DRN-3044326

Financial Ombudsman Service

The complaint

Mr F and Mr P complain that National House-Building Council ("NHBC") didn't take action to rectify a defect following a claim they made on their building warranty.

What happened

Mr F and Mr P bought a new home that came with a ten-year building warranty provided by NHBC. In 2019 they identified a problem with the bricks on the outside of the house, as they had lost their original colour and no longer matched the rest of the house. They made a claim under section two off the warranty.

In October 2019 NHBC arranged a resolution meeting with a contractor at the property. It set a date of 31 March 2020 for the work to be completed to rectify the issue.

In March 2020 the UK went into a national lockdown due to the Covid-19 pandemic and the work wasn't completed. Mr F and Mr P didn't hear from NHBC or its contractor in the months that followed. In June they contacted it, but an appointment wasn't arranged until August 2020. This was later delayed again to September 2020.

Mr F and Mr P weren't happy about this. They said they had waited too long for the work to be completed and they had had to chase NHBC for any progress to be made. They made a complaint.

NHBC didn't uphold their complaint. It said that due to the pandemic, its contractor had access to fewer staff because some were on furlough. This meant a date for the work wasn't possible until mid-September. However before this could be completed Mr F and Mr P advised they were taking matters to court so NHBC didn't progress the claim further. However it accepted the communication from its contractor could have been better from March until August 2020 and said it would give feedback to the contractor about this.

Mr F and Mr P weren't happy with this response. They thought NHBC could have communicated better with them throughout the claim. They also said that they had since instructed their own contractor who had advised the affected bricks needed to be replaced, rather than to be re-coloured as NHBC had suggested. So they thought NHBC should pay for this work. They brought their complaint to this service.

Our investigator didn't recommend the complaint be upheld. She said she was satisfied NHBC did all it should between March 2020 and September 2020 in the circumstances. And thought it acted fairly by pausing the claim when Mr F and Mr P said they were taking matters to court.

Mr F and Mr P didn't agree. They said they had sent a number of emails before getting any response from NHBC about when work would commence. And this had been significantly after the national lockdown had ended. They also said they hadn't proceeded with court action and only threatened this. They asked for their complaint to be reviewed by 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.

I think it's helpful to start by explaining how policies such as this one work. When dealing with a claim that falls within the first two years of a warranty such as this one, NHBC has a limited remit. A claim will come to NHBC if a defect has been reported to the original home builders and they've failed to rectify the damage in a reasonable timescale.

NHBC are then required only to offer a resolution service between the customer and the builder – laying out exactly what needs to be completed and by when. If the builder fails to complete the required work in that time, then NHBC is required to step in and do the work itself. It is only at this point, the insurance element of the warranty kicks in, which this service is permitted to consider

In this case NHBC set the builder a deadline of 31 March 2020 and they didn't complete the work before this date. This means we are able to consider the complaint. However we can only consider a complaint about matters after the insurance element has kicked in. That means, I can only consider NHBC's actions after the 31 March 2020, when the deadline was missed by the builders.

Mr F and Mr P have complained that the builders didn't complete the work in a timely manner after the deadline was missed, and NHBC failed to step in. I've considered what happened between March 31 2020 and when NHBC issued its final response to their complaint on 30 September 2020, to decide if it acted fairly and reasonably in the handling of the claim.

I've first considered the delay to the work being completed. Mr F and Mr P accept that the work couldn't be completed during the first national lockdown. However they say that this was partially lifted in May 2020 and as the work was to an external part of the building, this could have been safely carried out after this.

I've considered this but I don't agree there was an unreasonable delay. The first appointment was due to be arranged in August 2020. This is three months after lockdown was partially lifted. NHBC has explained that its contractor was dealing with a backlog of work that had been delayed over lockdown and that it had reduced staff due to the government's furlough scheme. And from my experience of dealing with many other companies in this area, at that time, this was a common problem for contractors. So considering the circumstances, I don't think the three month delay was unreasonable.

I understand this was subsequently delayed due to further lockdown restrictions, but a date in September was later arranged. Which is reasonable in the circumstances.

Mr F and Mr P have also said that they received poor service during this time and only secured a date for work to commence because they repeatedly contacted NHBC and their contractors. I agree that NHBC and its contractors provided poor service during this time. I can see from Mr P's account that he proactively contacted NHBC before any progress was made.

However it isn't the role of this service to punish a business for doing something wrong. But instead to seek to put things right. And in this case, while I can see Mr P suffered some inconvenience in having to contact NHBC a number of times, I don't think the inconvenience was such that NHBC should award any compensation. And as it subsequently arranged a visit in a reasonable time, I think it did enough to put things right at the time.

Mr F and Mr P decided to instruct their own surveyor in this time who advised that the bricks should be replaced instead of painted. I understand why they think NHBC should pay for this work, however I have to consider what is covered under their warranty. NHBC are required to ensure the property meets its technical requirements. So for it to fairly fulfil its obligation under the policy, it needs to ensure any defects are rectified in order to meet these requirements. And as it had directed the builder to carry out the required work to meet these, I'm satisfied it met this obligation. If Mr F and Mr P would prefer to have the work carried out in a different way than NHBC are suggesting, then they can instruct it to be completed outside of warranty cover. But as this wouldn't be covered by the warranty, it wouldn't be reasonable to ask NHBC to cover these costs.

Mr F and Mr P also think that NHBC were unreasonable for halting the claim due to legal action, as they said this was just a threat. Mr P said in an email to the builder that he would pursue them through the courts. And I don't think it was unreasonable for NHBC to assume this meant he was going to do as he said. So I don't agree it acted unfairly by halting progress on the claim at this stage.

For these reasons, I don't think NHBC has acted unfairly in its handling of Mr F and Mr P's claim between March and September 2020. While I agree it could have provided a better service, it still arranged an appointment in a reasonable time in the circumstances so did enough to put things right. So I won't require it to do anything further.

My final decision

For the reasons I've given, I don't uphold Mr F and Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mr P to accept or reject my decision before 4 November 2021.

Sophie Goodyear
Ombudsman