

## **The complaint**

Mrs P complains about National House-Building Council (NHBC)'s handling of her Buildings Warranty claim.

All references to NHBC also include its appointed agents.

## **What happened**

Below is intended to be a summary of what happened and does not therefore include a full timeline or list every point that has been made.

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

### *What I won't be considering*

I understand Mrs P has strong feelings about what has happened – and that our service has previously considered other complaints about NHBC's handling of her claim. But the role of this service is to look into individual complaints, and not to police or review how a business undertakes everyday activities or conduct investigations into how a customer has been treated through the life of their relationship with a business I want to assure Mrs P I've considered everything she's said very carefully.

But the purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by Mrs P, and by NHBC, to reach what I think is a fair and reasonable decision based on the facts of the case.

This isn't intended as a discourtesy to Mrs P. Rather it reflects the informal nature of our service, it's remit and my role in it.

An ombudsman provided a final decision for one of Mrs P's previous complaints in April 2021. The previous decision addressed some of the items that are set out in NHBC's report of November 2021. I can see our investigator's view incorrectly extended to comment on matters which fell under the previous ombudsman's directions. As such I will not comment on these here.

Mrs P referenced a number of these items as 'closed' in her letter in February 2022. I'm not intending to comment on these in my provisional findings. However, any reference to these is purely for the context of addressing this complaint.

An independent surveyor previously visited the property in February 2021 and provided a report on several aspects considered in this complaint. I shall refer to them below as 'M'.

## **My provisional decision**

I issued a provisional decision on 7 February 2023. In my provisional findings, I said:

*"I've considered all the available evidence and arguments to decide what's fair and*

*reasonable in the circumstances of this complaint.*

*For the insurance element of the policy to engage the following needs to be identified*

- *A defect*
- *Physical or major damage a result of the defect*
- *The cost of repairing the above exceeds NHBC's minimum claim value*

*If any of these aren't met, then there isn't a valid claim under the policy.*

#### *Lead Flashings*

*M's report highlights a breach in NHBC's technical requirements. But neither M or NHBC have referenced any physical damage. I appreciate Mrs P's concerns that damage will happen in the future. But I can't comment on what might happen. Only what has happened. And as there is no evidence of physical damage. I don't think NHBC are obviously wrong to decline this element of the claim.*

#### *The Driveway*

*The policy sets out a list of what it covers. Having looked at the policy, I can't see that driveways are covered. So, I don't think NHBC are wrong to decline this element of the claim.*

#### *Grouting*

*Mrs P says NHBC agreed to rectify issues identified with grouting in the bathroom. NHBC's report says it isn't covered under the policy, and from reviewing all other available evidence I can't see anything that persuades me that it has agreed to rectify these issues.*

*M's report identifies possible issues causing the cracking, which could point to a potential defect. But these opinions are not supported by testing. So, I'm not persuaded from the available evidence NHBC have acted unreasonably here.*

#### *Insulation*

*Mrs P has previously complained about insulation in the property and NHBC carried out rectification works, under Section 2 of the policy, following a thermal imaging report carried out in November 2016. M's report includes thermal imaging that highlights areas they said required attention – which includes rooms previously considered in relation to the insulation issues, although not specifically in like for like places.*

*NHBC has said it will consider evidence repairs have failed. But I can't see its directly responded to the thermal imaging in M's report which points NHBC as a guide to where attention should be focussed.*

*Mrs P has raised this with NHBC, and our service has enquired about what its response was provided, but I have seen nothing that persuades me this has been addressed. NHBC is obligated to provide a lasting and effective repair under the policy. So, it's reasonable it responds to this and re-examines this.*

*However, areas not previously considered relating to the insulation in the home will not be considered as no cover is provided for this under section 3. Which is the correct section of the policy for any new issues to be considered under. If Mrs P isn't satisfied with NHBC's*

*response, she may consider bringing a further complaint to our service.*

#### *Section 4 of the warranty*

*The below items have been considered under section 4 of the warranty. For a claim to be successful under this area of the policy it needs to be identified the item in question does not comply with requirements of building regulations and because of this, poses a present or imminent danger to physical health or safety to the occupants.*

