

The complaint

Mr and Mrs W complain about the way National House-Building Council (NHBC) has settled a claim they've made on their Buildmark building warranty policy.

What happened

Mr W brings this complaint on behalf of himself and his wife, so I'll refer to him throughout.

Mr W purchased a newly built property from a builder in August 2018. This property came with the benefit of a Buildmark building warranty which, in certain circumstances, covers certain defects that might affect a house.

The property experienced some post-construction issues and Mr W initially reported these to the builder and asked him to fix them. After some time, the issues were still not resolved and so Mr W contacted NHBC. It undertook a number of inspections and produced resolution reports for the two claims which are the subject of this decision. These reports detailed the work the builder should undertake.

Sometime later, the builder declined to undertake any further work and Mr W asked NHBC to take over the work under the resolution service offered under the warranty. NHBC agreed to do this in April 2019.

Mr W remained unhappy with the way the house had been constructed by the builder and raised various issues about this, saying the builder hadn't built the property to NHBC's standards.

There were also some issues relating to major damage which were potentially covered by the insurance element of the warranty. There was some back and forth between NHBC and Mr W and eventually schedules of works were produced which detailed the work which was covered by the insurance element of the warranty.

NHBC produced settlement offers for the two claims but Mr W didn't think these were right. After some further queries and negotiation over what should be included and how much should be paid for certain work, NHBC produced further settlement offers totalling in the region of £33,000. Mr W said he was happy with these offers and confirmed his acceptance of them. In due course, NHBC paid him the money and the claim was settled.

Sometime later, Mr W brought a complaint to this service explaining he didn't think the payment he'd received was fair. He also complained direct to NHBC saying while he was happy with the amount he was paid for the work that needed to be undertaken, he didn't think it was fair he hadn't been paid either to take time off work to supervise the work himself or to pay a project manager (PM) to look after things for him.

He calculated that a PM would cost in the region of £24,000 and asked NHBC to pay him this additional money. NHBC issued its final response and declined his request, saying it didn't think a PM was required for the kind of work to be undertaken. It also said it had included a 2% uplift in what it had paid him and he could use this to employ a supervisor to run the project if he wished.

Our investigator looked at the evidence presented by the parties and explained that he could only consider what had happened after the insurance part of the warranty kicked in. That meant he couldn't consider a complaint about the scope of NHBC's investigation and was only able to look into what *has* been included within the resolution report.

He went on to say he thought NHBC had settled the claim fairly by paying Mr W the amount it would have cost it to undertake the work using its own contractors and he didn't think it needed to pay for a PM. Mr W accepted the amount NHBC had paid was reasonable in terms of the work that needed to be done but remained unhappy it hadn't paid for his time to oversee the work or for him to pay someone else to. As he was still unhappy, he asked an ombudsman to make a 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.

The Buildmark warranty has a number of different sections of cover, some of which I can consider and some I can't. The section of cover relevant depends on the time that's expired since the property was purchased.

Section two - The resolution service

In this case, Mr W purchased his property in August 2018 and for the first two years after this, section two (the resolution service), is the relevant cover. Put simply, this cover requires the builder to resolve damage and defects in the home within the first two years. If it doesn't do this, then NHBC will take over in certain circumstances to carry out the repairs.

During this time, the policy allows NHBC to act as a mediator between the builder and the consumer and that's what it did in this case. During this time, it inspected the property and prepared a number of resolution reports saying what the builder should do to fix the various problems.

As our investigator has outlined previously, this resolution service isn't a regulated activity in itself and therefore it's not something I can consider. This means I can't consider or comment on what NHBC did during this time – including what was and wasn't included in the resolution reports and whether the builder built the house to NHBC's standards.

I acknowledge this will be frustrating for Mr W but, put simply, this service doesn't have the power to consider, or make recommendations on, this part of Mr W's complaint.

The settlement of the claim

I can however look at the insurance element of the cover, which commences when:

- A resolution report has been completed; *and*
- The report directed the builder to do something by a deadline; *and*
- The builder has failed to complete the works by the deadline.

In this case, the builder declined to undertake further work in April 2019 and asked NHBC to take over the repairs. At that point, with all the above requirements having been met, NHBC assumed responsibility for completing the work and the insurance element of the warranty kicked in.

As I've explained above, I can't comment on what work was included in the resolution reports. But I can consider whether NHBC's offer to settle the claim – based on the work identified in the resolution reports – was fair.

Insurers often have the option of undertaking repairs themselves or offering a cash settlement to allow the policyholder to have the work undertaken by their own contractors. I've looked through the policy document and this policy allows NHBC to decide which of those it opts for. In this case, NHBC offered to cash settle the claims.

The policy terms explain in the section "*How we calculate what we have to pay*" NHBC will calculate the amount it pays for a claim based on the amount it would cost it to have the work done so I'm satisfied what NHBC did was in line with the policy terms.

But I do have to consider whether this was fair in the circumstances of this case.

NHBC initially put forward settlement offers significantly lower than the final figures. Mr W queried the cost allowed for a number of elements of the work and following some discussions and negotiations, NHBC agreed to increase the figure to in excess of £33,000.

I note from the file, Mr W confirmed by email in July 2019 to NHBC he thought it had been fair with the settlement. He confirmed his acceptance of the amounts in September 2019 and NHBC paid them to settle the claim.

I've not seen any evidence of alternative costings which lead me to conclude these figures weren't fair. And the evidence suggests Mr W was happy with them at the time.

I've then gone on to consider Mr W's request for a further sum of £24,000 to hire a PM to manage the remedial works. There's no specific mention of a PM being provided under the policy, but I might expect NHBC to provide one depending on the extent of the works.

I acknowledge there's an inherent inconvenience to Mr W of having this remedial work undertaken. But in this case, given the settlement sum and scope of work required, I'm not persuaded NHBC should've provided him with a PM to oversee it.

I note NHBC has included a 2% uplift in the amount it already paid Mr W and says he could use this to employ a supervisor. I acknowledge Mr W doesn't consider this sum to be fair. But as I say, I've not seen enough evidence to persuade me the work would require a PM to manage it, particularly at a cost which is such a significant proportion of the cost of the work involved.

Overall, I've not seen enough to persuade me the amounts already paid by NHBC were unfair. So I won't be upholding this complaint or asking NHBC to do any more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 7 January 2021.

Paul Phillips
Ombudsman