

The complaint

Mr M has complained on behalf of an organisation, K, about the way National House-Building Council (NHBC) has dealt with a claim made on an NHBC Buildmark warranty.

What happened

The background to this complaint isn't in dispute, so I'll summarise the key points:

- Mr M and other members of K bought new homes covered by ten-year NHBC warranties. He got in touch with NHBC to report problems with the guttering and downpipes. Particularly where gutter brackets had broken under pressure from snow.
- NHBC offered its Resolution Service. It said the gutters were installed according to the manufacturer's guidelines and that meant the work complied with its Technical Requirements. It didn't require the builder to do anything, but I understand the builder agreed to repair the brackets anyway.
- The manufacturer reviewed the problem and NHBC inspected the gutters again. It accepted there had been a failure in the performance of the gutters. In summary it said the builder should reduce the spacing of the gutter brackets or fit snow guards.
- The builder chose the first option. After further snowfall, Mr M said 15 gutter brackets had failed. The manufacturer inspected the problem again and recommended snow guards be installed. NHBC said the builder had complied with its Resolution report and Technical Requirements and nothing further was required.
- Mr M complained and NHBC maintained its position. Mr M referred his complaint to this service and our investigator considered NHBC had acted fairly. Mr M disagreed, so the complaint has been passed to me.

My provisional decision

In my recent provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

NHBC has accepted responsibility for the downpipe problems. Some work has been carried out and NHBC has offered a cash settlement to cover the remainder. This part of the claim isn't in dispute, so I haven't considered it. Mr M's complaint is about the gutters failing under the pressure of snow. So that's what I'll focus on.

As the gutter problem was raised within the first two years after the property was built, the claim was considered under Section 2 of the warranty. In summary, Section 2 says it provides protection if the builder failed to meet NHBC Requirements. And NHBC will be responsible for anything it decides the builder should have done – but didn't.

NHBC says the relevant Requirement is 7.2 – S1 which includes guidance that ‘all sitework shall ... take account of the design’. Its second Resolution report accepted there was a failure in the design and that had caused a problem with the gutters. In summary it considered the builder should have taken the steepness of the roof and the likelihood of snow into account when designing the relevant parts of the gutter system.

NHBC decided the builder should do something. It recommended the builder resolve the problem by carrying out one of two options – reduce the bracket spacing or install snow guards.

I don’t think there’s any dispute that both options were, at that time, reasonable. They’re consistent with the guidance found in a British Standard: ‘in areas where snow lies on roofs, the front edge of the gutter should not be higher than the projected line of the roof, unless snow guards or other precautions are used’. NHBC says it used ‘other precautions’ by reducing the bracket spacing. And it was consistent with the view of the manufacturer, who said reduced bracket spacing or a snow guard could resolve this kind of problem.

The builder reduced the spacing but that didn’t overcome the design problem. The gutters were damaged again after further snowfall. After that the manufacturer said, ‘we strongly advise that a snow guard is installed’. This remedy is specified in the British Standard. And NHBC included it in the second Resolution report. So it seems to be accepted the snow guard option was a suitable way to ensure a lasting and effective solution to the design problem. Mr M asked NHBC to carry out or pay for the snow guard option.

NHBC didn’t agree to do so. Its argument is essentially that it asked the builder to pick one of two options. Either option was a reasonable one in order to comply with its Technical Requirements. And the builder carried one of them out. So that means the builder did what it was asked, and the warranty doesn’t cover doing anything further than that.

I’m required to consider what the warranty covers as well as what’s fair and reasonable in all the circumstances. Having done so, I’m not persuaded NHBC has acted fairly.

NHBC doesn’t dispute the option the builder took failed to overcome the design failure. That means NHBC identified a problem caused by a breach of the Technical Requirements, made recommendations to deal with it, and the problem hasn’t been solved. Despite that, NHBC has declined to provide further support to Mr M. I’m not persuaded that amounts to treating Mr M fairly or reasonably.

There’s no dispute the snow guard option – which was available to the builder and one of the recommendations made by NHBC – would be a suitable solution to the design failure. In these circumstances, I’m satisfied it would have been fair and reasonable for NHBC to carry out or pay for the snow guard option.

Mr M has since arranged for the snow guard work to be carried out at a cost of £3,565 plus VAT, which comes to £4,278. I’m satisfied it would be fair for NHBC to pay this amount. It should also add interest from the date the invoice was paid until it pays the settlement.

What I’ve decided – and why

NHBC responded to say it accepted my provisional decision and had no further comments to make.

Mr M also said he had nothing to further to add.

I’ve considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint.

As both parties have agreed with my provisional decision and neither party has provided any further comments, I see no reason to change my provisional findings.

My final decision

I uphold this complaint.

For the reasons above, I require National House-Building Council to:

- Pay £4,278;
- Pay simple interest* at 8% per year on the above amount, from the date the invoice was paid until the date NHBC settles the above amount.

**If NHBC considers that it's required by HM Revenue & Customs to deduct tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 16 July 2021.

James Neville
Ombudsman