

complaint

Mr and Mrs W are unhappy with how National House-Building Council (NHBC) has handled their claim under their buildmark warranty.

Mr W brings this complaint on behalf of himself and his wife.

background

Mr and Mrs W purchased a new build property in 2006 for which they have a buildings warranty. During the first two years of owning the property, Mr W reported issues to the builder about the property's conservatory roof. The builder carried out repairs, but Mr W has said the problem remains.

Mr W later raised issues with NHBC regarding the front and rear first floor dormer windows. After inspecting Mr W's property in June 2016, NHBC initially said the windows weren't covered under the policy. It said while there was physical damage to the windows, the defects were not within an area of the property for which NHBC provides cover. It said there was no evidence of physical damage in respect of the conservatory. So, it declined both aspects of the claim.

In January 2017 Mr W arranged for an independent surveyor to inspect his property. The surveyor concluded:

“all the dormer windows are defective and there is sufficient evidence of potential structural failure of the dormers, supporting structure/floors to require further investigation [...]”

The surveyor also said the geometry of the conservatory's roof construction was defective and that as it had been an ongoing issue since 2008, both the original builder and NHBC (if the builder didn't respond) would be responsible for the rectification works.

In its resolution report NHBC said there was evidence to suggest the conservatory roof wasn't adequately supported as the framework was coming away and the ridge had dropped from level. So, it instructed the builder to carry out investigative works to ensure the conservatory complied with the relevant technical requirements when being built. But the builder didn't respond and so NHBC took over the liabilities of the original builder. NHBC said it would inspect the conservatory and proposed next steps, but Mr W asked that further action was paused while this service considered his complaint.

With regards to the windows, NHBC completed an intrusive inspection to ascertain the cause of the damage. Following this it said the front dormer windows had been damaged as a result of a defect in the floor joists. And as the defect was in one of the parts of the property listed under section 3 of the buildmark warranty, NHBC agreed to cover the repair works using one of its contractors.

But NHBC didn't agree the rear dormer windows were defective. It said the damage was attributable to the windows and frames having been incorrectly installed as there were insufficient suitable fixings in the upper half of the frame where it'd been secured to the surrounding timber structure. So, it didn't agree the damage had been caused by a defect in a specified part of the property under the buildmark warranty. As a result, it declined this aspect of the claim.

Mr W remained dissatisfied and so brought his complaint to this service. In summary he's unhappy because:

- NHBC has refused to cover the repair works to the rear dormer windows.
- Although NHBC has agreed to repair the front dormer windows, the original windows are no longer available and so he's said the remaining windows won't match.
- He's lost faith in NHBC and its contractors and so he wants a cash settlement for the conservatory.
- His home has been left in a poor state following NHBC's intrusive inspection of his property.
- He's experienced ongoing stress and disruption to his and his family's life since first raising the issues with NHBC. And the problems with his property have caused loss of enjoyment for a number of years.
- He's had to pay for an independent surveyor himself. Had he not done so, NHBC wouldn't have reconsidered his claim. So, he wants to be reimbursed the surveyor's fees.

One of our investigators considered the complaint. She was satisfied NHBC didn't need to do anything further in respect of the front dormer windows as it had agreed to cover the repairs. She explained she couldn't ask NHBC to cover the rear dormer windows because the damage was due to poor installation and not as a result of a defect in a specified part of the property.

She advised that Mr W would need to make a separate complaint regarding his concerns about the windows in his house not matching and the condition his home had been left in following NHBC's intrusive inspection.

Both parties remained unhappy and so asked for an ombudsman to decide this complaint.

In my provisional decision I said:

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm minded to partially uphold this complaint and I'll explain why.

Both parties have provided a lot of information in relation to this complaint. I want to reassure them that I've looked at everything they've submitted but I will only comment on those things I consider central to the outcome I've reached.

