

complaint

Miss D and Mr H are unhappy with NHBC's handling of a claim they made under their building warranty policy.

background

I issued a provisional decision on Miss D and Mr H's complaint in February 2020. I explained why I was upholding their complaint:

"Miss D and Mr H bought a new build property which was covered by an NHBC Buildmark policy. In 2016, Miss D and Mr H reported problems with both the interior and exterior of their property which the builder was initially responsible for under the builder's warranty section. But, in line with the NHBC guarantee section, NHBC took over responsibility for the claim from the builder when they failed to get the work done, despite all parties being satisfied they had been given a reasonable opportunity to do so.

Miss D and Mr H said the claims investigator and contractors instructed by NHBC were incompetent. They were given mixed and conflicting messages about what would be carried out under the warranty, and when the repairs would be carried out. They said both claims were taking too long to resolve.

NHBC arranged for two resolution reports to be completed. In September 2016 the one for the internal works was completed. NHBC accepted that remedial works needed to be completed for 11 of the 13 faults identified. It didn't recommend any works needed to be carried out in terms of the sink in the ensuite bathroom which appeared to be slightly uneven, or to the boiler flue which was at an angle. Neither issue was considered to be a defect as set out in the Technical requirements.

NHBC instructed contractors to carry out the works but Miss D and Mr H raised concerns, saying not all the repairs had been carried out. They were also concerned about the quality of the workmanship.

In terms of the external works, NHBC completed an updated resolution report in February 2017. This report accepted there were two defects with the exterior of the property. It said there was a defect with the kitchen bay window flashing and the lining of the window, and there was internal and external cracking around the kitchen window which also constituted a defect. NHBC went on to offer a cash settlement in October 2017. Miss D and Mr H didn't accept this, so NHBC issued an updated scope of works in December 2017.

Unhappy with NHBC's overall handling of the claim, Miss D and Mr H raised a complaint. NHBC issued its final response in December 2017. It acknowledged there had been delay in taking over the obligations of the builder and that it was responsible for some of the delays, acknowledging the service hadn't always been good enough. It offered £500 in respect of this. However, NHBC also said some of the delays were down to their contractors being unable to access the property, which Miss D and Mr H disagreed with.

Miss D and Mr H referred their complaint to this service, where one of our investigators looked into what happened. He concluded the compensation NHBC offered Miss D and Mr H was fair and reasonable in the circumstances. And he agreed a cash settlement looked to be the most appropriate way to resolve the complaint, given how unhappy Miss D and Mr H were with NHBC's contractors.

Our investigator said all issues set out in the December 2017 scope of works should be the basis for a cash settlement. However, he didn't agree the rendering above the bay window

should be considered because it wasn't validated in the initial resolution report. He considered that the tiling in the ensuite bathroom should be inspected again and factored into the cash settlement if necessary. He considered Miss D and Mr H's view the damage could have been caused by earlier poor workmanship was something that needed consideration.

Miss D and Mr H also sent us photographs of some damage to the skirting board in their living room, and some water damage to their ceilings. They felt these issues should also be considered as part of the cash settlement. The investigator recommended the skirting board also be inspected.

NHBC accepted the investigators findings, recommending it inspect any outstanding damage that should be included in the scope of works. However, Miss D and Mr H thought the compensation awarded didn't reflect the time and effort they'd spent trying to get these issues put right.

As time moved on, Miss D and Mr H remained concerned about the state of their home. NHBC agreed to send another claims inspector out to carry out a further inspection to clarify what works set out in the resolution reports were still outstanding.

This happened in late 2019, and the outcome of the inspection in relation to the external cracking was different to the first inspection. It was now felt the pattern of cracking to the rendered blockwork might be consistent with ground foundation movement. The recommendation was that the property ought to be monitored for 12 months. Miss D and Mr H were unhappy with this, as they felt this ought to have been identified and instructed when the first inspection took place.

