

## **The complaint**

Mr S is unhappy with the service he's received from National House-Building Council (NHBC) when making claims under his building warranty.

## **What happened**

Mr S purchased a new home and it came with a ten-year NHBC building warranty which started in 2014. Since then there have been a number of issues with Mr S' home, so he's needed to make claims to both the developer and NHBC. He's also raised several complaints with NHBC about their handling of his claims. Over the course of the claims and complaints, NHBC has offered compensation at different points and agreed on next steps for the reported issues with Mr S' home.

This claim and complaint relate to a longstanding issue with the Mechanical Ventilation and Heat Recovery (MVHR) system in Mr S' home, and problems with the flooring in various rooms. Mr S was unhappy with NHBC's handling of things, so he approached this service.

At first, NHBC said part of Mr S' complaint fell outside our jurisdiction. This was because they said Mr S hadn't approached this service until outside the six-month timescale in their final response(s). Following review and correspondence with our investigator, NHBC agreed that we could consider things.

Our investigator looked into the complaint and upheld it. In relation to the MVHR, he said that NHBC had recognised Mr S' concerns and had agreed to arrange for a specialist to look at the unit and installation to establish if it was now conforming with requirements, or whether further work was required. Our investigator said in principle this was reasonable, but as there were delays in organising this after being agreed by NHBC, he said Mr S should be compensated a further £100 for the additional delays in this being carried out.

In relation to the tiled flooring at Mr S' home, our investigator said the claim position had changed several times since NHBC had first inspected in October 2019, including after Mr S raised complaints and NHBC then reinspected. This resulted in previous claim decisions being overturned, over an extended period. He also noted that NHBC had said they would inspect all the areas reported by Mr S, and whilst this had resulted in a further partial claim acceptance, they'd missed some areas.

In our investigator's opinion, he said NHBC should accept the claim for the tiles in the main bathroom based on the same reasoning they had already accepted the claims for conservatory and en-suite tiling. He also said that NHBC should have accepted and offered settlement for all three rooms at an earlier point. As NHBC were cash settling the tile claims and hadn't looked at or accepted all rooms when they should have, he said that NHBC should also add 8% simple interest to the total settlement for *all* rooms from when, in his view, they should have considered and accepted them in October 2020.

Our investigator recognised that NHBC had more recently offered an additional £450 for part of the flooring claim and complaint. But he didn't think this was enough. So, in addition to the additional £100 compensation he recommended for the ongoing MHVR issue, he said NHBC should also pay a further £200 for the tiling part of the claim and complaint. Therefore, in total our investigator recommended an additional £300, on top of the compensation NHBC had already offered in the various previous complaints.

NHBC agreed with the £300 increase in compensation. They also agreed to accept the main bathroom tile claim.

But NHBC didn't agree to pay 8% interest on the total cash settlement amounts. NHBC said they made settlement offers for the accepted rooms at different points during the course of the claim and complaints. So, they didn't think they should pay 8% interest on *all* of the settlement offers from 7 October 2020 – the date our investigator suggested - to the date of payment.

Our investigator said that NHBC should've accepted and settled *all* of the tiling claims in October 2020 but didn't. He said this led to Mr S needing to dispute the settlements, raise complaints and encounter further avoidable delays. And he then needed to bring a complaint to this service. As a result of this, our investigator concluded, which NHBC agreed with, that the main bathroom should also have been included in the claim settlement. So, he explained this is why he believed NHBC should pay 8% simple interest for *all* the tiling settlements, and from 7 October 2020 to the current time. NHBC didn't agree.

Mr S mostly agreed with our investigator's recommendations and view of things. However, he said his concerns remained with the MVHR unit and installation. He said that a recent inspection had been carried out as NHBC had agreed previously, but he wasn't satisfied with this, or the possible next steps which might happen. Our investigator said the next steps and/or outcome of the investigation weren't known at this stage. But when they were, if Mr S remained dissatisfied, we could look at that as a new separate complaint. So, he said he wouldn't be looking at that as part of this complaint.

As an agreement couldn't be reached overall, an ombudsman was asked for a final decision.

I was minded to reach a slightly different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment, before I reached my final decision.

