

## The complaint

Mr and Mrs S are unhappy with National House-Building Council's (NHBC) handling of a claim they made under their building warranty. Any references to NHBC include its agents.

## What happened

Mr and Mrs S purchased their property as a new build in early 2009. In the summer of 2017, they noticed signs of cracking and logged a claim with NHBC under their warranty. NHBC arranged for an inspection to take place, which led to Mr and Mrs S' claim being rejected.

Unhappy with this, Mr and Mrs S instructed their own expert. He made some recommendations which led to NHBC concluding the most appropriate course of action was to carry out level monitoring at Mr and Mrs S' home. The monitoring began in early 2018 and continued in to the summer of 2019. Towards the end of 2019, NHBC received an arboriculture report it had instructed and considered this.

In early 2020, NHBC responded to Mr and Mrs S, and put forward a proposal to try and stabilise the property. They said the first course of action should be to cut back a laurel hedge and then continue monitoring the property to assess the impact.

NHBC acknowledged whilst the foundations of the property were shallower than its guidelines set out (at 1.9m deep against a recommendation of 2.5), they considered the foundations had performed as expected from the point the property was built until the claim was made. NHBC also said all homes suffer from some seasonal movement. NHBC acknowledged this was a complex claim and likely to take a long time to be resolved. However it said there had been some avoidable delays in its handling of the case and offered £500 in respect of this.

Mr and Mrs S were unhappy with this approach. They said it contradicted the recommendation from their expert to underpin the property. They noted there were two false acacia trees nearby their home and were owned by a third party so it wasn't within their control to decide if these could be removed. NHBC said there was a potential for heave, if these trees were removed. But unhappy with what they felt was an overall lack of progress, Mr and Mrs S referred their complaint to this service.

Our investigator recommended NHBC arrange for the laurel hedge to be reduced and to contact the third party who owns the property the acacia trees are located on and arrange for these to be removed. After these steps are taken, she said a further period of monitoring should be undertaken. However, she felt the compensation of £500 was appropriate in the circumstances.

Mr and Mrs S didn't think the compensation reflected what they considered to be NHBC's poor handling of their claim. And NHBC said as the acacia trees were owned by a third party and they could not guarantee their cooperation in removing them. It didn't suggest any alternative action apart from reducing the laurel hedge. As neither side agreed with the investigators conclusions, this matter has been passed to me.

Ahead of issuing my final decision, we reached out to both sides to explain that rather than requiring NHBC to remove the trees in the neighbouring property, I was inclined to require it to explore this option. I recognised there were potential challenges with a straightforward direction to remove the trees. And, if removal wasn't possible, present an alternative resolution to Mr and Mrs S in a timely manner.

Mr and Mrs S responded, asking if I'd considered the timeframe of the claim acceptable, and if the potential for heave had been considered if the trees were removed. They also asked me to consider putting a timeframe in place and for me to direct NHBC to implement further monitoring.

NHBC said there was a possibility that if the trees were removed, it could cause heave. It said this was why it had put forward the proposal to reduce the laurel hedge and monitor the property as a first course of action.

### **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.

At this point, I think it's helpful to clarify that while I'm aware this claim has not been resolved, I'm only considering NHBC's handling of this matter up until the final response letter issued in February 2020. While I appreciate NHBC and Mr and Mrs S have remained in contact after this point, and proposals for stabilising the property have been explored, my consideration of this matter only goes up to February 2020.

NHBC have accepted Mr and Mrs S' claim under section of their NHBC building warranty. The warranty requires NHBC to carry out a lasting and effective repair of the damage to Mr and Mrs S' property. However, this doesn't necessarily mean NHBC is required to underpin the property as Mr and Mrs S have asked.

I've started by considering the depth of the foundations. Mr and Mrs S think the movement impacted their property as a result of foundations being shallower than the required depth set by the NHBC standards. They say this supports the recommendation of their structural engineer that the property be underpinned. Mr and Mrs S' structural engineer said "*if an acceptable alternative could be found which involved less disruptions and/or cost then it should be pursued*".

However, NHBC says while the foundations are not 2.5m deep, for a number of years they were "*performing and supporting the load above*". They went on to say most properties experience seasonal movement, but Mr and Mrs S' home was impacted by the extremely hot summers of 2018 and 2019. However, I note Mr and Mrs S first raised their concerns before 2018. In response to the comment from Mr and Mrs S' structural engineer about potentially underpinning the property NHBC said it did not consider this was a straightforward step and doing so could introduce heave and cause further damage.

Having carefully considered the information provided, while I acknowledge the foundations are not at the depth set out in NHBC's standards, I'm not going to require NHBC to underpin Mr and Mrs S' property. Underpinning a property is a complex and expensive step. And, given the information available to me, I'm not satisfied it should be the first option here.

