

## The complaint

Miss L is unhappy with how National House-Building Council (NHBC) has handled her claim under the buildmark policy.

## What happened

Before summarising what's happened, I need to clarify this complaint is about how NHBC handled Miss L's claims from 1 August 2020 to 20 December 2020.

Another ombudsman issued a final decision about NHBC's handling of claim 18/17816 for the period 15 February 2019 to 31 July 2020. I can't, nor do I need to, comment on the ombudsman's findings. But where necessary - to understand the timeline of events - I have referred to what the ombudsman decided.

Miss L bought a new property in December 2015 for which she has a NHBC buildmark policy. In January 2016, Miss L reported issues with the property to the builder. But she remained unhappy, and in March 2018 told NHBC about the outstanding issues.

NHBC carried out investigations and completed repairs in respect of the issues it deemed fell within section 2 of the policy. Miss L remained unhappy with how things had been handled and complained to NHBC. NHBC provided multiple final responses from July 2018 to December 2020.

Miss L subsequently complained to this service. The ombudsman explained she could only consider aspects of Miss L's claim which fell within our jurisdiction – and she decided these were:

1. roof leak – damp coming through walls to bedroom *and* flooring – uneven in both bedrooms (18/17816)

In respect of the damp, the ombudsman was satisfied NHBC had largely handled Miss L's claim as she'd expect it to. Where there had been delays, she considered NHBC's compensation fairly reflected the inconvenience Miss L had experienced. And the ombudsman was satisfied NHBC's further investigations into the flooring was a reasonable course of action. These two issues continue to be of concern for Miss L.

In addition to claim 18/17816, Miss L complained to NHBC about the:

1. heating system not performing *and* roof leak near extractor (19/36332).
2. damp ingress to front bedroom *and* external wall is excessively wet (19/37903)
3. external guttering at front house (20/51611)
4. cash settlement
  - a. it doesn't include compensation for the time, discomfort and ill health she's experienced.
  - b. no mention of temporary accommodation is included in the cash settlement.

c. reservations about sufficiency of proposed works and cost.

NHBC considered Miss L's concerns and in November 2020 made a cash settlement offer, which it said covered the:

- Guttering and downpipe to front of property (ex-gratia)
- Missing flashings to the rear of property
- Right sizing of the guttering to the rear of property
- Flashings to either side of the balcony
- Replacement glazed panel to the balcony
- Floors in both bedrooms
- Rectification of cold bridge in rear bedroom
- Decoration of kitchen ceiling
- Professional fees - to plan and oversee the works.

Miss L remained unhappy and so brought a complaint to this service.

*Claim 18/17816*

Our investigator said she was satisfied NHBC's cash settlement sufficiently covered the outstanding works required to remedy the damage.

*Claim 19/36332*

With regards to the heating system not performing, NHBC had previously said its ability to investigate the issue had been prejudiced because the system had been repaired by a third party. The item was considered under NHBC's resolution service and was based on Miss L reporting issues with the heating system showing error messages. The investigator said she hadn't seen evidence to show Miss L reported issues with the temperature in the house.

During further investigations in 2020, NHBC found an issue with the Mechanical Ventilation Heat Recovery (MVHR). This malfunctioning caused condensation to collect in and on the ductwork and to drip on to the kitchen ceiling below, causing staining. NHBC disagreed that lack of insulation contributed to the problem and said it wouldn't be carrying out installing this under section 2 or 3 of the policy. It did however, include in its cash settlement an amount to make good the kitchen ceiling – which the investigator considered to be fair.

Investigations also revealed a cold bridge in the rear bedroom - which could be corrected by adding more insulation. NHBC accepted this as a valid claim under section 2 of the policy and included this in its cash settlement. The investigator was satisfied NHBC had acted fairly by offering to cover the cost of installing insulation, and that the works to rectify the cold bridge were reasonable.

Overall however, the investigator said she hadn't seen there'd been a breach of a NHBC technical requirement with the heating system (MVHR unit). In any event, as it was considered under the resolution service part of the policy in 2019, it wasn't within our jurisdiction and so couldn't be commented on.

