

complaint

Ms B and Mr R have complained about National House-Building Council (NHBC). It provides their building warranty for the flat they own and has handled a number of claims for them since December 2014.

background

Ms B and Mr R bought a flat in 2014 and immediately noticed issues with it. They contacted the developer straight away and first began dealing with NHBC in respect of their concerns about the property in December 2014.

By 2018 some issues had progressed and/or been resolved but not without hassle. Some issues were still being resolved and regarding one issue neither the developer nor NHBC had agreed to do anything. Ms B and Mr R were also unhappy as they thought NHBC's involvement in the development process for the flat meant it was responsible for everything they'd been through in respect of the condition of the property since they'd bought it.

In 2018 NHBC issued three final responses to Ms B and Mr R in respect of complaints they'd made. NHBC accepted that it had caused delays but argued the claim had been complex. It said it would pay a total of £950 compensation to make up for the upset its avoidable delays had caused.

Ms B and Mr R complained to this service and their complaint came to me for consideration. I noted that some of the concerns Ms B and Mr R had likely related to things we couldn't consider against NHBC (because we can only consider complaints about regulated activities). I issued findings letting both parties know what I can and can't consider. In short, I said I can look at:

- The bathroom ceiling – it needed redecorating but then collapsed, Ms B and Mr R had it fixed and the builder reimbursed their costs. I'll be considering what happened between 13 July 2015 and 1 August 2015.
- Window repair – NHBC told the builder to complete a repair to ensure the window sashes and frames met when closed but the issue wasn't resolved within the deadline NHBC had given for the work to be done. I'll be considering what happened from 1 August 2015 until the window issue was resolved.
- Damp and Mould – the developer and NHBC both said this wasn't due to a defect. NHBC only took over liability from the builder in March 2016. I'll be considering what NHBC said and did on this issue from the point it took over liability in March 2016 and until it gave its final response on this issue on 21 June 2018.
- Noise/vibrations – Ms B and Mr R's home suffered from noise and vibrations from the flat above. This has been Ms B and Mr R's biggest concern and has caused them a lot of distress. I'll be considering what happened from March 2016 until 5 October 2018.

And I went on to issue some provisional findings on those issues. Overall I felt NHBC had failed Ms B and Mr R and said it should pay them a total of £2,000 compensation – but if NHBC had already paid the £950 previously offered, only £1,050 would now have to be paid. NHBC said it agreed with my findings, and it hadn't previously paid the £950, so it would pay £2,000. Ms B and Mr R were satisfied I'd considered everything but said they were unsure how I'd come to the figure of £2,000 being sufficient for four years of upset. They said recent repairs hadn't really worked and there was still damp and mould.

my findings

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

My provisional findings are set out below, I've added interjections where Ms B and Mr R have commented and included my responses on those issues:

"bathroom ceiling

There had been a history of water damage to the ceiling which the developer had tried to repair. In June 2015 NHBC completed a resolution report and one of the recommendations it made was for the developer to check for leaks and then redecorate. The developer was seriously ill and, when, only a couple of weeks after the report was made, the ceiling cracked, NHBC decided to take on sourcing and resolving the cause of the damage. NHBC decided to do this on 13 July 2015. Unfortunately overnight 15 – 16 July the ceiling collapsed. NHBC then said Ms B and Mr R had to deal with the developer to fix the ceiling or pay for its repair.

Having seen what occurred, and so quickly, between 13 and 16 July 2015, I don't think NHBC could reasonably have done more. It had a contractor attend at short notice on the morning of 15 July and was considering repair options (because the water damage didn't stem from a leaking pipe) when the collapse occurred. I'm not sure that doing any work on 15 July would have prevented that collapse – I think the damage had already been done by the point the ceiling had cracked, before NHBC took on liability and began carrying out a regulated activity. So I can't blame NHBC for the collapse itself, or the upset this caused Ms B and Mr R.

