

The complaint

Mr M complains about National House-Building Council's handling of claims under his buildings warranty.

What happened

Mr M has a buildings warranty with National House-Building Council (NHBC) which covers his home.

Mr M has had a number of issues with his home and has made approaches to NHBC in an attempt to resolve them. There's a long and complex history here, but I don't need to set it out in detail. Mr M and NHBC are both very well aware of the background.

Mr M has made two relevant complaints to NHBC about the way they've responded to him raising issues with them about the building of his home.

He complained to NHBC about work carried out to rectify problems with his roof, including a dip in the roof ridge. Mr M says the work hasn't been completed satisfactorily.

And he complained that NHBC had offered him a cash settlement to resolve other issues with the home.

NHBC offered £400 in total to Mr M to reflect the inconvenience he'd experienced, but they said the issues with the roof had been resolved satisfactorily and they maintained that they were entitled to offer a cash settlement for the other work.

Mr M wasn't happy with this response and complained to us. Our investigator looked into it and didn't think NHBC had done anything wrong.

Mr M disagreed and asked for a final decision from an ombudsman.

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.

It's important to understand the nature of the warranty Mr M has because this has a bearing on what we can and can't consider when we look at his complaint.

The Dispute Resolution ("DISP") rules in the Financial Conduct Authority (FCA) handbook set out what complaints we have the power to consider. DISP 2.3.1 says we can look into a complaint if it's about a "regulated activity".

Providing insurance is a regulated activity. But not all parts of the NHBC warranty can be classed as insurance.

The warranty contract makes it clear that in the first two years of cover the builder is responsible for dealing with any problems with the property. At this stage NHBC gets involved only if things can't be resolved between the customer and the builder.

Importantly, what NHBC offer at this stage is a mediation service only. It is not a regulated insurance activity. The warranty states that NHBC's responsibilities as an insurer don't begin until year three.

So, if NHBC provides a resolution service within the first two years – as it did in the case of Mr M's roof – we have no power to intervene (unless NHBC choose to take over the repairs, which they didn't when it came to the problems with Mr M's roof).

And if, as part of the resolution service, NHBC inspect the property and conclude that the builder complied with their technical requirements, we can't question or comment on that decision.

In terms of Mr M's complaint, NHBC carried out an inspection as part of their resolution service, after remedial work had been carried out by the builder. They concluded that the issues with the roof were satisfactorily resolved and their technical requirements were met.

It's not for us to comment on that. It's not something we can look into, for the reasons set out above. Mr M may not think that's fair, but we can't act outside our statutory powers. And even if we did offer an opinion, any outcome we proposed would have no traction – it wouldn't be binding on NHBC.

NHBC did take responsibility for some of the other repairs to Mr M's home. Primarily to do with door frames and snagging issues. So, we *can* look into the second part of Mr M's complaint against NHBC.

Mr M's issue here is that NHBC have offered a cash settlement instead of arranging for the remaining repairs to be carried out by their own contractors.

As I understand it, some repairs had been carried out by NHBC's contractors, but Mr M was unhappy with the results. At that point, those contractors refused to remain involved.

I can see from the information provided by NHBC that they tried to engage other contractors to complete the work, but without success. And, at that point, they offered a cash settlement to Mr M.

On this point, the warranty says:

"We will pay you the cost of any... work that is required.... Alternatively we may at our option arrange to get that... work done at our expense."

So, it's clear to me that NHBC are entitled to offer a cash settlement if they wish, in accordance with the terms of the warranty.

I'm aware that these issues have been on-going now for some considerable time. And I'm aware of the inconvenience Mr M has suffered as a result.

Whilst Mr M has my sympathy, and whilst I know he will be disappointed, I can't conclude that NHBC have acted unreasonably in this case.

In coming to that conclusion, I've taken into account the compensation already offered to Mr M. I've borne in mind that NHBC tried to find other contractors to do the work. And I've looked at the wording of the terms set out in the warranty.

I'm also aware that NHBC have offered an uplift to the case settlement to take into account Mr M's time and effort in arranging the work. And that they've offered to consider any quotes he can provide which may show that the work will cost more than their original estimate.

Mr M said in response to our investigator's view that he thought we ought to insist that NHBC change the wording of the warranties so that they don't have the option to cash settle as and when they wish.

That's a matter for the regulator – the FCA – rather than us. We're here to try to resolve individual complaints. And I don't think there's anything inherently unfair towards Mr M in the way the policy is worded.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 February 2021.

Neil Marshall
Ombudsman