### **What I provisionally decided – and why**

In my provisional decision, I said:

“I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There have been multiple issues with Mr S' home which resulted in him needing to make several claims to NHBC under his building warranty. Several complaints have also been made, and NHBC has issued responses to those complaints.

There are two main elements to the complaint I'm considering here. That is the MVHR unit and the tiled flooring in Mr S' home. I don't intend on commenting individually on every event or action that occurred throughout. I don't mean this as a discourtesy to either party, but both parties are already aware of what has happened. Instead I'll focus on what I believe is important in reaching a decision which is fair and reasonable in all the circumstances of the case. Having said that, I'd like to reassure both parties that I've considered all the information they've provided when reaching my decision.

Based on everything I've seen, I'm minded to reach a slightly different outcome on what NHBC needs to do to put things right to that recommended by our investigator. There is also one point which hasn't been addressed by our investigator, and I wanted to outline my thoughts on next steps for that here in my provisional decision, before I reach my final decision.

NHBC also raised jurisdiction concerns that some elements relating to previous complaints were outside our jurisdiction. This was on the basis that NHBC said Mr S didn't approach us within six months of the date of their final response letter(s). But following discussion with our investigator who believed the complaint was in our jurisdiction and the time limit didn't apply, NHBC agreed that this was something we could consider. Therefore, as our service's power to consider these issues is no longer in dispute, I don't need to comment on the jurisdiction elements further in this provisional decision.

### The MVHR unit

Mr S reported concerns with his MVHR unit and installation to NHBC. He was worried that it didn't comply with requirements and posed a safety risk. As this was initially raised within the first two years of Mr S' building warranty, it fell under section two of the policy and was within the builder liability period. What this means is that, in the first instance, the builder is responsible for rectifying damage or defects reported to them.

If the builder fails to do so, NHBC can offer a resolution service to try to move things forward. And if the builder then fails to do works directed by NHBC as part of that resolution service, NHBC can then take over the builder's responsibilities under the policy and deal with the claim. This is what happened here, NHBC took over the MVHR claim from the builder.

Further repairs and replacement of the MVHR unit was carried out. However, Mr S had ongoing concerns about the installation and system. Due to this, NHBC agreed to arrange for a third party to carry out tests to see if the unit conformed with the relevant requirements, or whether any further work was required.

NHBC confirmed this in their final response in July 2021. They also offered £450 compensation for other issues relating to the flooring which I'll address below.

In principle, given the concerns Mr S has raised about his MVHR system, I think it was fair and reasonable for NHBC to arrange to appoint a third party to check the system and whether any additional works are required. However, after agreeing to appoint a third party, there have been around a further six months of delays in this being arranged. So, whilst NHBC had acknowledge things in July 2021 and set out the next steps, this didn't take into account the further six months in arranging this after that time. Our investigator recommended a further £100 compensation be paid for this.

Given the risk concerns Mr S has about his MVHR and the delay in arranging tests has caused additional distress, I think a further £100 compensation for the additional delays is fair and reasonable in the circumstances.

Mr S has also said he remains concerned following the recent visit and tests being carried out, and potential next steps depending on those results. But that's not something I can consider here. As outlined by our investigator, once the outcome of that is known, if Mr S remains dissatisfied, he'd need to raise this with NHBC in the first instance, before referring back to us as a new separate complaint if he remains unhappy.

#### The tiles in Mr S' home

Mr S first reported issues with his tiles to NHBC in 2019. His claim reported to NHBC at the time said the tiles were debonding in multiple rooms. As this was reported within years three to ten of the ten-year policy, this was considered under section three of the cover. This says:

*"We will pay you the full Cost, if it is more than £1,200 Indexed, of putting right any physical damage to your home which is caused by a Defect in respect of any of the following parts of your house, bungalow, maisonette or flat, or its garage or other permanent outbuildings:"*

There is then a list of insured areas of the property and of relevance here in particular is *load-bearing parts of the floors*. So, the policy covers damage caused by a Defect to those listed areas, and Defect is defined as:

#### *"Defect*

*The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC requirement is achieved by other means."*

And if its damage caused by a Defect in one of the covered areas, the claim also needs to meet the minimum claim value (MCV) of £1,200 indexed, which at the time of Mr S' claim was £1,578. If all the requirements are met, a claim would then be valid under the policy.

