

complaint

Mr and Mrs F complain about remedial works carried out on their house under their building warranty with National House-Building Council (NHBC).

background

Mr and Mrs F made a previous complaint to us about issues that had arisen after work carried out on their house by NHBC in 2009. The outcome – in April 2013 - was that an independent inspection should be carried out to determine whether further remedial work was necessary. If so, NHBC would then decide whether it was covered under the warranty.

After the independent inspection, further work *was* carried out under the warranty. Mr and Mrs F's current complaint is about the quality of that work, the way it was carried out and delays in its completion.

Mr and Mrs F made a number of complaints to NHBC after April 2013. They weren't satisfied with NHBC's responses and complained to us again in May 2017.

Our investigator looked into it and thought NHBC should pay Mr and Mrs F £250 in compensation for their distress and inconvenience caused by delays in the work being completed.

Mr and Mrs F didn't agree and have asked for a final decision from an ombudsman.

my findings

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

First of all, I'd like to say how sorry I am to hear about the problems Mr and Mrs F have had with their house for many years now. I know Mr and Mrs F both have health problems and it must have been very difficult for them to deal with the situation they've found themselves in.

There are a number of issues raised by Mr and Mrs F in their complaint and it might be useful to set these out before I explain my thinking on them. Mr F very helpfully wrote to us in October 2017 to tell us he thought the remaining issues were:

- the contractor chosen by NHBC to carry out the remedial work;
- NHBC's failure to replace the flooring in his loft;
- snagging work still not completed;
- NHBC's failure to pay an agreed amount to Mr and Mrs F for damage caused to their floor by the contractor;
- NHBC not accepting that the contractors had damaged an intruder alarm at the house – and refusing to replace it;
- NHBC not agreeing to replace wiring in the house which Mr and Mrs F thought had been damaged during the remedial work;
- NHBC not paying for certain expenses Mr and Mrs F had incurred – specifically car mileage costs as they travelled to and from temporary accommodation;
- compensation for delays in the remedial works and snagging which meant Mr and Mrs F had been inconvenienced for longer than necessary;

- compensation for what Mr F referred to as “13 years of stress and upheaval” since the issues with the house first began.

Some of these issues have since been resolved to Mr and Mrs F’s satisfaction, but I’ll deal with them in turn below. I’ve taken into account the fact that the warranty makes NHBC responsible for any major damage caused by defects in the structure of the property. And of course, they would be responsible for putting right any damage caused by their contractors whilst carrying out the remedial work.

NHBC’s choice of contractor

The outcome in 2013 of Mr and Mrs F’s previous complaint to us was that they would select a list of three local firms who might carry out the inspection of the property. From this list, NHBC would select a contractor to carry out the inspection. Once their report was received, NHBC would determine whether any recommended work was covered by the warranty.

A local company (I’ll call them company A), selected in line with our specification, carried out the inspection. And as a result of that, NHBC accepted that they should cover the necessary remedial work.

Company A made a proposal for that work, but NHBC weren’t happy with it and asked another company (company B) to make a proposal. Company B were then contracted to do the work.

Mr and Mrs F would have preferred company A to do the work. They think NHBC contracting company B contravenes the agreement which was the outcome of our consideration of their previous complaint.

I disagree with Mr and Mrs F. The previous complaint’s outcome was about how the company to carry out the independent inspection was selected – and our requirements were followed by NHBC. That outcome didn’t specify how a contractor should be selected to carry out any works recommended as a result of the inspection.

NHBC say they selected company B because their proposal had a greater chance of success. There’s no evidence to suggest this isn’t the case. And NHBC’s obligation under the warranty is to ensure that effective and lasting repairs are carried out. There’s no evidence to suggest the work carried out by company B doesn’t meet that requirement.

Mr and Mrs F also say that they never agreed for company B to carry out the work. NHBC say they agreed at a site meeting in August 2015, although there isn’t a written record of what was agreed at that meeting. I’ve not seen any signed document to show Mr and Mrs F agreed to the work being carried out. I’m also aware that Mr F wrote to NHBC in September 2015 to express some concerns about company B’s proposal for the work.

Although it’s not ideal that there’s no clear record of what was agreed, I also have to take into account that there’s also no record of Mr and Mrs F objecting to company B carrying out the work on their home. On balance, I think it’s unlikely that if Mr and Mrs F had fundamental objections to company B, they’d have moved out of their property to allow the work to take place.

And again, I come back to NHBC’s obligation under the policy – to carry out effective and lasting remedial work to rectify the problems with Mr and Mrs F’s house. There is no

evidence to suggest company B haven't done that, so I can't see what loss Mr and Mrs F have suffered as a result of NHBC appointing company B to implement their proposal.

the flooring in Mr and Mrs F's loft

NHBC told Mr and Mrs F that current building regulations required insulation to be installed at such a depth that the previous loft flooring couldn't be replaced. Mr and Mrs F suggested a means to work around this by raising the height of the flooring. NHBC then agreed a cash settlement to pay for the necessary work to be carried out by contractors appointed by Mr and Mrs F.

