

The complaint

Mr and Mrs H complain that National House-Building Council (“NHBC”) has unfairly declined a claim they made under their Buildmark policy.

What happened

The background of this complaint is well known to all parties. So, I’ve summarised events.

- Mr and Mrs H bought their property in December 2017. Noticing issues with heat retention, Mr and Mrs H raised this with the builder of the property initially, then to NHBC. Following some back and forth, NHBC engaged its resolution service.
- A resolution report was produced which directed the builder to complete investigations and deal with any heat retention issues by February 2020.
- NHBC said due to Covid-19, investigations were delayed. It then took over the claim and investigations began in February 2021, with a report produced in April 2021. NHBC said a heating contractor reported the heating within the property was adequate within a second resolution report produced in June 2021.
- Mr and Mrs H complained. NHBC agreed it had made mistakes in its handling, service and communication and offered £700. NHBC carried out further investigations in August 2021. Mr and Mrs H complained about the lack of notice or information around the visit and NHBC offered an additional £100.
- NHBC said its investigations weren’t yet complete. So, it was unable to conclude at that time if there was a breach of technical requirements or not. And a further visit was arranged for October 2021. Discussion of further visits also took place around this time. And NHBC said it had arranged a communication plan going forwards to keep Mr and Mrs H up to date with events as it continues to investigate.
- Mr and Mrs H brought their complaint to this Service. They said the delays had caused distress and inconvenience.
- One of our Investigators looked into what happened and didn’t uphold the complaint. She considered a thermographic survey provided, and said while this highlighted issues with airflow, it didn’t show any particular breaches of the NHBC technical requirements as it would need to, to be covered. She acknowledged the unnecessary delays were impactful, but NHBC’s intention to continue investigating the issue at this time was reasonable. Overall, she felt NHBC’s offer of £800 was reasonable for the mistakes it had made.
- Mr and Mrs H disagreed, providing photos, temperature readings, and further commentary. They said the thermographic report showed failures in heat retention of the home with significantly different readings across rooms. And NHBC’s agents had already investigated all relevant areas of the home and should just settle the claim. They also said their energy bills have been highly inflated and should be covered.
- The Investigator looked again but didn’t change her mind. She said the information provided didn’t highlight any particular technical requirement, so she wasn’t persuaded NHBC was acting unreasonably by continuing to investigate. She also

said as a result it was too early to determine if it should also cover energy bills.

So, the complaint has been passed to me for an Ombudsman's final decision.

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 claim

In this case, Mr and Mrs H are seeking to claim on their Buildmark policy under section 2, events that occur within the first two years of the warranty.

NHBC produces a set of technical requirements, which builders need to comply with when building (or converting) a property. As the claim was made within the first two years, the warranty allows NHBC to act as a mediator between the builder and consumer in order to determine if the builder has failed to meet its technical requirements, and decide what it should do to meet their responsibilities under Buildmark.

This is known as the "resolution" service. NHBC will typically produce a resolution report which outlines all of the above. In this case, NHBC did direct the builder to carry out investigations under a resolution report, and following this it took responsibility for them itself.

In June 2021 it produced a second resolution report. Within which it determined there was not a failing in the heating design of the property, having considered the placement and size of radiators within its investigation. Mr and Mrs H have also agreed the heating system is not at fault for the issues experienced.

The report concluded that further investigation into the thermal performance of the external envelope of the over-garage room was required to determine whether this item complies with NHBC technical requirements.

Mr and Mrs H say the cause of the issues is the airflow behind non-insulated plasterboard on the north and south elevations of their property. But they've not directed me to any particular technical requirements to show where a breach has occurred.

There appears to be no dispute from NHBC that Mr and Mrs H's home is suffering from an issue as they've described. But as I've outlined, for this to be covered under the policy, the builder *must* have breached a technical requirement during the build. It is not sufficient for there to be simply to be an issue.

NHBC says it still needs to carry out further investigations to establish whether a requirement has been breached. So, I've thought about whether this is reasonable and I've reviewed the technical requirements myself.

Having done so, it's not clear to me what technical requirement specifically Mr and Mrs H would seek to rely on or how the requirement had been breached. So based on what I have, even if I was in agreement with Mr and Mrs H's diagnosis of the problem, this wouldn't persuade me there had been a breach of the technical requirements.

So, it seems to me that further investigation of the problem from NHBC is the most sensible solution going forward. And I will leave this to NHBC to do. Should it subsequently determine the claim is covered then I would expect it to consider any additional costs or fees Mr and Mrs H have incurred.

Handling

NHBC has an obligation to handle claims promptly and fairly, and to provide appropriate information on the progress of his claim to its policyholders.

In this case, NHBC has apologised and recognised various issues and mistakes it has made across the life of this claim. These have included unnecessary delays, poor communication, as well as service provided by its agents. As these have been detailed by our Investigator at length previously I won't go over these points again, but I'm satisfied NHBC has not met its obligations to handle the claim promptly or keep Mr and Mrs H updated as it should've done.

Taking into account everything that's happened, it's clear to me NHBC's actions and mistakes have caused a lot of distress, inconvenience and avoidable frustration for Mr and Mrs H. In light of these mistakes and the impact they've had against the offer of £800 NHBC has put forward, I'm satisfied this sum is fair compensation in the circumstances. And I'm not going to ask it to do anything further.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 26 April 2022.

Jack Baldry
Ombudsman