But I'm not persuaded it was reasonable for NHBC to push Ms B and Mr R back to the builder to get the damage repaired. It knew his health was extremely poor and that situation hadn't suddenly resolved itself in a matter of days. It should have liaised with the builder to get the work done, and when it became apparent that wasn't going to be possible, either appoint its own contractor to do it, or pay Ms B and Mr R. The developer did reimburse Ms B and Mr R and they had the ceiling fixed quite quickly – probably in around the same time period I'd have expected NHBC to have done the work. But NHBC's failure to keep dealing with this issue did cause them an amount of frustration and inconvenience. I'll take that into account in my compensation award.

windows

The resolution report from NHBC issued in June 2015 found gaps in between the sashes and frames, even when the windows were closed. NHBC said the developer had to resolve this by fitting thicker seals or by adjusting the sashes and/or frames. On 28 July 2015 the developer said he'd arrange for the windows to be replaced as that would be quicker and easier than the recommendations NHBC had made (and said had to be completed by 31 July 2015). The developer communicated this to both NHBC and Ms B and Mr R.

But in August 2015 the builder wrote to NHBC challenging the finding and recommendation it had made regarding the windows. NHBC responded explaining why, in its view, it had authority to make that finding and recommendation. Further correspondence occurred into November 2015. The builder then replaced the windows.

Replacing windows is quite disruptive work, but as I explained in my jurisdiction findings,

I can't look at the replacement itself against NHBC. However, I have looked at what went on following the recommendation deadline ending on 31 July 2015.

With regret for any disappointment this may cause Ms B and Mr R, I think NHBC handled things adequately at this time. It was reasonable for NHBC to want the builder to complete this work, even though it was now carrying out regulated activity in this respect. And in any event, before NHBC could take it upon itself to do repairs, it needed to respond to the builder's objections and set out its position on the matter clearly – if it hadn't there could have been legal implications for it further down the line. I see it responded to the builder in a timely and appropriate manner. I can't reasonably have expected it to do more than that. And its responses did ultimately convince the builder to resolve the window issue and he chose to do that by replacing the windows – admittedly more disruptive than the recommendations NHBC had made, but arguably a better outcome. If NHBC had taken over the work it would only have completed a repair of the existing windows.

So, in respect of the windows, I don't think NHBC failed Ms B and Mr R, or did anything to cause them distress and inconvenience beyond that the issue itself, and it needing resolving, caused them. Consequently, I won't be factoring this issue into my compensation award.

damp and mould

NHBC, following it taking over full liability from the builder in March 2016, first gave its answer on this to Ms B and Mr R in April 2016. NHBC's answer was that it isn't a defect – it's damage caused by condensation, and the condensation isn't a defect either. Its position hasn't changed since and it issued a final response on it on 21 June 2018.

I know this is an upsetting issue for Ms B and Mr R, and I've seen the many pictures they've provided of belongings damaged by mould. I also understand that the pervading smell in the flat is difficult to live with too. However, in terms of issues that are originally notified within the first two years of cover (as this was), NHBC is only responsible for "defects". And the policy defines what is meant by the word "defect". It says:

"The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means."

NHBC's expert view is that the damp and mould is caused by condensation. There is no technical requirement regarding condensation. Whilst it's possible that condensation might be caused by a defect, I haven't seen that is the case here. NHBC says it's due to the amount of ventilation utilised and possibly things like drying clothes. I know Ms B and Mr R dispute this – but I've not seen an expert report from them on the cause of either condensation or damp/mould.

Further, if condensation, damp and/or mould is being caused by a defect, then it is damage caused by a defect, rather than being a defect itself. And the policy only gives cover for damage caused by defects when that damage occurs in years three to ten of the cover. The damp and mould has been an issue from the outset so there'd be no cover for it in this respect.

I've seen nothing to make me think that NHBC's position in this respect is wrong. I've also not seen anything on NHBC's file that makes me think it's mishandled this situation during the period it was carrying out regulated activity regarding the damp/mould issue. Consequently I won't be factoring Ms B and Mr R's upset over the problems they have in this respect with the property which NHBC won't resolve for them, into my compensation award."

Ms B and Mr R asked how I could know NHBC assessed this issue properly – it had made mistakes in other areas, such as regarding the noise. They added that they don't dry anything inside now and keep the flat ventilated but they are still having issues.

I understand that this is still a problem for Ms B and Mr R – but their report on how they're using the flat isn't sufficient for me to think NHBC was wrong about condensation. Even though it has made other mistakes. For me to say that NHBC has to resolve a defect (such as might be causing the damp/mould issue), I have to be satisfied that there is one, not just that there might be because NHBC might be wrong.

