed to take, repeated through all of the resolution reports, then I may have been inclined to say NHBC should have stepped in to do the works. However, as the builder was still involved with the property, and works were progressing, I'm of the view that requiring NHBC to appoint a contractor who wasn't familiar with the property, would likely have led to further delays in resolving the issue. Overall, in these circumstances, I don't think NHBC acted unfairly in allowing the builder to continue to work to rectify the defect.*

*In relation to the timescales and service provided by NHBC, I think NHBC dealt with the matter reasonably and fairly. While there were a couple of occasions on which they could have responded more promptly to Mr Y's concerns, overall I don't think that impacted the time it took for the defect to be addressed. When further inspections and investigations were requested, NHBC dealt with these reasonably. Overall, with regard to the waterlogging of the rear garden, I'm currently of the view that NHBC acted as the warranty requires it to do and in line with the terms and*

conditions. I think NHBC has therefore dealt with this part of Mr and Mrs Y's claim fairly and reasonably throughout.

#### *Damage to the Roof*

Mr Y also made a claim for damage to the roof, in relation to both a tile that had fallen off the roof and evidence of mould growth within the roof space.

Mr Y told us that while he was waiting for NHBC's claims investigator to come to the property, he arranged for a roofer to come and replace the tile. Mr Y said the roofer told him that the hip tiles were loose and not secured properly, however no report was provided in relation to this.

When NHBC's claims investigator came to the property he recorded the damage to the roof as being one tile coming off. He confirmed that apart from the one fallen roof tile, there was no evidence of any further physical damage to the roof tiles. He also said that the mould growth and related condensation wouldn't be covered by the policy.

As the claim was made in 2019, it was considered under section 3 of the policy terms and conditions. Section 3 says, providing the cost is more than the minimum claim value (in this case £1535) NHBC will pay the full cost of putting right any "damage" in any of the listed parts of the house, which includes roof coverings. But damage is specifically defined within the policy as physical damage to the home caused by a Defect. And a Defect is defined as the breach of any mandatory NHBC Requirement by the Builder.

I would only expect NHBC to cover a claim for condensation and mould if it had been demonstrated that the specific defect was covered by the warranty. However, the presence of condensation or mould in the roof space isn't considered to be Damage caused by a Defect, under the policy terms and conditions, so I'm satisfied it wouldn't be covered under section 3 of the policy.

With regard to Mr Y's claim in relation to the loose tile, NHBC's policy doesn't cover work that will cost it less than the indexed linked value applicable to the cover. In this case, NHBC noted that indexing at that time meant the claim would need to exceed £1,535 to be accepted. NHBC has provided a report and scope of works which satisfy me that its cost, in this case is less than the minimum claim value. Here, in light of NHBC's policy wording which requires a certain value to be reached before the claim is accepted, NHBC, in my view, has not treated Mr and Mrs Y unfairly.

#### *Issues with the heating / plumbing system*

Mr and Mrs Y say they've had issues with the heating / plumbing system since moving in, which the builder has failed to resolve, despite four attempts to rectify the issues. They've complained that the builder has now refused to do anything further on the basis that any repair works are outside of the resolution set by NHBC. When Mr and Mrs Y raised this with NHBC, they were told that due to the works carried out (both in line with the resolution report and outside of the resolution report), they can't say with any certainty that the defects are related to the resolution report.

Mr Y believes that the issues with the plumbing arose as a result of the contractor trying to resolve the issues raised.

*NHBC explained in their correspondence with Mr Y on 26 June 2019 that as that particular issue with the plumbing was unrelated to the original issue under the resolution claim, they couldn't assist with it.*

*The resolution report dated 16 June 2015 noted the garage heating system was noisy and could be heard throughout the home; the kitchen radiator was hissing and noisy since work done to WC radiator; another radiator was noisy, and the heating system could be heard in the next room. In the report, NHBC required the builder to ensure the heating system complied with Technical Requirements R2, R4 and recommended the builder consider sending a plumber/heating engineer to the property to check the heating system, by 28 August 2015.*

