

complaint

Mr and Mrs P complain about the works to their new home undertaken by National House-Building Council (NHBC) under its *Buildmark* building warranty.

background

Mr and Mrs P moved into their new home in November 2013. It came with a 10-year building warranty provided by NHBC. In September 2015 they reported some issues with their house to NHBC. NHBC undertook an investigation in November 2015 and it was discovered that 13 items didn't comply with its Technical Requirements. These included problems with the first floor 'dropping' causing the ceiling below to bow and problems with the windows, doors and door frames. As the builder was, by then, insolvent, NHBC (as per the policy terms) took over the claim.

After various visits, a schedule of works was prepared and NHBC moved Mr and Mrs P into alternative accommodation in July 2016 whilst the remedial works were carried out. It was planned that Mr and Mrs P would move back in in December 2016 but, due to delays caused by the nature of the works, that didn't happen until July 2017.

Mr and Mrs P submitted a complaint to NHBC in July 2017. They complained about the standard of the remedial works. Specifically they were unhappy with the following:

- That the windows and doors had been badly fitted. Whilst the installation was CERTASS (a glazing trading association) registered the name on the certificate is not the name of the company that fitted them. Mr and Mrs P consider the certificate to be invalid.
- There are gaps between the render and newly installed windows. These have been filled with mastic or overlaid with new render that doesn't abut the frames meaning large gaps were left. Mr and Mrs P doubt this is weather proof.
- The tile trim in the bathroom has been badly installed so that it overhangs and there are sharp edges which are dangerous.
- The door handles installed on the new French doors were not the ones Mr and Mrs P selected.
- The shower screen was removed, without their permission, and was replaced with one of inferior quality.
- The electrical test certificate they were sent to guarantee the works that were undertaken contained incorrect information. They asked for an amended replacement and despite now having received three certificates still don't have one which is correct. They are worried that if they have to sell the house they won't be able to show that the electricians are regulation compliant.

In response to Mr and Mrs P's complaint NHBC offered them £300 to replace two sets of the French door handles and £500 for a like-for-like replacement of the shower screen. It also offered £1,500 compensation for the way it had handled their claim.

Mr and Mrs P were unhappy with NHBC's response so they complained to this service. They said they wanted the following:

- The installation of the windows and doors needed to meet building regulations. They said the CERTASS certificate was invalid because the company named on the certificate didn't install the windows. They said NHBC should bring in their local Building Control to

inspect the installation and to see if a certificate of compliance was capable of being issued;

- The render repaired so there were no gaps around the windows and doors.
- The dangerous chrome tiling trim to be rectified;
- For an accurate and correct electrical test certificate to be issued;
- For all four sets of incorrect handles on their French doors to be replaced with the ones they chose;
- For NHBC to replace their shower screen with a like for like version of the one it removed;
- Compensation for their house being in a filthy state when they moved back in.

Our investigator looked into Mr and Mrs P's complaint and made some recommendations. She said the windows were installed by the company named on the CERTASS certificate. She also said that she was unable to comment on the quality of the work that NHBC had undertaken. After speaking to NHBC, it offered to pay Mr and Mrs P £1,000 so they could replace their shower screen which our investigator thought was fair. She initially asked NHBC to re-inspect the electrics and provide a new certificate but it said it wasn't prepared to do so. She asked NHBC if it would pay to replace all four sets of door handles which it agreed to as a gesture of goodwill. Finally she thought that the compensation of £1,500 offered by NHBC was reasonable.

Mr and Mrs P were unhappy with our investigator's findings so the complaint was passed to me for a decision.

I issued a provisional decision in this case in December 2018. I made the following provisional findings:

"CERTASS building regulation compliance certificate and the render

Mr and Mrs P are concerned that the replacement windows and doors installed in their house have been badly fitted. The photographs I've seen would seem to suggest they were. They are also worried that their installation wasn't building regulation compliant.

My understanding is that any replacement windows and doors need to be CERTASS building regulation complaint. In essence this requires the installer to be registered with CERTASS. Providing they are, CERTASS issues a certificate after the installation which states the installation complied with the relevant building regulations. It says on the certificate: 'this certificate is evidence, but not conclusive evidence, that the requirements specified in the certificate have been complied with'.

Mr and Mrs P say that the installer named on the certificate didn't install the windows and doors so the installation isn't a compliant one. They say the main contractor that undertook the overall repair works installed the windows. The main contractor isn't CERTASS registered. They say they've been left with badly fitting windows that aren't building regulation compliant.

NHBC say the work done met the required standard and that the windows were installed by the contractor named on the certificate. I'm unable to agree.

