

## **The complaint**

Mr P and Miss W complain that National House-Building Council (“NHBC”) declined to take corrective action following a claim on their structural defects warranty.

## **What happened**

Mr P and Miss W bought a new home in October 2018 that came with a 10 year structural warranty provided by NHBC.

In March 2019, Mr P noticed a problem with the mortar between the bricks. He instructed an engineer to carry out a report and this stated the mortar was weaker than expected. He got in touch with NHBC to report this under section 2 of the warranty.

NHBC sent out an expert to examine it and in June 2019, it produced a resolution report in which it directed the builder to instruct an independent engineer to report on whether the mortar was weak in some areas and whether a deep re-pointing exercise should be carried out. It gave the builder a deadline of July 2019. However, the builder didn’t instruct the report until August 2019, and it wasn’t completed until October that year.

In February 2022, NHBC confirmed that no further action would be required. It said the expert report confirmed the mortar wasn’t causing any structural issues and that no remedial work was required. However, it offered a goodwill gesture of around £700 as it said this could go towards the cost of any re-pointing that may be required.

Mr P and Miss W didn’t agree this was fair. They said that the reports they’d instructed showed that the mortar didn’t meet NHBC’s buildings requirements, and concluded that this could cause structural issues. So they thought NHBC should take steps to rectify the defect under the warranty. They made a complaint.

NHBC didn’t uphold their complaint so they brought it to this Service.

Our Investigator considered the issues but didn’t recommend that the complaint be upheld. She thought NHBC had acted fairly by relying on the report from the builder’s expert which set out that no remedial work would be required.

Mr P and Miss W didn’t agree. They said that a number of experts agreed that the mortar didn’t meet the requirements of NHBC guidance and because of this, if it wasn’t rectified it would have an impact on the value of their home. They asked for the complaint to be reviewed by an Ombudsman.

## **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.

Mr P and Miss W have made a claim under section 2 of the warranty. The warranty wording for this section states as follows:

*'This section protects you if the builder failed to meet the NHBC requirements when building your home, or when preparing your land, and you have told them about this failure or about any resulting damage, or about any evidence of contamination.'*

It goes onto say:

*'If you tell the builder during the builder warranty period that they have failed to meet the NHBC requirements, they must put this right within a reasonable time. This includes:*  
• *repairing physical damage to your home resulting from their failure...'*

Here, Mr P and Miss W had concerns about the strength of the mortar between the bricks. They had an expert examine it and this showed there was slightly less lime in the make up of the substance than is required by NHBC requirements.

When NHBC compiled its first resolution report it noted 'crumbling mortar' as an item to be addressed by the builder. The report concluded:

*'The builder should appoint an independent structural engineer to provide a report to confirm whether a deep re-pointing exercise would maintain the structural integrity of the home, including any relevant recommendations into such a scheme.'*

Following this an engineer was appointed. They tested some areas of mortar and found it to be sufficient for its purpose. They said:

*'The amount of lime is not critical to the strength, being included for workability and long term movement characteristics. The average of all the mixes is 1: 0.9: 6.2; post hardened analysis will always contain some inaccuracies, but this mix is consistent, and very close to a recognised prescribed volume mix, even although it was a designed mix.'*

The report concluded:

*'The mortar has been found to be as specified, so no remedial work is required.'*

Based on this report, NHBC decided that no further action was required and I consider this to be a fair and reasonable approach. While the mortar has been found to have slightly less than the required ratio of lime in the mix in some places that were tested, NHBC's expert has concluded that this makes no material difference to its effectiveness and that it met building regulations at the time. It also concluded that there is therefore no remedial work needed as there has been no damage caused. As the initial resolution report directed only that further investigation should be carried out, and that further investigation concluded no work was required, I think it's reasonable that NHBC has declined to do anything more.

Further, the warranty states that if there is an identified issue then it will put things right, including by repairing any damage. Here, as the mortar is functioning as it should, there is no damage to the building to repair. And from the findings in NHBC's report I can't see that the issue has caused any detriment. While the mortar has a slightly different make up, it explains that it is no less effective. This means it would be disproportionate for NHBC to take remedial action, as the evidence available shows that there is no impact of the small difference in the mortar.

I note Mr P has said that the report he instructed concluded there may be structural issues caused by the mortar. However, I don't agree the report reaches this conclusion. It states that the mortar is weak however that further investigation is required to see if it meets the design requirements, concluding:

*'Without this evidence and analysis we do not believe it prudent to assume that the affected weak mortar is structurally sound.'*

So while the report speculates that the property may not be structurally sound, it doesn't conclude this and agrees that further investigation is required. NHBC went on to carry out a further report that concluded the mortar was sufficient, so I don't consider Mr P's report to be enough to persuade me that was incorrect.

Based on all the evidence, I think NHBC has acted fairly in declining to take further action. It has investigated the issue and followed the advice of an expert report. And while Mr P has provided his own reports, I've not seen anything that shows the mortar isn't sufficient and is causing further damage to the structure of the building.

Additionally, NHBC has offered around £700 as a goodwill gesture, that could be used towards re-pointing to further strengthen the building. Which I think is fair in the circumstances.

For these reasons I won't ask NHBC to do anything further.

### **My final decision**

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Miss W to accept or reject my decision before 14 April 2023.

Sophie Goodyear  
**Ombudsman**