With regards to the 'roof leak near extractor' element – NHBC said extensive investigations didn't reveal damp or ongoing water ingress. But it accepted the repair to the stained area

was poor, and so in order to comply with the technical requirement further works to sand and repaint the area using a stain block was needed. The investigator was satisfied there hadn't been further water ingress and so considered NHBC's remedial works to be reasonable.

#### *Claim 19/37903*

NHBC has included an ex gratia payment for the guttering and downpipe at the front of Miss L's property. It says this is despite it not being liable for the repair under the policy. The investigator said claim 19/37903 doesn't fall within this service's jurisdiction because it was investigated under NHBC's resolution service and no technical failings were identified.

#### *Claim 20/51611*

NHBC said the lack of guttering to the front of Miss L's property isn't a failing of a technical requirement – it said above ground drainage isn't a 'part' of the home covered by section 3 of the policy, and so its unable to consider the claim. However, its contractor said it would be beneficial for the property to have the guttering sorted, and so NHBC has included an ex-gratia payment in its cash settlement for this.

The investigator said she hadn't seen evidence to show internal water ingress was a result of the guttering, and as NHBC had included the guttering in the cash settlement, she was satisfied it had done enough.

#### *Cash settlement*

The investigator hadn't seen evidence to suggest the cash settlement wouldn't allow the works to be completed. She acknowledged that NHBC had included an amount to enable Miss L to employ a professional to have the works designed and overseen – something it isn't required to do under the policy. And she was satisfied NHBC had progressed the claim proactively from August to December 2020. And so, she didn't ask it to do anything else.

Miss L remained unhappy and so the complaint has been passed to me for a 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'm not upholding this complaint and I'll explain why. Both parties have provided a lot of information in relation to this complaint. I want to reassure them I've looked at everything they've submitted; however, I'll only comment on those things I consider central to the outcome I've reached

Section 2 of the buildmark warranty protects an owner if the builder becomes insolvent or fails to meet its obligations during the first two years after completion. But we can only look at complaints which fall within this period if the following has happened: a resolution report has been completed; the report directed the builder to do something by a deadline; the builder has failed to complete the works by the deadline or is insolvent.

Section 3 of the policy provides cover against damage caused by defects in specified parts of the property during the three to ten-year period after purchasing the property. Under the policy, 'damage' is defined as "physical damage", and 'defect' as being where damage occurred because "*the builder failed to build [certain parts of] your home to comply with NHBC requirements.*"

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To determine whether there is a 'defect' I need to consider whether a technical requirement exists. If a requirement exists, I'll then need to consider whether it has been breached. Here, the relevant technical requirements are those which were mandatory and in force at the time the property was built.

But not all aspects of Miss L's claims issue are within our jurisdiction - where they aren't, I've explained why.

#### *Claim 18/17816 – roof, balcony and flooring*

NHBC has accepted the missing flashings and undersized guttering to the rear of the property, along with the uneven bedroom flooring is a breach of its technical requirements. As these issues were reported to the builder in the two years after completion, NHBC has accepted this as a valid claim under section 2. The repair costs have been accounted for in the cash settlement. So, I don't need to comment any further on this

With regards to the second-floor balcony, NHBC has said it has undergone works to prevent water ingress to Miss L's property, and it's satisfied these were done to an acceptable standard. The replacement glass panel was an outstanding issue, but I can see an amount for this has been included in NHBC's cash settlement, so I'm satisfied a solution has been provided.

In October 2020, Miss L made a claim for storm damage after a stain appeared on her bedroom ceiling. I've looked at the insurer's report and note the damage wasn't as a result of a storm. Tests showed the area to be dry and the surveyor said there wasn't a visible stain. I've not seen evidence to show there had been further water ingress during the period this complaint is considering. And so, I'm satisfied NHBC's cash settlement is a fair reflection of the scope of works required to remedy items listed in this claim.