The photographs I've seen show some of the windows were poorly installed. Mastic has been used extensively to fill large gaps where the render should be.

There's a letter from the installer named on the certificate dated 22 June 2017 stating it installed the windows and another from November 2017 saying that CERTASS had been in contact to say it was satisfied with the works undertaken. Finally there's a copy invoice – produced at the very end of our investigator's investigation - from the installer to the main contractor. The invoice is for the cost of installing the windows at Mr and Mrs P's house for a total of £1,260.

But the invoice doesn't include the customer address or the supply date. There's no order number on it. And the total doesn't correspond with the total contract value inserted on the insurance backed guarantee Mr and Mrs P were given after the installation. The value on that is £850. I've also seen the email from the main contractor to Mr and Mrs P (which pre-dates any of the letters or invoices I referred to above) naming two of their carpenters as the installers and not the company named on the certificate. I've also seen correspondence between NHBC's personal claims consultant and Mr and Mrs P which indicates that it was the main contractor that installed the windows and that four months after the installation they were still trying to get a certificate of compliance with building regulations. There was no mention by the main contractor or the personal claims consultant of the company named on the certificate.

Taking all the evidence into account I think, on balance, that the windows were installed by the main contractor. I understand the main contractor isn't a certified window installer. That would explain the delay in the production of the certificate (which I understand to be 4 months), which was only produced after Mr and Mrs P repeatedly asked for it.

My understanding is that if windows and doors are installed that need to be building regulation compliant then they must be installed by a certified or registered installer. If they aren't, then the local authority Building Control must be asked to certify the installation. As I've said above, it appears the main contractor wasn't certified.

That means I think that NHBC need to involve Building Control to inspect the installation and see if it meets the required standard for a certificate to be issued.

Whilst I agree that from the photographs the windows appear to have been badly fitted, I think that it's the responsibility of Building Control to say whether they are or aren't so I don't intend to make any provisional findings about the quality of the installation. But if it turns out that the windows haven't been installed according to the necessary regulations I'd expect NHBC to do the necessary work so they are compliant. In such circumstances it would be only fair and reasonable that NHBC put Mr and Mrs P back in the position they were before they had to make their claim.

tiling trim

This was initially correctly installed when the WC was retiled. It was then then damaged by a following tradesman. NHBC sent in a contractor who has 'filed down a sharp edge'. Mr and Mrs P have said it is still dangerous and the trim itself – which I understand was replaced as a result of the following tradesman's damage – is incorrectly installed so that there is an overhang.

The damage to the trim arose out of NHBC's contractor's actions. It is neither fair nor reasonable that Mr and Mrs P should be left with dangerous and unsightly trim or pay to replace it themselves. NHBC should carry out a proper repair – or replacement if necessary – of Mr and Mrs P's tiling trim.

the electrical test certificate

NHBC has issued Mr and Mrs P with three incorrect test certificates. It's not unreasonable for them to require an accurate test certificate. NHBC should provide them with one. They can do this in one of two ways. Either by amending all the errors in the ones they have so far provided and issue a fourth, correct one or, if it would prefer, attend Mr and Mrs P's home, inspect the electrics and issue a new one. Either way, it is only fair and reasonable that they are provided with a certificate containing the correct details. The mistakes may well be 'administrative errors' but that isn't a valid reason for leaving Mr and Mrs P with an incorrect test certificate.

door handles

NHBC has offered to replace all four sets of door handles which it agreed to as a gesture of goodwill. That seems fair to me.

shower screen

I've thought about whether paying Mr and Mrs P £1,000 so they could arrange to replace the shower screen themselves instead of NHBC's contractors doing the work is fair. NHBC says that relations between its contractors and Mr and Mrs P have broken down so they want to cash settle for this part of Mr and Mrs P's complaint.

Mr and Mrs P say they want NHBC to arrange and carry out the repair because there maybe damage to the tiles when the cheap screen is removed. I think, at most, there will be some holes in the tiles that may need to be fixed. That is something any competent plumber/tiler/bathroom fitter can undertake. I think that £1,000 is more than adequate for Mr and Mrs P to replace and fit the high end screen that NHBC's contractors removed and make good any snags. So I'm not minded to make NHBC send round a contractor to undertake this work.

compensation

NHBC has offered Mr and Mrs P compensation of £1,500 for the way their claim was poorly handled. Mr and Mrs P have mentioned that their house was dirty when they moved back in. When this service thinks about what fair compensation should be we look at everything that has gone on. I have to say that if this complaint had passed across my desk without there being any compensation offered by NHBC, it's unlikely I'd have awarded any more than £1,500. I think that's a fair and reasonable amount in the circumstances of Mr and Mrs P's complaint and in line with this service's awards in similar complaints. I'm not minded to award any more.

