

## The complaint

Mr and Mrs A are unhappy about National House-Building Council's handling and delays regarding their claim under a Buildmark warranty for their new build property.

As the correspondence is mainly from Mr A I'll refer to him throughout this decision.

## What happened

Mr A bought the house in 2009. But there were issues with it from the start and trying to get work done to resolve the issues took roughly 5 years.

Some of the houses on the development were fitted with a flat roof. Mr A said all of these particular properties have suffered problems and were all part of the same repair process. This involved removing the roof and replacing it. This was because of issues with ventilation, sealing and mould.

Unfortunately, the mould problems returned, and Mr A needed to complain again to NHBC in November 2019. He said initially NHBC agreed to review and were going to send a technical expert, but a Director checked the details and said the issue had first been raised within the initial two years of the warranty. In view of this NHBC said the repair had been undertaken by the builder in line with the warranty requirements and so any issue now was the responsibility of the builder.

Mr A said NHBC had been involved in the solutions from 2013/2014 and that work had been done under its supervision. Mr A also pointed out that mid-way through those repairs NHBC had inspected the work and wrote a report (I note there was a resolution report issued by NHBC 7 April 2014) confirming a requirement for "mushroom vents" to be fitted. Mr A made sure the request was carried out, but it hasn't resolved the mould or the lack of a vapour barrier.

Mr A said he felt the only way forward, at this point, would be for NHBC to pay for an independent surveyor to write a new report. This would be sent to Mr A and NHBC would be compelled to appoint a contractor to carry out any requirements of such a report. NHBC wrote a final response letter to Mr A in April 2020 to confirm it would offer him as much support as it could in getting the builder to resolve the recurring issues. Unhappy with this Mr A brought his complaint to this service.

In my first provisional decision, I said:

### ***“Jurisdiction***

*Firstly, in terms of jurisdiction I agree that within the first two years of the policy Mr A wouldn't have been able to bring a complaint to this service. But it's very clear that we're a long way past the two year period. This situation arose within the Section three period of the policy covering years three to ten when the issues returned. This part of the warranty is the insurance warranty part and a regulated activity. I think this means this service does have jurisdiction to look at the complaint. NHBC accepted that this further problem was within time*

*under Section three of the warranty. I don't see any reason why this complaint can't be reviewed.*

*So, I don't think this complaint is outside the jurisdiction of this service. I think the latest issue is accepted by NHBC as happening during the time when Section three applies. Section three is a regulated activity and I think I can make a finding on any outstanding issues Mr A has raised as part of his complaint to NHBC.*

*I accept NHBC will want to consider this point and may well wish to refute the jurisdiction point. I accept it is perfectly entitled to review this within the rules of this service. But it can also agree that after such a long time trying to get a resolution it can step in and offer a full resolution to Mr A.*

### **Claims issues and service received**

*I don't see anything within the final response letter issued by NHBC to Mr A that allows it to continue to step away from any responsibility for the problems he continues to deal with. I've looked over the wording and I don't see anything that says NHBC now taking control of the ongoing problems "is excluded" under the Buildmark warranty. I think NHBC can step in at any point it wants to if the situation demands it. I think this is one of those situations.*

*Within the arrangements under the resolution service (within the first two years) there is a requirement for C to resolve the damage or defects discovered in the home. If C doesn't cooperate or fails to carry out the repairs, then NHBC may take over in certain circumstances to carry out the repairs. Considering this issue took roughly five years to resolve first time around and this second time it was raised in 2019 I think it's a fair and reasonable time for NHBC to provide the action and support Mr A needs.*

*I've reviewed the details and I think Mr A has a valid point here. I think NHBC should be doing more to help Mr A resolve this issue. I don't think it writing to C asking it to act at this late stage is enough. I think NHBC needs to take control of the situation and come up with a lasting and effective repair for Mr A.*

*There's no doubt this situation has been very difficult for Mr and Mrs A. I think Mr A has been clear about the issues as he sees them from the start of his original claim. Mr A had made C aware of the problems the property was having with "moisture retention and mould".*