I understand Mr and Mrs F have raised a new complaint with us about whether any new problems arising as a result of that work should be covered under the NHBC warranty. So, I won't deal with that issue in this decision. For the purposes of my current decision, suffice to say that the loft flooring has been installed in line with Mr and Mrs F's wishes – and NHBC have covered the cost of this under the warranty.

snagging work

I understand this has now been completed. Mr and Mrs F have expressed their dissatisfaction about the time this has taken – and the fact that so much snagging was necessary. But I'll deal with that below when I come to the question of compensation.

Payment for the damage to the floor caused by the contractors

I understand this payment has now been made. So, it's no longer an issue.

the intruder alarm

Mr and Mrs F say their alarm was working when they vacated the property to allow the work to be carried out. And it wasn't working when they returned. So the contractors must have damaged it.

Mr F has also pointed out that the contractors were advised to carry out documented handovers of the property when Mr and Mrs F moved out and when they moved back in. They didn't, but if they had done so, there would have been a record that the alarm was fully functional when Mr and Mrs F moved out.

I'm happy to take Mr F's word that the alarm was fine when he and Mrs F moved out. I'm also willing to agree that it would have been advisable to have documented handovers of the property.

However, I don't think that means NHBC have to accept that their contractors caused the damage. Indeed, NHBC have provided evidence that the property suffered from an infestation of rats at the relevant time.

There's no evidence to suggest the contractors damaged the alarm, so I'm satisfied it's more likely – as NHBC suggest – that the damage was caused by the rats. Given what Mr F tells us about the state of the alarm when he left the property, this is likely to have occurred after that and before he and Mrs F moved back in.

the wiring

I'm afraid the same goes for the electrical wiring. There's no reason to suspect any damage was caused by the contractors. On balance, any damage is more likely to have been the result of the rat infestation.

mileage expenses

I understand NHBC have now paid Mr and Mrs F just over £700 for mileage and for new locks. And that Mr and Mrs F were happy to accept the offer. So this is no longer an issue.

Compensation

Mr and Mrs F think they should be compensated for delays in the remedial works - and subsequent snagging – carried out after 2014. They also say they want proper and adequate compensation for thirteen years of stress and upheaval.

As I've said, I think Mr and Mrs F have suffered considerable stress and inconvenience as a result of the problems with their house. No-one would want to go through what they've been through since 2006.

My decision has to be fair to both parties. And I can't ask NHBC to compensate Mr and Mrs F for things for which they have no responsibility. Nor can I ask them to compensate Mr and Mrs F twice for the same thing over the same period.

So, it's important first of all to set out what I think Mr and Mrs F should now be compensated for – and over what period of time.

When Mr and Mrs F accepted the outcome of their previous complaint to us – in April 2013 – they took that as full and final settlement of their complaint against NHBC. So, I can't now think about compensation for anything before that time. I can't say NHBC should compensate Mr and Mrs F for, as he puts it, "thirteen years of stress and upheaval".

Mr and Mrs F also made a complaint to NHBC in 2014. They got a final response in May 2014 – which gave them rights of referral to us if they were unhappy with NHBC's response. Mr and Mrs F didn't make a complaint to us at that time.

There was however further correspondence and discussion between Mr and Mrs F and NHBC. And in October 2015, Mr and Mrs F accepted £1500 from NHBC in compensation for the poor handling of their claim up to that point.

So, when it comes to further compensation, I'm looking at the period after October 2015. There are delays after that point which meant Mr and Mrs F suffered some stress and worry before the works were agreed and started – and some inconvenience because the works (and/or snagging) went on for longer than might have been the case.

NHBC have said the delays in starting the work were due to their having to find a new contractor after company A's plan proved unacceptable to them. I can understand that these things sometimes can't be resolved immediately. But finding a contractor is NHBC's responsibility – not Mr and Mrs F's. And I can see that company B's proposal was with NHBC in October 2015. It wasn't until May 2016 that a site meeting took place with Mr and Mrs F. So there's a six months plus delay there that certainly isn't Mr and Mrs F's fault.

I can also see Mr F's point that a shorter period of snagging might have been possible had the issues being 'snagged' not arisen in the first place.

Bearing in mind the period I'm considering now and the nature of the inconvenience to Mr and Mrs F – and taking into account the payments already made by NHBC to cover compensation for the earlier period, the locks and the mileage expenses – I think the £250 compensation suggested by our investigator is fair and reasonable.

my final decision

For the reasons set out above, I uphold Mr and Mrs F's complaint against National House-Building Council.

They should pay Mr and Mrs F £250 in compensation for their distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 9 December 2018.

Neil Marshall
ombudsman