

## **The complaint**

Mr and Mrs R complain about the way National House-Building Council (“NHBC”) handled a claim they made on their building warranty.

## **What happened**

Mr and Mrs R bought a new-build property that came with an NHBC warranty, which started in 2008. In the first two years Mr and Mrs R raised concerns with the builder about movement in the property, and NHBC eventually took over the claim. Around 2014, it was found that the property was suffering from heave related movement caused by a building defect, so NHBC carried out the repair work required under section two of its policy. To correct the defect NHBC carried out piled underpinning works to the foundations.

In 2016 and 2018, Mr and Mrs R reported further cracks in the property. They were concerned the foundations were still moving. In 2016, a period of monitoring took place and it was deemed the cracks were down to thermal movement, not subsidence. In 2018, following further contact from Mr and Mrs R, NHBC agreed to monitoring for a further period of 12 months initially. In September 2020, NHBC said the monitoring hadn’t shown any foundation movement, so proposed to stop. During this monitoring period, Mr and Mrs R had also instructed their own surveyor (who I’ll refer to as “W”), who was carrying out its own readings. W agreed there was likely no foundation movement, but it recommended some other repairs. He said there appeared to be a lack of masonry movement joints around the property, so these should be fitted. He also said helibar bed joint reinforcement should be installed to bridge internal cracking in the garage and other areas. And repairs should be carried out to corroded steel on the balcony structure.

NHBC didn’t agree to carry out these repairs, so Mr and Mrs R complained. They also asked that NHBC reimburse what they had paid for their surveyor. Initially NHBC refused to pay for any invoices after October 2019. It said invoices were paid prior to that on the assumption the surveyor was assisting with other repairs not related to the monitoring. It said Mr and Mrs R hadn’t needed to instruct their own surveyor to carry out monitoring readings, as it was already doing it. But it later accepted it would pay 50% of the fees from July 2020, as a gesture of goodwill. But NHBC didn’t agree to change its position on any repairs. Unhappy with its response, Mr and Mrs R referred their complaint to this service.

Our investigator didn’t think NHBC needed to carry out the repairs recommended by Mr and Mrs R’s surveyor, she thought the corroded steel couldn’t be considered as a complaint about it had been brought too late. And she thought the surveyor’s comments on helibars and movement joints were new, but didn’t think there was cover for these repairs under the policy. She also thought NHBC’s offer in relation to the fees, was fair.

Mr and Mrs R didn’t accept what our investigator said and provided extensive information in relation to their points. Having reviewed this, our investigator thought NHBC should pay 100% of the invoice from July 2021 (£1,305), rather than the 50% it had offered. But she still didn’t think NHBC needed to carry out any further repairs relating to the cracks in the property.

NHBC didn’t accept to pay the extra amount, as it said it had been clear no further invoices would be paid unless agreed in advance with NHBC.

Mr and Mrs R also asked for an ombudsman's decision. In summary their main points were:

- NHBC should be responsible for installing helibars as it was recommended in 2014 as part of the previous repair.
- NHBC should be responsible for the repair works needed to the cracking in the property.

Other issues relating to the investigator's findings on the steel supports and movement joints were accepted by Mr and Mrs R.

### **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.

This is a long running claim and Mr and Mrs R have raised several issues with NHBC during that time. But the things I'm considering as part of this decision are whether NHBC needs to carry out repairs to Mr and Mrs R's property in line with its surveyor's report of July 2020, and whether NHBC should be liable to pay all of Mr and Mrs R's surveyor's fees. And whilst I've read everything provided by both [parties, I won't comment on each piece of evidence, but instead will focus on the key reasons for reaching the decision I have.

As Mr and Mrs R accepted the investigator's position regarding the corroded steel, I haven't considered this further. But in order to provide a full response on the movement and repairs, I have made my own findings on whether movement joints should now be installed by NHBC.

### **Movement in the property**

It's not in doubt that Mr and Mrs R's property suffered foundation movement, which was repaired around 2014. So I've considered whether the cracks that have appeared since 2018 are related to the original repair from NHBC, and if not, whether there is any cover under the policy for them.

A period of monitoring has been carried out by both NHBC and Mr and Mrs R's surveyor, a number of monitoring points were installed, and both crack and level monitoring took place for around 12 months. Having considered the reports from Mr and Mrs R's surveyor, and NHBC, I'm satisfied that the most likely cause of the damage in Mr and Mrs R's home is as a result of thermal movement.

NHBC says the movement in the monitoring points was minimal over the monitoring period, which doesn't support an issue with the foundations. And whilst one of the monitoring points showed some movement, the conclusion of its surveyor in October 2020 was:

*"Given the extremes in precipitation and temperature over this period, a small variation in level (0.7mm) is an entirely expected response of the ground and/or structure and not indicative of abnormal foundation movement in my view."*

This seems to me to be a reasonable position for NHBC to take. And it's view on the monitoring is broadly supported by C's surveyor, W, whose own conclusions in December 2020 were:

*"we would agree that the results indicate that the building does not appear to be suffering from significant foundation movement."*

There seems to be some agreement that thermal movement is the most likely cause. NHBC hasn't agreed to carry out the remedial work recommended by W as it says thermal movement isn't covered under section three of the policy, which is what these cracks would fall under, given when they were reported (i.e. after the first two years of the policy). Having

reviewed NHBC's policy, I agree that damage caused by thermal movement isn't covered by section three of the NHBC policy, so I consider NHBC's position on this to be fair and reasonable in declining a claim under this section.