NHBC first inspected the tiles in October 2019. The conclusions at the time were that there were minor grout cracking issues, which were cosmetic, and not covered under section three of the policy. There was no movement in the tiles reported at that time. And the stairs were said to be suffering with shrinking of the timber construction, which isn't covered. Consequently, the claim was declined.

Mr S didn't agree with the content of the report completed, or the level of investigation that was carried out. He said that the photographs taken and included within the report weren't representative of the worst areas or areas of movement he'd identified. And he was also unhappy with some of the comments made by NHBC's agent. So, he complained to NHBC.

NHBC responded to Mr S' complaint in May 2020. They apologised for the comments made by their representative. And outlined that following the submission of additional photographs by Mr S, and a further inspection, they had said that debonding of the tiles could constitute a valid claim in principle under section three. But they also said the claims team had told Mr S that the cost to repair would fall below the MCV – so in any event Mr S still didn't have a valid claim. But NHBC also said that as Mr S remained dissatisfied, they would carry out a further inspection in which they said the claim would be looked at again.

The inspection went ahead in October 2020 following some delays (which were outside NHBC's control). But during this visit, NHBC only inspected the conservatory floor tiles, rather than all areas that they'd previously agreed would be looked at. The conservatory tiles claim was then declined on the basis there was no Defect or damage and the cost didn't exceed the MCV. But that decision was overturned following internal review. NHBC then issued a further complaint response to Mr S in January 2021. NHBC accepted the conservatory tiles were covered under section three and Mr S had a valid claim for those. They offered a cash settlement of £2,918.64 for repairs. NHBC also offered £300 compensation for their claim handling.

A further inspection was carried out in May 2021 for the tiles not commented on in the October 2020 inspection. This resulted in NHBC accepting tiles in another room – an ensuite - as valid under section three and they offered an additional cash settlement of £1,453.23 for this room. But this settlement didn't include every room NHBC had inspected at that time. Or the first floor, which was reportedly suffering other issues.

NHBC issued a further complaint response in July 2021. In this they recognised they hadn't looked at all the claimed elements reported, which included the first floor. They offered £450 compensation (they also talked about next steps for the MVHR issue which I've referred to above) and said they'd arrange a further inspection for the first floor missed at the visit. I've commented further on this point specifically below, in the section titled *First floor*.

Having looked at what happened, it's clear that Mr S first reported tiles in multiple rooms were debonding in 2019. NHBC first declined the tiles claim as not covered under section three. Following a complaint, NHBC said that a claim for this damage would be valid in principle, but for the MCV. They said the tiles could be reused, and this was the reason the costs would be minimal and fall below the MCV. However, there hasn't been any costings provided from that time to show that was the case.

But in any event, following the further inspections after Mr S raised complaints, the schedule of works indicates the tiles couldn't be reused and the flooring would need relaying with new tiles – which resulted in the MCV actually being exceeded, and the earlier claim decision being overturned. So, it does appear that the MCV wasn't fairly applied in the earlier claim stages.

Unfairly applying the MCV, not investigating all areas of reported issues, and subsequently having to carry out several further inspections has avoidably prolonged the claim. And Mr S has needed to dispute and raise concerns at each stage in order to move things forward – and when he did, it then resulted in NHBC revisiting matters and the claims decisions partly being overturned. So, I can see why Mr S has been unhappy with the handling of his claim.

Mr S has asked for all the tiles in his home to be replaced. But the policy, under section three, provides cover for damage caused by a Defect. Either a Defect or damage on their own isn't enough for a valid claim under section three - it needs to be both – and meet the other claim requirements. So, I don't think in principle NHBC has acted unfairly in not agreeing to cover *every* area if it doesn't meet the claim criteria.

However, NHBC accepted both the conservatory and an en-suite – following several inspections – were suffering from movement and this they consider is damage caused by a Defect. This is why they ultimately then offered a cash settlement for these rooms as valid claims (at separate points). But NHBC also concluded the main bathroom was suffering from the same problem during the May 2021 visit, yet they didn't include it in the claim settlement offer. Whilst I can't say that NHBC has acted unreasonably by not dealing with *all* the rooms where there isn't damage caused by a Defect, it does seem that NHBC has already identified that the main bathroom meets the criteria they've used to accept other rooms.

