

## **The complaint**

Mr H and Miss C complain that National House-Building Council ("NHBC") have unfairly handled a claim under their building warranty.

Mr H has led this complaint with our Service, so I'll mainly refer to him throughout.

## **What happened**

The background of this complaint is known to all parties and has been discussed in detail by our Investigator previously. So, I've summarised events.

- In August 2018 Mr H moved into his new build property. Around October 2019 he discovered issues within an en-suite bathroom possibly caused by the extractor fan. This was reported to the builder (Company A) who carried out checks.
- Mr H appointed a specialist (Company B) to investigate. They said there was a thermal bridge within the house caused by a fault in construction and insulation to the four internal eaves of the property – which led to the property not retaining heat properly, leading to paint peeling and mould.
- Following back and forth between parties, NHBC became involved and engaged its resolution report process in February 2021. This directed Company A to address the insulation, mould and heat loss issues by March 2021. NHBC granted a small extension but the deadline wasn't met.
- So, NHBC took responsibility for the claim from 12 April 2021. It costed the scope of repairs to be £2,854.92. Mr H disagreed, saying this sum wasn't enough and complained about various issues, including the scope of works, additional associated costs, competency of NHBC's experts and requesting plans of the property.
- NHBC's scope of works included works to the front elevation of the home, Mr H said this wasn't enough, and that all of the ceilings of the first floor needed replacement.
- NHBC provided its final response on 26 July 2022, saying its proposals were fairly costed and sufficient to meet building regulations. It said the experts it appointed were suitably qualified. And the policy does cover alternative accommodation ("AA") costs and removal of non-fitted furniture where necessary, but not fitted furniture.
- Mr H brought his complaint to this Service, saying NHBC should settle the complaint for a sum of around £78,000 which he said was necessary for appointing relevant experts and contractors alongside removals and AA costs.
- Our Investigator looked into things. She said Company B's report didn't persuade her NHBC's proposals were flawed or wouldn't meet technical requirements. And she said the costs Mr H had outlined weren't supported by evidence to show they were necessary. She said NHBC wasn't required to share property plans, and she had no concerns about the qualifications of those involved.
- But the Investigator did partially uphold the complaint, saying NHBC should pay for the fitted furniture removal. And that avoidable delays occurred around September 2020, awarding £250 in compensation to reflect this.

- Mr H disagreed, providing a detailed response on why he felt NHBC should cover the additional repairs and his reasons for costs. He also obtained further commentary from Company B in January 2022, including smoke testing, in which he concluded all four eaves were incorrectly formed and would need repairs to comply with NHBC technical requirements.
- The Investigator said the additional evidence demonstrated there were issues with the construction of all four dropped eaves amounting to breaches of NHBC requirements. So, she said NHBC should deal with the rectification to all four eaves.
- NHBC disagreed, saying the fitted furniture did not fall under the policy, and that the compensation awarded related to a period outside of the jurisdiction of this Service – prior to 31 March 2021. It also said it disagreed works to all four eaves were necessary, saying it would provide information to explain this. But we haven't been sent anything further since February 2022.
- The Investigator looked again, she directed NHBC to accept the wider scope of repairs including all four eaves, reconsider any associated costs submitted by Mr H, and settle the cost of the second report produced by Company B. She also agreed with NHBC she was unable to compensate Mr H for the period prior to the resolution report being produced.
- So, the complaint has been passed to me for an Ombudsman's final decision.

### **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, I'm upholding this complaint. I'll explain why.

#### *The claim*

- Within its resolution report, NHBC identified thermal bridge issues and insulation that was incorrectly installed causing heat loss to the first floor. This specifically mentions potential problems with the eaves that would need to be investigated and says it is unclear where a draught is coming from.
- In line with the policy, NHBC took responsibility for repairs following Company A failing to action the damage within the required timeframe. So, I'm satisfied all of the eaves of the property fall within the scope of the claim in question.
- NHBC has given its reasoning as to why it believed its proposed works would be sufficient for bringing the property up to meet its technical requirements.
- NHBC has since been provided with Company B's second report. This details why the specialist's view was that all four eaves are incorrectly formed, and that a more limited repair would amount to a breach of NHBC requirements. I've included a section of this below.

*"...all the drop eaves details have been incorrectly formed and all of these should be altered to ensure that the detailing complies with the approved NHBC details... It is also worth recording that the proposal by the NHBC to only carry out remedial work to one side of the property would leave the property with, what is essentially, a non-compliant and under-performing building in terms of heat loss."*

- Taking into account the smoke testing and the strength of opinion given by this specialist, I find their commentary and evidence to be persuasive. And as I've

outlined above, NHBC hasn't provided any expert opinion or evidence in response to this. So, in these circumstances I'm satisfied NHBC should agree to repair/replace all four drop eaves in line with Company B's recommendations.

#### *Additional costs*

- Mr H has provided details of many costs he would like NHBC to cover. As our Investigator has outlined previously, we would expect costs of this nature to be supported by clear quotes and expert evidence where necessary if the scope differs from NHBC's proposed settlement.
- In light of my above direction about the scope of works, NHBC will need to reassess the claim to consider what additional costs may be necessary. So, I do not think it would be helpful to direct NHBC to agree to any set sum at this time as this will be subject to change.
- But I direct NHBC to reconsider any claims related costs in light of this change of works, including storage and alternative accommodation where necessary. And any additional costs Mr H has sought in light of any further evidence he's provided.
- There was a dispute about the removal of fitted wardrobes. I would expect NHBC to consider the removal of any such items within any settlement it provides *if* this is necessary for an effective and lasting repair.
- Company B's second report has been significant in this claim in leading to a change of NHBC's position. As a result, I'm in agreement with our Investigator that NHBC will need to cover the costs of this specific report – upon receipt of the relevant invoice.
- Should any issues remain unresolved after NHBC's reconsideration, this may be a matter Mr H chooses to bring back to this Service as a separate complaint.

#### *Claims handling*

- As our Investigator has outlined, this Service can only consider a complaint about a claim of this nature after a deadline within NHBC's resolution report has expired. So, while I'm sympathetic to the stresses Mr H has experienced over a number of years prior to March 2021, I simply do not have the power to consider this period.
- Between the date of NHBC taking responsibility for the claim and its final response, I'm satisfied the claim moved at a reasonable pace. I understand the disagreement about the scope of works will have been frustrating to Mr R, but NHBC relied on its expert opinions and like our Investigator, I don't think it had any reason to change its position on this until the January 2022 report Mr R obtained. So, I wouldn't look to compensate him for this time.
- Mr H has questioned the competency and qualifications of NHBC's staff or agents. While it's clear to me there is a disagreement between parties on the necessary resolution of this claim, I'm not persuaded that the disagreement alone extends to support Mr H's allegations. So, this isn't something I'm going to make a direction on.
- Mr H has sought specific house plans from NHBC. I consider this to be a matter between him and Company A and not connected to the Buildmark policy I've been asked to consider.

#### **My final decision**

I uphold this complaint and I direct National House-Building Council to:

- accept within its claim that all four dropped eaves of the property will need to be

altered to ensure that the detailing complies with the approved NHBC guidelines.

- reconsider all necessary costs for an effective and lasting repair (including alternative accommodation, removal and storage of items, and costs put forward by Mr H) in line with the policy's terms and conditions.
- reimburse Mr H's costs in instructing Company B's second report and smoke testing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr H to accept or reject my decision before 1 June 2022.

Jack Baldry  
**Ombudsman**