#### *Claim 19/36332*

- *heating system not performing (item 1)*

NHBC issued an updated resolution report on 2 December 2020. In it, NHBC explained that following BSRIA (Building Services Research and Information Association):

*"the heating system was found to be sized correctly for the conditions, and the underfloor heating system was operating correctly with no leaks or dead legs found in the system.*

*Testing indicates that the heating system is sized correctly in this property for the conditions and the heating demand at the time, therefore the item complies with our technical requirements."*

NHBC said no further action was required in respect of the heating. As such, I don't have authority to investigate this further because the report didn't direct the builder to do something (which is one of the criteria that must be met before we can look into things).

- *roof leak near extractor (item 2)*

In December 2019, NHBC issued an updated resolution report regarding item 2. The report said the tested areas were found to be dry and that there wasn't evidence of recent water ingress.

But it did say the repair paint work to the previously stained area was poor and didn't comply with NHBC's technical requirements. So, it directed the builder to carry out works to ensure it was compliant – and it gave a deadline of 31 January 2020 for this to be done.

It's not clear if the repair was completed by the deadline. Given that making good the ceiling has been included in the cash settlement, I think it's unlikely. I haven't been persuaded that there was a water ingress in the period this complaint is considering, and so I'm satisfied NHBC's means of putting right the paint work – by accounting for it in the cash settlement – is reasonable.

#### *Claim 19/37903 – damp in front bedroom and wet external wall*

These concerns were considered as part of NHBC's resolution service. Because these were found to comply with NHBC's technical requirements and no further action was required, NHBC said it wouldn't be taking the claim further. It also means I'm unable to comment on it. I note however, NHBC has made a *ex gratia* contribution to rectify the guttering in respect of this.

#### *Claim 20/51611 – external guttering at front house*

NHBC considered this claim item under section 3 but declined it on the basis it wasn't in breach of a technical requirement. So, I need to consider whether NHBC's decision is fair. The important issues are:

1. Was there physical damage? And
2. Was it caused by a defect in a specified part of the property?

Both parties agree the guttering at the front had become disconnected. So, I'm satisfied there was physical damage. But NHBC said there isn't a technical requirement in respect of drainage above ground level. I've looked at the technical standards and agree this isn't covered, so I'm satisfied NHBC has acted fairly by declining this aspect of the claim.

However, I note NHBC has included an amount for this in the cash settlement as a gesture of goodwill to enable Miss L to have it repaired – which I'm satisfied provides a fair resolution to the problem.

#### *Cash settlement*

Miss L has concerns about whether the cash settlement is enough to allow the necessary works to be completed. First, it's worth setting out what the policy says:

*“If the builder does not fulfil their responsibilities under the builder warranty, we will do so on their behalf or alternatively if we choose to, we will pay you what it would cost us to have the work done.”* So, NHBC choosing to settle the claim by way of a cash settlement is something it is entitled to do under the policy.

NHBC has explained that an allowance for temporary accommodation hasn't been included in the cash settlement because it doesn't agree Miss L needs to vacate her home for the repairs to be completed. While there will be some disruption, I'm satisfied the works do not affect the functioning of the kitchen or bathroom and so the property is habitable. And so, I

think NHBC has acted reasonably by omitting temporary accommodation costs from the settlement figure.

Having looked at how NHBC has handled Miss L's claims during this period, I haven't seen anything to persuade me that it caused avoidable distress. I sympathise with Miss L that this situation has caused her great strain, but I can't attribute it to NHBC having done something wrong.

The difficulties Miss L has experienced with her new home ultimately stem from the original builder. So, it wouldn't be fair of me to ask NHBC to pay compensation for failings it's not responsible for. What I need to consider is whether NHBC has treated her unfairly once its liabilities materialised under the policy. From what I've seen – in respect of the time frame of this complaint – it has. And so, I won't be asking it to pay compensation.

I know my decision will disappoint Miss L but for the reasons I've explained above I hope she can appreciate why I haven't upheld her complaint.

### **My final decision**

My final decision is that 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 25 May 2021.

Nicola Beakhust

**Ombudsman**