

The complaint

Mr and Mrs C complain about the way Evolution Insurance Company Limited dealt with claims they made under their new home warranty.

Reference to Evolution includes its agents and representatives.

What happened

The circumstances aren't in dispute, so I'll summarise the background:

- Mr and Mrs C bought a new home. It's covered by a ten-year warranty, underwritten by Evolution, which began in 2020.
- They got in touch with the builder about noisy floors, but it didn't resolve the problem, so they contacted Evolution in early 2021. It asked the builder to carry out some work, which it did, but the problem remained. Evolution said a 'resilient layer' may solve the problem and the builder should carry that work out. But when the builder didn't do anything further, Evolution said it would take no further action either.
- Mr and Mrs C took advice from a structural engineer and a surveyor about it and shared the expert opinions with Evolution in January 2022. By May 2022, Evolution said the noisy floor problem wasn't covered by the warranty. Mr and Mrs C complained about the claim outcome and the way it had been handled.
- Evolution responded in June 2022. It apologised for delays but maintained the noisy floor problem wasn't covered by the policy because it didn't amount to 'major damage' as defined by the policy.
- Mr and Mrs C also took advice from a surveyor, who prepared a snagging report which identified many problems with their house. After they shared this with Evolution in March 2022, it said the report should be referred to the developer first. By August 2022, the developer told Mr and Mrs C it didn't think any of the problems itemised by the surveyor were covered by the warranty. They asked Evolution to consider the particular points they thought should be covered under the warranty.
- Evolution appointed a loss adjuster, who inspected the problems. They said the noisy floor problem wasn't covered by the warranty. They thought problems identified with the escape pipe and boiler installation were covered by the warranty – but were either below the applicable excess and/or hadn't been notified to the builder. They didn't think anything else was covered. So, overall, Evolution didn't agree to take any further action in relation to the problems.
- Mr and Mrs C complained about this outcome and the way things had been handled. Evolution responded in December 2022 to say its position hadn't changed.
- Our investigator thought the complaint should be upheld in part. She set out her

findings and asked Evolution to:

- Consider the saturated brickwork problem (item 9)
 - Cover the damp proof course and French drain problem (items 13, 14 and 88)
 - Consider the cost of putting right the escape pipe problem (item 28)
 - Cover the boiler installation problem (items 56 and 57)
 - Cover the bathroom window restrictor problem (item 95)
 - Pay £650 compensation for distress and inconvenience
 - She didn't think Evolution needed to consider the remaining points further
- Evolution accepted what our investigator said. Mr and Mrs C made a number of comments. An agreement wasn't reached, so the complaint has been passed to me.

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 and Mrs C have made numerous complaint points and comments. My role isn't to respond to each and every one of them, but to focus on the matters I consider are key to reaching and explaining my decision. That's what I'll do, but it's not intended as a discourtesy to Mr and Mrs C. Nor does it mean I haven't read and thought about everything they've said. Rather, it reflects the informal nature of this Service.
- I also note Mr and Mrs C have asked for multiple separate decisions to be made about the different matters they've complained about. Whilst there are multiple claims, a single complaint was referred to this Service about all the claims and matters. So it follows that a single decision will be made about that complaint.
- Some of Mr and Mrs C's complaint is about Evolution's role signing off the building. That's not something I can consider – I can only consider Evolution's role as underwriter of the warranty. Similarly, I can't consider the way the builder acted at any point, as it wasn't acting on behalf of Evolution in its role as underwriter of the warranty. So, my considerations are limited to how Evolution handled the claim, including responsibility for the loss adjuster.
- I think the main point of dispute is the outcome of the claims. In summary, Mr and Mrs C referred several problems to Evolution which they thought should be covered by the warranty. After our investigation, Evolution has agreed to do the following:
 - Consider the saturated brickwork problem (item 9)
 - Cover the damp proof course and French drain problem (items 13, 14 and 88)
 - Consider the cost of putting right the escape pipe problem (item 28)
 - Cover the boiler installation problem (items 56 and 57)
 - Cover the bathroom window restrictor problem (item 95)
- As those points have been resolved, I don't think it's necessary for me to go into them in detail, aside from the applicable excess(es), which I'll come back to below. Otherwise, I'll focus on the points that remain in dispute. They are:
 - Guttering (item 8)
 - Electrics (items 20, 21 and 88)
 - Noisy floors and ceilings (items 64, 69, 72, 75 and 82)
 - Towel warmers (item 87)

