

The complaint

Mr and Mrs M are unhappy with delays experienced during a claim under their buildings warranty with National House-Building Council and that it was eventually declined.

What happened

Mr and Mrs M's basement flooded in November 2018. They contacted National House-Building Council (NHBC) to make a claim under their *Solo for Self-Build* warranty.

On 12 December 2018 NHBC sent their assessor to the property to understand what had happened and to identify the cause of the water ingress.

On 21 December 2018 NHBC told Mr and Mrs M to refer back to their home insurer because they previously paid a claim for an escape of water in the basement. Mr and Mrs M weren't happy with this and complained to NHBC. On 4 January 2019 NHBC said they'd send a leak detection specialist.

NHBC addressed this initial complaint in a final response letter dated 25 January 2019 where they acknowledged delays and their initial decision to incorrectly decline the claim. They offered £200 by way of compensation.

On 29 April 2019 NHBC addressed another complaint about delays. This acknowledged the stress the situation was causing for Mr and Mrs M but concluded that they'd carried out necessary investigations since January 2019 so didn't award any compensation.

NHBC received a report on 10 May 2019 that said the claim was valid and suggested a cavity drained membrane. So, they let Mr and Mrs M know they'd accept the claim and then put the works out to tender.

Only one company responded to this which meant it took longer than the initial deadline of 2 August 2019. And it raised further issues. Mr and Mrs M were unhappy with this because a lot of time had been spent waiting for contractors to return and this left them no further forward.

A further complaint was addressed on 18 September 2019. This acknowledged there had been some delays but explained NHBC needed to find the source of the water ingress and compile a robust scope of work. They offered another £750 compensation for the trouble this caused Mr and Mrs M and arranged another visit to their property.

On 11 October 2019 NHBC wrote to Mr and Mrs M to explain their latest visit had revealed that the water ingress was due to a lack of maintenance to the sump pump. This led to a build-up of water in the pump chamber and in turn caused water ingress into the basement. NHBC said this meant the claim wasn't covered under the terms of the warranty.

Mr and Mrs M were unhappy with this because they'd been under the impression the claim would be covered and had been living without access to their basement for almost a year.

They also hadn't come any closer to getting the issue fixed and putting their house back in order.

NHBC addressed this complaint in a letter dated 5 November 2019. This acknowledged the service hadn't been to the standard NHBC would expect and that this had had a significant impact on Mr and Mrs M over the last year. So, they offered £3,000 as a gesture of goodwill to put things right.

Mr and Mrs M weren't happy with this and brought their complaint to us. Our investigator reviewed their case and thought part of the complaint wasn't something we could look at. He said that several complaints had been raised throughout the claim and each of them gave a six-month deadline to contact this service. This deadline is set by the industry regulator, the Financial Conduct Authority, and is outlined in their dispute resolution (DISP) rules.

There were only two complaints brought within the six-month deadline. The final complaint addressed in November 2019 once the claim had been declined. And the one addressed in September 2019.

When looking at the merits of these complaints, our investigator said he agreed the claim hadn't been handled well by NHBC. He acknowledged the impact the delays had had on Mr and Mrs M and that this caused them a great deal of upset and inconvenience. But he was satisfied that the claim had ultimately been declined in line with the terms of the warranty so he couldn't fairly ask NHBC to carry out the repairs. He also thought the total compensation of £3,750 offered by NHBC was reasonable in the circumstances.

Mr and Mrs M disagreed and asked for a final decision from an ombudsman. They say:

- There was only a delay in reporting the complaint to this service because of the delays caused by NHBC.
- Drainage experts have said the sump pump isn't integral to the waterproofing of the basement. They think the water ingress is due to a weakness in the waterproof concrete and a breach of the tanking. The sump pump wouldn't leak into the basement if it were full, it would leak onto the driveway. They never said the pump wasn't working, only that an engineer advised that one of the three floats was brittle and should be replaced.
- NHBC's reports are subjective and shouldn't be solely relied on. We should've spoken to their drainage expert and their building contractor.
- The compensation isn't enough to recognise the situation and they think NHBC dragged their heels on purpose.

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 should say first of all that Mr and Mrs M wanted to complain to us about the issues covered by all their complaints to NHBC dating back to the first one in December 2018.

We told them we couldn't consider all of their complaints against NHBC – only the issues addressed in their most recent final response letters from September and November 2019. This is because they brought them to us more than six months after they received NHBC's final response letters to the previous complaints.

We've explained that the Financial Conduct Authority's dispute resolution (DISP) rules, which govern our service, don't allow us to look into complaints brought to us more than six

months after a business's final response to a complaint, unless the business consents or there are exceptional circumstances.

Mr and Mrs M's complaints were brought to us more than six months after most of NHBC's final response letters. NHBC don't consent to our looking into the parts of this complaint that are out of time.

I know Mr and Mrs M were still in contact with NHBC following their earlier final response letters. But I'm satisfied the letters made the time limit clear and any continued contact doesn't override the deadlines set out. And there are no exceptional circumstances which might allow us to look into it despite it being brought to us out of time.

So, we can't look into those aspects of Mr and Mrs M's complaint and I can't deal with them here.

NHBC's self-build warranty is split into two different sections. The first provides cover between the time a consumer places a deposit on a new home and the date they complete. The second part of the warranty covers years one to 10 after completion and provides cover for physical damage to certain specified parts of the home caused by a defect. NHBC define a defect as:

'A defect in the Home resulting from a breach of any mandatory NHBC Requirement. Failure to follow the guidance supporting the NHBC's Requirements does not in itself amount to a Defect as there may be other ways that the required performance can be achieved.'

