

## **The complaint**

Mr and Mrs W complain that National House-Building Council (“NHBC”) have unfairly handled a claim under their building warranty.

Any reference to NHBC includes respective agents or representatives that it has taken responsibility for.

## **What happened**

The background of this complaint is well known to all parties, so I’ve summarised events.

In 2017 Mr and Mrs W bought a new build property that included an NHBC warranty.

Mr and Mrs W raised concerns to NHBC under the warranty, and it produced a resolution report in September 2018 which outlined problems with gaps under some of the doors and said these doors would need to be rehung to bring them within acceptable tolerance. But NHBC said doorframes in a guest bathroom and an ensuite could not be rehung as the flooring wasn’t level.

A complaint came to this Service and a final decision was issued in September 2021 directing NHBC to pay compensation, and resolve the gaps under both the guest bathroom and the ensuite and undertake remedial works to the bottom of the doorframes.

Since, NHBC has outlined its proposed works for resolving the issues in the two rooms, giving Mr and Mrs W the following options:

- Ceramic tiling – which will result in the flooring in the guest bathroom/ensuite being higher than the neighbouring rooms.
- Vinyl flooring – which will result in the flooring in the guest bathroom/ensuite being lower than the neighbouring rooms.

Mr and Mrs W complained, saying they didn’t want vinyl flooring, nor did they want a step into the respective rooms as this would cause a trip hazard. They also raised concerns about NHBC’s contractors, saying they’d caused damage to blinds and carpets.

NHBC agreed it had caused unnecessary damage to Mr and Mrs W’s home, and agreed to cover the damage caused. NHBC also offered £800 in compensation for the distress and inconvenience caused by the quality of works, and unnecessary delays. However, NHBC stood by its position that its only options of repair would lead to flooring of a different height to the respective neighbouring rooms.

The complaint came to this Service and one of our Investigators looked into what happened. She didn’t uphold the complaint saying:

- NHBC’s options of either ceramic tiles or vinyl was fair and reasonable in the circumstances based on the technical opinion given – and would fix the defect and bring it into NHBC guidelines. She was persuaded this would amount to an effective

and lasting repair and commented that the height difference would be minimal.

- She said while Mr and Mrs W had raised safety concerns – she was satisfied NHBC’s solution to resolve this by installing a threshold strip would make the transition between rooms smoother. She recognised Mr and Mrs W had indicated NHBC could rip up all of the flooring and start again – but she wasn’t persuaded this was proportionate.
- NHBC said it would review quotes for new blinds and carpets. The Investigator said this was fair, and NHBC should act quickly in settling this upon receipt of quotes or invoices.
- The Investigator outlined various issues about the handling of the claim since the previous final decision was issued, including many delays, poor quality works, and considerable avoidable distress and inconvenience taking into account the history of the claim. She was satisfied a sum of £800 compensation was fair and reasonable in the circumstances.

Mr and Mrs W disagreed with the assessment, saying:

- NHBC had unfairly refused to rip out the flooring due to time and cost factors. They did not want the vinyl flooring option. And explained why they believed the ceramic tiles option would not work, would be uneven, and questioned why they should have to accept a flooring height change when their independent flooring specialist had said if “...a step was put in this could create a potential trip hazard”
- Regarding blinds and carpets they said this Service was allowing NHBC to not pay for replacements and instead allow it to pay a small settlement.
- Mr and Mrs W detailed further concerns and issues with NHBC’s handling, including poor communication.
- NHBC had failed to comply with the previous final decision from 2021. NHBC should take responsibility for failing to carry out due diligence when signing off the property. They highlighted NHBC was able to continue acting in this way without consequence unless this Service did something. They pointed to communications from NHBC which they said were misleading about floor level tolerances.

The Investigator looked again. But she didn’t change her mind, saying:

- It wasn’t proportionate for NHBC to replace all flooring to rectify a small discrepancy in height between respective rooms. She provided NHBC’s technical opinions on both the ceramic tile and vinyl flooring options and explained why she agreed the threshold strip would resolve the safety concerns Mr and Mrs W had raised.
- NHBC’s request for actual cost replacements was reasonable – and she wouldn’t expect it to pay more than it cost to rectify its mistakes. So, the request for invoices/quotes was fair.
- The compensation she had awarded was to account for the distress and inconvenience caused by NHBC – not to punish the firm as we are not a regulator.
- This complaint did not include all known issues within the property – only the further works following the previous final decision. The concerns Mr and Mrs W raised about NHBC signing off the property did not fall under the contract of insurance, so were not things we could consider as these were not regulated activities. Nor would she revisit or comment on the previous final decision – which included the correspondence regarding tolerances that were previously considered.

Mr and Mrs W disagreed and raised further concerns. This included concerns about the impact the claim has had on their ability to live in the property, its appearance, difficulties in obtaining contractors, or selling the property. So, the matter has been passed to me for an Ombudsman's final decision.

### **What I've decided – and why**

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 as I'm satisfied the resolution offered by NHBC is fair. I'll explain why.

Mr and Mrs W have been clear they are unhappy with NHBC's actions in handling their claim since it began, NHBC's actions to originally sign off the developer's work when the property was built, as well as concerns about the previous 2021 final decision not being enforced.

I will start by outlining the scope of this decision. As our Investigator has previously set out, this complaint concerns the actions of NHBC in handling a claim made under its NHBC Buildmark policy. Specifically, this complaint concerns the claim made under Section 2 related to an uneven gap underneath Mr and Mrs W's bathroom and ensuite doors – connected to a Resolution Report of 2018. The details of this claim were previously outlined and covered within the 2021 final decision.

