

## **complaint**

Mrs P complains about how National House-Building Council (“NHBC”) dealt with her claim on her building warranty.

## **background**

Mrs P bought a new home in 2014. It came with a building warranty provided by NHBC. In the first two years of owning the home, Mrs P raised a few problems with the builders and subsequently NHBC. NHBC produced a resolution report detailing the work that was required.

Over the next few years work was carried out on the property to fix the problems. However after this time Mrs P wasn't satisfied that all the issues had been fixed. She remained unhappy with the following issues:

- A damp problem in the garage hadn't been rectified.
- An upstairs window hadn't been fixed.
- Doors throughout the house had been painted without her consent.
- There were cracks in the paintwork in the skirting boards and stairs that hadn't been addressed.

She made a complaint to NHBC.

NHBC didn't uphold her complaint. It said it had carried out all necessary repairs to the window and to resolve the damp problem in the garage. And it said the cracks in the paintwork were a result of settlement rather than a defect with the building, so weren't covered by the warranty. Finally, it said its contractors had painted Mrs P's doors so they matched one that they had repaired. And it didn't think this was unreasonable.

Mrs P wasn't happy with this response and brought her complaint to this service.

Our investigator didn't recommend her complaint be upheld. He said he was satisfied NHBC had carried out the repairs as required in the resolution report to the damp in the garage. And he didn't think the problem with the window met the definition of a defect. And as the claim for this was raised under the defects section of the policy he didn't think NHBC needed to do anything more. He was also satisfied that the cracks in the paintwork weren't covered by the warranty and that NHBC acted reasonably by painting the internal doors.

Mrs P didn't agree with our investigator's view and asked for her complaint to be reviewed by an ombudsman.

## **my provisional decision**

When the complaint came to me, I came to a different outcome to our investigator. I wrote to Mrs P and NHBC to explain that while I agreed with our investigator about the windows, doors and cracks in the paint, I'd not seen enough to show that NHBC had rectified the issue with the damp in the garage. I said I thought NHBC should pay for an independent survey to assess whether the problem had been adequately rectified in line with the resolution report.

On receipt of the independent report, I wrote to NHBC and Mrs P with my conclusions. I said that as the report identified problems with damp on one of the garage walls, and this had

been considered as part of the resolution report produced previously, I thought NHBC should carry out the recommendations in the report in order to put this right.

The surveyor also inspected the upstairs windows of the property and found there was a defect with how they were installed that was causing a draught. I said that as draughts from the upstairs windows was identified as a problem in the resolution reports produced by NHBC, I was satisfied that this hadn't been rectified in the required time. So I thought NHBC should carry out the recommendations in the report in relation to the windows.

NHBC agreed to carry out the recommendations in relation to the damp in the garage. However it said it had already rectified the problem with the upstairs window so it was prepared to check this work had been done correctly, but it didn't think it should do anything further.

Mrs P responded and agreed to the recommendations to be carried out in relation to the garage and windows. She also pointed out a number of other defects that were identified in the report or were still outstanding that she felt NHBC should also deal with.

I've considered the comments from Mrs P and NHBC when reaching my final decision.

### **my findings**

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

For way of background, I will start by explaining how policies such as this one work. When dealing with a claim that falls within the first two years of a warranty such as this, NHBC have a limited remit. A claim will come to NHBC if a defect has been reported to the original home builders and they've failed to rectify the damage in a reasonable timescale. NHBC are then required only to offer a resolution service between the customer and the builder – laying out what needs to be completed and by when. If the builder fails to complete the required work in that time, then NHBC are required to step in and do the work itself. At this point, the insurance element of the warranty kicks in, which we are permitted to consider.

In this case, following the independent report carried out when the complaint came to this service, I don't consider that NHBC have rectified the problems identified in its resolution report in regards to the upstairs windows or the damp in the garage. I will explain why.

### **damp in the garage**

When the complaint came to this service originally, the main concern appeared to be around damp concerning the wall that attached the garage to the main house. The independent surveyor found no issues with damp on that side of the garage, however he did identify a problem in the wall opposite – the flank wall.

I have looked at the resolution report issued by NHBC in 2017. It lists the problem with damp in the garage as 'garage brickwork appears damp'. So the problem listed isn't specific to one particular wall.

Further, I've considered the investigative and repair work that was carried out as a result of the 2017 report. The report states: '*The right hand side flank wall of the garage was also*

*tested for damp Although one area showed high readings, this was located in the middle section of the wall and we consider that the meter detected a wall tie, rather than damp.'*

So I'm satisfied that the flank wall was included in the problem identified in the 2017 resolution report.