*The resolution report dated 31 January 2017 also referred to the radiator in the kitchen hissing and being noisy since work was done to the WC radiator, and it also referred to another radiator being noisy. The claims investigator noted that the builder had carried out some works to try and resolve noise issues from the radiators, but Mr Y said the noise was still heard at times from some of the radiators, which was supported by a video of the issue that he provided. The claims investigator observed that there had been a number of amendments to the heating system, including adding radiators and said it may be the system required a thorough check and needed to be fully balanced to ensure no air was trapped in it.*

*On the basis of the available evidence, I agree it is unclear as to whether the most recent issues with the heating system were connected to the issues reported in the first two years of the policy terms and conditions, given the number of works that had been done at the property in relation to the heating. If the issues were new issues, that needed to be considered under section 3 of the policy terms and conditions which covers damage or defects reported in years 3 to 10 of the policy, then it is unlikely NHBC would have been required to take any action. I say this because hissing or noisy radiators are not considered to be a breach of Chapter 8.1 of the 2014 technical standards, requiring action to be taken under section three of the policy terms and conditions.*

*Where the evidence is incomplete or contradictory as it is here, I make my decision based on the balance of probabilities, that is, what I think more likely than not happened. I'm currently of the view that the available evidence isn't sufficient to establish that the current issues with the heating system, more likely, were linked to the original issues reported in the first two years of the policy term. I'm therefore currently of the view that NHBC didn't act unfairly in declining to cover this element of Mr and Mrs Y's claim.*

#### *Fitting of front door*

*Mr and Mrs Y have told us that their front door has never fitted properly and recall that when they first moved in they could see daylight out the top of the front door. Mr and Mrs Y have also explained that a draft comes through the bottom and sides of the front door. They said they'd had three front doors, new frames and countless (unsuccessful, in their view) attempts to fix the issues, and they're unhappy that NHBC keep saying they have to let the builder carry out works to rectify the problem.*

*Issues with the front door were first included in the resolution report dated 16 June 2015. The resolution reports dated 4 November 2016, 31 January 2017, 13 August 2018, 22 January 2019, and 20 November 2020 also made reference to Mr and Mrs Y's concerns regarding the front door.*

*The resolution report dated 16 June 2015 identified a number of defects with the front door. NHBC's claims investigator agreed that there was a gap visible under the front door threshold which needed to be sealed and the report confirmed the builder had agreed to complete the repairs. However, NHBC said the frame for the front door complied with the technical requirements so no further action was required in relation to that issue. Similarly, in relation to the issue of draughts coming through the front door frame, the claims investigator confirmed that the door closed and made contact with the seals, so no further adjustments were required. He also confirmed that the external sealant around the front entrance door had been completed to an acceptable standard.*

*On 4 November 2016, a further resolution report was issued, which made reference to the front door being poorly fitted. The claims investigator explained that the front door to the property had been the subject of several new doors being fitted and alterations being carried out, but the homeowners remained concerned about the fit of the door and draughts from the door. The claims investigator observed that at the time of the investigation the door was noted to fit reasonably tightly into the frame, with only slight movement being noted.*

*However, to put Mr and Mrs Y's mind at ease, the claims investigator said the builder should arrange for the door manufacturers to inspect the front door and provide comment on the fitting of the door and whether it was considered acceptable.*

*The resolution report dated 31 January 2017 also made reference to the front door and addressed Mr Y's concerns regarding the front door catching at the bottom of the frame, and the frame for the front door being incorrectly fitted. NHBC's claim investigator didn't agree that any action was required. The report confirmed the lintel was suitable for the location, and no further action was required in relation to it. The report also said that the door manufacturer had inspected the door in its location and confirmed that in their view it fits within acceptable tolerances. NHBC was also of the view that the door fitted reasonably closely and evenly into the frame and concluded no further action was necessary as the items complied with their technical requirements.*

*On 13 August 2018 a further resolution report was issued which addressed Mr Y's report of a large gap beneath the front door, which NHBC agreed needed action. The claims investigator said that it wasn't clear what works had been carried out to resolve the issue regarding the gap below the front door threshold, but it was now noted that the threshold flexes underfoot when stood on, and a thermal imaging survey carried out by Mr Y's surveyor indicated draughts were present in the area. The builder was directed to investigate and determine the reason for the front door threshold flexing underfoot and carry out remedial works to ensure the sill was firmly fixed in place and was fully sealed to prevent draughts. Mr Y had also reported an incorrectly fitted front door, but the report confirmed no action was required.*

