

## **The complaint**

Mr S complains that National House-Building Council (“NHBC”) unfairly declined a claim made under his Buildmark warranty.

## **What happened**

Mr S made a claim under his NHBC Buildmark warranty, when he noticed the flooring in his home was uneven. He said this was a trip hazard and wanted NHBC to put things right.

NHBC inspected the issue but declined Mr S’s claim. It said whilst it had observed some unevenness in the flooring, which must have been due to poor levelling of the screed, there was no physical damage to the home so the claim wasn’t covered by the policy.

Mr S didn’t accept NHBC’s decision, so he made a complaint. In response to the complaint, NHBC said that whilst the uneven floor finish causing the tiles to have pronounced raised ends was a defect, it was not physical damage which was required under the policy. It maintained its decision to decline the claim.

Mr S didn’t agree with NHBC, so he referred his complaint to this service. Our Investigator considered it and ultimately thought there was physical damage caused by a defect, as the floor’s normal function had been impaired and it was now a trip hazard.

NHBC didn’t agree with our Investigator’s assessment. It made a number of different arguments, including that there was no physical damage, and no defect (or breach of technical requirements), as although the floor was uneven, the unevenness may have been within the acceptable tolerances.

The Investigator reconsidered the complaint but still felt NHBC hadn’t done enough to demonstrate there wasn’t a defect, as it was unable to confirm whether the difference in height due to the ramp was within acceptable tolerances or not. So she recommended NHBC carry out further investigations in reconsideration of the claim, and pay Mr S £100 compensation for the distress and inconvenience caused to him.

NHBC maintained its position that the claim wasn’t covered and asked for an Ombudsman to review the complaint, so the complaint has now come to me to decide.

## **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 this is an informal service, I’m not going to respond here to every point raised or comment on every piece of evidence Mr S and NHBC have provided. Instead, I’ve focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I’m upholding this complaint. I’ll explain why.

The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules

and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and give appropriate information on its progress; and not unreasonably reject a claim. It should also settle claims promptly once settlement terms are agreed. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

When making a claim, it is for the insured – so in this case Mr S – to demonstrate they've suffered a loss that's covered by the warranty. If they can do so, then NHBC will need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it.

So I've first considered whether Mr S has been able to show there's a valid claim here. The claim was made after the builder warranty period, so it was considered under Section 3 of the warranty. The following term therefore applies:

*"What you are covered for*

*This section protects you if there is physical damage to your home because the builder failed to build the following parts of your home to meet the NHBC requirements:*

- *Foundations, walls, external cladding, curtain walling, external render, external vertical tile hanging, roofs, ceilings, balconies, load-bearing floors, flues, chimneys and access steps to the main structure.*
- *Staircases, floor decking (for example, floorboards) and screeds (for example, a cement-based top layer applied to the structural floor) to the inside of the main structure, if they fail to support normal loads.*
- *Retaining walls, if they are necessary for the main structure to be stable.*
- *Double- or triple-glazing panes to outside windows and outside doors in the main structure, if these are newly installed at the completion date.*
- *Drainage below the ground, if you are responsible for it."*

So in order for there to be a valid claim here, there'd need to be evidence of physical damage to the home due to the builder breaching technical requirements in relation to the listed areas. As cover is provided for load-bearing floors, I've considered whether there's evidence of physical damage.

The key evidence in this case is NHBC's Investigation report dated 6 December 2023 and the numerous photos and videos I've seen of the flooring, which Mr S has provided.

The Investigation report states:

*"There is evidence of an uneven floor finish to the kitchen and dining room as shown in the photographs... A length of floor area spanning from between the rear elevation of the property across to the hallway has a clear step or ramp... Some of the floor tiles have pronounced raised ends, which are a result of the floor tile layer being unable to install them without a step due to the slope in the floor... I have concluded that the unevenness in the kitchen and dining room floor to both areas has been caused by insufficient levelling of the floor screed when it was laid."*

The report contains considerable detail and photographs of the flooring, which support the

commentary in the report that the floors are uneven and there is a clear ramp. Further photos and videos from Mr S also show tiles which do not sit level on the floor with raised ends due to the ramp in the floor, which Mr S says is only getting worse.

NHBC says the report also refers to a “lack of any physical damage”. But I don’t agree with its view of the definition of “physical damage”. I think the uneven tiles and the ramp in the kitchen floor constitute “physical damage”. This isn’t a defined term in the policy, so I’ve considered its everyday meaning. And physical damage usually refers to damage that can be clearly seen or felt, or something that impairs the value or normal function of an item or area.

I’m satisfied, from what I’ve seen, that there’s physical damage as the function of the load-bearing floor has been impaired. I’m persuaded by Mr S’s testimony that the floor has become a hazard, with his family having tripped over the uneven tiles – something that NHBC’s report states is a direct result of the insufficient levelling of the screed below. And I think the normal function of a load-bearing floor is to transfer loads safely but also to provide a safe surface for the people using it. I’m not satisfied the floor is safe for people to walk on, so this further supports the position that there is physical damage or a loss of function.