The buildmark warranty protects an owner if the builder becomes insolvent or fails to meet its obligations during the first two years after completion. And it provides cover against damage caused by defects in specified parts of the property during the three to ten year period after purchasing the property.

Under the policy, 'damage' is defined as "physical damage to the home caused by a defect."

'Defect' is defined as:

"A breach of any mandatory NHBC requirement by the Builder or anyone employed by him or acting for him."

Here, the relevant technical requirements are those which were mandatory and in force at the time the foundations of Mr W's property were laid in 2005.

front dormer windows

NHBC has agreed to cover the front dormer windows because the damage to the windows and wall finishes was caused by a defect in the floor joists which is listed as a specified part under section 3 of the buildmark policy. So I don't need to consider whether NHBC should cover the repairs.

Mr W has raised concerns that replacing the front dormer windows will mean the remaining windows won't match. He's said the supplier of the original windows no longer makes the style installed in his property.

From looking at pictures of Mr W's current windows, I note there isn't anything remarkable about them – the windows are not bespoke or unusual in style and are white uPVC windows. Because of this, I'm satisfied a suitable match could be sourced to provide a consistent appearance across Mr W's property. As such, I don't agree a reasonable resolution would be for NHBC to replace all the windows in his property.

rear dormer windows

I need to consider whether NHBC has acted fairly by declining Mr W's claim for the rear dormer windows. The important issues to consider are;

- 1. Was there physical damage? and*
- 2. Was it was caused by a defect in a specified part of the property?*

Both parties agree there is damage to the rear windows. Mr W's surveyor attributes this to the structural opening distorting and poor installation of the windows. NHBC has said the damage to the windows is consistent with defective and incorrectly installed windows and frames. NHBC said there were insufficient fixings in the upper half of the frame where it's secured to the surrounding timber structure.

There is a technical requirement that the design and materials used need to provide satisfactory performance, and that the structural design meets relevant British Standards and Codes of Practice.

But, the reason NHBC has declined Mr W's claim in respect of the rear windows is because the damage is not caused by a defect in a specified part of the property. Under the buildmark warranty, NHBC will only be responsible for remedying damage in between years 3 to 10 if the defect is in a specified part of the building.

Having looked at the list of specified parts in the buildmark warranty, I agree that windows (whether it be the frame or structural opening of the window) are not listed as a specified part. Although it will be disappointing to Mr W, I can't ask NHBC to cover the repairs to the rear dormer windows as it's not responsible for this under the buildmark policy.

internal repairs

Following NHBC's intrusive inspection, it completed repair work to the areas it'd had to inspect in order to determine the cause of the damage to the front dormer windows.

Mr W has provided photographs of the repair works which show parts of his internal décor having been, in my opinion, very roughly repaired. I don't think his home has been left in a reasonable state of repair and so I think it's only fair that NHBC make good the rectification work. Mr W's property should be put back into the condition it was prior to the intrusive inspection – which may include painting affected areas. I know Mr W would prefer a cash settlement and to find his own tradesperson to do this work but I'm satisfied NHBC should be given the opportunity to do so. If, following this, Mr W isn't happy with the quality of the work, he can make a further complaint about this to NHBC.

conservatory

Mr W reported his concerns about the conservatory roof during the first two years to the original builder and attempts were made by the builder to repair it. But Mr W remained unhappy as the damage remained. As far as I'm aware, no further remedial work has been done to the conservatory by either party.

In its resolution report NHBC directed the builder to conduct an investigation to establish whether the conservatory roof had been installed in accordance with the manufacturer's recommendations, applicable British Standards and recognised best practice. And that the findings should be shared with Mr W and NHBC. It said that following this, the builder should undertake any such works that may be required to ensure the NHBC Technical Requirements are met.

Mr W says he's lost faith in NHBC's contractors to properly repair the conservatory and so wants a cash settlement instead. His preference is to demolish the existing conservatory and replace it with a brick-built structure.

