

## **complaint**

Mr I is unhappy with his building warranty provider National House-Building Council (NHBC). He has had claims on-going with it for several years and he just wants matters resolved.

## **background**

Mr I made various claims to NHBC. As a result of one of those claims, in 2007, NHBC replaced the doors in Mr I's lounge. It also investigated squeaky floorboards. Over the years various works were done and settlements were made.

In March 2017 NHBC accepted that whilst it had carried out a survey of Mr I's windows and doors in 2015, it had overlooked making settlement for them. It also agreed to do a further survey on other things Mr I remained unhappy about. NHBC also said it would pay Mr I £700 compensation.

Following further enquiries NHBC wrote to Mr I again. It said it didn't intend to do anything in respect of the remaining issues Mr I had and it had recently considered when carrying out its survey. It noted though that it still hadn't made settlement for the windows and doors and said it would do so, based on the findings of the survey in 2015. It said it would pay Mr I a further £200 compensation for its further delay in offering a settlement for the windows and doors. Mr I was dissatisfied and complained to us.

There were five issues Mr I was unhappy about and our investigator considered those. She didn't think his complaint should be upheld though and so Mr I asked for an ombudsman's consideration; the complaint was passed to me.

I didn't think Mr I's complaint should be upheld but for different reasons to those set out by our adjudicator. I issued a provisional decision and the parties have now responded to that. NHBC had nothing further to add, while Mr I said he was dissatisfied. I've considered Mr I's responses but they haven't caused me to change my mind. My consideration of Mr I's points is set out in my findings below.

## **my findings**

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

### *rattling roof tiles*

I said provisionally:

*"Mr I believed this was caused by scaffolding, put up by NHBC's contractors, damaging the roof. Mr I had complained about this issue to this service before. At that time he had no proof as to the cause and NHBC refuted what he said. Mr I then got a report. The writer of the report based his findings on what Mr I told him and concluded the noise had probably been caused by scaffolding causing damage. NHBC maintained it hadn't damaged the roof and said it didn't find the report persuasive (as it was based on Mr I's hypothesis).*

*I have to say I don't find the report persuasive. To be persuasive an expert report has to be based on the findings of the expert. A conclusion written by somebody with expert knowledge but which is based on the findings or theories of the lay-person paying them holds no greater*

*weight, evidentially speaking, than the lay-person making that report themselves. I know Mr I believes NHBC damaged his roof but there is simply no persuasive evidence that makes me think this is most likely the case. I'm not going to make NHBC do anything in this respect."*

Mr I said the work was done negligently, the roof noise was apparent immediately after and NHBC was told of this at the time. He said the report he had done was an independent survey with pricing, he hadn't asked for the work to be priced. I appreciate that Mr I feels work was done poorly at the time and that he had a survey done to try and evidence the cause of the noise. But this doesn't change anything. The surveyor Mr I used didn't come to his own view as to the cause of damage; he merely reiterated Mr I's view. I'm not going to make NHBC do anything in this respect.

*chimney*

I said provisionally:

*"Water got in and debris fell into the chimney. Mr I's contractor said it needs capping. Whilst that may be, the NHBC policy, as it has explained to Mr I, doesn't, after the first two years of its cover, apply to fixing defects. It only offers cover for damage caused by defects. And only then where the relevant repair of that damage will cost more than the minimum claim value. When NHBC investigated the chimney in 2014 it found some minor staining caused by the water ingress and declined the claim based on the cost of repair. Mr I's contractor's view that the chimney needs capping doesn't change that or give me cause to think NHBC should fairly be doing this work."*

Mr I said this was an issue at the start along with all the rest but NHBC ignored it. I asked Mr I for more details – if he had any proof of when this issue was first drawn to the builder's or NHBC's attention. Mr I said the chimney leaked about 3-4 years ago during storms (so around the time NHBC investigated it following Mr I's claim in 2014, not in the first two years of cover) but as a whole it had been built poorly and had been problematic from the start.