- Bathroom window vents (items 93, 94 and 108)
- The warranty says in Section 2, which these claims have rightly been considered under, that the warranty holder “will be responsible for paying the amount of any excess shown in the certificate of insurance in respect of any claim under this section”. The certificate of insurance shows the excess is £1,000. The ‘excess’ is defined in the warranty to mean “the initial amount relating to each and every claim which [Evolution] isn’t liable for” and says it applies to “each and every separately identifiable cause of loss or damage, for which we make a payment under this insurance”.
- This means it’s fair for Evolution to charge a £1,000 excess for each of the separate problems – or to decline to pay for a problem where the cost of putting things right is less than £1,000. Whether the problems arose due to a failure on Evolution’s part when signing off the building isn’t something I can consider. And because of the way the policy is written, payment of the excess isn’t dependent on the fault of any party anyway – it’s Mr and Mrs C’s contractual responsibility to pay.
- Under Section 2, the warranty covers the reasonable cost of putting right the home where it has been affected by ‘major damage’. That phrase is defined in the policy at length, and isn’t disputed, so I won’t include it in full here. But, in summary, the ways in which a problem can amount to major damage, that are relevant in this case, are:
 - If a defect causes damage to a load-bearing element, which adversely affects the home’s structural stability or resistance to water penetration.
 - If immediate action is required to prevent damage to a load-bearing element, which adversely affects the home’s structural stability or resistance to water penetration.
 - If a defect requires immediate action to prevent imminent danger to health and safety.
 - If a defect to the waterproof envelope allows water to ingress.
- Section 2 also provides cover for putting right the home where there is “a present or imminent danger to the physical health and safety of the occupants” because the home didn’t comply with certain parts of Building Regulations when built.
- I’ll consider each of the remaining points in turn against this warranty cover.

Guttering (item 8)

- The snagging report says the gutter “falls the wrong way”. Evolution didn’t explain why it had declined to deal with this item specifically.
- It’s not clear what impact, if any, there is if the gutter does indeed fall the wrong way. There’s no evidence to show it would impact structural stability, cause water penetration, or pose a danger. So I’m not satisfied this problem amounts to major damage or is otherwise covered under Section 2.

Electrics (items 20, 21 and 88)

- The snagging report indicates the fuse box doesn’t meet Building or relevant electrical Regulations because it’s not labelled, lights flicker, and there should be relevant electrical information in place. Evolution didn’t explain why it had declined to deal with this item specifically.

- There's no evidence to show it would impact structural stability, cause water penetration, or pose a danger. So I'm not satisfied this problem amounts to major damage or is otherwise covered under Section 2.

Noisy floors and ceilings (items 64, 69, 72, 75 and 82)

- Mr and Mrs C say that because Evolution asked the builder to carry out work for this problem initially, it accepted the matter was covered by the warranty. But when the builder didn't do the work, it changed its position.
- I don't think Evolution went so far as to confirm it had accepted the claim. It initially asked the builder to carry out work to try to resolve the problem, as it's required to do, but that doesn't necessarily mean the problem was covered by the warranty. However, I'm not satisfied it made this clear to Mr and Mrs C, so I can understand their disappointment and frustration that Evolution appeared to change position.
- I don't consider Evolution committed itself to carrying out the repairs though. And even if it did, it was entitled to look at the claim afresh when the builder didn't do the work and decide whether it was covered by the warranty. But I'll take into account the impact on Mr and Mrs C below, when looking at the way the claim was handled.
- The snagging report says the floors suffer from 'micro cracking' and Mr and Mrs C have described how noisy it is, both in the rooms above and below the floors, when they walk across the floors. A chartered surveyor said there were "no perceived structural causes of the problems" but they believed the ceilings were inadequately fixed. A chartered structural engineer said the design specification of the joists was "structurally satisfactory" but in their opinion minor variations in joist levels meant there was some 'flexing' which led to noises when walked on.
- Evolution declined to pay for this problem. It said it didn't amount to 'major damage' because it didn't impact structural stability.
- I know Mr and Mrs C consider the floor was unstable because it moved and made loud cracking noises when walked on. And they say the professionals they took advice from didn't consider the specific wording of the policy or the meaning of the word 'structural' when writing their reports.
- The word 'structural' isn't defined in the policy, so it takes its ordinary, everyday meaning. The professionals who inspected the problem and gave advice would likely be familiar with the normal use of the word 'structural'. They didn't identify any structural concerns, suggest there was an impact on the structural stability of the home or indicate there was a danger to the occupants. Given both professionals have chartered status in relevant fields, and I haven't seen anything to the contrary, I have no reason to doubt their opinions. In these circumstances, I agree with Evolution that the definition of major damage hasn't been met based on the available evidence. It's open to Mr and Mrs C to take further advice if they wish, including any further investigations they or the professionals may consider appropriate.
- Whilst there's clearly a problem, and the professionals have given views on its cause and remedy, there's no evidence to show it would impact structural stability, cause water penetration, or pose a danger. So I'm not satisfied this problem amounts to major damage or is otherwise covered under Section 2.