So, I'm minded to agree with our investigator's view (which NHBC also accepted following his assessment) that they should also include the claim for the main bathroom tiles, in addition to the en-suite and conservatory. He said 8% simple interest should be added to all three tile claim settlements from 7 October 2020 to the current time. I'll comment on interest separately below.

For the reasons outlined above, in relation to the MVHR system, I'm minded to decide that NHBC should pay a further £100 compensation. In addition to this, I also think NHBC should pay a further £200 in relation to the tile part of the claim and complaint, for the additional distress and inconvenience Mr S has been caused by NHBC's claim handling and decisions in relation to this.

#### Interest on the tile settlements

Our investigator said that NHBC should pay 8% simple interest to the entire claim settlement and he said this should apply to *all* rooms from 7 October 2020 to the point when all three are cash settled together. He said 7 October 2020 should be the date used on the basis this is when the reinspection took place and, in his view, this is when NHBC should've accepted *all* the tile claims for the three rooms.

NHBC disagreed with this part of the investigator's assessment. They didn't think they should be paying 8% interest on *all* of the settlement, or from 7 October 2020 to the present time.

I'm minded to reach a slightly different outcome in relation to whether 8% interest should apply, and to which parts of the settlement - and the period. I'll explain why.

### The conservatory tiles

The original report didn't conclude any tile movement in 2019, and this was used in part to decline the claim. However, this was overturned when movement was actually confirmed in the conservatory in October 2020 following a further detailed inspection. So, I can't conclude with certainty that movement and therefore a valid claim was definitely present in October 2019 or that it should've been accepted at that time.

However, at the October 2020 inspection, this was determined with certainty – in the conservatory alone. But as I said, only the conservatory was inspected at this time, despite NHBC agreeing they would inspect the other reported areas too.

Therefore, the other rooms should've all been inspected at the same time, rather than much later at different reinspection visits after complaints were raised by Mr S. If they had all been inspected at the visit in October 2020 as previously agreed, on balance, the conclusions to accept those parts of the claim should've also been reached around the same time by NHBC – resulting in a settlement offer for all three rooms.

But the conservatory claim was declined at first too. And this wasn't overturned until internal discussion and review. And the settlement offer of £2,918.64 for that was then made to Mr S on 11 January 2021.

Whilst I appreciate Mr S was unhappy overall with NHBC, they still made a settlement offer for the conservatory at that time. I note that Mr S didn't feel he could accept the offer, but he could've accepted this in the interim whilst disputing the remainder of the rooms and settlement. So, unlike our investigator, I'm not minded to conclude it would be fair and reasonable for NHBC to pay 8% simple interest on this room from 7 October 2020 right up to the present date.

Having said that though, as I mentioned, the conservatory tiles claim was declined at first in October 2020, before being overturned during an internal review. So, if the decision to accept the claim had been made at the time, rather than needing to be overturned internally, then the settlement could and should have been offered sooner. Therefore, I do still think 8% simple interest is appropriate for this part of the settlement that was delayed.

The period I'm minded to say this should be from is the October 2020 inspection, which was actually 5 October 2020, rather than 7 October 2020 as said by our investigator. But I'm minded to conclude it would be fair and reasonable for the 8% simple interest to only be applied from this point, to when the (delayed) settlement offer was made to Mr S on 11 January 2021.

### The en-suite tiles

NHBC should've reinspected the en-suite (and other tiled areas reported) at that inspection on 5 October 2020. But they only did so for the conservatory. It wasn't until May 2021 that they then reinspected the remainder of the tiles. They then offered a cash settlement of £1,465.23 for the en-suite on 14 June 2021.

The settlement should've been offered much sooner than it was as the results determined in May 2021 should've been determined at that October 2020 inspection. And like the conservatory, the decision should have been made then (rather than requiring a revisit in the case of the en-suite and internal review and being overturned for the conservatory). Ultimately settlement was offered for the en-suite but not until 14 June 2021.

With this in mind, I do think that 8% simple interest should also be applied to the delayed ensuite cash settlement. But again, this should only be for the period 5 October 2020, to when it was actually offered on 14 June 2021. And this is for the same reasons as the conservatory, whilst I acknowledge Mr S didn't agree with his overall claim outcome or handling, he could've accepted that room, even if on an interim basis, so it wouldn't be fair or reasonable for me to direct NHBC to pay 8% interest from October 2020 up to the present date.

