

## The complaint

Miss L complains how National House-Building Council (“NHBC”) has handled her claim under the 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.

In December 2015 Miss L bought her new build property. In early January 2016 she provided the builder a list of issues with the property. But she remained unhappy, so, she reported the outstanding issues to NHBC in March 2018.

NHBC considered the issues under Section 2 of the policy, accepted some were covered and carried out investigations and repairs. Miss L remained unhappy and made complaints to NHBC. It issued final response letters (FRL’s) in July 2018, February 2019, July 2019, September 2019, October 2019, July 2020 and December 2020.

I am aware that NHBC have raised several references in response to Miss L’s concerns. To be clear, this final decision is only looking at certain points on NHBC’s claim reference 18/17816. Both parties were made aware in January 2020 of our jurisdiction on this complaint and that view covered what aspects of the complaint I can and cannot consider. Both parties accepted this, so I won’t explain it all in detail again here.

The timeframe that I can consider in this decision is from 15 February 2019 to 31 July 2020. Anything that happened on the claim before or after these dates isn’t something I can address in this decision.

So, under NHBC reference 18/17816 the following issues were considered under its resolution service:

1. Roof leak- damp coming through walls to bedroom
2. Flooring – uneven in both bedrooms;
3. Leaking shower in en-suite; *and*
4. Stair nosing’s are splitting and cracking.

However, I only have authority to look into complaints about faults reported to the builder in the first two years when:

- A. A resolution report has been completed; and
- B. The report has directed the builder to do something by a deadline; and
- C. The builder failed to complete the work by the deadline or is insolvent.

NHBC didn’t direct the builder to do anything for items 3 and 4, so the above criteria weren’t met, and I have no jurisdiction to look into those two items. For items 1 and 2, NHBC did direct the builder to carry out work. NHBC subsequently took over the builders’ obligations

for these two items because the works were not completed by the builder within the set time. So, I do have jurisdiction to look into items 1 and 2.

Miss L has said there have been numerous attempts to fix the issues causing water ingress, and the flooring but she says the repairs have not worked and the issues are still outstanding. Miss L has said the stress and living in damp, smelly conditions have affected her health, and ultimately, she wants the issues rectified and to be compensated. Miss L has paid for third parties to survey elements of her property for some of the issues she has identified, and she has forwarded these reports to NHBC to consider, which she would like them to cover the cost of. She also feels that because there have been several problems with the property, NHBC should complete a full forensic survey as opposed to just considering the items that have already been accepted.

NHBC have acknowledged that the repairs it has conducted have been piecemeal and there have been some delays at times during its involvement in the claim. Prior to the period of time I can consider, NHBC offered a total of £1,200 compensation. And in the period I'm considering it has offered a further £400 compensation.

Our investigator didn't uphold Miss L's complaint. Miss L has therefore asked for her complaint to be passed to 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.

I understand for Miss L that the issues she has experienced with her property have been ongoing for her over several years and I empathise that her property hasn't been built to some of the technical standards required. However, this complaint is against NHBC – not the builder of her home – and its involvement in this complaint started in March 2018. But as mentioned previously, I can only look at the period from 15 February 2019 to 31 July 2020 and only in relation to NHBC reference 18/17816.

I think it is essential to clarify NHBC's responsibilities here. NHBC do not regulate the builders or developer's that built Miss L's property. In the first two years it is the builder's responsibility to rectify any failure to comply with the NHBC technical requirements that has been notified to them during this period. If the builder does not fulfil their responsibilities under the policy, NHBC will do so on their behalf or alternatively if NHBC choose to, it will pay what it would cost it to have the work done.

NHBC do publish standards on the technical requirements, performance standards and guidance for the design and construction of homes which is deemed acceptable by NHBC. These requirements are not necessarily the same as building regulations.

A breach of the technical requirements occurs when a builder hasn't considered a technical requirement when constructing a property and this element doesn't therefore provide satisfactory performance as a result.