Towel warmers (item 87)

- The snagging report says the towel warmers haven't been fitted with thermostatic radiator valves in line with Building Regulations. Evolution didn't explain why it had declined to deal with this item specifically.
- Whilst Mr and Mrs C say this is dangerous, I haven't seen any evidence to show why that is. The snagging report suggests the Regulation is concerned with conservation of heat and power, rather than maintaining safety.
- As there's no evidence to show it would impact structural stability, cause water penetration, or pose a danger, I'm not satisfied this problem amounts to major damage or is otherwise covered under Section 2.

Bathroom window vents (items 93, 94 and 108)

- The snagging report says the bathroom window vents have been installed inside out, and there isn't a gap for air to flow out. It says the lack of ventilation has probably caused cracking in the room. It suggested this didn't meet Building Regulations. Evolution didn't explain why it had declined to deal with this item specifically.
- There's no evidence to show this problem would impact structural stability or cause water penetration. Rather than causing water ingress, the problem seems to be that moisture can't escape the waterproof envelope as well as it should do. Mr and Mrs C say the vents pose a danger because they can only be operated from the outside, using a ladder at height. But it's not clear from the evidence I've seen that the defect itself presents an imminent danger to health and safety.
- So I'm not satisfied this problem amounts to major damage or is otherwise covered under Section 2.

Next steps

- For the reasons given above, I'm satisfied the only problems that are covered are those outlined by the investigator – and which Evolution has agreed with. The next steps are for it consider those problems in line with the terms and conditions of the warranty. I'm satisfied it can fairly decline the other problems, based on the evidence currently available to me. Mr and Mrs C are entitled to take further advice about the problems if they wish. I'd expect Evolution to consider any information it received.

Claim handling

- Mr and Mrs C's complaint is also about the way the claim has been handled. They've made a number of points, but I think the main ones are about delays, communication, and the loss adjuster not being a qualified surveyor.
- Our investigator highlighted periods of delay and poor communication. Evolution has accepted that, so I won't go over each and every part of the claim. But in summary, it's clear Evolution struggled to engage meaningfully with the claim throughout.
- Evolution initially gave the impression it had accepted the claim for the noisy flooring – but later declined to deal with it. Whilst the claim outcome is fair for the reasons given above, I'm satisfied it would have been distressing for Mr and Mrs C to understand, quite rightly, that the main feature of their claim had been accepted, only

to find out several months later it hadn't been. Not only is the noise clearly very concerning for them, I understand the cost involved in putting that right is significant.

- When they provided expert reports about the problem, Evolution was slow to react. And when it did, it didn't fully engage with it. It insisted the builder's work had resolved things – when it clearly hadn't – and didn't inspect the problem for itself.
- Once a loss adjuster was appointed, the claim progressed more in line with what I'd usually expect to see. But, as noted above, the response provided to Mr and Mrs C about the problems identified was limited. I don't think that would have given them reassurance the problems had been fully considered.
- There was no requirement for Evolution to appoint a qualified surveyor to deal with the claim, although I can understand why Mr and Mrs C may have preferred that.
- All things considered, I'm satisfied Evolution caused avoidable distress and inconvenience to Mr and Mrs C by the way it handled the claim. I consider £650 compensation reasonable in the circumstances.

My final decision

I uphold this complaint.

I require Evolution Insurance Company Limited to:

- Consider the saturated brickwork problem (item 9)
- Cover the damp proof course and French drain problem (items 13, 14 and 88)
- Consider the cost of putting right the escape pipe problem (item 28)
- Cover the boiler installation problem (items 56 and 57)
- Cover the bathroom window restrictor problem (item 95)
- Pay £650 compensation for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 14 December 2023.

James Neville
Ombudsman