I've seen from the file that there were defects identified with the chimney in the first few years. But NHBC and/or the builder rectified these. There was a different flue needed and steel had been used where it might be compromised by heat. The chimney not being capped is a separate and different defect. Whether or not the chimney should always have been capped is irrelevant given the way the NHBC warranty works. For a defect to be covered by the policy it has to be notified to the builder or NHBC in the first two years after the policy starts. If it's notified after that time then only damage caused by the defect is covered and only then when the damage costs more than the minimum claim value to fix. I'm not going to make NHBC cap the chimney. Nor am I going to make it fix the damage caused because the chimney isn't capped as the cost to repair it appears to fall below the minimum claim value.

*noisy floorboards on third floor*

I said provisionally:

*"Mr I said NHBC hadn't resolved this issue. NHBC said it had found there wasn't excessive noise and that Mr I had recently fitted laminate flooring. It said Mr I's recent complaint about this noise had come after the warranty had finished."*

*I noted that noisy floorboards were an issue considered by NHBC in 2012. At that time it made a settlement to Mr I for £3,319 which was meant to cover the cost of resolving a number of issues, including item three on a list from January 2012. Item three was "third floor bedroom floorboards are noisy". I asked Mr I which other rooms he had issues with and when these issues were drawn to NHBC's attention. He confirmed that payment in respect of the noisy floorboard issue had been made in 2012 but his concern was that it had taken NHBC five years to get to that point.*

*As Mr I has confirmed that NHBC has settled this issue then I see no need to make it do anything more. It seems it did take a little while for it to be resolved but I can see that there were a number of issues – not all of which NHBC agreed were things it should resolve. I understand the settlement made in 2012 was done at least in part on a goodwill basis by NHBC. In other words it didn't really accept it had liability for a number of things complained about but settled for them to try and resolve the situation between it and Mr I. Given everything that has happened I don't think NHBC acted unfairly or that it unreasonably delayed making a settlement that it should always have made at the point the claim was made to it. I'm not going to find against NHBC in respect of this delay that Mr I has reported. In my view to do so would be unfair and unreasonable."*

Mr I said he has no idea what laminate flooring on the first and second floor has to do with noisy floor boards on the third floor. He said this was the stance of NHBC's investigator and which I seem to have accepted.

Mr I's response, in my view, doesn't reflect the findings I made (set out above). I referred to NHBC's inspector's view but made my own findings about this issue. Before I made them I specifically asked Mr I for more information as it seemed that there may be noise coming from rooms that NHBC hadn't made any settlement for. Mr I's response to that enquiry is recorded in my provisional findings above. Whether or not NHBC accepted that noisy floorboards were an issue for Mr I, it paid for the noisy floorboards on the third floor to be fixed and Mr I told me there was no noise coming from other rooms. I can't reasonably ask NHBC to do anything more.

*lounge doors*

I said provisionally:

*"NHBC replaced Mr I's lounge doors in December 2007 because the original ones didn't comply with fire regulations. Mr I says that soon after the doors were replaced the panes started misting and he had to keep wiping them. He says he told NHBC this once it had started to happen in 2008. NHBC says it wasn't told of the issue until 2017. And it felt that, by then, it was too late for a complaint about it installing faulty doors to be considered.*

*In investigating NHBC's files I found that there was reference to the lounge doors in 2012. And the cost of repairing the issue reported at that time was included within the £3,319 settlement paid in June 2012. However, the issue was recorded as "installation of double doors to second floor lounge unacceptable". I couldn't find any further clarification within NHBC's files as to what this meant. Mr I though told me that this was to do with cracks appearing around the edges of the doors, not the panes misting. What I think is interesting is that despite the fact that at this point in 2012 Mr I was raising with NHBC what he saw as the remaining outstanding issues at the property, there is no mention of the problem he has later said was in existence from 2008 (in respect of the panes misting).*

*When Mr I did bring the issue to NHBC's attention in 2017 it assessed the doors. It concluded that some form of reaction was occurring that was causing a form of etching on each pane (the doors comprise 24 decorative panes). As each pane seemed to be affected in the same way NHBC thought the doors might well be defective. However, in its view, it had been too long since installation to know for sure or for it to successfully look to claim against the door's manufacturer.*