my provisional decision

My provisional decision is that I intend to uphold this complaint. I require National House-Building Council to do the following:

- *Arrange for Mr and Mrs P's local Building Control to assess whether the window and door installation is compliant with the necessary regulations and carry out any remedial work required to ensure compliance;*
- *Repair any render damaged in the repairs;*

- *Repair or replace the tiling trim;*
- *Issue Mr and Mrs P with the correct electrical test certificate;*
- *Replace all four sets of door handles on the French doors;*
- *Pay Mr and Mrs P £1,000 so they can replace their shower screen;*

If it hasn't done so already, pay Mr and Mrs P compensation of £1,500 for any distress and inconvenience they were caused by the poor handling of their claim."

Mr and Mrs P replied to say that they accepted my provisional findings in full. They asked if they could have a cash settlement for the four pairs of door handles and for the tiling trim. They stated that no work had been done to render, the windows/doors or the reveals since they complained to NHBC.

NHBC replied with the following comments:

- That the installer named on the CERTASS certificate is both CERTASS registered and meets CERTASS's required criteria;
- That the installation needn't be undertaken by a CERTASS registered installer as long as someone from the registered installer company is on site when the windows are installed;
- That it is categorically evident that the installation was undertaken by the installer named on the certificate. The copy invoice shows the address of the property. The omission of a supply date doesn't prove the invoice isn't genuine.
- CERTASS's main function is to ensure double glazing installations follow building regulations and the issuing of a certificate overrides the requirement for the local Building Control to inspect;
- As far as CERTASS is concerned its information is correct, the certificate is genuine and it confirms compliance with the necessary Building Control requirements;
- Even if the windows were inspected by local Building Control the issues Mr and Mrs P complain about don't fall within Building Regulation requirements. The installation was inspected by NHBC's claims area manager who previously had been a Building Control inspector. He confirmed compliance;
- Any issue Mr and Mrs P have with the windows isn't related to whether they meet Building Regulations;
- It doesn't understand how Mr and Mrs P could know that the installer on the certificate wasn't on site given they were in alternative accommodation;
- That my provisional decision suggests the invoices are in some way fraudulent. It's not reasonable to assume the named installer didn't install the windows based on Mr and Mrs P's say-so;
- Whilst I also referred to delays and the names of individuals, doing so doesn't confirm the information on the certificate and invoices isn't genuine;
- According to NHBC's records the window reveals have been made good after the windows were replaced;
- That it questions what evidence I've relied on when provisionally finding that the tile trim needed to be replaced. Its Claims Area Manager inspected the repair, felt the overhang was minor and that there were no sharp edges. The appearance and workmanship is acceptable. It sent three photos of the tile trim after it was made good in June 2017 taken by the Claims Area Manager on his inspection of the works;
- It considers the issue with the electrical certificate to be resolved – a new one was sent and nothing further was heard from Mr and Mrs P;
- It already agreed to cash settle for all four sets of the door handles;

The complaint was passed back to me.

my findings

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

CERTASS building regulation compliance certificate and the render

I've thought carefully about everything NHBC said about this issue in response to my provisional decision but it's not persuaded me to change my mind.

I accept that the installer named on the certificate is CERTASS registered and meets its required criteria. But for the reasons I gave in my provisional decision, it's reasonable to think the named installer didn't install the windows. Nothing NHBC has said has persuaded me that such a conclusion was an unfair one to reach.

NHBC has said that the installation could be carried out by a non-registered installer providing someone from the registered installer was on site when the installation was happening. I've no doubt it could but I've seen no evidence that this is what happened here. As far as I'm aware, this is the first time NHBC has suggested that this is what happened. It's not unreasonable to expect that, if it did, it would've been mentioned before now.

Whilst I accept that the copy invoice does show the property address I'm afraid I'm unable to agree that it's 'categorically evident' that the installation was undertaken by the company named on the certificate. I say this for the reasons given in my provisional decision. And NHBC itself has suggested that the named installer may indeed only have been 'on site' rather than actually installing the windows. I haven't based my findings solely on Mr and Mrs P's 'say-so'. To do so wouldn't be reasonable. My findings were based on the evidence I referred to in my provisional decision.

I accept what CERTASS's function is but that function can only override the need to involve Building Control if the installation is undertaken by a registered contractor. Presumably CERTASS can only produce a certificate based upon the information it's provided with. For the reasons I've given, I can't fairly conclude that the installation was undertaken by a registered contractor.