The independent surveyor commented in his report:

*'The rear wall of the garage, close to the right-hand door reveal is severely affected by rising and penetrating damp, at wall base, caused by high external finished floor levels, which are bridging the physical damp proof course. There may also be issues with the cavity closer in this area, but this should be inspected, when the plasterboard is removed for renewal in this area.'*

And goes on to say:

*'High external ground levels, which bridge the physical DPC, are already causing significant dampness to the rear garage wall but pose the real potential for future issues with wall base damp to other areas of the building.'*

So the item in the resolution report refers to the garage brickwork in general. And the flank wall was tested, but the results were disregarded without further investigation. I therefore think that it's fair to conclude NHBC hasn't carried out the required work for this part of the resolution report. I will therefore require NHBC to carry out all recommendations in the independent report in relation to the damp in the garage. NHBC has now agreed to this course of action.

## **windows**

NHBC has said that the issue raised regarding the windows was in relation to just the upstairs bathroom window. It says this was fixed at the time, so it feels it has fulfilled the requirements under the resolution report.

I have looked at the 2017 resolution report. In relation to the issue with the window it states:

*'Throughout distinct draught from the windows on 1st floor'.*

The report from the independent surveyor states:

*'A number of windows have been severely undersized for the window openings, and as such, the excessively wide gaps around the windows'.*

As the surveyor identified a defect with the windows that would have likely caused the problem outlined in the resolution report, I am satisfied that this problem wasn't satisfactorily rectified by NHBC.

NHBC doesn't agree. It says it has already carried out remedial work on the window of the upstairs bathroom. And thinks it should be given the opportunity to check this remedial work has been successful, rather than carry out the recommendations in the report. Further it says there isn't any proof that the problem found with the window is a defect that means the windows don't meet its required standards.

I've considered this but it doesn't change my position. NHBC accepted there was a problem with a 'distinct draught' from the upstairs windows. While I accept it carried out remedial work to fix the bathroom window, Mrs P has maintained that this problem wasn't properly rectified by the work carried out. And the independent report supports this assertion. While I appreciate NHBC's wish to assess the work it previously carried out before doing anything further, I don't think this is necessary in the circumstances. Nor do I think it's fair to subject Mrs P to further investigations or reports.

The most recent report was carried out by an expert. And it concludes that there are defects with the windows that are causing draughts. As this was a problem identified in the resolution report, I'm satisfied that this is sufficient evidence to show that this wasn't properly rectified. I will therefore require NHBC to carry out the recommendations in the independent report in relation to the windows.

### **internal doors**

Mrs P explained in her original complaint that she was unhappy that NHBC's contractor painted all the internal doors of her property, without checking with her first.

While I appreciate Mrs P's frustration that the work wasn't checked with her first, NHBC has said that this work was carried out as it had to re-hang one of doors and this left a bare edge which had a poor physical appearance. So it repainted the door to ensure a good appearance and all the other doors were re-painted to ensure they match.

Mrs P has said that this is against the recommendations from the manufacturer of the doors, as its states they shouldn't be re-painted. However I've not seen any evidence that this is the advice given in relation to this kind of door. Nor have seen anything to suggest the new paintwork has caused problems in aesthetic or function.

For this reason I don't think NHBC has acted unreasonably by re-painting the doors and I don't think it needs to do anything further in relation to this.

### **cracks in stairs and skirting boards**

Mrs P also complained about cracks that appeared in the paintwork around the stairs and skirting boards.

NHBC's contractor inspected the cracks when he attended the property in August 2018. He concluded that the cracks were caused by normal settlement. NHBC has said that damage caused by settlement, rather than a defect, is excluded from cover under the warranty.

I appreciate Mrs P's concerns around NHBC's account of the cause considering the other issues she has had. However I haven't seen anything further to suggest NHBC's contractor's initial opinion was incorrect. And as this is the only expert opinion provided, I am satisfied that the cracks are most likely caused by settlement and therefore wouldn't be covered under the warranty.

### **additional issues**

Mrs P has raised a number of other issues that either haven't been resolved by NHBC or have arisen as a result of the independent report. As these weren't raised as part of this complaint, I haven't considered them here. However I have passed all of Mrs P's concerns

onto NHBC and it has agreed to open new claims as appropriate. NHBC will contact Mrs P about these separately.

**my final decision**

For the reasons I've given, I require National House-Building Council to:

- Carry out all recommendations in relation to the damp in the garage as laid out in the independent report.
- Carry out all recommendations in relation to the windows in the independent report.
- If National House-Building Council wishes to cash settle rather than carry out the work outlined above, it must do this at the cost to the consumer, on receipt of reasonable quotes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 29 May 2021.

Sophie Goodyear  
**ombudsman**