I say this because neither independent report conclusively states underpinning is the only option presented which is likely provide a lasting and effective repair to Mr and Mrs S' home. Therefore, like our investigator, I agree it's appropriate that other options to stabilise the property are considered first.

It's clear from the independent reports that the acacia trees located in Mr and Mrs S' neighbour's garden have been identified as the likely primary cause of the movement. The monitoring report from June 2019 from NHBC said:

*"The damage is indicative of foundation movement to the right-hand side of the house which appears to have moved relative to the remainder of the house above the basement. Based on the recorded ground conditions, the movement has probably been caused by the root induced clay shrinkage subsidence noting the presence of nearby trees..."*

And the arborists' report from October 2019 also identified the acacia trees, recommending as a first port of call they be felled, rather than being reduced in size. He said that felling them was the preferred option, as reducing them in size could still lead to sucker shoots, which could go on to impact the property. While the arborist mentioned there was a possibility of heave impacting the property if the acacia trees were removed, none of the reports I've seen have indicated heave would likely be excessive.

NHBC indicated willingness to explore the options around having the trees removed. It's said this isn't a straightforward process and there's no guarantee that doing so will result in the trees being removed. That being said, it was concerned about the potential for heave, and thought there were other options that should be explored first - like the reduction of the laurel hedge. However, on the basis of the evidence available to me, I'm inclined to require NHBC to explore the options around removing the acacia trees, as well as reducing the laurel hedge in line with the recommendations of the arborist, if it hasn't already done so.

However, unlike our investigator, I'm not intending to require NHBC to arrange for the removal of the trees. As the trees are not on property owned by Mr and Mrs S, I don't think it would be appropriate to direct NHBC to remove them - because if the neighbour doesn't agree to their removal this will be beyond NHBC's control.

Instead, I'm intending to require NHBC to take significant and meaningful steps to explore whether the acacia trees can be removed. If the neighbour does not give consent for the trees to be removed, or there is evidence to suggest that removing the trees could cause heave, NHBC will need to make another recommendation to Mr and Mrs S in respect of how it intends to stabilise the movement to their property. It should do this without any further delays to the resolution of this claim. However, I'm not going to set a timeframe as Mr and Mrs S have asked - as many of these steps will be outside of NHBC's control. However, NHBC should do all it can to progress these investigations in a timely way.

And, whilst I've considered NHBC's comments that other cases similar to Mr and Mrs S' have been decided in a different way, I'd like to remind both sides that I'm required to reach a fair and reasonable conclusion in this specific case. It won't be the same as other cases that might appear similar. In this instance, I'm not satisfied that, up to February 2020, there has been any attempt to explore whether the acacia trees can be removed. There may be many reasons why they should not be (for example, the neighbour does not consent or they do give consent but there is a significant risk of heave), but it's not possible to know this unless enquires are made.

At the same time, I agree the laurel hedge should be reduced as recommended by the arborist and outlined in the final response letter. In recent submissions, NHBC said it had put forward a proposal to remove the laurel hedge, but this appears to have happened after the date of the final response letter, so I haven't considered this. With this in mind, I think a fair resolution would be for further monitoring to continue after the work was completed on the laurel hedge, to understand the impact reducing it has had.

Whilst I've only considered NHBC's handling of this claim up until the final response letter in February 2020, I can't see that it made these enquiries, despite having had the arborists' report for several months by that time. Whilst I appreciate NHBC felt further monitoring was the most appropriate step, I consider that it could have started to explore the possibility of reducing or removing the acacia trees at this time and reducing the laurel given the clear recommendation from the arborist.

In not taking these steps, NHBC has added a delay into the resolution of this claim. As I've said in the paragraph above, I'm only considering its handling of the claim up until the final response letter of February 2020, and aware that this claim is far from being resolved.

Mr and Mrs S have told us about the impact this matter has had on them. They say they've been living in a home where doors don't shut properly as a result of the property moving, making some rooms unusable. And they tell us this matter has taken a huge strain on them, causing significant frustration and worry for their wellbeing and the structure of their home. And there is also the acknowledgement that NHBC has delayed the handling of this claim.

I consider that, for the timeframe from the claim being logged up to the date of the final response letter, £500 is an appropriate payment to recognise the upset and inconvenience Mr and Mrs S have experienced. I appreciate Mr and Mrs S have continued to express concern about the way their claim is being handled. At this point, I'd say it's for them to decide if they wanted to make another complaint about the continued handling of the claim. If they decide to do so, they can refer that matter back to this service if they remain unhappy with NHBC's response.

### **My final decision**

I uphold Mr S and Mrs S' complaint. To put things right, I require National House-Building Council to:

- Explore the options around removing the acacia trees
- Pay Mr and Mrs S £500 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 16 September 2021.

Emma Hawkins  
**Ombudsman**