So, I need to consider what a reasonable course of action is. Because the original builder didn't respond to the findings of the resolution report, NHBC effectively steps into its shoes. So, although I appreciate Mr W's concerns, NHBC do need to be given the option to inspect the conservatory roof, report its findings and agree the scope of works with Mr W to remedy any damage – as this is what was asked of the original builder. And I'm satisfied this is the appropriate course of action.

Surveyor's fees

Mr W has asked to be reimbursed for the fees he incurred in having an independent surveyor's report conducted. From what I've seen, it seems Mr W's surveyor's report prompted NHBC to reconsider his claim which consequently led to it agreeing to

cover the front dormer windows. It had completed a report prior to this in 2016 but didn't find in Mr W's favour in respect of any aspect of his claim.

NHBC has said that if the claim was subsequently found to be valid it would recommend reimbursing Mr W his surveyor's costs. As NHBC has agreed to cover part of Mr W's claim, I'm currently minded to say it should pay the costs Mr W incurred in having an independent surveyor's report (subject to Mr W providing proof of payment).

Non-financial loss

This circumstances which led to this complaint have been going on for a number of years and I sympathise with Mr W for not having his home as he'd hoped it would be for such a lengthy period of time.

I agree NHBC hasn't handled things as well as it could, and I've seen that its actions led to Mr W having to chase it for updates which was frustrating and inconvenient for him. But NHBC has recognised that it caused Mr W inconvenience and avoidable delays by offering £1,400 compensation.

While I know Mr W has experienced various issues with his home over a number of years, I can only consider compensation in respect of NHBC from when it was aware there was a problem – which was in 2016. And I can't hold it responsible for the issues Mr W has experienced with third parties. I know Mr W doesn't feel £1,400 reflects the difficulties he's experienced but from what I've seen I think it's fair and so I'm not minded to ask NHBC to increase it.

I know my provisional findings will likely disappoint Mr W but I hope he understands why I'm currently minded to only uphold part of his complaint.

my provisional decision

My provisional decision is that I partially uphold this complaint. National House-Building Council must:

- Attend Mr W's property to inspect the damage to the conservatory roof; share its findings with Mr W; undertake any work that might be required to ensure the NHBC technical requirements are met.*
- Make good (which may include painting) the internal rectification work to Mr W's property following its intrusive inspection.*
- Reimburse Mr W the costs he incurred in having the independent surveyor's report completed plus 8% simple interest from the date Mr W paid the fee (subject to proof of costs).¹*
- Pay Mr W £1,400 compensation if it's not already done so. National House Building Council must pay the compensation within 28 days of the date on*

¹ HM Revenue & Customs requires National House-Building Council to take off tax from this interest. National House-Building Council must give Mr and Mrs W a certificate showing how much tax it's taken off if they ask for one.

which we tell it Mr W accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Both parties responded to my provisional decision. I've summarised their points below in respect of each aspect of Mr W's complaint.

front dormer windows

Mr W says he was willing to tentatively accept the scope of works originally drawn up by NHBC to repair the damage to the front dormer windows which was caused by a defect in the floor joists. Mr W says the work didn't commence because a contractor for the original house builder tried to negotiate an alternative specification which he wasn't prepared to agree to.

NHBC has said it's accepted this aspect of the claim and is prepared to carry out repairs in line with its scope of works. NHBC has said there is the possibility of it providing a cash settlement for the works if Mr W would prefer this. But the cash settlement would be in line with the policy criteria and would be based on the cost to NHBC if it were to complete the works. It added the cash settlement would be for the required works and not for the additional works Mr W is asking to be covered.

Mr W has said his windows are a unique design and as such they cannot be matched. He says this is supported by the window manufacturer. NHBC has said it's not required to replace items in order to match existing ones as this is specifically excluded under the policy.

rear dormer windows

Mr W says NHBC has incorrectly asserted there isn't a specific performance standard in respect of windows. He says windows need to comply with both British standards and regulations, and that this is set out in the technical requirements. Mr W says the windows are in breach of the NHBC standards because they aren't fully plumb and sealed, and so NHBC is bound to remedy them under the terms of the buildmark policy.