Mr and Mrs R say the addition of movement joints and helibars should be carried out by NHBC as they argue the helibars, in particular, should have been included in the original repair in 2014 as they were part of the schedule of works. So they don't accept this is 'new' damage or a 'new' claim, and say it shows NHBC's repair in 2014 wasn't done as it should have been. And so it should now carry out these works under the same section as before (i.e. under section two).

With reference to the movement joints, Mr and Mrs R say as laypeople, they couldn't have known within the first two years of the policy that they hadn't been installed, and this has only come to light due to the involvement of W. And W has told them movement joints are an NHBC technical requirement in new-builds such as theirs.

Having reviewed everything, I don't think it has been shown NHBC does need to carry out the installation of helibars or movement joints. To explain why, I've firstly set out how the NHBC policy works within the first two years.

For defects or damage within the first two years of the policy, NHBC offers a resolution service. This means NHBC will carry out a report to identify faults on a newbuild home, as well as decide what needs to be done to fix them. The resolution service isn't a regulated activity – which means it isn't something this service has the power to consider. So complaints about what faults were/weren't identified as part of this, don't come under the remit of this service.

It seems to me that Mr and Mrs R and their surveyor, W, have said movement joints should have been installed as part of the repair, as they are part of the technical requirements for new build homes with a construction similar to Mr and Mrs R's. That might be the case, but I can't see that movement joints, or a lack thereof, formed part of the resolution report carried out by NHBC. So I can't see it identified movement joints as an issue with the property as part of the resolution service. But because I can't look at complaints about any faults that may not have been mentioned in the resolution report, I don't have the power to consider this further.

However, I can see that as part of the resolution report, helibars were to be included in the repairs to the property, once the foundation work had been done. W has asked NHBC to confirm where it installed helibars. I can't see that NHBC has provided a response to this. But my understanding is that helibars are installed where cracks have appeared, as a way of stitching the masonry back together. And it seems to me that this is what the resolution report allowed for, rather than installing helibars at other points to reinforce the property.

Having reviewed the reports, monitoring and comments from both NHBC and W, I'm not satisfied that it's been shown that NHBC didn't install any helibars as it set out in 2014, and that a lack of helibars is the cause of the new cracks in the property. It seems to me that W thinks NHBC should install further helibars to stabilise cracks to the property that have come about since the repairs in 2014. But I'd only expect NHBC to do that if it was shown that the cracks were as a result of ground movement relating to the repair it carried out. And as I'm persuaded any movement is most likely as a result of thermal movement, and not NHBC's repair, it follows NHBC doesn't have to carry out any further work.

## **Invoices**

NHBC has paid a number of invoices for W, as it agreed it was reasonable for Mr and Mrs R to want some independent advice, given the issues they'd had with the property. NHBC says it told Mr and Mrs R in 2019 that it wouldn't pay for W to carry out monitoring to the property, as it was already doing so. However, I can then see it did agree to cover payments relating to the monitoring into 2020. Whether or not that was a mistake on the part of NHBC, I think

it's reasonable that it did that. W had installed additional monitoring points, and it seems to me that because of government lockdowns due to the covid-19 pandemic, NHBC did agree for W to continue monitoring some areas for a period of time.

In June 2020, NHBC paid an invoice from W for around £800. This invoice was for monitoring. Shortly after, on 29 July 2020, it said it had reviewed the invoices being submitted and it wouldn't agree to reimburse any other work carried out by W. I think NHBC made a reasonable decision at this stage, as it seems by this point it was reviewing the same monitoring as W, so I wouldn't expect it to pay two parties to carry out the same work.

But NHBC did later agree to pay around £650, which was a 50% contribution towards an invoice dated 31 July 2020, as this was for work carried out in June 2020. Having reviewed everything, I agree with our investigator that it would be fair and reasonable for NHBC to pay the full invoice amount of £1,305, less the amount it's already paid. I say this because the work being claimed for in this invoice was carried out in June 2020, before NHBC had made clear it wouldn't reimburse any further invoices.

There is a final invoice dated August 2021 for around £300. I understand Mr and Mrs R didn't expect to have any further amounts to pay, but I don't think this means NHBC should reimburse the amount. It seems accepted by Mr and Mrs R that some of the work claimed for in this invoice was done in August 2020. So I'm satisfied NHBC had been clear this wouldn't be covered. Mr R says even though it was dated after NHBC's decision, it did link to some work from July 2020. But overall I'm not going to ask NHBC to pay this final invoice as it hadn't agreed it in advance and I think NHBC's overall position of not paying for more work from July 2020, was a reasonable one.

## **My final decision**

My final decision is that National House-Building Council needs to pay a further £653 to resolve this complaint.

It also needs to add 8% simple interest on this amount, from the date the relevant invoice was paid, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 5 April 2022.

Michelle Henderson  
**Ombudsman**