

complaint

Mr and Mrs J complain that work carried out under the warranty on their new home, provided by National House-Building Council (“NHBC”), was not satisfactory.

background

Mr and Mrs J bought a new house in December 2015 which came with a ten year building warranty, provided by NHBC. At the end of 2017 Mr and Mrs J reported a leak from the guttering to the company they bought the house from - I'll refer to them as Company B. Company B arranged for builders to fix the problem and repair the damage caused. Damage included discolouring of the rendering where the guttering had leaked onto it.

A few months later there were still a number of repairs outstanding, so Mr and Mrs J raised it with NHBC. In line with the terms of the warranty, NHBC inspected the property and produced a resolution report in early 2018. The report contained work NHBC considered to still require completion under the policy and a deadline for completion. This included improving the colour matching of the patch repair to the rendering.

Following a couple of extensions to the deadline, Company B completed all work to NHBC's satisfaction. However Mr and Mrs J said that as Company B had re-painted the rendering on one side of the house, it was now a different colour to the other side so the work had not been completed satisfactorily. They complained to NHBC.

NHBC didn't uphold the complaint. It said that the render on the left side of the house (that hadn't been painted) wasn't part of the original claim so it had been unable to consider it as part of the resolution service provided under the first two years of the policy. Further it said it wouldn't be covered under the next part of the policy (covering three to ten years) as there was no physical damage.

Mr and Mrs J didn't think this was fair as they said they have been left with an inferior house which may now be harder to sell. They brought the complaint to this service.

Our investigator considered all the issues but didn't recommend Mr and Mrs J's complaint was upheld. She said as the problem with the mis-matched colours is not a defect but a new cosmetic issue, NHBC aren't responsible for repairing this under the warranty. She said the damage done by the original defect has already been repaired so she thought NHBC had done enough.

Mr S didn't think this was fair as he said he had been left with a house that is two different colours through no fault of his own. He said he was concerned about the impact this would have when he comes to sell it. He asked for the complaint to be looked at by an ombudsman.

my provisional decision

I issued a provisional decision in February 2020, in which I said:

'I will start by explaining how policies such as this one work. When dealing with a claim that falls within the first two years of a warranty such as this, NHBC have a limited remit. A claim will come to NHBC if a defect has been reported to the original home builders and they've failed to rectify the damage in a reasonable timescale. NHBC are then required only to offer a resolution service between the customer and the builder – laying out exactly what needs to

be completed and by when. If the builder fails to complete the required work in that time, then NHBC are required to step in and do the work itself. At this point, the insurance element of the warranty kicks in, which we are permitted to consider.

In this case NHBC has agreed that the builder didn't complete the work within the originally agreed timescales, as extensions to the deadline were required. This means we are able to consider the complaint.

NHBC said in its final response that because the render on the left hand side of the house didn't form part of the claim originally, painting it would be a new claim and would fall into the three to ten year part of the policy. And as it wasn't due to a defect this wouldn't be covered. I agree that, should the painting be considered as a new claim, it wouldn't be covered as it isn't a defect in itself. However I don't agree that this is the correct way to consider the claim. I think it should be considered as part of the original claim under the first two years of the policy. I will explain why.

The resolution report, put together by NHBC, required the builder to correct the patch repair they had done on the discolouring of the render. It stated as follows:

'An inspection confirmed that the colour of the repaired render is a poor match to that of the existing render. The area in question is in a prominent position and it is considered that the colour match needs to be improved. This item is deemed to be non-compliant with NHBC Technical Requirement R4 in respect of Chapter 1.2-S2. The builder must carry out works to make sure that this item complies with our Technical Requirements.'

In order to fulfil this item, the builder decided to paint the whole of the right hand side of the house. Presumably this was done so there would be no mis-match of colour on that side. However instead, it has created a mis-match of colour between the left and right sides of the house.

Based on this, I don't agree that the requirement in the resolution report has been carried out. I have looked at the photos of Mr and Mrs J's house currently. The house is clearly two different colours. The purpose of the requirement in the resolution report was to improve the colour match. This may have been done in one area, but the problem hasn't been resolved, as there is still a colour match problem. The report also points out that the colour match is 'in a prominent position'. Now the house is divided into two different coloured sections, I think it is more prominent; not less, as intended.

Further, the extract from the report above says the work is required to comply with NHBC's technical requirements. The specific requirement it refers to is as follows:

'R4. All work shall be carried out in a proper, neat and workmanlike manner.'

From looking at the work completed, I don't agree this has been adhered to. The house does not look 'neat' and the work looks incomplete. I therefore don't think it has been carried out in a proper, workmanlike manner.

I have also considered comments made by a number of different agents working on behalf of NHBC. The builder who visited the site confirmed there was a difference in colour in natural light. Another of NHBC's agents said in an email to NHBC "...to be honest [Company B] have clearly made a mess where they have attempted to spray paint the render to the front elevation." Finally Mr J reports that another staff member referred to the colour difference as

'hideous' during a phone call with him. It is therefore clear that NHBC and its agents agree that the colour mismatch has not been rectified and the work didn't meet the requirement from NHBC guidelines quoted above. I therefore cannot agree that the builders completed the requirement in the resolution report.

NHBC has said that it didn't ask the builder to paint the whole right side of the house, so it isn't its responsibility. But I don't think this is relevant. The purpose of the first two years of the warranty is for NHBC to set out what the builder must achieve and by when. The builders will always have a certain amount of autonomy in how they choose to carry out those requirements. I have already said I don't agree that they have met the requirement. The fact they made the decision to paint half of the house is the reason for this. NHBC are responsible for this, as the builder failed to meet the requirement by the deadline, so it would have been required to step in and complete it itself. It didn't do this, so it is at fault. For these reasons I am minded to uphold Mr and Mrs J's complaint. I will therefore require NHBC to complete the work on the repair of the damage to the house to ensure it is all the same colour – as close to the original colour as reasonably possible.

I also note that Mr and Mrs J have had to put up with the distress of having a house that is in an inferior condition than it was before the claim. This would be likely to lead to problems when selling the house and may mean they would lose money on the purchase which would be distressing. Further the time they have had to spend corresponding with NHBC to persuade them of the need to do additional work has caused more inconvenience than it should. I am therefore minded to require NHBC to pay Mr and Mrs J £200 compensation to make up for the distress and inconvenience.

response to my provisional decision

NHBC accepted my provisional decision.

Mr and Mrs J said they weren't happy for NHBC to carry out the work and would prefer a cash settlement, to allow them to choose their own contractors.

NHBC has since offered to cash settle at a full and final settlement of £8,000 based on quotes obtained by Mr J. Mr and Mrs J have accepted this offer.

my findings

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

As NHBC has now offered to cash settle the claim, I think this is a fair and reasonable conclusion to the matter. I will therefore require NHBC to pay Mr and Mrs J £8,000 in full and final settlement of the claim.

Further, I outlined in my provisional decision the distress and inconvenience NHBC has caused Mr and Mrs J throughout the claim. And I recommended it pays them £200 compensation. I have seen no reason to depart from this decision so I will require NHBC to pay this Mr and Mrs J £200 compensation to make up for the distress and inconvenience it has caused.

my final decision

For the reasons I have given, I require National House-Building Council to:

- Pay Mr and Mrs J £8,000 in full and final settlement of the claim.
- Pay Mr and Mrs J £200 compensation for the distress and inconvenience it has caused. This should be paid within 28 days of us telling it that Mr and Mrs J has accepted my final decision. If National House-Building Council pay later than this it must also pay interest on that amount from the date of my final decision to the date of payment at a rate of 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 24 May 2020

Sophie Goodyear
ombudsman