*In correspondence in 2012 I note C said "It has been identified that a flow of warm air can enter the loft space which, when meeting the colder surfaces within the lofts, is condensing. There should be barriers in place to stop this transfer between plasterboard and indeed any other routes, around light fittings for example, into the loft space. We intend to review this particular point in all lofts and if required take the appropriate steps to stop the transfer of warm air in line with the required NHBC standards."*

*Mr A pointed out that his own independent surveyor "identified the need for a vapour barrier in 2014 but the builder and NHBC failed to comply". Mr A said in correspondence with C that is still the case and that the issue is "the lack of a vapour barrier at first floor ceiling level". He said this is still allowing warm air from the house to enter the cold loft space.*

*It seems there may have been some action with the builder. One of the resolutions suggested originally was C going to fit a "warm roof" and apparently the builder might be in a position to do it this year. Also, Mr A told this service that C was going to write up a "technical specification" for repairs leading to a solution being implemented. But I've not had confirmation from NHBC about what has been agreed or done. I do accept that with government restrictions around the pandemic works have been difficult over the recent*

*period. But as restrictions have now been lifted, I think it's fair if NHBC take control of the claim situation.*

*I don't think NHBC can continue to ask C to contact Mr A and resolve the matter. NHBC need to take control and set up an action plan with dates and times when matters will be dealt with. I think the easiest way to do this was outlined by Mr A previously and I referred to it above. This is as long as the work is still outstanding, and Mr A would still like this option to go ahead.*

*I think NHBC should agree with Mr A on an independent surveyor to visit at a time convenient to Mr A, write a new report to both parties and then NHBC would appoint and pay a contractor to conclude repairs. I think at the point when NHBC gets the report it should produce an action plan saying when the steps will be taken and when each stage will be completed."*

### **Responses to my provisional decision**

Mr A responded and accepted the provisional decision. I'll refer to the main factors he raised here:

- There has been no support from NHBC;
- C sent a technical expert who produced a specification to convert the cold roof to a warm roof but still didn't allow for a vapour barrier;
- This specification included the use of different products as roofing material that have a shorter guarantee, is a different fire risk, and isn't as safe to walk on – Mr A would prefer like for like products to be used. Since then Mr A has said further different products are now being offered;
- There's nobody answering any of Mr A technical queries and he feels both NHBC and C have gone very quiet, the second variation on materials also leads to questions Mr A hasn't had answers on;
- He'd like to clear up who is guaranteeing any roof work done going forward. Mr A said neither party wants to offer a guarantee and instead are pushing this towards the manufacturer of the materials guarantee. Mr A said this isn't sufficient and the C or NHBC need to offer an appropriate guarantee;
- Mr A feels he is entitled to some compensation as he feels this all could have been resolved a couple of years ago if an NHBC director hadn't stopped matters progressing at that point.

NHBC responded saying they didn't think that section three should apply to this claim. NHBC said cover should be dealt with under section two where the builder is still responsible. NHBC didn't think the appointment of an independent surveyor would be helpful.

In my further provisional decision, I said:

*"I do understand why NHBC said this matter should still be dealt with under Section two of the warranty. They say that this is how this claim needs to be handled. But it does mean the claim is effectively outside the jurisdiction of this service as section two isn't a regulated activity. But to me that means Mr A would have been better off if the builder had ignored the resolution service within the first two years of the warranty. In terms of bringing a complaint to this service if the builder had missed a deadline back when the original problem occurred Mr A would have been able to bring his complaint to this service then.*

*Now that is easy for me to say with hindsight. The builder responded to the issues at that original point, so it looked like it had been resolved in line with the requirements of Section*

*two of the Buildmark warranty. But the reality is, there were further problems and the matter still isn't resolved many years later. So, if I accept what NHBC say Mr A is potentially left in a continuous state of not knowing who is taking control of the matter or indeed if anyone is taking control of the matter under Section two. There has been a lack of certainty for several years surrounding an accepted claim under the overall ten years of the warranty. I don't see how the parties can continue to leave Mr A in this situation without any certainty about when or if the known problems and issues will be resolved.*