#### *Wall Straps in Roof*

*M's report identifies this hasn't been installed according to NHBC's technical requirements and is not structurally sound. NHBC's report broadly agrees with this but notes the strap is still providing some restraint. However, having reviewed M and NHBC's comments, neither identifies immediate danger. So, I'm not persuaded NHBC is obviously wrong in not taking action here.*

#### *Gas Supply*

*M's report details the gas supply has not been sleeved. NHBC's report also identifies this – with a photo. Mrs P had a gas engineer attend in April 2022 who confirmed the pipe had not been sleeved – and was in contravention of Gas Safe Regulations. Mrs P has provided evidence of the costs incurred for this inspection. If it hasn't done so already, NHBC should make this payment to Mrs P – it should also add 8% from date of invoice to the date it makes settlement.*

*NHBC will also be required under the terms of the policy to rectify this. If NHBC chooses to offer a settlement, rather than carry out the work required, it must do this at the cost to Mrs P, on receipt of reasonable quotes.*

#### *Additional Item - Damaged roof mortar.*

*Mrs P says the claim value should be calculated at the cost to the customer, not at NHBC's rates. However, the policy sets out about the minimum claim value and the cost is what NHBC would have to pay to have the work done. This isn't an unusual term and NHBC have provided a breakdown of its costs for repairing this issue, which I'm satisfied shows it doesn't meet the minimum claim value. So, I don't think NHBC have acted unreasonably here.*

#### *Compensation*

*I appreciate Mrs P feelings about the service she has received, and the time taken to manage her claim. And she does have my natural sympathy about this. However, in considering compensation, I will only do so where I can identify NHBC have made an error, and this error has led to a particular impact.*

*NHBC confirmed that some of the items on their investigation report should not have been added. As they had previously been considered under another claim. NHBC have offered Mrs P £150 compensation to recognise the distress and inconvenience caused.*

*However, I've also considered what I set out regarding the insulation and thermal imaging report above. Mrs P has continued to raise concerns about this, and while this has been referred to in NHBC's report, it hasn't provided detail as to why the insulation repairs completed are sufficient or the photos its referenced to Mrs P.*

*There is information from an independent surveyor that highlights concerns in an area where*

*NHBC have previously carried out works, and NHBC has not responded to this. I can appreciate why this would cause further concern to Mrs P about energy and heat loss, and the associated costs, which I can also understand would cause stress as she's described. So, considering everything available. I think NHBC should increase its award of compensation by a further £300 to a total of £450.*

### *Putting things right*

*For the reasons set out above, I intend to uphold this complaint. To put things right I'm minded to direct National House-Building Council to:*

- *Re-examine the claim for the insulation to ensure a lasting and effective repair has been carried out for the items previously considered in Mrs P's claim.*
- *Reimburse Mrs P the costs incurred for the Gas Engineer inspection.*
- *It should add 8% simple interest to this cost, from date of invoice to the date it makes settlement to Mrs P.*
- *Rectify the issues with the un-sleeved Gas Pipe.*
- *Pay Mrs P a total of £450 compensation."*

### **Responses to my provisional decision**

NHBC responded to say it accepted my provisional findings.

Mrs P responded with further comments for me to consider.

In summary, she said:

- NHBC failed to work to industry standards and Mrs P strongly felt the lead flashings were defective.
- The driveway had been damaged by NHBC and as such was a negligence claim against NHBC. Mrs P feels this meets the requirement of a defect as physical damage has taken place.
- Mrs P reiterated NHBC had agreed to rectify issues with the grouting. She mentions claiming for defective grouting under a warranty provided by NHBC's contractor when the bathroom was ripped out around 2018. Mrs P has also asked what testing has been carried out.
- Regarding the wall straps, Mrs P says she reserves the right to review this in the future and to bring a claim should an issue arise.
- Mrs P has concerns about NHBC completing work to the gas supply in a timely manner. She's requested I direct NHBC to make the payment for the gas supply and complete gas works by a deadline.
- Mrs P feels the damaged roof mortar should be considered under her claim or she should be compensated as she has had to pay out for rectification herself.
- Mrs P doesn't agree with the compensation I intended to award in my provisional findings.