So NHBC's investigations needed to determine whether there was a defect (a failure to follow their standards) in the build - and so whether this was covered by the warranty.

The important thing for NHBC was to investigate what was causing the water ingress into the basement. I can see that both NHBC and Mr and Mrs M had leak detection reports carried out in November 2018 and January 2019 and neither could find a source of the water ingress.

Because the reports couldn't identify the cause of the water ingress, NHBC commissioned further investigations. They sent out a specialist surveyor in April 2019 who compiled a report which said:

'Without stripping out all finishes and then monitoring the basement over a period of time we cannot prove the exact source of water.'

It also commented on the two previous reports and said:

'Both confirmed they could find no initial source of water, both concluded that it was ground water. Both are competent reports and we would agree with their conclusion.'

On that basis, NHBC made the assumption that the cause might be ground water seeping into the basement. They took into account the extensive recommendations and then arranged their own updated report. They did this because there was still seemingly no reasonable explanation other than ground water.

NHBC's updated report from May 2019 accepts the claim. But it also comments on the sump pump:

'During the visit, a drainage contractor was present. They advised that the drainage is not blocked, but that a sump pump was not operating correctly. This is shown in photograph 12 above – the leak detection contractor determined that this was the cause of the water ingress. The drainage contractor does not agree with this opinion as the sump pump is a backup, should the chamber become over-whelmed.'

The sump pump has been a theme in the expert reports throughout this claim and each one comments on its importance in the investigation as to how the water was getting into the basement. The reports from December 2018, April 2019 and May 2019 all reflect that the water level within the pumping chamber was full.

As I understand it, the sump pump helps keep the area beneath a building dry and ultimately prevents it from flooding. It's installed in a sump pit or pumping chamber which is filled with water that flows through the drainage system and through natural water movement through the soil. The sump pump then pumps water out and away from the house.

On 13 June 2019 NHBC emailed Mrs M attaching a tender schedule and explaining what would happen when the contractors attended. NHBC put the tender out to a selection of contractors but it was eventually unsuccessful. I can appreciate how frustrating this must have been for Mr and Mrs M.

In an email to Mrs M on 18 September 2019 NHBC explained that the tender failed because the scope of works wasn't detailed enough. Ultimately because they still hadn't identified the exact route of the water ingress into the basement. They highlighted that they were concerned about the land drain and sump pump. So, another visit was arranged to try to identify again what was causing the water ingress.

I agree NHBC caused unnecessary delays between May 2019 and September 2019. Their initial investigations should have been more thorough and given a more concrete answer as to where the water ingress was coming from.

NHBC had the information that the sump pump wasn't working correctly from the report in May 2019. They should have followed this line of enquiry up further at this point. Their failure to do this meant the claim progressed without the full facts and wasted a great deal of Mr and Mrs M's time. During this time, they were unable to use any of their basement rooms and they had to live with the mould. On top of this, there was the worry and inconvenience of the ongoing claim.

NHBC's final report dated 7 October 2019 concludes that the deterioration and lack of maintenance to the sump pump was causing the water ingress. It explains that a full pumping chamber allowed hydrostatic pressure to build up against the basement wall and exploited its weakness.

It was also noted that Mr and Mrs M had recently made repairs to the sump pump. I know Mr and Mrs M feel strongly that the sump pump isn't the issue and have said their drainage specialist has said the same. But I'm persuaded by the expert evidence I've seen that it's more likely this is the cause of the water ingress and it's not a breach of the tanking as Mr and Mrs M suggest.

On page two of the warranty, it lists general exclusions and says:

*'NHBC will not be liable for....
d Wear and tear
e Deterioration caused by neglect or failure to carry out normal or specific maintenance'*

NHBC have explained that the sump pump is vital for the waterproofing of the basement. And having reviewed the evidence provided, I'm satisfied this is true. I'm not persuaded by Mr and Mrs M's argument that the sump pump is only a backup and that living on a hill means it wasn't strictly a necessary part of the build.

The fact that the original pump was poorly maintained is the most likely cause the water ingress. And that amounts to wear and tear. Mr and Mrs M know the pump wasn't in good repair – this is why they had repairs carried out.

As per the above quote, wear and tear isn't covered under the terms of the warranty. And having reviewed all expert evidence presented, I'm satisfied NHBC have acted reasonably and fairly in coming to their decision to decline the claim.

To summarise, the sump pump is an integral part of the building's defences against water ingress. It's not there for cosmetic reasons, it's there to serve a purpose. There's no dispute it was damaged and needed repair and so wasn't performing its intended function. Which meant the building wasn't defended from water ingress as the design of the building intended. There was water ingress – and no-one has identified a credible alternative source of – or reason for – that ingress.

Going through any claims process can be a stressful time and I can appreciate Mr and Mrs M's disappointment at ultimately having their claim declined after such a long process. I agree there were avoidable delays, and this caused Mr and Mrs M a lot of wasted time and frustration.

I know Mr and Mrs M were unable to use the games room and cinema room located in the basement throughout the claim. Thankfully no essential facilities like their kitchen or bathroom were affected. So, they could continue to carry on their daily lives in the house without the impact of losing any essential facilities.

Although I can appreciate living with mould downstairs and an ongoing claim would've caused them both a degree of stress and inconvenience. I think the £3,750 is reasonable compensation for their trouble and upset.

I bear in mind that whilst the claim has been ongoing for more than a year, NHBC aren't responsible for a year of delay. The claim would have reasonably taken some time to deal with however swiftly NHBC had acted.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 24 February 2021.

Neil Marshall
Ombudsman