

## The complaint

Mr and Mrs B complain that National House-Building Council (NHBC) has unfairly offered a cash settlement that isn't sufficient to carry out necessary repairs under their building warranty.

## What happened

The detailed background to this complaint is well known to both parties, so I'll only provide a very brief overview here.

Mr and Mrs B made a claim under their NHBC building warranty. The claim concerns a defect to the gable wall of the property and the resulting damage. The validity of the claim (under Section 3 of the Buildmark cover) is agreed by both parties. But there remains a dispute about whether NHBC's offer of cash settlement is fair.

After the claim was accepted, NHBC chose to provide a cash settlement for the claim instead of arranging to have the necessary repairs carried out. This was outlined in its letter of 10 May 2018 and was for £2,991.20 (including VAT).

In October 2018, NHBC updated its schedule of works with an increased total of £3,397.33 (including VAT). Mr and Mrs B complained as they said the offer wasn't enough to allow them to complete the necessary works. And they disagreed with NHBC's scope of works as they felt the damaged external wall should be fully re-rendered.

Our investigator upheld this complaint. She said NHBC should make a cash settlement payment that reflected the *actual* cost to Mr and Mrs B to carry out the necessary repairs, not the cost NHBC would have had to pay if it had arranged for the work to be done itself. And on the topic of the rendering, she said a patch repair (as proposed by NHBC) was fair.

Mr and Mrs B agreed with our investigator, but NHBC didn't. It said that the terms specifically allow NHBC to offer a cash settlement calculated in this way, and the investigator had ignored the policy wording. Because NHBC didn't agree with our investigator, this case has been passed to me for a 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've reached the same conclusions on this complaint as our investigator. Within this decision I have only focused on the claim issues that remain in dispute.

NHBC has said it is able to provide a cash settlement to a Mr and Mrs B, based on the cost *it* would've incurred if it had arranged for the work to be done itself.

I've looked at the policy and these say NHBC will either pay Mr and Mrs B the cost of repairing the damage or arrange to get the necessary work carried out at its expense. As for

cash settlement, the terms say NHBC may ask the customer to get estimates or work out what it would cost NHBC to do the repairs. 'Cost' is also defined under the policy as the cost NHBC would have to pay if it had arranged for the work to be done.

While I have considered these terms NHBC's interpretation of them, my role is to determine whether NHBC has treated Mr and Mrs B fairly and reasonably in all of the circumstances. And in doing this, I am able to direct NHBC to take steps to put things right if I'm satisfied these terms haven't been fairly applied or if this application of terms leads to an unfair or unreasonable outcome.

The purpose of the policy, particularly section 3, seems to be to cover damage caused by defects. Where the requirements for cover are met, (as in this case), I'm satisfied the cover seeks and promises to return the customer to the position they were in before the damage or loss. In this sense, the cover offered by NHBC is no different to the cover offered by other insurance policies. And I don't consider that the policy seeks to provide partial cover for fully insured repairs, or that NHBC presents the policy in this way.

Had NHBC agreed to carry out the necessary repairs itself, I would likely be satisfied that the above was achieved. But NHBC has chosen not to do this and offered a cash settlement instead (as it is entitled to do under the policy).

I think it's important to take into account that the cash settlement is something NHBC has enforced on Mr and Mrs B, and not something that they requested or insisted on having. To the contrary, Mr and Mrs B have made it clear they'd prefer for NHBC to arrange the necessary repairs instead.

So, the issue at hand is what amounts to a fair cash settlement in the circumstances. On this point, I consider a fair cash settlement to be what it would cost *Mr and Mrs B* to have the necessary repairs completed – I say this as this would ensure the cash settlement would be enough to return them to the position they were in before the damage or loss.

NHBC, in defining 'cost' accepts that the cost to it for repairs is likely to be different to the cost to customers to have the same repairs carried out privately. This is common across insurers given their position in the market.

It follows that the cost to have these repairs completed is likely to be higher for Mr and Mrs B to arrange than for NHBC. And in turn, this persuades me that NHBC's offer of settlement isn't likely to be fair as it's based on its own cost of the works.

The terms of the policy allow NHBC to request estimates in order to determine a settlement figure, and in the circumstances of this case I think would be a fairer approach. And on this basis I direct NHBC to reconsider its settlement offer in light of estimates provided by Mr and Mrs B.

### **My final decision**

For the above reasons, I uphold this complaint. Unless National House-Building Council agrees to arrange the necessary repairs itself, I require it to:

- Pay Mr and Mrs B a cash settlement that reflects the actual cost to them to have the necessary repairs carried out. In doing this, NHBC can ask Mr and Mrs B to provide more than one estimate based on its updated schedule of works (that includes only a patch repair to the render); *and*

- Pay Mr and Mrs B any associated VAT costs upon receipt of a related invoice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 16 October 2020.

Jack Baldry  
**Ombudsman**