

complaint

Mr and Mrs T are unhappy with National House-Building Council's (NHBC) proposed repair following a claim under their building warranty.

background

Mr and Mrs T made a claim under Section Two of their building warranty as their bathroom floor wasn't level. The builder who had a responsibility to fix the flooring didn't carry out repairs within the required timeframe, so NHBC stepped in and took over the claim.

The flooring was lowered in order to level it. But this resulted in there being a gap between the floor and wall tiles behind the toilet and sink.

NHBC said that the works completed to the floor now meant it complied with its technical requirements. NHBC also said there weren't any technical requirements for joins between tiled floors and walls so they didn't have an obligation to resolve the gap. But they accepted the finish could have been better so they said that Mr and Mrs T could have skirting installed to cover the gap, initially offering £100 for this.

Mr and Mrs T were unhappy with NHBC's proposals and raised a complaint. NHBC maintained that it had no obligation, but increased the offer to £200 so Mr and Mrs T could arrange for a skirting board to be fitted. As Mr and Mrs T remained unhappy, they approached this service.

Our investigator didn't uphold the complaint. She said that NHBC had met its obligations under Mr and Mrs T's building warranty as it had carried out works to the floor, so she didn't recommend they do anything further.

Mr and Mrs T disagreed with our investigator and asked for a decision from an ombudsman.

Because I disagreed with our investigator's view of the complaint, I decided to issue a provisional decision before I make my final decision. This allowed both parties to comment on my thinking before I make my final decision – which is the Financial Ombudsman Service's last word on the case.

my provisional decision

In my provisional decision, I said:

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

Mr and Mrs T's claim was made under Section Two of their building warranty, and as the builder didn't carry out the repairs in the required timescale, NHBC took over the claim in line with the terms of the policy.

Before the claim Mr and Mrs T had a bathroom which had a tiled floor (albeit uneven), which had sealant joining it to the tiled wall behind the sink and toilet. But as a result of the works to the flooring by NHBC, it's now not possible to close the gap with sealant due to the distance between the floor and wall tiles.

NHBC has said that the flooring now meets its technical requirements as the levelling is within acceptable tolerances. And they also say that there aren't any technical requirements for joins between tiled floors and walls, so they don't have any obligation under the policy to resolve the gap which is now present.

Regardless of whether there is or isn't a specific technical requirement for the join, I don't think this means NHBC can now leave Mr and Mrs T with a large gap and propose a cash settlement for skirting to cover this. I will explain why below.

Whilst I take into account the terms and NHBC's obligations under the policy, my remit also extends to considering what is fair and reasonable in the circumstances of the case.

NHBC has proposed a skirting board to cover the gap and says that another wall in the bathroom has this already. They also say that it isn't unusual to have gaps between walls and flooring around a property, and this would be likely if Mr and Mrs T were to remove skirting which covers the join in other areas of the home.

As NHBC say, there may be gaps around Mr and Mrs T's home if they were to remove skirting in other rooms. And I've seen photos of the bathroom, which do show skirting on an adjoining wall as NHBC has pointed out.

But the difference here is that the gap in question is on a tiled wall, where it joins a tiled floor. The existing skirting in the bathroom is attached to an un-tiled painted wall so is of a different finish.

When a business carries out repair works, I would expect them to be lasting and of importance here, effective. I don't think needing to add skirting which wasn't there before means an effective repair has taken place. And I don't think it would be a reasonable resolution to cover the gap.

In my view it would look unusual. And as Mr and Mrs T have pointed out to NHBC, it is questionable how this would actually be attached to tiles. And from looking at the photos, it also looks like it could cause issues with the bath panel and gaining access to underneath the bath in the future.

NHBC's own expert who inspected the bathroom and completed a report after Mr and Mrs T raised concerns said:

"The gap is considered to be too wide for the silicone based sealant to perform. Sealants have a limit to their gap filling performance and elasticity, and it is inevitable that future tearing of the sealant will occur if replaced again.

The best way to resolve it would be to reduce the gap to 2 – 3mm and re-seal.

To do this, the floor tiling to the bathroom would need to be replaced and re-levelled to remove the bump in the floor. This will leave the floor slightly out of level but would not be noticeable, and would close the gap to acceptable limits for sealant gap filling."

And:

“Simple re-sealing would require fairly regular maintenance and the gap is beyond the gap filling performance of the sealant.”

So regardless of whether NHBC has an *obligation* under the policy terms, in my view, a fair, reasonable and effective resolution would be to ensure the gap between the tiled floor and wall is in a position where it can be sealed. NHBC’s own expert has outlined how this can be achieved above, and as noted on the report, it appears Mr and Mrs T are happy with this proposal.

It’s clear that not completing repairs effectively and proposing unsuitable remedies has caused Mr and Mrs T inconvenience. With this in mind, I also think Mr and Mrs T should be compensated £150.”

