

The complaint

Mr and Mrs B complain that National House-Building Council (“NHBC”) have treated them unfairly following a claim under a Buildmark policy.

What happened

Given the history of this claim is extensive and well known to both parties, I have summarised events within this background. I have also previously issued a jurisdiction decision outlining what aspects of the complaint I can and *cannot* consider. For this reason, I won't repeat the concerns or NHBC responses to points I'm unable to consider.

Mr and Mrs B bought a new build property in December 2017. Alongside the purchase of the property a Buildmark policy was included – a warranty provided by NHBC. In April 2018 Mr and Mrs B contacted NHBC to claim on their Buildmark policy, saying there were a range of issues across the property. NHBC produced two reports covering concerns about the property in September 2018 and January 2019 respectively. This second report provided commentary to the list of issues raised, saying around half of them had been resolved, with the remaining issues to be completed in the future.

Following further concerns, NHBC wrote to Mr and Mrs B in March 2019 with a final response letter. Within this it said the claims team would settle the claims by way of cash settlement, and in line with the policy terms. It said a schedule of works and cost calculation had been completed for each claim in line with the amount it would cost NHBC to have the work done itself.

On specific issues it said the garage wouldn't be impervious to wind driven rain so could be damp at times, and this didn't amount to non-compliance. It also said the cracks above the lintel were as a result of thermal movement which wasn't covered by the Resolution Service. NHBC said gutter leaks had been fixed, a door issue had been repaired, and it needed further evidence to show decorative issues were reported promptly upon occupation to consider it any further.

NHBC also discussed works related to turf, slabs, and a WC. It concluded that any dispute regarding whether corrective work was required ultimately sat with the builder, and that NHBC offers assistance to resolve the issue under the Resolution Report. And again, it referred Mr and Mrs B to this service if they were unhappy.

Mr and Mrs B brought their complaint to our service on 22 June 2019. They outlined this experience had been incredibly stressful and had a significant impact on them. They asked for a full refund for the property and compensation to the value of around £1,000,000. Mr and Mrs B also accused NHBC of fraud and collusion with the builder.

One of our investigators looked into what happened. He said his scope was limited to only the actions carried out by NHBC following the builder not completing required works NHBC had told it to. And of the issues outstanding, he considered whether the cash settlement provided was fair in relation to mis-matched mortar works. NHBC had offered £397, and Mr and Mrs B's own contractor had quoted £320 plus VAT. On this basis he felt NHBC's offer

was enough to cover the works and this was fair. He also referred Mr and Mrs B back to NHBC for any complaints about events that followed after the final response was sent.

Mr and Mrs B disagreed, saying NHBC had failed to investigate all of their concerns raised across the life of the claim, as well as failing to complete repairs as it should've. They reiterated NHBC's settlement offer was still too low and that it should provide a full survey.

Following my jurisdiction decision, the complaint has been passed to me for a final decision on the case's merits. Mr and Mrs B have raised additional concerns about repairs and the actions of the builder.

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 not upholding this complaint, I'll explain why.

Under section two of the Buildmark policy, NHBC provides a resolution service. Under this service it will act as a mediator between a consumer and a builder. In doing so it will identify what faults there may be in a newly built property, decide what works need to be done, and then tell the builder when the repairs need to be completed by.

This resolution service isn't a regulated activity in itself. This means a complaint about NHBC's decision of what faults are identified or not identified, or what repairs are necessary, or the projected completion date fall outside of our jurisdiction.

But we can consider complaints where:

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

In this case NHBC has produced Resolution reports in September 2018 and January 2019. Within the second report it detailed a number of issues. It said concerns about garage flooding, a cracked lintel, front door lock required no further action. For the reasons given above, I can't consider these matters further.

The report also said action *was* required on the topic of debris remaining in the garden, chipped bricks, and cracked at the rear elevation of the property, and a damp course being too low in places around the property. A deadline of 12 October 2018 had been set. And it's clear the works weren't completed by this date.

Of these remaining points Mr and Mrs B have complained about the tinting of their brickwork. NHBC has provided a broken-down schedule of works remaining from 30 January 2019 which includes the work it says was necessary to put right the items outlined above. It said its cash settlement for the remaining items was calculated fairly and it wouldn't look to increase this – but it did offer to visit the property to provide further clarification given Mr and Mrs B's concerns.

This leads me to ask whether NHBC's cash settlement is in line with its policy terms and is fair and reasonable. The policy says NHBC will calculate how much it has to pay based on the amount it will cost it to have the work done.

Mr and Mrs B said works completed had led to mismatched mortar. And they provided a quote from their own contractor to the value of around £384 for tinting works. They've also said a stone mason would be necessary to complete works to the brickwork and estimated the cost to be around £2,000 but haven't provided any quotes or reports to support this.

NHBC said the schedule it had provided included a sum of £205 for a scaffold tower, and £192 for the tinting itself (totalling £397) which it estimated would take four hours. Mr and Mrs B said their quote supplied was only for two areas and therefore would be considerably more expensive than the cost quoted by NHBC. They also said their contractor would take three days to complete the works instead of one.

As part of NHBC's schedule of works, its quote included a sum towards "*The builder should carry out work to improve the appearance of the pointing to the cracks and may wish to consider cosmetic tinting of the affected areas.*" And it's clear to me its factored a cost to the sum of £397 to complete the tint works to the affected areas.

I'd also note that within the resolution report, it said "*The builder should carefully cut out and replace the damaged blocks. It should be noted that there may be some shade difference between the new and old work.*" This suggests to me the focus of this resolution report was about replacing the damaged bricks, not any colouration difference.

But in any case, NHBC has made an allowance for these costs. And while I take on board Mr and Mrs B's concerns, I'm not persuaded they've shown NHBC's settlement is unfair. I say this as their comments are speculative and they haven't given supporting evidence (such as quotes) to show that NHBC's settlement is too low.

And on its face, NHBC has allowed for £397 against their own quote of around £384. On this basis, I'm satisfied NHBC has made a fair and reasonable settlement for the required works under its resolution report. And I'm not going to ask it to do anything further.

Mr and Mrs B have said they believe NHBC should complete a full survey as opposed to just considering the items that have already been accepted. As I've outlined above, this isn't a requirement under the insurance I'm able to consider, so it's not something I will direct NHBC to do.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 30 December 2020.

Jack Baldry
Ombudsman