NHBC maintains the rear dormer windows aren't covered under the policy because the defect is not within a specified part of the building.

internal repairs

Mr W wants the internal repair works to be completed to all affected areas, including walls, ceilings, coving, skirtings, décor and anything else damaged as a result of the works.

I provided NHBC with photographs showing the internal repairs completed to Mr W's property following the intrusive inspection. In response, NHBC has agreed to take this into account when settling the claim. It said this would be in respect of damage caused internally as a result of the specific defects its agreed to cover.

conservatory

Mr W has said as the conservatory has been surveyed and repaired multiple times, he doesn't feel NHBC needs to attend his property again to inspect it. Instead, Mr W wants the monetary value of his conservatory paid to him so he can replace it with a brick structure.

NHBC has said it's prepared to carry out the requirements of its resolution report but that it will need to complete further investigations to determine the full extent of the situation. It will then carry out works to resolve the defect in line with its liabilities. It has said it may be able to provide a cash settlement, but this would be in line with the costs it'd incur if it were to complete the works - not the value of the conservatory.

surveyor's fees

Mr W has provided two invoices in respect of the independent surveyor he appointed. I shared these with NHBC for it to consider. In response, NHBC said it's only prepared to pay the invoice dated 6 January 2017 as this report led it to review its initial decision to repudiate the claim and instead accept the front dormer windows should be covered.

non-financial loss

Mr W has asked that I reconsider the amount of compensation awarded by NHBC. He's said that in addition to suffering from ongoing stress and loss of enjoyment of his home, he's also incurred increased heating bills because of the poorly insulated bedrooms. He's also said he's lost out on earnings as a result of having to deal with the claim for a disproportionate amount of time.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm partially upholding this complaint and I'll explain why.

front dormers

From what I've seen, both parties are willing to have the repairs to the front dormer windows completed in line with the original scope of works drawn up by NHBC. And I'm satisfied this is a reasonable resolution.

NHBC has said it might be able to provide a cash settlement in respect of this. If it does and Mr W chooses to accept this, he must keep in mind that the amount offered will be based on the costs NHBC would incur if it were to appoint a contractor to complete the works. It's likely that NHBC will be able to negotiate discounts with contractors and as such the amount of a cash settlement could be less than it would cost Mr W to arrange his own repairs. And the cash settlement would only be for the agreed scope of works.

I know Mr W remains concerned about his windows not matching – he's said the windows are unique and no longer made by the manufacturer. But as I said in my provisional decision, from looking at the photos of Mr W's windows, I'm satisfied alternative windows could be sourced from another manufacturer which would allow a consistent look to be achieved. So, I won't be asking NHBC to replace all the windows in his property.

rear dormer windows

In my provisional decision I accepted there is a technical requirement that both the design and materials for windows needs to provide satisfactory performance, and that the structural

design meets British Standards and Codes of Practice. But this isn't the reason why NHBC has declined this aspect of Mr W's claim.

Instead, it's been declined (and I agree fairly) because the defect isn't in a specified part of the building and it needs to be for the claim to be valid. Window frames are not listed as a specified part under the buildmark warranty and so I won't be asking NHBC to cover this aspect of Mr W's claim.

internal repairs

My position remains the same that NHBC should be given the opportunity to complete the internal rectification work that's attributable to the intrusive survey.

Any internal damage caused as a result of repairing the defect in connection with the front dormer windows should also be made good.

If Mr W has any concerns about the standard of this following completion, he'd need to raise this with NHBC as a separate complaint.

conservatory

While I understand Mr W's reluctance in having NHBC visit his property to assess the extent of the work required, NHBC won't be able to calculate a cash settlement or draw up a scope of works, if it doesn't have the opportunity to attend. So, my position remains the same that NHBC needs to attend Mr W's property to inspect the conservatory and following this it should its findings with Mr W so the scope of works can be agreed.