### **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.

As I set out before, I fully acknowledge Mrs P has not had a pleasant experience with her home, and that matters have been ongoing for some time. For this she has my natural sympathy.

But NHBC's warranty doesn't cover every issue that may arise with a new build home. And our service isn't a regulator. We're only able to look at individual complaints and issues that are within our service's power to consider.

NHBC's warranty isn't just an insurance policy. That means some of the actions NHBC undertakes aren't insurance related and there are certain aspects we cannot consider.

So, although, I've considered what Mrs P has said, it doesn't change my decision – or my reasoning.

### *Lead flashings*

As I set out in my provisional findings M's report does highlight a breach in NHBC's technical requirements. But neither M or NHBC have referenced, or provided, any evidence of physical damage.

As there is no evidence of physical damage. I don't think NHBC are obviously wrong to decline this element of the claim.

### *The driveway*

As I set out in my provisional findings, I can't see driveways are covered under the policy, so I don't think NHBC were unreasonable to decline this as a claim under the warranty.

If Mrs P feels the damage has been caused by NHBC she will have to refer the matter back to it to consider. But this falls outside of our service's jurisdiction, so I'm unable to provide further comment on this.

### *Grouting*

I've not seen any evidence of testing from either M or NHBC. However, I can't see grouting is covered under the policy and I've seen nothing to persuade me NHBC agreed to rectify issues with the grouting.

Again, if Mrs P considers this to be related to a warranty for works carried out by NHBC or its contractors, she will have to refer the matter back to it to consider. But this falls outside of our service's jurisdiction, so again I'm unable to provide further comment on this.

### *Wall straps*

In my provisional decision I said from reviewing M and NHBC's comments, neither identifies immediate danger. So, I wasn't persuaded NHBC is obviously wrong in not taking action here.

If Mrs P feels this situation should change in future, she can refer it to NHBC to consider. If she is unhappy with its response, it's possible our service may be able to consider a future complaint regarding this aspect.

### *Gas supply*

Although I can understand why Mrs P has concerns here, our service doesn't have the power to impose a specific deadline to NHBC to complete works or to make payment.

However, I will remind NHBC of its responsibility here and the need to make safe the property regarding this aspect. Should Mrs P be unhappy with the action NHBC takes, its again possible our service may be able to consider a future complaint regarding this aspect. And its possible a further compensation award could be considered if we do.

### *Damaged roof mortar*

I've set out in my provisional decision why I'm satisfied this item doesn't meet the minimum claim value. So, I don't think NHBC have acted unreasonably here.

### *Compensation*

The compensation relates to the issues I've set out in my provisional decision. It isn't a reflection of how a customer has been treated through the life of their relationship with a business.

Mrs P has referenced issues with the insulation she feels should be considered in any award I make. But I wish to point out I've not made a finding on whether the insulation was insufficient. I've pointed out NHBC is obligated to provide a lasting and effective repair under the policy. And it needs to respond to this and re-examine it.

As it has failed to respond this previously, I've set out why this formed part of my consideration for compensation to be paid by NHBC to Mrs P.

Mrs P does have my natural sympathy, as I've said, but for the reasons set out in my provisional decision, I think the compensation I've set out is fair and reasonable in the circumstances. And so, I make no further award.

### **Putting things right**

I direct National House-Building Council to:

- Re-examine the claim for the insulation to ensure a lasting and effective repair has been carried out for the items previously considered in Mrs P's claim.
- Reimburse Mrs P the costs incurred for the Gas Engineer inspection.
- NHBC should add 8% simple interest to this cost, from date of invoice to the date it makes settlement to Mrs P.
- Rectify the issues with the un-sleeved Gas Pipe.
- Pay Mrs P a total of £450 compensation.

### **My final decision**

My final decision is that I uphold Mrs P's complaint.

To put things right I direct National House-Building Council to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 27 March 2023.

Michael Baronti  
**Ombudsman**