My provisional findings continued:

"noise and vibration

I think NHBC failed Ms B and Mr R in this respect and that they suffered a lot as a result. There was a defect here, and as of October 2018 NHBC was acting to resolve it. But it was liable for the issue from March 2016. How noise and vibration affects people is quite a personal issue – some cope alright, others find it very difficult, especially in the long-term – and at the point NHBC became liable for sorting this, Ms B and Mr R had been living with it for two years. Mr R, particularly, was clear with NHBC that he was reaching a point where he could no longer cope. Mr R eventually had to move out of the property for a time (although this only occurred, I understand, after my period of consideration, which ends on 5 October 2018.)

NHBC should have started its investigations in March 2016, but it didn't. It wasn't until September 2017, after Ms B and Mr R got their own sound test that NHBC began to act. A whole year and a half of upset which could have been avoided.

Even when NHBC began to act progress was slow with its claim investigations being full of errors. I've summarised the errors I've found here (before moving on to comment more thoroughly on some issues):

- *It initially said Ms B and Mr R's report was unclear – it wasn't it clearly said "failed".*
- *Its investigator caused many delays.*
- *Its investigator said he assessed the property with the neighbour in situ running the washing machine – when challenged on this – without admitting he was wrong in what he'd said – he agreed to undertake another visit.*
- *NHBC failed to foresee that its initial repair plan might only resolve one cause of sound transference.*

- *When Ms B told it the problem hadn't been resolved, it was slow to act and only did so when Ms B chased and challenged it.*
- *There was also an unreasonable delay in the kitchen ceiling being reinstated following further investigations.*
- *Between January and March 2018 NHBC needed the neighbour to agree to a sound test. It wrote to the neighbour but didn't seek to speak to them.*
- *When the neighbour gave dates the investigator was slow to act and the first date passed by.*
- *The sound test was completed 3 May 2018 but NHBC hadn't asked the engineer to provide recommendations for resolving any issues found. It had to ask for that which caused delays and then challenged the expert when its view was given. It was 8 June before the matter moved on, a delay of just over a month.*

Ms B and Mr R feel that some initial repairs, carried out October 2017 – December 2017 which necessitated them moving out of their home, were unnecessary, wasted time and caused them upset. I don't think this is the case. With issues like sound transference it is often a case of trial and error to resolve the problem. And there can be more than one cause. This repair, I think, was necessary – as the piping had negated the sound deadening design of the ceiling – but because there was also an issue upstairs causing sound transference, fixing the ceiling alone didn't resolve the whole issue.

As I noted in the above bullets – I think NHBC should have been live to the idea that this might not solve everything. Particularly as the investigations had highlighted that the property hadn't been developed in line with approved plans.

Ms B and Mr R think NHBC failed them by changing the recommended 4.5mm of sound insulation to 3mm. NHBC changed it back afterwards to 4.5mm, but only after Ms B and Mr R challenged it. I don't think NHBC failed Ms B and Mr R in this respect. I know they did research which said only 4.5mm would do – but NHBC only changed it from 4.5mm to 3mm on the receipt of advice from the sound engineer. I can't reasonably criticise it for acting on the basis of expert advice received. Yes, fitting 3mm instead of 4.5mm would have made a cost saving – but it isn't unreasonable for NHBC to have wanted to mitigate its outlay.

Ms B and Mr R feel NHBC failed them by not taking appropriate action to find alternative accommodation for their neighbour (who had to move out for NHBC to carry out work to resolve the sound issue in Ms B and Mr R's flat). They say it was also frustrating that NHBC wouldn't tell them much about what was happening in this respect. I understand their frustration, but I don't think NHBC failed them in this respect. It had a duty to protect the details and communication it was having with the third-party. For similar reasons I can't say much here about what I've seen on NHBC's files about the communication it had with the neighbour. But I can say that I think it did handle things appropriately (my review ends with the final response which was issued 5 October 2018). Ms B and Mr R will hopefully see from the rest of my findings that where I've found NHBC has failed them I've said so. Whilst I know this will be difficult for them, not least because I know the neighbour has shared their view of what was happening with them, I can't share any more detail or comment with them about this. All I can do is ask that they trust my judgement in this respect. In my view, prior to its final response letter being issued on 5 October 2018, NHBC did what it could here to move things on towards getting work started.