NHBC has said it might be able to offer a cash settlement which would allow Mr W to appoint his own contractor to complete the works. If NHBC chooses to offer a cash settlement and Mr W accepts it, it's important he is aware the cash settlement will likely be based on the costs NHBC would incur if it were to complete the work. And that the cash settlement would be for the works required to repair the conservatory, not its monetary value. I know Mr W wants the cash settlement to enable him to build a new brick-built structure but that's not something NHBC is required to do under the policy.

surveyor's fees

Mr W has provided two invoices in respect of the independent surveyor he appointed. The invoices are dated January 2017 and January 2019 respectively. NHBC has agreed to reimburse the costs Mr W incurred in having the initial survey carried out (invoice dated January 2017) as the findings from this survey led NHBC to review its position and accept responsibility for repairing the damage to the front dormer windows.

NHBC has said the second independent report didn't lead it to change its position, and so it doesn't think it should reimburse the cost of this.

It was ultimately Mr W's decision to instruct an independent surveyor and incur the costs associated with doing so. Under the policy, NHBC isn't obligated to pay these but in the interest of fairness, I explained that I think it should reimburse Mr W the cost of having the initial survey completed because this led to it changing its position. But I don't think NHBC needs to reimburse Mr W for the surveyor's subsequent costs as its position has remained the same since the surveyor's initial findings.

non-financial loss

I don't doubt this has been a stressful experience for Mr W, but as I explained in my provisional decision, I'm satisfied the total compensation (£1,400) offered by NHBC fairly reflects the inconvenience he and his family has experienced.

It's not unusual with claims such as Mr W's – where investigations and remedial works are required - for it to take time for things to progress. Likewise, needing to invest time in the claim is inevitable. NHBC has said it could have, at times, handled things better, and it's offered compensation to reflect this.

financial loss

Mr W has said he's incurred increased heating costs as a result of the ill-fitting windows. The onus is ultimately on Mr W to prove this rather than it being for NHBC to disprove it – but he hasn't provided evidence to substantiate this aspect of his claim. I don't have much detail about Mr W's family circumstances and whether there were changes to it which might have led to increased heating costs. I must also keep in mind that energy costs increase overtime, so it's not reasonable to exclusively attribute Mr W's higher heating bills to the problems he's experienced with his windows.

So, on balance, I can't conclusively say his heating costs have gone up, or by how much as a result of the issues he's experienced. As such, I won't be recommending that NHBC reimburses him in respect of this.

my final decision

My final decision is that I partially uphold this complaint. Unless NHBC offers a cash settlement which Mr W chooses to accept, then it will need to do the following. National House-Building Council must:

- Complete repairs to the front dormer windows in line with NHBC's original scope of works. And make good internal damage which directly stems from repair works carried out in respect of the defect affecting the front dormer windows.
- Attend Mr W's property to inspect the damage to the conservatory roof; share its findings with Mr W; undertake any work that might be required to ensure the NHBC technical requirements are met.
- Make good (which may include painting) the internal rectification work to Mr W's property following its intrusive inspection.
- Reimburse Mr W the cost he incurred in having the initial independent surveyor's report completed (invoice dated 6 January 2017) plus 8% simple interest from the date Mr W paid the fee to when payment is made (subject to proof of costs).²
- Pay Mr W £1,400 compensation if it's not already done so. National House-Building Council must pay the compensation within 28 days of the date on which we tell it

² HM Revenue & Customs requires National House-Building Council to take off tax from this interest. National House-Building Council must give Mr and Mrs W a certificate showing how much tax it's taken off if they ask for one.

Mr W accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 2 January 2020.

Nicola Beakhust
Ombudsman