In terms of the internal works, NHBC said some of the works outlined in the first resolution report had been carried out to an acceptable standard, as set out in the Technical requirements. It accepted some of these works hadn't been carried out to an acceptable standard. However, it also said some ought not to have been included in the resolution report in the first instance. NHBC still considered, given the strength of Miss D and Mr H's feelings about the contractors appointed in the past, a cash settlement would be the best way forward. It calculated the cost it would have to pay for the outstanding works and offered Miss D and Mr H £1,275.40.

Miss D and Mr H weren't satisfied the offer went far enough for them to put things right. In particular, Miss D says she was concerned because the new inspection didn't reference the water ingress from her ensuite which she says has got worse as a result of the time that has passed.

As matters haven't been resolved, they've been passed 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. The background to this complaint is extensive, and I've considered everything both sides have said and provided, however my decision focuses on what I consider to be the most relevant issues.

Initially, I think it might be helpful for me to clarify that NHBC produces a set of technical requirements which builders should follow when building a property. They're not necessarily the same as building regulations. The Buildmark Policy provides cover where it can be shown the quality of the work amounts to a breach of NHBC's own technical requirements. And, from what I've seen, NHBC has explained why some of the issues Miss D and Mr H

consider to be defects don't meet the definition under the technical requirements.

Like our investigator, I can only look at NHBC's actions from February 2017, when it took over responsibility for the claim. And it's clear this matter has been unresolved for a long period of time and Miss D and Mr H fundamentally want their home to be at the standard they'd expect.

the external claim

The cracking around the bay window didn't form part of the initial resolution report, as the inspector didn't agree that the cracking amounted to a breach of the technical requirements.

However, when a further inspection was carried out in late 2019, the response was different. The recommendation was for a trial pit investigation, and that the property be monitored for 12 months to determine if the cracking is as a result of ground foundation movement.

Miss D and Mr H feel this should have been identified when the first inspection took place. If this had happened, they say they'd have a more definitive answer about the cause of the external cracking by now. They're concerned about the potential impact subsidence would have on their property if they wanted to sell it.

However, I haven't been presented with any evidence to show the outcome of the first resolution report wasn't of an adequate standard. Based on what I've seen, I'm not persuaded it's enough to assume that because a different approach has been suggested more recently that the findings in the initial reports were inadequate.

Where there's been the possibility of ground foundation movement, this service would usually say it's a reasonable response from a business to adopt a period of monitoring of at least 12 months. So, while I can understand why Miss D and Mr H would prefer for a more conclusive course of action to be taken at this time, NHBC has responded as I'd expect here. And I'm not going to recommend it takes any further action beyond a period of monitoring. At the end of the period of monitoring NHBC should let Miss D and Mr H know of the outcome, and then they will be able to move on from there.

Miss D and Mr H have said they're concerned about a potential reduction in the value of their home if subsidence is found and the impact this might have on their home insurance premium. While I understand their concerns, I don't consider it's appropriate for me to make an award for something that might not or hasn't yet happened.

If Miss D and Mr H continue to have these concerns at the end of the period of monitoring, they'll need to consider what their next steps should be – and this might include making a new complaint. But I can't consider a complaint about potential loss in sale value or potential increase in home insurance premiums at this time, as these issues didn't form part of their original complaint to NHBC.

the internal claim

The updated resolution report made the finding that of the 13 defects originally reported, six still needed to be actioned. Miss D and Mr H have been in touch with this service to tell us they were especially concerned with the tiling in their ensuite bathroom. This appears to be the only room where there's any dispute about the outstanding works that need to be resolved, so I've focused on this point.

I've looked back at the original resolution report and the recommendations made for the ensuite bathroom. It made two findings for work that needed to be carried out. Firstly, it said

there was an uneven surface line of a tile in the shower cubicle. Secondly it said there was a poor grouted finish at skirting board line on sink wall line. The report recommended resetting "the uneven tile in the shower cubicle, apply grout to improve surface line level and smoothness, rub down and redecorate skirting board on sink unit wall line to give overall cosmetic repairs."