Ms B and Mr R have also raised various concerns about how, during the development, NHBC should have done more to prevent this problem from ever having occurred. And that in its actions during the claim, it may have been seeking to cover up failures it made during the build. I've already explained that I can't comment on what NHBC did during the build – it wasn't carrying out regulated activity at that time. I have found NHBC failed Ms B and Mr R in many ways during its handling of this claim – but nothing I've seen makes me think it was trying to cover up anything that had gone before.

In summary in respect of this section, I see that NHBC delayed matters by a year and a half between March 2016 and September 2017. There was then a litany of claim failings (bulleted above) that caused further delays, inconvenience and frustration. All of this on top of the couple having to live with an on-going, and for Mr R at least, a particularly troublesome noise issue. But for the year and a half's delay alone – not even taking the further delays into account – which would give an even earlier start date, repair work should reasonably have started in April 2017.

I can't comment on whether those repairs which started in October 2018 were handled adequately (because they started after the date of NHBC's final response) – but I do know, regardless of how they were handled they completed before the end of 2019. So I think it's fair to say if they'd commenced in April 2017, or earlier, the issue would have been resolved before the end of that year.

This is important because as 2018 drew to an end, Ms B and Mr R had to change plans they'd had. The on-going, delayed issue impacted their lives beyond that associated with having to live with the unresolved issue – which in itself seems to have been agony for Mr R at least, at times. There is no doubt in my mind that this all had a significant debilitating effect on the couple and that significant compensation is required.”

Ms B and Mr R said that whilst repairs have now completed, the noise and vibrations continue to unacceptable levels.

I'm sorry to hear that the repairs haven't provided the relief that was hoped for. However, I can't take that into account in this decision. I know Ms B and Mr R don't feel they have the energy to contest matters further with NHBC but that is what they'd need to do for anyone at this service to make any findings about the recent works and current situation. As I explained provisionally, my consideration only goes up to the date of NHBC's final response which was 5 October 2018.

I concluded my provisional findings by setting out my compensation award:

“compensation

I see that Ms B has suggested that compensation equivalent to the monthly mortgage payment should be paid across the term of the delay. I also see she thinks the NHBC website offers up to 10% of the purchase price of the property, so compensation should be paid accordingly. Whilst I understand why Ms B may think these are appropriate methods of awarding compensation – they aren't commensurate with awards made by this service.

NHBC has already offered a total of £950 compensation. I'm not sure if it's been paid or not. I think that is a good starting point – but given everything I've seen it isn't enough. For me fair and reasonable compensation, for everything I'm satisfied NHBC has put Ms B and Mr R through, within the relevant dates as set out above, is a total of £2,000.”

Ms B and Mr R asked that I reconsider this amount, and provide a figure based not just on the service received but the time it took for NHBC to take them seriously. And which accounts for all their furniture and belongings being affected as well as their health.

Taking the last point first – whilst I understand how Ms B and Mr R feel, their items were damaged by moisture and mould, and they believe this affected their health too. I've explained why I can't find NHBC liable for the damp and mould issue, so I also can't award compensation for the damage that has been caused or the effects that have been felt as a result.

My award is based on the upset NHBC's actions *and* inactions caused Ms B and Mr R – as I explained provisionally, the fact that NHBC didn't take things on in 2016 and only did so after Ms B and Mr R went to the trouble of undertaking their own sound test, was factored into my award. As was the effect living with this issue had on both Ms B and Mr R, but particularly Mr R.

There are more details on our website about how we calculate compensation. But, as I said provisionally, I wasn't looking at this over a four-year period. My timelines are set out in my background above but the longest period of upset I considered was in respect of the sound issue and that period was March 2016 – 5 October 2018. It may also help Ms B and Mr R to know that I don't make many awards of £2,000 compensation. My awards often don't exceed £1,000. I felt it was fair and reasonable to award such a significant sum here because I accepted NHBC's failures had markedly affected Ms B and Mr R's lives. I remain of that view.

my final decision

I uphold this complaint. I require National House-Building Council to pay Ms B and Mr R a total of £2,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr R to accept or reject my decision before 14 June 2020.

Fiona Robinson
ombudsman