In Miss L's case I empathise that there has been more than one cause to the water ingress and poor repair works conducted prior to the timeframe I'm looking at has added to the issues identified.

I understand Miss L is unhappy with how the claim has been handled so I've considered if there were any avoidable delays and the handling of the claim.

From February to May 2019 I think the claim was being managed as I'd expect it to be. It was during this period a zinc specialist company had to be used and the materials needed had to be ordered. It was hoped that work could start mid-April 2019, but the materials required couldn't be secured for delivery. So, the date was pushed back a couple of weeks to the beginning of May and this was agreed with Miss L as she wanted the work to start after the Easter holidays.

When the work was being conducted in May it was unfortunate that a part was found to be damaged. I understand Miss L was trying to sell her home at this time so delays and having scaffold up was inconvenient, but I don't feel a damaged part is something I can hold NHBC responsible for and it was rectified in a reasonable timeframe.

In June 2019 it was evident that the works in May 2019 hadn't fully resolved the water ingress. NHBC tried to get the technical drawings and information from the builder about the construction of the façade of the property. When this failed it had no choice but to do an internal inspection in July 2019 to determine the method of construction. I can appreciate for Miss L this would've been frustrating, but I don't think NHBC's actions were unwarranted. It was during this investigation it found the cavity tray that had been installed on a previous repair had been damaged during installation and this would need to be re-done. NHBC recognised the inconvenience to Miss L and compensated her £400 and rescheduled the works to be done in August. I think this is fair and reasonable.

In August the contractor didn't attend as scheduled, although NHBC did attend. It was at this point that the NHBC investigator identified that he thought there were further problems with the second-floor balcony and recommended that the balcony be stripped back. This was confirmed after the cavity tray was fitted in early September and found that it was working but there was still evidence of water ingress. I can appreciate the couple of weeks between the contractors failed attendance and the tray being installed in early September would've caused Miss L frustration and inconvenience. However, I don't think the rescheduled time for the contractor to return was unreasonable in the circumstances, as NHBC had already identified and informed Miss L that further investigation works were going to be needed on the second-floor balcony.

In late September 2019 when further investigations were done on the balconies, Miss L asked for the works to be paused. The work couldn't be scheduled in until Miss L consented and agreed to the schedule of works. From what I can see she gave this in November and works were booked for early December 2019. The internal work was scheduled for January 2020.

In March 2020 I can see Miss L raised concerns that the water ingress had returned in the same area. I would expect under the circumstances for NHBC to attend to inspect the property, and I can see it intended to do that. But Miss L refused access to her home as she had concerns a thorough investigation wouldn't be taking place.

Unfortunately, on 23 March 2020 a national lockdown occurred due to Covid-19 and the public were told to stay at home unless it was necessary for them to go to work, i.e. they were a key worker or had to care for others. All non-essential businesses were shut.

By mid-May some restrictions were eased and those who couldn't work from home were encouraged to return to work, this included contractors and construction workers. This is the earliest NHBC could look to organise contractors to return to Miss L property and that would be subject to the contractor's availability.

Miss L told us she wasn't shielding during lockdown and could accommodate house visits. So, whilst I accept Covid-19 would've delayed NHBC's actions, I don't think NHBC contributed to the delays from March to June 2020.

In June and July NHBC has shown us they couldn't find any further evidence of water ingress in this area. Either by way of visible signs or from the meter readings taken. So, at that point in time I haven't seen evidence that the water ingress in this area had returned. I understand Miss L has said this could've been down to the time of year the readings were taken and that the wall was dry lined. But I haven't seen any contradictory evidence that shows water ingress was re-occurring at that time, I'm therefore persuaded the NHBC work that was carried out in December 2019 was still effective as of July 2020 – which is the latest point in time I can consider in this decision.