The updated resolution report made a finding the tiling in the shower cubicle didn't require any remedial work to be carried out. It said the work originally recommended to reset the tile in order to improve the appearance of the line would be a disproportionate action. Based on the updated resolution report, the problem with the tile doesn't appear to meet the definition of a defect, therefore I don't think it needs to be included in the cash settlement. The updated resolution report identified that repairs still needed to be carried out in respect of the poor grouting.

Miss D has expressed concern there has been damage to a tile in the ensuite, and this has caused water to leak into her hallway. Miss D and Mr H would like action taken to correct the damage caused by this loose tile, and to be reimbursed for the costs she's incurred by instructing her own contractor to carry out repairs.

The updated resolution report made a finding that one of the tiles on an adjacent wall was loose and this was where there has been water seepage down into the landing below.

I can't see this tile was identified as a defect in the original resolution report. Miss D and Mr H feel any cash settlement for remedial works should include what they say is an obvious fault with the adjacent tile. However, as it wasn't mentioned in the original resolution report, I can't say that NHBC has acted wrongly in choosing not to include this in the recently revised scope of works, or subsequent cash settlement.

NHBC has provided me with an updated resolution report and scope of works devised from this. They have put a cash settlement to Miss D and Mr H based on what it would cost them to carry out the works. In considering whether this amount is fair, I've referred back to the Buildmark policy, which says:

"How we calculate what we have to pay

If we have to pay for something, we will calculate the cost based on the amount it will cost us to have the work done, but

1 we will not pay more than a reasonable amount..."

I've considered whether it's fair that NHBC makes a cash settlement in line with what it would cost it to put things right. And, on reflection, I think this is a fair approach. I say this because not only is it in line with what it's required to do under the policy, I'm also mindful Miss D and Mr H have made it clear they were not prepared to allow any NHBC contractors back in their home and wanted a cash settlement. I don't think it would be fair to direct NHBC to cash settle based on a quote from Miss D and Mr H's contractors when it has no control over the costs that might make up any other quote, and it goes beyond what's required of it under the policy.

the works Miss D and Mr H have already carried out

Miss D and Mr H have told us they've had some remedial works carried out to rectify the water damage caused to the hallway walls and ceilings, at a cost of £1,000. They've asked this amount is refunded to them. Although the first resolution report refers to a tile out of alignment, the updated report makes the finding that tile wasn't a defect. So, I don't think I can safely say, based on the information I currently have, that this was the tile responsible for the water leak.

And on that basis, I can't say the works Miss D and Mr H carried out were necessary as a result of a defect as identified in the first resolution report. It follows I'm not intending to recommend NHBC reimburse any costs Miss D and Mr H have incurred as a result of having works done to their hallway.

I'm only considering the defects identified in the first resolution report. If they wished to do so, Miss D and Mr H can explore whether they want to make a new complaint about this tile and that they consider it to be a defect.

trouble and upset

I appreciate this matter has been ongoing for a long time, and Miss D and Mr H feel strongly they've been badly treated by NHBC. I can see there have been some delays during the course of their claims. And, I think with claims of this nature, a degree of upset and inconvenience is often inevitable. However, NHBC has already acknowledged it has caused delays and the level of service offered hasn't been at the standard Miss D and Mr H might have expected and made an offer of £500 in respect of this in its final response letter of December 2017.

I think it's important to clarify that I'm only able to consider the service Miss D and Mr H received up to the final response letter. And even though Miss D and Mr H feel the service they've continued to experience has fallen below what they expected, I this isn't something I can consider. If they wanted to consider this separately, they'd need to make a new complaint to NHBC about the service they've received.

I accept there's been upset and frustration by the failure to complete some of the works some works identified in the initial resolution report. But I don't think either side is solely responsible for the delay.

However, I think there would have been some additional upset upon receiving the updated resolution report and seeing something that had been identified as a defect in the initial report was no longer classed as a defect. I think Miss D and Mr H should have been entitled to trust that their initial resolution report would be consistent in identifying the outstanding defects. And on this basis, I'm inclined to increase the award".

I said in order to resolve the complaint, I intended to direct NHBC to make a cash settlement of £1,275.40 for the outstanding remedial works a trouble and upset payment of £600, less any payments already made.

