

The complaint

Mr B and Mrs B complain about National House-Building Council's handling of a claim under their buildings warranty policy.

What happened

Mr B and Mrs B have a *Buildmark* warranty policy with NHBC which covers the new-build home they bought in 2016.

For the first two years, the policy says NHBC will provide a dispute resolution service if the builder doesn't rectify any (covered) faults with the building. In the following eight years, NHBC provide insurance and will carry out or pay for any repairs which are covered.

Mr B and Mrs B approached NHBC during the first two years of the warranty because they were having persistent problems with their drains. NHBC tried to resolve this with the builder, but when that failed, they accepted an insurance claim and responsibility for the necessary rectification work.

In October 2018, NHBC carried out an inspection and following that they put together a plan of works and appointed a contractor.

The works began but ceased when the contractor advised NHBC that the fall or gradient on the drain was insufficient to allow it to operate effectively.

This eventually led to a further inspection in February 2019. The upshot being a new schedule of works, which involved the local water authority in making adjustments to the public drains in the street outside the house.

Mr B and Mrs B made a complaint to NHBC about the poor service and delays with their claim up to this point. NHBC sent a final response letter in February 2019, offering £100 in compensation. Mr and Mrs B didn't accept this offer. They tell us they thought it was insufficient and unacceptable.

A plan was formulated after the inspection in February 2019, but it required NHBC to coordinate activity with the local water authority.

Mr B and Mrs B say NHBC failed to do this until July 2019 - after they'd appointed a solicitor to deal with NHBC.

They made a further complaint to NHBC about the inactivity and poor service between February and July 2019. NHBC provided a final response to that second complaint in July 2019, offering £400 in compensation. Again, Mr B and Mrs B didn't find that acceptable and didn't accept the offer.

In July 2019, NHBC, the local water authority, the contractor and Mr B and Mrs B came to an agreement about a plan to take things forward.

It was agreed that work would commence in September 2019, in line with the Water

Authority's schedule. And it appeared everyone was happy with the new plan and timetable.

That work began, but again it was brought to an abrupt end before completion. On this occasion, the contractor informed NHBC that the tarmac around the property – which was to be replaced as part of the schedule of works – was thicker than expected. In short, the contractor appears to have been unwilling to do the job for the previously agreed price.

This led to another hiatus, whilst various solutions were discussed. NHBC proposed to skim the existing tarmac and re-surface it, but Mr B and Mrs B found that unacceptable, for understandable reasons.

Eventually, NHBC agreed a cash settlement for the work, but only after Mr B and Mrs B lost patience and had the work carried out themselves.

Mr B and Mrs B made a further complaint to NHBC, who now offered £600 in compensation for their trouble and upset. Mr B and Mrs B weren't happy with this outcome and brought their complaint to us.

Our investigator looked into it and thought the offer of £600 compensation was fair and reasonable. Mr B and Mrs B disagreed and asked for a final decision from 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.

It's important first of all to set out exactly what I can consider in this decision.

As we've explained to Mr B and Mrs B previously, there are rules which govern the way our service operates – the Financial Conduct Authority's dispute resolution (or DISP) rules.

These say that before we get involved, a financial business has an opportunity to put things right for the customer themselves. If they receive a complaint, they have eight weeks to try to resolve things. And they must provide the customer with a final response to their complaint.

The rules also say that once the customer has the final response from the business, they have six months to bring their complaint to us if they aren't satisfied with the business's answer.

We can't consider complaints brought to us after that time unless the business consents or there are exceptional circumstances to explain why the customer could not have brought their complaint sooner.

Mr B and Mrs B have made three complaints to NHBC during the course of their claim. The first, which was about the delays and poor service up to around February 2019, received a final response from NHBC in February 2019.

The second – about poor service and delays between February 2019 and July 2019 - received a final response from NHBC in July 2019.

The third and most recent complaint – about delays and poor service after July 2019 - received a final response from NHBC in April 2020.

Mr B and Mrs B brought these complaints to our service in May 2020. So, the last complaint was brought to our attention within six months of the final response from NHBC. The

previous two complaints were not. And so, we can't look into them.

Mr B has told us he thinks this is unfair, given that it made sense to allow the claim to be concluded before he brought the full set of complaints to our attention. I can understand his point of view, but I can't choose to ignore the rules which govern our service, and which give us powers to investigate complaints and instruct businesses to take action and/or provide compensation. As I say, we are entirely bound by those rules and have no discretion to operate outside them.

NHBC haven't consented to our looking at the two earlier complaints. And there are no exceptional circumstances which would explain why Mr B and Mrs B couldn't have brought those matters to our attention earlier.