*I think it is very difficult to know, nearly ten-years after installation, whether the doors are defective. I know Mr I says this problem manifested itself soon after installation and he told NHBC about it then and kept telling it but it never resolved it. But, given what I've noted above about the file from 2012, I can't reasonably conclude that Mr I's memory on this issue is reliable. If the misting had been an issue from 2008 through to 2012 and beyond, I think Mr I would have raised it in 2012. That makes me think the issue only occurred later and that NHBC is correct in stating it was only brought to its attention at least more than five years (2012) after the installation. Given the time between installation and the issue being brought to NHBC's attention, I think its refusal to do anything more is fair and reasonable."*

Mr I said NHBC had initially tried to avoid liability by saying they didn't fit the doors, then when he showed it did it said they were out of warranty – but the work is guaranteed for six years not five.

The contemporaneous evidence I have seen from NHBC's files satisfies me that the doors were fitted in late 2007. Even allowing for a full six years after fitting, that only takes us to late 2013. And there is no evidence that after having told NHBC in 2012 or everything that was outstanding, and not mentioning the doors, Mr I then got back in touch with it before the end of 2013 to advise of the misting problem. I'm satisfied that NHBC's refusal to take on this issue is fair and reasonable; I'm not going to make it do anything more.

*windows and doors*

I said provisionally:

*"There were issues with the double glazing. In 2012 NHBC agreed to do work to resolve the problems. Mr I wasn't entirely happy with that and told NHBC he wanted everything replacing. But work went ahead in late 2012. Mr I was still dissatisfied and NHBC did a further assessment of the windows in 2015 and accepted that some further work was required. It said it would make a settlement for the necessary repairs. Mr I thought further repairs wouldn't resolve the issues and provided a quote from his contractor for removal and bricking up of the bay windows and making good internal decorations.*

*I'm not sure why anyone would want to brick up their windows. It seems this would be a costly and quite extreme way to resolve any issues with the installation. I'm not minded to say NHBC should pay the price Mr I has submitted for this work to be done.*

*NHBC says that the problems with the double glazing can be resolved by:*

- *where the drainage holes are in line, sealing the internal holes with a white mastic sealant and re drilling internal drainage holes in the correct position*
- *fitting a weather bar/drip bar to the kitchen door*
- *purchasing and fitting new blocks to pull in the sash*
- *removing and resealing the external cover strip from the outside of the lounge window.*

*NHBC priced this work in 2017. It told us that it would cost £230, including VAT to complete. It also said the problems wouldn't have got worse in the interim such that further work would be required. In the absence of any reasonable findings from another expert as to why this work won't resolve the problems Mr I has and that NHBC is responsible for resolving, I think this is a fair and reasonable settlement. And I'm mindful that the overall consensus from NHBC's surveyor in 2015 was that the windows and doors were generally performing as expected. If Mr I wants to accept this settlement he can do so directly with NHBC.*

*Ideally NHBC should have raised settlement for the necessary work sooner. I can see from its files that it had some difficulty getting its contractor to complete the pricing exercise. Even so, two years was a long time to go without making any settlement.*

*Even after noticing the initial delay and offering to pay compensation, that took the upset caused by this into account, the repair settlement still wasn't paid. By the point of NHBC offering compensation for the unpaid settlement it was aware that Mr I had lodged his complaint with us (although we hadn't yet started considering the merits of it). Ideally NHBC would have made payment on an interim basis but I can see why it, and Mr I, would first want to wait for the outcome of the complaint. I'm not going to make NHBC pay any additional compensation. If Mr I would like to accept the £200 NHBC offered he can contact it direct."*

Mr I felt I had largely ignored this issue. I'm not sure how he can reasonably conclude that with the detail I have copied immediately above which is taken from my provisional findings.

Mr I said he feels he's been accused of wanting to replace all his windows and doors which isn't true. I'm aware that this was Mr I's position at one point, but as I referred to provisionally, Mr I's most recent quote for rectification refers to bricking up the bay windows.