NHBC at one point seemed to accept that there had been a failure to comply with NHBC requirements, as it accepted the screed was defective and uneven. But it says the claim still wouldn’t succeed as the policy excludes damage which only affects the floor coverings. Mr S, however, says it’s more than just the tiles that are affected – and that the floor is visibly sloping. I think what he’s said is plausible. So I don’t consider NHBC to have applied the floor covering exclusion fairly, as I’m satisfied the defect has impacted more than just the tiles. From what I can see, it’s affected the overall evenness, function and safety of the floor itself – not just the floor covering.

NHBC says the flooring is excluded but this isn’t correct – it’s damage “which only affects floor coverings” which is excluded. So as the damage here (the loss of function of the load-bearing floor) affects more than just the floor covering, I don’t consider the exclusion applies.

NHBC says that as the issue is caused by the uneven screed, which can’t be seen, there isn’t physical damage. NHBC says that even if the screed itself was considered physical damage, it must be caused by non-compliance with its technical requirements, which are performance based. And that as the screed is performing as intended, the technical requirements have been complied with.

My view is that it’s highly likely the uneven screed is the defect causing the damage, and the physical damage is the unevenness and loss of function of the floor. I’ve also considered NHBC’s requirements. These are defined in the warranty as:

*“R1, R2, R3, R4 and R5 of the mandatory NHBC Technical Requirements contained in the NHBC Standards, which are as follows (as taken from the NHBC Standards):*

- R1. Work shall comply with all relevant Building Regulations and other statutory requirements relating to the completed construction work. Please note this does not include statutory requirements for planning permission, which are not covered by the NHBC Standards.*
- R2. Design and specification shall provide satisfactory performance.*
- R3. All materials, products and building systems shall be suitable for their intended purpose.*

R4. *All work shall be carried out in a proper, neat and workmanlike manner.*

R5. *Structural design shall be carried out by suitably qualified persons in accordance with British Standards and Codes of Practice.”*

I've also checked the archived documents on NHBC's website. The technical requirements from 2019, when the property was completed – which are still in place today – include the following at R4:

*“The Builder shall ensure that:*

*a) the conditions of the materials, products and the completed work are satisfactory*

*b) appropriate precautions are taken to prevent damage*

*c) account is taken of the following:*

*i. the requirements of the design*

*ii. suitable methods of unloading and handling*

*iii. proper protection during storage*

*iv. use of correct installation methods*

*v. protection against weather during construction (including excessive heat, cold, wetting or drying)*

*vi. protection against damage by following trades.”*

Given the problems with the flooring, I don't consider the condition of the completed work to have been satisfactory, carried out in a neat and workmanlike manner, or that correct installation methods were used – as it's likely the screed wasn't properly levelled. So I think it's likely there's been a breach of NHBC's technical requirements here.

It follows therefore, that Mr S may have a valid claim under the warranty – as there's physical damage in the form of an uneven floor, the normal function of which has been affected as its function is to be walked on safely. There is also physical damage to tiles, so the flooring exclusion doesn't apply as that would apply where the damage *only* affects the floor covering and in this case that is not the only impact of the damage, as it also affects the floor's function and overall evenness. The physical damage is likely due to a breach of technical requirements by the builder, in relation to the load-bearing floors which are covered under Section 3.

And I'm not satisfied that NHBC has been able to demonstrate that the unevenness is within its accepted tolerances, as it would only be able to do so by removing the flooring and further inspecting the screed levels. So I'm not persuaded it's declined the claim fairly and I think it needs to investigate further.

I appreciate NHBC doesn't agree with this position and says the work required to investigate further will be intrusive. I accept that it will be, but I don't think it's fair to decline the claim on the assumption that there's no defect when I consider the evidence strongly suggests there is. And ultimately, ICOBs says an insurer must provide reasonable guidance to help a policyholder make a claim and not unreasonably reject it. I don't consider it's done enough to show that there isn't a defect here or that a valid exclusion applies that would entitle it to

reject Mr S's valid claim. So the claim should be reconsidered in line with my findings that there is physical damage and the floor covering exclusion doesn't apply.

In determining whether there is a defect or breach of technical requirements and reconsidering the claim, NHBC should have particular regard for the relevant Building Regulations as per R1, whether work has been carried out in a proper, neat and workmanlike manner as per R4 and whether, also under R4, the condition of the completed work was satisfactory and correct installation methods were used (including the methods used to level the screed).

I also think Mr S has been caused distress and inconvenience for which he should be compensated, due to the unfair decline of his claim and the fact that NHBC didn't arrange a full inspection sooner. So I'm going to require NHBC to pay Mr S £100, which reflects the impact of NHBC's actions. This impact includes the flooring worsening over time – which may have been avoidable – and Mr S's family tripping over the tiles, which has caused unnecessary upset.

### **Putting things right**

National House-Building Council should now do the following to put things right for Mr S:

- Reconsider Mr S's claim in line with the remaining terms and conditions of the policy. In doing so, it should promptly arrange an inspection of the flooring, to establish the underlying cause of the unevenness, ramp and raised tiles and to determine if there is a defect in the screed or any other defect covered under the policy which is causing the physical damage (the uneven floor).
- Pay Mr S £100 compensation for distress and inconvenience.

### **My final decision**

My final decision is that I uphold this complaint and I direct National House-Building Council to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 June 2025.

Ifrah Malik  
**Ombudsman**