### The main bathroom tiles

As I've outlined above, I'm minded to direct NHBC to accept the main bathroom tiles part of the claim (which NHBC accepted when our investigator recommended it). As with the other two rooms mentioned above, I think this should've been accepted at the time of the 5 October 2020 inspection, if it had been included with the conservatory inspection (and ensuite).

Therefore, if my final decision remains the same as my provisional decision, then I'm minded to direct NHBC to pay 8% simple interest on this cash settlement too. But as this hasn't been offered by NHBC at all previously, and is only included in the claim as a result of this service's involvement and consideration of things, I'm minded to conclude this would be payable from 5 October 2020 to the date of settlement.

### First floor

Our investigator didn't comment on this part of the claim or complaint or reach any findings. So, I wanted to let both parties know my thoughts on this, before reaching my final decision.

Mr S first reported his first floor was moving and causing significant noise in 2019. This was declined when NHBC inspected in October 2019 as they said the floor wasn't failing to support a normal load, and there was no damage being caused by a Defect.

Following the complaints raised by Mr S, in May 2020 NHBC agreed to reinspect all the flooring issues reported and this was to include the upstairs flooring along with the tiled flooring in other rooms. However, this wasn't carried out at the same time as the conservatory tiles were inspected in October 2020 or when the other tiled areas were looked at after.

NHBC had some internal discussion around this and recognised that they should have inspected the first floor again in October 2020 along with the tiles, as they previously agreed to. NHBC issued their final response in July 2021 and said they would now do this. And they also offered £450 compensation for this (along with next steps for the ongoing MVHR issues I've mentioned above).

More recently Mr S has said the inspection has now been carried out, and the claim decline decision maintained. But I can't see that this new decision has been raised with NHBC as a new complaint by Mr S, if he remains unhappy with that decision, or that NHBC has given their final response based on those recent new investigations. So, the reasons for that claim decision, and NHBC's final position isn't yet known, therefore I'm not able to consider that here.

Consequently, along with the MVHR next steps I've mentioned above, if Mr S remains unhappy with this part of the claim, he should raise this with NHBC before referring back to this service as a separate new complaint, if he remains unhappy with their final response."

So, I was minded to uphold the complaint in part and to direct NHBC to accept the main bathroom tiles claim, pay a further £300 compensation and to add 8% simple interest to the different settlements from the dates outlined above.

### **The responses to my provisional decision**

Mr S responded and accepted my provisional decision. He queried if the final decision would outline the exact amount the 8% simple interest would equate to.

NHBC also responded and accepted my provisional decision. They said they were still unsure why 8% simple interest was payable but agreed in any event.

### **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.

And I've thought carefully about the findings reached in my provisional decision. As both parties accepted these, and neither party has provided anything which alters these findings, my final decision remains the same, and for the same reasons.

To answer Mr S' question about how much the 8% simple interest equates to, this will need to be calculated by NHBC. This is because it'll be calculated for the specific dates I've outlined, and for the main bathroom tiles, this will be until the exact date the settlement is paid to Mr S.

NHBC has said they are still unsure why 8% simple interest is payable. I've directed NHBC to pay 8% simple interest on the various cash settlements, as they should've accepted the claim(s) and paid those cash settlements sooner - but didn't. So, Mr S should've received the funds at earlier points, which he could then have used towards repairs at the time or at a later date (or not at all if he ultimately decided not to go ahead with repairs). I explained in my provisional decision why different dates would apply here based on the different claim elements.

## **My final decision**

It's my final decision that I uphold this complaint in part and direct National House-Building Council to:

- Accept the main bathroom tiles claim
- Add 8% simple interest\* to the conservatory tiles cash settlement from 5 October 2020 to 11 January 2021
- Add 8% simple interest\* to the en-suite cash settlement from 5 October 2020 to 14 June 2021
- Add 8% simple interest\* to the main bathroom tiles cash settlement from 5 October 2020 to the date of settlement
- Pay Mr S a further £300 compensation

*\*If National House-Building Council considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 April 2022.

Callum Milne  
**Ombudsman**