*Mr Y again raised the issue of the front door catch being faulty, which was addressed in the resolution report dated 22 January 2019. The report said that during the investigation it was noted that the front door wasn't providing an adequate seal when closed or locked and draughts could be felt. The report required the builder to carry out works to ensure that NHBC's technical requirements were met in relation to this issue.*

*The last resolution report to make reference to issues with the front door was dated 20 November 2020. The report listed "Front door poorly fitted and draughty" as a reported item, but said no action was required. It confirmed that the builder had*

*carried out various remedial works to the front entrance door but said that Mr Y still considered the door was poorly fitted and allowed draughts to enter. The report confirmed that additional brush seals had been fitted by the builder and the door was considered to fit reasonably closely and evenly into the frame with acceptable margins noted around the door. As a result, it wasn't considered that any further remedial action was required by the builder as the item complied with NHBC's technical requirements.*

*There was a delay mentioned in the casefile of three months, in arranging a revisit, and there was also mention of the scheduled date being cancelled, due to the covid19 restrictions. NHBC offered Mr and Mrs Y £200, in May 2020, as a goodwill payment to apologise for the delay.*

*Mr Y wasn't happy with the resolution report and complained to NHBC in November 2020. He said he was concerned that he could still close the front door over a Hoover cable and believed that showed there was still a significant gap allowing the draught to continue. In response, NHBC explained that it is not uncommon to be able to close a door over a cable, as the cable can compress the seals on the door as it is closed. With regard to the standards that apply in terms of front doors, NHBC confirmed that when referring to margins in the resolution report, they look at whether the door is set evenly into the frame with equal gaps to both sides. The investigator was satisfied that the door was fitting closely and evenly, and the door was providing a satisfactory performance. He explained that the technical requirements only require a front door to be weathertight, not airtight. I've reviewed the relevant technical specification 6.7 S3(a) which I agree refers to weathertightness. It says, "Doors and windows should be installed correctly so they perform satisfactorily in use".*

*Having considered the number of issues Mr and Mrs Y had with their front door, during the period of their claim, again, I can appreciate why they are feeling frustrated with how long it took for the issues to be resolved. However, as I explained in relation to the issue with the waterlogged garden, the resolution reports I've seen, and referred to above, lead me to think NHBC has dealt with the claim reasonably under the terms of the warranty. Where the cause of damage or a defect isn't immediately clear, I think it's clear to require certain actions to be taken, and if they aren't successful, to take a different approach to resolving the issue. At all times the builder was willing to carry out the works detailed in the resolution reports, and while the builder was engaging and making a reasonable effort to repair the damage or defects, I think it was fair for NHBC to decline to step in and take over the remedial works.*

*Where a delay occurred, that was due to actions on the part of NHBC, I think it was appropriate for NHBC to offer Mr Y compensation, and in the context of the £200 goodwill payment they offered to Mr Y, for delays in arranging a revisit of the property, I think the offer of £200 was far in the circumstances of this complaint. If this payment hasn't been made to Mr Y, I would ask that NHBC promptly make that payment to Mr Y, should he decide to accept this decision.*

*Overall, with regard to the issues affecting the front door, I'm currently of the view that NHBC acted as the warranty requires it to do and in line with the terms and conditions. I think NHBC has dealt with this part of Mr and Mrs Y's claim fairly and reasonably throughout.*

I concluded that I wasn't intending to uphold the complaint.

I asked the parties to provide any final submissions or information they'd like me to consider before I issued my final decision.

NHBC didn't provide any further response to the provisional decision. However, Mr Y responded to say he was disappointed by the outcome. He also said that while the garden has finally been resolved after 7 years, they are still left with a badly fitted front door, which lets the draughts into the hall as it always has, and the issues with the heating system remain, both of which he'll have to resolve at his own expense.

### **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.

While I do understand Mr Y's disappointment; his comments haven't caused me to change my mind. As neither party has persuaded me to depart from the conclusion I reached in the provisional decision, for the reasons set out in this decision and my provisional decision, I don't uphold this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y and Mr Y to accept or reject my decision before 14 July 2021.

Carolyn Harwood  
**Ombudsman**