On that basis, I was minded to uphold the complaint and direct NHBC to carry out repairs in line with its own expert recommendations, and pay Mr and Mrs T compensation.

the responses to my provisional decision

Both parties broadly agreed with my provisional decision. But they both proposed exploring alternative remedies. Mr and Mrs T said:

“Myself and Mrs T accept the provisional decision made by the Ombudsman.

We would also consider other reasonable suggestions made by the NHBC that would reduce the gap between wall and floor. Any other suggestion provided by the NHBC would need to be in agreement with us before work commences. If agreement is unable to be reached on other suggestions provided by the NHBC then the work carried out to reduce the gap will be as directed in the Ombudsman’s provisional decision.

I hope this gives the NHBC more flexibility in achieving the repair required.”

And NHBC also said:

“I appreciate and agree that before the works were completed, the policyholders had a tiled floor and a wall without a gap or without skirting on the wall in question.

I also agree that whilst there is not a breach of requirements with regards to the join, the solution offered is not appropriate for the reasons mentioned in the decision.

I can also see from the file that there is a report saying the gap is too wide for the silicone based sealant to perform and therefore to attempt to reseal the gap would not be an appropriate solution.

However, having reviewed the case with a senior technical expert and manager from NHBC, whilst the skirting board solution is not appropriate, the floor tiling replacement and releveling is not the only solution available and there other options such as work to the wall tiles rather than the floor. This would be less intrusive and it would cause less inconvenient (sic). I would therefore ask that consideration is given to this fact and we are provided with the option to explore alternative solutions in more depth. I would also confirm that there would also be an option available for a

cash settlement amount for the cost of the rectification works rather than us appointing a contractor.”

At the time I issued my provisional decision, there was only one expert recommendation (outlined above) on the method of repairs to ensure the wall and floor tiles meet and can be sealed. But both parties are open to exploring other options. So rather than issuing a further provisional decision, I asked our investigator to relay both parties’ responses to each other, and a change I was proposing to make to the direction from that outlined in my provisional decision:

“So both parties accept that the experts suggested way is a way to ensure the join can be sealed, but both parties are open to exploring other options. And if these options are less intrusive, can resolve the problem and Mr and Mrs T are happy with this, then this could be a more appropriate option than the extensive works suggested by the expert.

But I’m also mindful that an agreement may not be reached by both parties around alternatives.

So I am intending to issue a decision, subject to further comments from both parties, which in effect says NHBC should explore other solutions to ensure the floor and wall can be sealed and reach an agreement with Mr and Mrs T. If Mr and Mrs T don’t agree with other options put forward by NHBC, then they should follow the expert recommendations outlined in my provisional decision to ensure the floor and wall tiles can be sealed.

NHBC should also, as outlined in my provisional decision, pay Mr and Mrs T £150 compensation.”

NHBC agreed with this.

Mr and Mrs T agreed in principle, but also commented on the options of repair NHBC had mentioned in their response to the provisional decision.

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 considered the responses from both parties, I’m going to issue a final decision along the lines of my revised direction after the provisional decision.

Mr and Mrs T have said in response that some of the repair options, such as retiling, have already been discussed before, but NHBC didn’t agree to it at that stage. They also commented on the option of a cash settlement, and how this should only be agreed by both parties as they say it limits NHBC’s further responsibilities.

However, I’m not considering the actual alternative repairs at this stage, as that is for Mr and Mrs T to discuss with NHBC if they agree with and accept my final decision. As whilst the options Mr and Mrs T have mentioned could be proposed by NHBC as an alternative, there could also be others which haven’t yet been explored.

But whilst I'm not commenting on the other repair options at this stage, I've outlined what should happen if Mr and Mrs T don't agree with the options presented by NHBC – that they should carry out the repairs already recommended by their expert.

Mr and Mrs T have also asked for a four-week deadline to be placed on this. But I'm mindful that at this stage it is unclear what further investigations need to be carried out in order to establish alternative remedies to resolve the gap. Or that appointments can be mutually agreed, or how many different options may be proposed to Mr and Mrs T and how much time they need to consider these and decide. So, I don't think it would be fair to either party to say at this stage it must be done within four weeks.

However, having said that, the claim has been ongoing for some time, so NHBC need to take this into account when considering and proposing alternative options. And if Mr and Mrs T are unhappy with the time taken to do this, then they may be able to make a new complaint to NHBC about this.

my final decision

For the reasons outlined in my provisional decision and above, it is my final decision that I uphold this complaint.

National House-Building Council should explore options to ensure the bathroom floor and wall tiles can be sealed and propose these to Mr and Mrs T. If Mr and Mrs T don't agree with the alternative options put forward, then National House-Building Council should follow the experts repair method already recommended.

National House-Building Council should also pay Mr and Mrs T £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 3 April 2020.

Callum Milne
ombudsman