*When the builder does respond in line with the requirements of Section two of the warranty but the matter isn't resolved to a recognised and satisfactory standard I think there has to be a point (just as there would be if a deadline has passed) where NHBC have to step in and act. I accept that in most situations that would be under Section two. But here where we are so many years away from Section two and so much of the debate, the work, the problems have all occurred at a point when the warranty was running through the Section three time period then I think on occasion a line has to be drawn. I think here it would be fair and reasonable to apply Section three. I would hope that the unfortunate circumstances and situation that Mr A finds himself in are very rare and so NHBC would be in agreement to deal with the claim in this way.*

*Although I take on board NHBC's point that an independent surveyor isn't ideal I think this is the best option in this situation and should be used as the way forward to avoid more delays. I understand Mr A's concern about the roofing products, but I think it would be best for me to allow the extra points he has raised to be part of the discussion with an independent surveyor.*

*I think Mr A makes a very fair point about a guarantee. If a roofing firm replace a roof, they generally give a guarantee. So, referring to the product guarantee doesn't seem reasonable. I think whichever roofing firm is employed to do the work there needs to be a guarantee agreed between the original builder, NHBC and the roofing firm that does the work. And this needs to be clearly relayed to Mr A.*

*I do take Mr A's point about the delays and difficulties he has faced, and he feels compensation should be paid. I did consider this point as part of my review of his case. But it isn't just NHBC involved here and it has made the point that most of the issues stem from the builder. I do think NHBC could have moved more quickly to help."*

### **Responses to my further provisional decision**

Mr A accepted this.

NHBC accepted the matter wasn't progressing and shouldn't continue to be held up. It has agreed to take this situation over. It maintained it would do this under Section two and not Section three as it said the problem was the builder's liability. NHBC said this was just coding and it wouldn't affect the outcome for the policyholder as it was accepting liability.

NHBC reiterated that it would prefer to use its own investigator along with one of its own contractors prior to appointing an independent surveyor. It said if needed it would then appoint a surveyor. It said it hadn't looked at the property for some time and would like to understand what it's dealing with.

### **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.

In terms of what NHBC said about Section two I think Mr A is keen to see some action taken to put matters right. So as NHBC is in agreement to this service dealing with the complaint and to get the work done I'm not going to make a specific finding on which section should apply specifically. But what I would say is that NHBC cannot use Section two as any sort of limitation or excuse in terms of getting the problem put right. Further, if there are any issues with the claim repair in the future, I expect NHBC to give Mr A cover in line with the best case scenario under the overall policy, whether that be under section two or three in relation to this claim issue.

Otherwise, I don't think NHBC has said anything about the provisional findings that make me think I need to change the outcome of my decision. Although I think NHBC has put its latest points well and in the right spirit I just don't think it would be fair and reasonable to Mr A to step back from the clear path to a resolution that an independent surveyor would bring.

### **Putting things right**

- Pay for an independent surveyor (agreed in advance with Mr A) to write a new report covering all the issues that are outstanding and directly linked to the original claim;
- A copy of the report should be sent to Mr A and NHBC at the same time;
- Any requirements from that report NHBC will need to appoint a contractor to carry out the requirements and pay for any such work;
- Produce a timed and dated action plan to allow completion in a reasonable period;
- Resolve in advance of the work going ahead arrangements regarding a roof guarantee.

### **My final decision**

I uphold this complaint.

I require National House-Building Council to:

- Pay for an independent surveyor (agreed in advance with Mr A) to write a new report covering all the issues that are outstanding and directly linked to the original claim;
- A copy of the report should be sent to Mr A and NHBC at the same time;
- Any requirements from that report NHBC will need to appoint a contractor to carry out the requirements and pay for any such work;
- Produce a timed and dated action plan to allow completion in a reasonable period;
- Resolve in advance of the work going ahead arrangements regarding a roof guarantee.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 11 January 2022.

John Quinlan  
**Ombudsman**