

The complaint

Mr and Mrs P are unhappy with the way National House-Building Council (NHBC) has dealt with their claim under a new home Buildmark policy for damage and defects in their property.

What happened

Mr and Mrs P's house required significant remedial works. The original contractor went bust, so NHBC stepped in to remedy the damage and defects under the terms of the policy.

When this complaint originally came to us, a few issues remained outstanding, although for the purposes of my decision, there were only two matters left for me to decide, the rest having been settled already. They were as follows:

1. That the windows and doors had been badly fitted and Mr and Mrs P were concerned whether they were weatherproof; and
2. Whilst the fitting of the windows and doors had been registered with an industry regulator for the purposes of building control approval, the name on the certificate is not that of the company that Mr and Mrs P think installed the windows and doors. Mr and Mrs P consider the certificate to be invalid.

NHBC appointed a contractor, S, to do the required works on Mr and Mrs P's house. One of the defects to be remedied was to replace certain windows and doors. That work was completed, although there is a dispute as to which company did the work. NHBC say it was a specialist sub-contractor, R. Mr and Mrs P say that they never had anything to do with R and that it was S' carpenters that poorly fitted the windows.

This is important, because a government approved certification scheme has issued a Building Regulation Compliance Certificate for work done by the window installer, R. If R wasn't involved in the installation, the certificate, and the consequent building regulation approval that it provides, could be called into question.

NHBC is satisfied that the windows were fitted correctly by R and that any problems with the fitting had been rectified. So, I needed to determine if the windows were more likely than not fitted by R. If I found that they were, then they would be covered by the existing compliance certificate and hence building regulation consent would not be called into question.

But if I found that R wasn't involved in the fitting, then the compliance certificate issued could be questionable, and this would put in doubt whether there is building regulation consent for the installation. NHBC would then have to remedy this.

Prior to this final decision, I issued two provisional decisions. In the first of those, I found that R hadn't been involved in fitting the windows. So, the validity of the certificate was in question. But I didn't consider that there was sufficient evidence for me to conclude that the fitting was so poor that it needed remedying.

In determining what would be fair compensation, I initially provisionally decided that Mr and Mrs P's windows and doors should be removed and refitted, with any damage done in the

process made good. I said that this would be for NHBC to arrange. And I provided that quotes should be obtained, so that if Mr and Mrs P preferred, a cash settlement could be agreed.

Following the first provisional decision, there was significant further correspondence between this service and the parties. NHBC were unhappy with a number of my findings. But they agreed to do what I'd suggested to bring an end to this matter. Mr and Mrs P had their doubts that the proposed outcome would see the windows being re-certified. And they were worried that removing them may void their 10-year guarantee. But they too said that they were prepared to consider a reasonable cash settlement for the work, and that this should take into account any damage that may be done to their home in the process.

Sadly, it transpired that it wasn't possible to get the quotes that I'd asked for in my decision. Following the start of the pandemic and the numerous intervening lockdowns, despite both parties trying very hard to get contractors to attend, nobody had been prepared to fully quote for this work. This understandably left Mr and Mrs P very frustrated. NHBC ultimately got one contractor to quote for the job. But this had to be done via a desk-top survey. Half of which was completed by NHBC and the other by the contractor. Mr and Mrs P were sceptical about the contents of the estimate, which had to be amended a number of times.

After that estimate was provided, NHBC offered to cash settle this complaint for £6,195.38, being the total value of the estimated works. Mr and Mrs P asked that I determine again what I think would be fair compensation.

In my second provisional decision, I said that I still intended to uphold this complaint in part. And my provisional findings and proposed redress are set out below. Both Mr and Mrs P and NHBC accepted those findings.

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.

The findings I made in my second provisional decision were as follows:

'I have reviewed the desk-top estimate that NHBC has provided. And I am sympathetic toward Mr and Mrs P's criticism of it. But I also acknowledge that NHBC has tried to provide a compromise here to account for the fact that nobody could get any contractors to attend, during what has been an unprecedented period for everyone over the last year and a half.

With that in mind, having thought carefully about what would be best in all the circumstances of this complaint, I have provisionally decided that a cash settlement would be the most fair and reasonable redress for this complaint. This will see an end to Mr and Mrs P having to deal with NHBC further - which I know is their preference. And NHBC similarly will be able to draw a line under this claim.

Whilst I accept that the one quote that we have isn't perfect. And I appreciate that it's difficult to estimate in advance any damage that might be done to the property by any work that Mr and Mrs P ultimately decide to do, I am satisfied that the amount of NHBC's offer does amount to fair compensation. From my personal experience, it is in the ballpark of what I was expecting that this work might cost. And, indeed, it is slightly above what I thought may be quoted.

NHBC's offer includes a 16% uplift for what a private contractor, not obliged to provide preferable industry rates to NHBC, might charge. And it also includes 20% VAT which, if Mr

and Mrs P choose not to do all of the work which has been quoted for, isn't something that I would have expected NHBC to indemnify them for in any event.

I understand that Mr and Mrs P may well still be nervous to accept an offer of compensation where NHBC have been instrumental in providing the quote upon which it is based. But in all the circumstances, and with the ongoing difficulties prevailing in the construction industry, I don't think that there is a fairer way of determining compensation at this time. And this settlement sum should allow Mr and Mrs P to do as much or as little work on their house as they feel is required to satisfy their concerns, without any further outside influence.

So, taking everything into account, I think that the offer made by NHBC to cash-settle this complaint amounts to fair compensation.'

Given that both parties have accepted my second provisional decision, I see no reason to change my above findings, which I adopt in full in this final decision.

My final decision

It's my final decision to uphold this complaint in part. I require that National House-Building Council pay Mr and Mrs P the sum of £6,195.38 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 26 August 2021.

James Kennard
Ombudsman