I understand Miss L has also raised concerns with regards to the first-floor balcony following the survey she had conducted in May 2020. The survey raised concerns about the construction of both the balconies and the thermal breaks. From what I've seen the construction of the two balconies are different. So, a problem identified on the second-floor balcony doesn't mean it will be the same for the first-floor balcony. And as far as I can see Miss L hasn't reported any water ingress from the first-floor balcony during this period and this was not reported to NHBC in terms of a defect being present during the builder's liability period. If any damage does occur in this area during the remainder of the policy Miss L is able to make a claim under Section 3 of the policy, subject to the terms and conditions. The remedial work done on the second-floor balcony was as a result of resolving the leak that was reported causing damp to come through walls to the bedroom.

I understand there were other issues Miss L has raised like the scaffolding causing some minor damage to the brickwork from where it was tied into the building and damage to the balcony rail and balcony glass. Although I can appreciate these things happening is not ideal, I can see NHBC has agreed to rectify these issues for Miss L and I think this is fair and reasonable.

### ***Flooring***

I can see when NHBC visited the property in June 2020, it found an area of floor in the front bedroom that was still affected and moved when walked upon. It has agreed that the previous fix had only partially fixed the issue and it agreed to rectify this. So, in the timeframe I'm looking at this is still being investigated and being considered under section 2 of the warranty.

I understand Miss L's concerns this is still not rectified but from what I've seen this may also be interlinked with the heating issue that is being dealt with on a separate complaint. I'm also aware that Miss L has raised a further complaint to look at the issues after the timeline I can consider in this complaint. So, I'm satisfied that this was at a reasonable position during the period I can consider and was still being investigated by NHBC.

### ***Reports***

Miss L has requested the cost of reports she had commissioned to be covered by NHBC. The policy clearly shows that these costs will not be covered, and I can see NHBC also made this clear to Miss L in its correspondence with her. I have also considered if the reports helped or changed the actions NHBC were doing at the time. And from what I've seen I don't think they impacted the claim or suggested anything that NHBC hadn't considered. So, I won't be asking it to pay for these reports.

### ***Survey***

I understand Miss L feels that there could be hidden problems with the build of her property that haven't come to light and so she feels NHBC should conduct a full forensic investigation on the entire property. I can understand she is anxious about this, but it isn't something I'm going to direct NHBC to do.

The 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. There is also no provision under the policy terms for NHBC to do this. NHBC's responsibility is to consider claims made by the policyholder for defects and/or damage that have been identified – not to search for problems. So, this isn't something I will be directing NHBC to do.

Miss L still does have the benefit of section 3 of her warranty that covers physical damage to her home because the builder failed to build (parts as listed in the policy) to comply with NHBC requirements. And the repair works that NHBC have or will complete will have a certificate of repair that makes NHBC responsible for the repair for six years from when it was completed.

### ***In summary***

I appreciate that for Miss L the issues with her home are ongoing. I hope Miss L can understand why a lot of the points that she has raised to us throughout our service looking at this complaint, are ones I'm unable to consider in this final decision. For example, the heating, gutters, water ingress in the kitchen/lounge area and what has happened since the 31 July 2020.

Miss L has told NHBC and us about the effect it has had on her health and mental wellbeing having to live in a damp property. Her doctor provided a letter in September 2019 which said she had attended on several occasions with symptoms of chest pain, stress and anxiety. It continued to say Miss L had reported that her house is damp and has multiple problems relating to the building. The doctor said she is sure this is contributing to her symptoms.

I have also seen Miss L has provided more recent health information, but this is outside of the period I can consider in this decision. I don't doubt having a home with multiple issues has caused Miss L stress and anxiety. But I'm mindful that I'm looking into a restricted timeframe of the overall claim issues, and I'm unable to evidence that Miss L's health conditions are directly as a result of anything NHBC has done wrong during this period. The £400 compensation offered for the inconvenience caused in this period I think is fair and reasonable.

**My final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 18 March 2021.

Angela Casey  
**Ombudsman**