

## **The complaint**

Mr and Mrs E complain about the way National House-Building Council (NHBC) handled a claim they made under their new home warranty.

Mr E has primarily dealt with things so, for simplicity, I'll refer to him only.

## **What happened**

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

- Mr E bought a new home covered by a ten-year NHBC warranty which began in December 2019. He discovered a number of problems soon after. He brought them up with the builder and NHBC, but they weren't resolved.
- So NHBC investigated the problems under its Resolution Service. In March 2022, it set out seven areas of damage, and told the builder it needed to take action to bring each area up to NHBC standards by the end of May.
- When the builder didn't meet this deadline, NHBC took responsibility for the problems. It visited again in July to take measurements and updated its report. It also prepared a schedule of work and offered to settle the claim by paying the cost of it.
- Mr E didn't think the schedule of work was sufficient and raised some queries with NHBC. He also asked it to consider various professional opinions that had been gathered since the problems arose. NHBC made some minor amendments but didn't alter the schedule in the way Mr E thought it should. So Mr E complained.
- NHBC said its liability was to carry out the work the builder should have done in order to meet NHBC's standards. It thought the schedule of work achieved this.
- Our investigator initially upheld the complaint in part but, after NHBC provided further information and clarified it was prepared to carry out the schedule of work, she was satisfied it had acted reasonably. She thought its schedule of work was in line with what it had asked the builder to do to – and that was all it was required to do.
- Mr E disagreed. In summary, he said NHBC had initially asked the builder to carry out a more extensive method of repair in its March report. But when NHBC took responsibility for the work and returned to take measurements in July, it reduced the scope of work. He said he'd been in touch with builders who wouldn't carry out the work NHBC had scheduled – and the professional opinions supported his view that the more extensive repair method should be carried out, in line with the March report.

## **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.

- At the heart of this dispute is a question about how the warranty works and what this Service can consider. So I'll start by explaining that.
- For problems that arise within the first two years, as is the case here, if the builder doesn't put the problem right, NHBC will offer its Resolution Service. As part of that service, NHBC will decide what work, if any, the builder must do to meet NHBC's standards – and by when.
- The Resolution Service doesn't amount to insurance – or any other activity this Service can consider – so it's not within our power to look at any aspects of the Resolution Service, such as the work NHBC decides the builder must do and the deadline for doing it.
- If the builder doesn't carry out that work by the deadline, NHBC will take responsibility for doing so. It's at this point NHBC is providing insurance – so it's at this point our power to consider how it's acted begins.
- The first report in March was carried out under the Resolution Service. It explained there would always be an element of movement to the floor due to the way it was designed, and this could result in creaking noises. It said this was natural and couldn't be totally eliminated. It went on to say the next steps in relation to the flooring were: *"The builder is to undertake remedial works to the first-floor structure to ensure creaking is reduced"*.
- The second report in July reiterated that some creaking was to be expected and said: *"The floor requires remediation to ensure creaking is reduced to an acceptable level"*. The schedule of work was based on this method of repair.
- However, the first report also said: *"works are required to eliminate the main creaking"*. The use of the word 'eliminate' is why Mr E says NHBC had agreed to more extensive works than it scheduled. In the same sentence NHBC also said: *"minor creaking may still occur"*.
- As set out above, I can't consider how NHBC acted during the Resolution Service. That means I can't consider the findings of its first report. But the position with the second report is less clear.
- NHBC says it didn't accept responsibility until *after* the second report, which would make that report part of the Resolution Service. I note it was labelled as a 'Resolution Report Update'. However, the builder's deadline expired *before* the second report. And, according to the warranty, NHBC will take responsibility if the builder doesn't meet the deadline. So I think the second report fell outside of the Resolution Service and is open to my consideration.
- The part Mr E highlighted in the first report required the builder to 'eliminate' the 'main creaking'. I think that means Mr E could expect most, but not all, of the creaking to be eliminated. And other parts of the report explained why a degree of creaking would and should exist, including the remainder of the sentence Mr E highlighted, and the 'next steps' summary required the creaking to be 'reduced'. In the second report, the focus remained on 'reduction' and 'elimination' wasn't mentioned again.
- Overall, I think the first report was concerned with reducing, rather than completely eliminating, the creaking noises. And this was reiterated and emphasised, rather than

changed, in the second report. That means NHBC decided the creaking noise should be 'reduced' under its Resolution Service – which I can't consider – and I'm not persuaded it later changed that decision outside the Resolution Service. So I don't think it's open to me to consider whether it should go beyond 'reduction'.

- NHBC prepared a schedule of work which it thought would bring the problem areas up to its standards – including reducing the floor creaking. It later made some minor amendments. It's prepared to carry out that work or to pay Mr E cash to the value of that work. That's in line with the warranty terms. And I also think it treats Mr E fairly and reasonably. I'll explain why.
- When carrying out work, I would expect NHBC to do so in a lasting and effective manner. That means it should properly deal with the problem and for a reasonable period of time. And if it doesn't achieve that, it will remain responsible for doing so. NHBC recognises that responsibility and says it's confident in its schedule of work.
- I'm satisfied NHBC has taken into account the queries Mr E raised, as well as the professional opinions available, when finalising the schedule of work. It provided a thorough response to his queries and made some amendments. Whilst that may not have been to the extent Mr E would have liked, it's clear NHBC gave consideration to his points and made changes where it agreed with him.
- I understand Mr E recently provided NHBC some further information to consider. I would expect it to do so and let him know whether that means it will update the schedule – and if not, why not. After that, it will be open to Mr E to let NHBC carry out the work its scheduled, take a cash settlement based on NHBC's schedule, or provide further information to challenge the schedule.
- As it stands, based on the available evidence and to the extent I can consider how NHBC acted, I'm satisfied it did so fairly.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 16 April 2024.

James Neville  
**Ombudsman**