

## **complaint**

Mr and Mrs G are unhappy that National House-Building Council (NHBC) won't carry out work to remedy issues with their windows and doors under their building warranty.

## **background**

In December 2016 Mr and Mrs G reported to NHBC concerning problems they had with their windows and internal and external doors. This was within the first two years of the warranty so the primary liability at that stage was the builders'. Some work had been done to the windows but Mr and Mrs G were unhappy with the quality of finish – of gapping and sharp edges. The doors had excessive gaps at the bottom. NHBC initially carried out an investigation under its resolution scheme and reported in April 2017. This identified issues with the doors and windows and recommended action to be taken by the builders.

The builders declined to take any action but agreed to supply replacement doors. NHBC agreed to take over dealing with the repairs. This took some time to organise, and although the doors were replaced the contractor couldn't deal with the windows. NHBC then indicated that it would only be repairing or replacing three windows. Mr and Mrs G said they were told following the April 2017 report that all the windows would be replaced.

NHBC reviewed the matter and agreed to pay Mr and Mrs G £300 compensation because of the delay in informing them that the builders weren't going to do the work and in organising the repairs. NHBC further said that the April 2017 report wasn't clear as to which windows were affected so it carried out another visit in February 2018. The new report identified only three windows that needed work to be carried out - namely to replace the opening lights. These were the study, lounge and rear right hand bedroom windows. It further identified issues with the rear right hand and front right hand bedroom doors. That work required the refitting of the doors. The report also recommended finishing all the doors with Danish oil.

Mr and Mrs G were unhappy as they said that the original report had said that all windows were to be replaced. They were also unhappy that ladders weren't used to inspect the upstairs windows, that the external utility door wasn't dealt with and with the testing for draughts carried out. NHBC said that it was satisfied with its report and that the other windows all complied with its requirements.

I issued an initial provisional decision. Following a review of photographs supplied by Mr and Mrs G (which had been disclosed to NHBC) I proposed to require NHBC to:

- Carry out the repairs to the doors and windows it had agreed
- Inspect and adjust the patio doors (from the living room) so they are draught free
- Carry out repairs to the beading/frames of the patio doors (both sets) as shown in and identified in Mr and Mrs G's photos.

Following that decision NHBC agreed to carry out a further inspection, particularly because of the issues raised by those photos which it had contended hadn't been seen by its inspector. A further (third) inspection was carried out by NHBC.

After that inspection, as well as the issues NHBC had already identified in its previous inspection as needing repair (and that I've bulleted above), it set out the following further issues which it agreed to deal with:

- Patio doors - sharp edges to the external corners of both sets of doors (view from rear external). Kitchen right side door right bottom, left side door right bottom; Lounge right side door left top, left door right top.
- First floor left bedroom window, right side opening light, both top corners.
- There were gaps between both sets of patio doors and the frames where paper could be inserted. This was mainly evident to the corners and around the locks to both set of doors

It proposed to remove the sharp edges and to adjust the patio doors to make a weather tight seal. But it maintained that the glazing beads were found to be securely fitted. It found slight gaps of 0.5mm and misalignment but didn't find any to be excessive or to require any repair.

It said that some issues hadn't been reported to the builder under section 2 of the warranty, so could not be dealt with now. These were the gaps to the mastic seal at the top of the patio doors, the holes to the corners of the doors, out of line hinge and protection tape showing.

A further issue of the external utility room door had been noted under another investigation. I understand this has now been dealt with.

I then issued a further provisional decision. I still felt that the photos of the windows Mr and Mrs G sent in showed that they were in breach of NHBC requirements. So I maintained my view that NHBC should deal with the specific issues of gapping shown in those photos. I further said that, as the complaint was generally about the poor quality finish of the windows, the issues of the protection tape showing, misaligned hinge and missing mastic all came under this and should be dealt with. The holes to the corners of the doors I thought were a different issue and hadn't been reported under part 2 of the warranty.

NHBC in response said it didn't agree with the part about the gapping around the doors and windows. It appreciated that there are photographs but photographs are not always accurate in their appearance.

It didn't think that a photographic view that could be distorted depending on how it's taken can override a physical assessment of the situation whereby measurements have been taken. It believes this to be an unusual concept and unfair to take photographs as accurate and to disregard a measured investigation that shows its standards have been met.

