

## **complaint**

Mr A complains about National House-Building Council's handling of a claim under his buildings warranty.

## **background**

Mr A has a Buildmark buildings warranty with NHBC to cover his home, which he bought in February 2016.

Mr A complained about a number of issues with the standard of the building work on his property. The builder wasn't able to resolve all of these, so Mr A asked NHBC to intervene.

In line with the terms of the warranty, NHBC inspected the property and produced a resolution report in early 2017.

This said that some of the issues Mr A had raised didn't indicate a failure by the builder to meet the relevant standards. Others did – and NHBC asked the builder to undertake further work to put things right.

Mr A was unhappy with the outcome of this process and made a complaint to NHBC. They didn't uphold his complaint, so Mr A brought it to us.

He had two main concerns.

First, there is an enclosed space in his house which had been described on the original plans (and in the marketing material) as a laundry room. Mr A pointed out this had no ventilation and so was completely unsuited to use as a laundry room, despite the fact it was plumbed in to take a washing machine.

NHBC's report said the space was in fact a cupboard, had been built as such and met the required standards.

Second, Mr A said his French doors didn't fit the space that had been left for them in the wall of the building. He said the builders had "botched" a solution to this by filling in the gaps on either side of the doors with wooden battens which weren't suited to the purpose.

NHBC's report concluded that this was a problem. They asked the builder to return to the property and replace the battens with more durable and suitable wood. Mr A was unhappy with this and asked the builders to brick in the gaps.

Our investigator looked into Mr A's complaint and didn't think NHBC had done anything wrong.

Mr A disagreed and 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, the situation has moved on since Mr A complained to NHBC. As I understand it, the builder agreed to Mr A's request to replace the wooden surrounds to Mr A's French doors with brick - and carried out the work.

However, Mr A says the standard of that work is still unsatisfactory. Amongst other things, he says the brickwork has been built directly off the outside paving, has no damp-proof course and has blocked removal of the drainage grill at the foot of the doors.

It's also important to understand the nature of the warranty Mr A has because this has a bearing on what we can and can't consider when we look at his complaint.

The Dispute Resolution ("DISP") rules in the Financial Conduct Authority (FCA) handbook set out what complaints we have the power to consider. DISP 2.3.1 says we can look into a complaint if it's about a "regulated activity".

Providing insurance is a regulated activity. But not all parts of the NHBC warranty can be classed as insurance.

The warranty contract makes it clear that in the first two years of cover the builder is responsible for dealing with any problems with the property. At this stage NHBC gets involved only if things can't be resolved between the customer and the builder.

Importantly, what NHBC offer at this stage is a mediation service only. It is not a regulated insurance activity. The warranty states that NHBC's responsibilities as an insurer don't begin until year three.

So, if NHBC provides a resolution service within the first two years – as it did in Mr A's case – we usually (see below for the exception to this rule) have no power to intervene. And if, as part of the resolution service, NHBC inspect the property and conclude that the builder complied with their technical requirements, we can't question or comment on that decision.

In terms of Mr A's complaint, NHBC carried out an inspection as part of the resolution service. They concluded that the issues Mr A identified with the cupboard / laundry room didn't indicate a failure by the builder to meet the relevant requirements. And it's not for us to comment on that. It's not something we can look into.

The situation is different in terms of the French doors. We *can* look into complaints concerning the resolution service if NHBC's report says the builder *did* fail to comply with their requirements *and* the builder then fails to carry out the rectification works requested by NHBC.

At this point, according to the warranty contract, NHBC take over responsibility for the rectifications. And so, importantly in terms of our service's involvement, the insurance element of the warranty kicks in.

It's entirely understandable that NHBC felt their obligations under the warranty had been met when they asked the builder to deal with the problem with Mr A's French doors.

However, it's now become apparent that the builder hasn't rectified the problem at all – at least according to Mr A, who says the work carried out on the doors is unsatisfactory.

If Mr A is right, then the terms of the warranty suggest NHBC should take over the rectification works. And the insurance part of the contract kicks in.

So, I'm satisfied NHBC should now arrange to inspect Mr A's French doors to determine what further rectification work is necessary. And I expect NHBC to take responsibility for getting any such work carried out.

I've spoken to NHBC about this and they're happy to contact Mr A to make arrangements to carry out the inspection at his convenience.

I suspect Mr A will remain unhappy that we're not able to look into his complaint about the laundry room / cupboard. I understand his frustration, particularly since he says his attempts to raise complaints with other bodies about this issue have come to a dead end.

However, I hope we've managed to explain our specific role to Mr A. And I hope he at least understands why we can't look into this aspect of his complaint.

#### **my final decision**

For the reasons set out above, I'm upholding Mr A's complaint in part.

National House-Building Council must make arrangements with Mr A to inspect his French doors to determine what further rectification works are required.

But I'm satisfied we can't look into Mr A's complaint about the laundry room / cupboard in his home.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 May 2019.

Neil Marshall  
**ombudsman**