NHBC said they thought my final decision was inconsistent. I'd said both I was only giving consideration of events up to the final response but was minded to increase the trouble an upset payment as a result of the findings of the resolution report from the end of 2019.

Miss D and Mr H said they were disappointed by my provisional decision, and made the following points:

- they'd made their concerns clear on a number of occasions about the possibility of ground movement, but these were not investigated;
- they tried to make a complaint to NHBC about the potential of subsidence occurring, but they refused to send someone out to monitor the property;
- three separate contractors have looked at the tiling in the ensuite and said it would all need to be removed to carry out the necessary repairs;

- they've spent £1,000 decorating their home, which they wouldn't have spent if the first resolution report had identified the possibility movement in their home.

my findings

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

I've carefully considered everything both sides have said in response to my provisional decision. However, having done so, I've not been persuaded to reach a different conclusion and I'll explain why.

In respect of the claim relating to the exterior of the property, Ms D and Mr H remain of the opinion the original report should have identified the cracking was a defect. I've again considered the information contained in the resolution report against the technical requirements that apply to their home.

The 2014 technical standards relating to render (Chapter 6.1 (d) – cracking and crazing) state render should be free from significant cracking and crazing. While this guidance doesn't specifically define 'significant', I note the resolution report stated the cracking to the property was "*hairline in width*".

On balance, I remain of the view that had the cracking identified in January 2017 been considered significant, further action would have been taken at the time. As I've said, it's not enough to assume that because monitoring of the property was implemented following the 2019 report, this should have happened in 2017. However, in making the comment about the cracking being "*hairline in width*", I'm satisfied the claims inspector would have identified if the cracking was significant enough to be classed as a defect at that time.

I'll turn now to Miss D and Mr H's points about the tiling in the ensuite. While I understand their view that they've been told by three separate contractors the tiling isn't of an acceptable standard, I'm inclined to give more weight to the findings of the claims inspector. I say this because they're the expert in understanding the technical requirements and NHBC's obligations under the warranty.

The finding of the most recent resolution report stated in the ensuite shower cubicle, the alignment of the tile referred to in the original report was not sufficient to be classified as a defect. The report also stated that a tile on the adjacent wall was loose and that was the cause of the water seepage. However, as this tile wasn't mentioned in the original resolution report, I'm unable to direct NHBC to factor the remedial costs for putting this right into its cash settlement. It remains for Miss D and Mr H to decide if they want to pursue this with NHBC as a separate matter, if they haven't already done so.

I can only consider the complaint that was made and addressed in the final response letter. And that means in this instance, the issue I need to decide is whether the cash settlement offered is a fair offer. And, as both sides agreed a second resolution report needed to be carried out to accurately calculate the cost of the outstanding works, I remain of the view this was an appropriate course of action to take.

The outcome of that second report at the end of 2019 was one element of the works Miss D and Mr H thought would be included in the cash settlement wasn't correctly classed as a

defect under policy. However, I remain of the view some compensation is due for the fact the first report identified a defect which Miss D and Mr H were later then told was not the case.

As I said in my provisional decision, I consider this caused additional upset. Miss D and Mr H should have been entitled to trust their initial resolution report would identify the outstanding defects that needed putting right. And the claims inspector has identified their expectations were wrongly raised in respect of one 'defect' from the initial resolution report, and I think some additional compensation should be paid in respect of this.

I think it's helpful for me to clarify I haven't considered any of the wider issues that Miss D and Mr H have mentioned to this service during the course of our investigation. These are issues that have occurred since the final response. The increase in compensation for the trouble and upset experienced is in recognition of the upset and frustration experienced as a result of the lack of consistency between the two internal resolution reports.

my final decision

My final decision is up I uphold Miss D and Mr H's complaint and National House-Building Council should:

- Pay £1,275.40 as a cash settlement for the outstanding works that need to be completed in Miss D and Mr H's home; and
- Pay a total of £600 for the trouble and upset experienced, less anything already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Mr H to accept or reject my decision before 27 March 2020.

Emma Hawkins
ombudsman