Mr and Mrs G had no further comments to make.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

These were my provisional findings:

*“excessive gapping around windows and doors*

*My provisional decision noted excessive gapping in the beading around the windows and doors. NHBC says, as a result of its further inspection that there is no excessive gapping, that it's less than 0.5mm so was within tolerance. Having looked again at Mr and Mrs G's photos (which NHBC had agreed “may be a problem”) I can't square the report with the gapping shown in those photos, which has been poorly filled with mastic. The gaps in those photos look to me to be much more than 0.5mm.*

*As I said in my first provisional decision “The relevant NHBC requirements which I think have been breached are:*

*“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”*

*I still think NHBC should deal with the issues of excessive gapping in joints shown in those photos. To be clear NHBC should deal with the defects it has agreed to deal with as identified in the second and third reports and the issues which appear in the photos Mr and Mrs G supplied. Those photos are of:*

- 1. Top left hand corner patio door, right hand side breakfast area.*
- 2. Top left hand corner right hand patio door kitchen.*
- 3. Outer bead joint to top left hand corner of glass to right hand patio door kitchen.*
- 4. Top right hand corner of patio door right, kitchen.*
- 5. Bottom corner of left hand sash to right hand side window to office front elevation.*
- 6. Bottom right hand corner of left hand sash to office to front elevation.*
- 7. Top left hand corner of left hand patio door breakfast side.*
- 8. Top left hand corner to right hand patio door breakfast area.*
- 9. Top left hand corner to left hand sash front living room.*
- 10. Bottom right hand corner to fixed sash front living room.*
- 11. Top right hand corner of right hand sash second bedroom front.*

*other issues*

*NHBC won't deal with the following issues under section 2 of the warranty:*

- The gaps to the mastic seal at the top of the patio doors.*
- The holes to the corners of the doors.*
- Out of line hinge.*
- Protection tape showing.*

*Of those issues I was only previously aware of the holes in the doors. Whilst I understand that Mr and Mrs G expected NHBC to carry out a comprehensive survey of the doors and windows, unfortunately that's not how the warranty works. For a claim under section 2 (the first two years) any issue must be reported initially to the builder. The issue that NHBC agreed to consider was “poor quality finish of all windows – gaps/sharp edges etc”. The “etc” shows to me that it was looking at the poor quality finish including, but not limited to gaps/sharp edges. In my view that covers the missing mastic, the protective tape and the misaligned hinge which appear to me to be straightforward issues to resolve.*

*But I don't think that covers the holes in the corners of the patio doors. Mr G first advised us of those in October 2018 as having just been discovered. Mr and Mrs G have advised us that the issue hadn't been reported to the builder or to NHBC. And the section 2 period expired on 30 June 2018. So I don't think the holes were related to the poor finish, so NHBC doesn't have to deal with them under section 2. Mr and Mrs G could make a claim under section 3. I don't want to pre-empt them doing that but I should warn them that the cover under section 3 is quite different. It covers certain parts of the building if there is physical damage to the home.*

*As I've set out above the utility room door has been accepted under a different claim and I understand now dealt with.*

*compensation*

*NHBC has so far agreed to pay £300 compensation. This is for the delays caused by having to do two inspections and for not informing Mr and Mrs G that the builders weren't carrying out the repairs. I've noted that in respect of the third inspection, NHBC did identify further issues. Indeed I note that it now agrees there are sharp edges around the patio doors even though it said before there were no such sharp edges. I think that NHBC should pay Mr and Mrs G a further £100 for the extra inconvenience caused."*

NHBC objects to my relying on photographs to determine this issue. I should point out that I have considered and taken into account all the evidence put forward by both sides. But whilst photos can be manipulated these ones look perfectly clear and not distorted to me. And the inspection report didn't allege this was the case i.e. specifying and showing that the gaps in the photos were smaller in reality than they appeared to be on film. To be clear the photos show excessive gapping badly filled by mastic. As I have said I'm satisfied that these images show breaches of NHBC requirements R3 and R4.

I had previously asked NHBC to identify how the issues shown in the photographs comply with its requirements and, if it alleges compliance with a British standard to advise us what that standard is. It hasn't done so in my view and merely saying that the gaps were not excessive without addressing the content of those photographs wasn't in my view sufficient. The report also said they were of an acceptable appearance which again in my view doesn't square with Mr and Mrs G's photos. And whilst it didn't identify which beads were concerned its first report referred to "*misaligned beads some of which had been covered in mastic*". So I have here three reports all of which in part say different things. My view is that NHBC hasn't shown that the appearance and workmanship to the window beading in Mr and Mrs G's photos comply with its requirements as set out. So I think that NHBC should deal with repairs to the doors and windows, as specifically identified in Mr and Mrs G's photos.

NHBC hasn't commented on any other issues and Mr and Mrs G made no comment on my provisional findings. So I remain satisfied by what I said. Therefore, my provisional findings in my second provisional decision, as set out above, remain unchanged and form part of this final decision.

### **my final decision**

I uphold the complaint and require National House-Building Council to:

- Carry out the repairs to the doors and windows it had agreed in its second and third inspections.

- Resolve the gaps in the mastic over the patio doors, the out of line hinge and the parts where the protective tape is showing.
- Carry out repairs to the beading/frames of the patio doors (both sets) and the windows as shown in and identified in Mr and Mrs G's photos and as fully detailed above and numbered 1-11.
- Pay Mr and Mrs G a total of £400 compensation. If it has paid any part of that, it should pay the balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 27 September 2019.

Ray Lawley  
**ombudsman**