The complaint I'm looking at concerns NHBC's actions that followed and whether it has acted fairly and reasonably in handling these matters.

For these reasons I won't be revisiting any of the claims handling matters previously covered by the 2021 final decision – which includes communications from NHBC about tolerances of flooring. Nor will I be covering any concerns Mr and Mrs W have about NHBC's "*sign off*" of the developer's work previously – this simply doesn't fall under the scope of the insurance claim that I am considering.

As a result, my review may appear more narrow to Mr and Mrs W than they would like. My role as an Ombudsman at this Service requires me to say how I think a complaint should be resolved quickly and with minimal formality. That means I'll focus on what I consider to be the crux of the complaint. Mr and Mrs W's submissions to this Service span many pages. Within this decision I won't be responding in similar detail. This is not intended as a discourtesy, but a reflection of the informal nature of this Service.

Where I don't comment on every point made by the parties, that's not to say I haven't seen or considered them. I have carefully considered all points raised by both parties, but I do not consider it necessary to specifically reference them in reaching my decision. And when considering what's fair and reasonable in the circumstances, I have taken into account the relevant law and regulations, regulator's rules, guidance and standards and codes of practice.

### *NHBC's proposals*

NHBC has said it is seeking to provide an effective and lasting solution to the door gap issues in the bathroom and ensuite.

The details of NHBC's proposals have been explained in detail by our Investigator and NHBC previously. In summary, NHBC said for its ceramic floor:

*“I can confirm that the existing flooring comprises of chipboard being laid directly onto the floor joists. This is installed prior to the partition walls being put up and is therefore continuous across the area rather than being laid in sections.*

*Where a ceramic floor finish is to be laid, the chipboard needs to be cross lined with plywood, as this serves to strengthen the floor to reduce the chance of deflection and the likelihood of the tiles cracking or lifting.*

*The plywood needs to be 9mm thick with an average floor tile being 12mm. Including an adhesive bed, this would give an overall thickness of circa 25mm. Allowing for a quality underlay to the carpet (Cloud 9 is 12mm thick with the carpet being 12mm thick) any variation in height is marginal and would be more a lip rather than a step. This can easily be covered by use of a suitable threshold so that the transition is not that noticeable.”*

I find this commentary to be persuasive and well-reasoned. Mr and Mrs W have suggested the alternative of removing all flooring as they do not want any variation in height. From what I've seen, the height would be marginal and in line with the NHBC technical requirements – which is what the policy is designed to do. I understand they don't want any gap or variation in height – and while I understand this is frustrating, I'm not satisfied this changes matters as I'm satisfied the solution NHBC has put forward would meet the terms of the insurance and is fair and reasonable.

Mr and Mrs W have suggested the height difference would be a trip hazard. I've read the commentary they've provided from an expert – and this specifies *“If a step was put in this could create a potential trip hazard”*. I'd agree this suggests there is potential for a step to be a trip hazard, but this doesn't mean this couldn't be done safely, and given the threshold strip that NHBC has suggested will minimise the risk – this hasn't changed my mind.

NHBC has also said if the whole floor deck was taken up, it would still result in the bathroom floors needing to be cross lined, meaning the outcome would be the same. For the reasons I've given, I don't think taking the whole floor up is necessary, but this comment suggests this wouldn't resolve Mr and Mrs W's concerns in any case.

For all of the above reasons, while I understand Mr and Mrs W's strong opinion on the matter and take into account a wider dissatisfaction with NHBC's actions, but within the scope of what I can consider – this claim under Section 2 of their warranty - I'm satisfied NHBC's proposed solution is fair and reasonable in the circumstances.

#### *Damage to blinds, carpets*

NHBC has agreed it damaged blinds and carpets and agreed to cover these costs. It asked for quotes from Mr and Mrs W to establish the cost of replacing these damaged items. In principle I think this is fair as I wouldn't expect NHBC to speculate on the losses in these circumstances, nor expect it to pay above the actual cost to replace the items.

Mr and Mrs W have said this proposal would allow NHBC to pay part of the price as opposed to the full cost. It's unclear to me why this is as it appears to me that NHBC does intend to settle the cost of replacing the damaged items. Our Investigator outlined it appeared NHBC hadn't been given quotes to inform it what the damaged items would cost to replace, and Mr and Mrs W have given me nothing since to suggest this is not the case. It follows I'm satisfied NHBC's offer to consider such quotes in the future is fair. Should Mr and Mrs W provide NHBC with these quotes, I'd expect it to settle the matter soon after.

#### *Overall handling*

I want to highlight here that the compensation I'm looking at under this complaint is only for the poor handling in relation to the claim issues I've been able to consider above – and not the wider issues Mr and Mrs W have raised.

The handling of this claim has been poor. Again, I won't detail the history of it as all parties agree it's been handled badly, spanning between unnecessary delays, unnecessary damage, poor quality of works. I also have to consider this against a backdrop of a long-standing matter that has been ongoing for several years – which no doubt will have compounded the frustration and distress caused to Mr and Mrs W.

I recognise Mr and Mrs W's claim was not handled fairly nor promptly as it should've done. And taking into account the impact of NHBC's poor handling on the claim in question – I'm satisfied the sum of £800 is fair and reasonable compensation.

### **My final decision**

For all of the above reasons, I'm upholding this complaint and direct National House-Building Council to pay Mr and Mrs W £800 compensation if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 19 June 2024.

Jack Baldry  
**Ombudsman**