So, in this decision, all I'm looking at is the alleged poor service and delays after July 2019.

When I look at this period, I think it's important to say right away that however the parties reached the point they did in July 2019, at that stage they were all – including Mr B and Mrs B – happy to accept that the work would start in September 2019. And they were all happy with the proposed plans for those works.

By just after mid-January 2020, Mr B and Mrs B had NHBC's offer to pay for the works they'd had completed on the hard standing around their property. So, from the start date for the works, there's at most four months delay before things were finally resolved.

Had the works gone entirely smoothly, they might have reasonably taken some part of that four months to complete.

The remaining delays were due to the contractors leaving the site due to the unforeseen issue with the depth of the tarmac and NHBC's attempts to devise an alternative means to repair the hard standing by skimming and re-surfacing it.

I think NHBC are primarily, though perhaps not wholly, responsible for those delays. The delays certainly aren't Mr B and Mrs B's fault. And it's clear that NHBC's initial response to the dilemma – to skim and re-surface the hard standing area around the house – wasn't an appropriate solution to the problem.

I don't think £600 compensation is unfair and unreasonable given the trouble and upset suffered by Mr B and Mrs B in that time.

They were caused a good deal of inconvenience by the fact their driveway had holes and trenches in it (boarded over to provide for access). They had the stress of not knowing when and how the issue would be resolved. And they had to go to the trouble of arranging the repairs themselves eventually.

But they weren't without access to or use of their property. And the repairs were completed, as I say, within at most four months of the original start date for the work.

Mr B and Mrs B think NHBC should also pay their legal costs after they appointed a solicitor to deal with the claim on their behalf. The costs were just over £2,500.

I'm afraid I don't agree with Mr B and Mrs B on this point, for a number of reasons. First and foremost, the warranty policy is very clear on this point. In the Section entitled *General Conditions and Exclusions*, the policy document states that NHBC will not pay for:

“The cost of getting professional advice in connection with your claim (unless we

asked you to).”

Additionally, Mr B and Mrs B signed up to a full and final offer for settlement of their claim, which NHBC sent to them in January 2020.

The letter making that offer says that the payment to be made will be in full and final settlement. And it explicitly says that:

“... (the policy) has an exclusion for professional costs... we would not look to cover any costs for legal expenses.”

If this were buried in the small print of the offer letter or were in any way unclear or obscure – or if indeed there were any indication that Mr B and Mrs B had been coerced, tricked or compelled into accepting the offer – then I might take a different view. But there is no sign of any of those things. Mr B and Mrs B signed up to accept that offer with the terms set out clearly before them.

Mr B tells us he wasn't aware NHBC wouldn't pay his solicitors fees until after he'd hired the solicitor. He ought to have been so aware, if he'd read the policy. And in any case, Mr B and Mrs B signed up to an agreement which specifically and explicitly made it clear that these costs wouldn't be covered. I don't think it would be fair to ask NHBC now to put aside the parts of that agreement Mr B and Mrs B have decided they don't like, after NHBC have honoured the parts they do like.

So, I'm not going to ask NHBC to cover Mr B and Mrs B's legal costs in this case.

Putting things right

Mr B and Mrs B have my sympathy. What happened to them in their new house was clearly stressful, unwarranted and unfair. The build was clearly defective in a number of ways and this led to annoying and persistent problems with their drains.

But it was the builder, not NHBC, who was primarily responsible for the problem. And I have to separate out: (a) the distress and inconvenience inevitably caused to Mr B and Mrs B by the defective build; from (b) the additional, unnecessary trouble and upset caused by NHBC's delays and poor service (after July 2019).

Given the degree of trouble and upset suffered by Mr B and Mrs B – for at most four months, during the period I can consider – I'm satisfied that £600 is fair and reasonable compensation.

I should be absolutely clear that I think £600 compensation reasonably covers the trouble and upset Mr B and Mrs B suffered *after* July 2019. I make no comment at all – because the rules don't allow it – on the period before that time.

I can't compel them to do so, but NHBC will have to decide for themselves whether their offer of (cumulatively) £400 for trouble and upset before July 2019 – in addition to the £600 we're now awarding for the later period (after July 2019) – still stands. I can't make any direction at all on that point since we're not entitled to look at those earlier complaints, as I've explained above.

My final decision

For the reasons set out above, I uphold Mr B and Mrs B's complaint.

National House-Building Council must pay them £600 for their trouble and upset.

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 4 October 2021.

Neil Marshall
Ombudsman