But Mr I also said that NHBC asked him in 2007 for a quote for replacing all the windows and, in his view, continued repair makes no sense. Whether or not NHBC asked to see a quote for replacement, doesn't change the fact that it is satisfied that the problems with the windows can be repaired.

Mr I went on to explain that he thinks the windows need bricking up as they are moving and causing cracking as a result of the work NHBC has done. I've referred back to Mr I's report which does mention this. But I can also see three reports from NHBC that looked at this issue; one in 2012, one in 2015 and one in 2017 just a few months before Mr I got his report.

The 2012 report refers to supports having been fitted where movement had previously been found but further tests showed the frame was stable and not moving. It was felt that cracking to the internal plaster was due to natural thermal movement and shrinkage. The 2015 report records that supports were put in place for these windows sometime before and that the cracking hadn't been redecorated since. The 2017 report records that the cracking evident at this point is the same as that present in 2015 – it still hasn't been decorated.

I think if I were Mr I's expert and had only seen the windows once, I might reasonably conclude, taking the cracking into account, that they were moving. However, NHBC inspected the windows on more than one occasion over the course of several years. I find that on-going comparison and reconsideration of the state of the windows to be more persuasive than the one-off opinion Mr I obtained in 2017. I'm also mindful that Mr I's expert opinion came from a roofer, whereas NHBC has had its surveyors consider the damage as well as a glazing specialist. Whilst I understand how strongly Mr I feels about this, I'm not

persuaded by his evidence that the bay windows are moving or that they need removing and bricking up. So I'm not going to make NHBC do anything in this respect.

Regarding the costings NHBC had provided for the repair work it considers outstanding, Mr I said he has never been passed this information. I'm aware of that and that is why I shared it in my provisional decision. I was also, as can be seen by the findings I have copied above, critical of NHBC having let this matter go on for so long without offering to make a settlement.

Mr I said that he wants NHBC to give him written assurance that it will remain liable for the windows if, after the work is done, the problems persist. He said the other option is that an independent report on the windows and doors is obtained to allow both parties to move forwards.

If NHBC settles for the remaining repairs in cash then it will have no liability for the work that Mr I gets done. But if the work is done and the same problems still persist then I'd expect NHBC to review the situation. Mr I may think this is unfair and doesn't go far enough. However, before any decision can be made about any further liability NHBC may have many aspects that are currently unknown or unconfirmed would need to be considered. Such as:

- a) that the work had been done and done correctly;
- b) that the problems still being experienced are truly the same as before but also that they are ones that NHBC had accepted needed fixing and that it thought would be resolved by carrying out the specified repairs.

Whilst Mr I thinks that there is another option – i.e. appointing an independent expert to assess the glazing installations – I would only be looking to make NHBC do something different to what it has suggested if I felt its suggestion was unfair or unreasonable. And I don't. In this case I think settling the matter in cash is reasonable as Mr I has clearly lost faith in NHBC's ability to resolve the problems at his home. I've seen no evidence from Mr I that persuades me the suggested repairs aren't sufficient or that they will cost him more to do than NHBC has allowed for. I can't see any grounds on which I could fairly and reasonably find that NHBC's offer is unsuitable. Therefore, I can't fairly and reasonably require it do something else.

If Mr I wants to take up NHBC's offer of settlement for works and compensation regarding the windows (£230 and £200 respectively), he can contact it directly. I'm not going to require it to do anything else.

*length of claims (excluding the delay and £200 compensation offered as referred to in the immediately preceding paragraph)*

I said provisionally:

*"Mr I and NHBC have been dealing with each other now, in respect of various claims, for several years. There were times during that extended period, I think, that NHBC could have acted more quickly. But, to be fair to it, it has accepted that and paid £700 compensation to make up for the upset caused. I think fair and reasonable compensation has been paid by NHBC, I'm not going to make it pay anything more."*

Mr I made no comment in this respect. My view on this hasn't changed; fair and reasonable compensation has been paid by NHBC to Mr I for the distress and inconvenience it caused him during the course of his claims.

**my final decision**

I don't uphold this complaint. I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 7 September 2018.

Fiona Robinson  
**ombudsman**