I've made no findings in respect of the quality of the installation or whether the installation actually satisfies the necessary building regulation requirements. My finding relates to whether the installation was properly certified (achieved either by certification by a registered CERTASS installer or an inspection by Building Control). For the reasons I've given I don't think it can be reasonably said that it was. So I remain of the view that local Building Control should be asked to certify the installation.

Mr and Mrs P should be aware that such an inspection may not encompass or comment on the issues that concern them. And the installation may indeed meet the required standard (and I've noted what NHBC has said about the relevant window installation building regulations). But, as I've said, should the inspection conclude that the installation isn't building regulation compliant then I expect NHBC to carry out the necessary work to make sure that it is.

That the installation was inspected by NHBC's Claims Area Manager isn't relevant. It must be certified by a registered installer or local Building Control. As the manager works for neither he is unable to provide the necessary certification.

I've set out in my provisional decision how Mr and Mrs P came to understand the installation had been carried out by the main contractor. That they were living in alternative accommodation, and not on site, doesn't allow me to reasonably disregard that evidence.

tiling trim

Following NHBC's reply to my provisional decision I asked Mr and Mrs P to send me some photographs of the tiling trim as it currently is. These were in addition to those already on the file. The photographs they sent were taken in January 2019 and show that the trim overhangs the tiles below. This is in contrast to the photographs of the trim before the works were undertaken and to the photographs NHBC sent to me after my provisional decision. Those photographs are undated although I note that NHBC say the 'making good' took place in June 2017. But it's unclear to me whether they pre or post-dated the damage caused by the following tradesman. However, whether they did or didn't isn't relevant to my decision. I have seen photographs of the tile trim taken in January 2019 and they show an overhang (that causes a noticeable shadow on the tiles) and an excessive use of mastic. My understanding is that the trim should be flush to the tiles.

NHBC sent round a contractor to file down the sharp edges. So it's reasonable to assume that the need to do so was borne out of an inadequate installation. I've thought about what NHBC said in response to my provisional decision but, for the reasons I gave there I'm not persuaded to change my mind about this issue. The damage to the trim arose out of NHBC's contractor's actions. It is neither fair nor reasonable that Mr and Mrs P should be left with dangerous and unsightly trim or pay to replace it themselves. NHBC should carry out a proper repair – or replacement if necessary – of Mr and Mrs P's tiling trim.

Mr and Mrs P say that they would prefer a cash settlement for the trim. That doesn't seem unreasonable to me although I have no information before me about what that might cost. That would need to be agreed between NHBC and Mr and Mrs P.

the electrical test certificate

Nothing NHBC said in response to my provisional decision has caused me to change my mind about this part of Mr and Mrs P's complaint. A new, third certificate, was indeed sent but my understanding is that it contained the same incorrect information that had appeared on the second certificate. By the time it was sent, Mr and Mrs P had already complained to this service (perhaps explaining why they didn't liaise directly with NHBC about the errors). Through this service, NHBC was aware that part of Mr and Mrs P's complaint related to the incorrect third certificate but I note that NHBC told our investigator that it wasn't prepared to do anything further about it because it considered the issue to be administrative. I explained in my provisional decision why I thought this was unfair. My view remains unchanged.

door handles

NHBC has agreed to replace all four sets of door handles. It has also agreed that it's willing to cash settle for this part of Mr and Mrs P's complaint. I think the agreement reached about this item is fair so there's no need for any further comment from me.

shower screen

Mr and Mrs P accepted my provisional findings in full – including those relating to the shower screen. For the reasons I gave in my provisional decision, I think this is a fair resolution to this part of Mr and Mrs P’s complaint.

compensation

Mr and Mrs P accepted my provisional findings which included those related to the amount of compensation they’d been offered by NHBC. As there’s no dispute around this issue I won’t comment any further on it.

my final decision

My final decision is that I uphold this complaint. I require National House-Building Council to do the following:

- Arrange for Mr and Mrs P’s local Building Control to assess whether the window and door installation is compliant with the necessary regulations. If it isn’t it should carry out any remedial work required to ensure compliance;
- Repair, replace, or (by agreement) cash settle the tiling trim;
- Issue Mr and Mrs P with a correct electrical test certificate;
- Pay Mr and Mrs P a cash sum to replace all four sets of door handles on the French doors;
- Pay Mr and Mrs P £1,000 to replace their shower screen;
- Pay Mr and Mrs P the compensation it offered them of £1,500 for the distress and inconvenience they were caused by the poor handling of their claim.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs P to accept or reject my decision before 3 May 2019.

Claire Woollerson
ombudsman