

The complaint

Mr and Mrs P complain that National House-Building Council (NHBC) hasn't treated them fairly after they made a claim on their building warranty policy.

What happened

Mr and Mrs P brought a new build property in 2009. The property was covered by a ten-year building warranty policy. During the first two years of cover, they experienced damp in their en-suite due to water ingress via the roof.

The builder of the property is responsible for putting right any defects or damage identified during the first two years of cover. However, NHBC may offer its resolution service if there's a dispute between the builder and the homeowner. Should NHBC do so, and if certain requirements are met, NHBC becomes responsible for putting the issues right.

Mr and Mrs P notified NHBC of the damp in 2015, after the builder's attempts to resolve it had been unsuccessful.

Between 2015 and 2017, NHBC issued three resolution reports requiring action from the builder. However, the underlying problem remained unresolved. So, in 2018, NHBC took responsibility for the issue and appointed one of its contractors. NHBC's repairs were thought to be successful, and in March 2018, NHBC issued a fourth resolution report requiring the original builder to rectify the internal damage.

After the builder's internal repairs, the damp reappeared. In November 2018, NHBC issued a fifth resolution report. NHBC thought the damp related to a separate issue (an uninsulated gutter detail) which the builder was previously meant to investigate. NHBC also noted that some of the internal repairs were poor. NHBC required the builder to undertake the gutter detail investigations and rectify the poor internal finishing.

NHBC says, in 2019, further investigations and works were undertaken by the builder, and in October 2019, the builder confirmed all the works were complete. NHBC says Mr and Mrs P next made contact in September 2020, as the damp had again returned. NHBC told them it couldn't offer any further assistance. Mr and Mrs P made a complaint.

In February 2021, NHBC responded to Mr and Mrs P's complaint. NHBC said the builder has provided evidence the gutter insulation is in place, and further investigations are now needed to establish the cause of the returning damp. NHBC also offered £450 compensation for wrongly advising it was unable to help further and for its delay in arranging those further investigations.

Mr and Mrs P referred their complaint to our service. Whilst the complaint was waiting to be considered by one of our investigators, NHBC undertook the further investigations and further repairs were subsequently scheduled.

In February 2022, NHBC updated our service. NHBC explained the repairs were underway, but they had since been halted by Mr and Mrs P as they were unhappy with the scope of work.

NHBC explained its investigations had found the water ingress had reoccurred because a membrane had only been patch-repaired. NHBC said localised repairs would resolve that issue. NHBC clarified that it's not repatching any areas, but completely removing and replacing any repairs previously undertaken.

However, Mr and Mrs P remained unhappy with the scope of work because it had also been found there was no vapour control layer ('VCL') on the roof, and NHBC wasn't intending to install one.

NHBC explained the missing VCL wasn't the cause of the water ingress above the en-suite, and whilst it would include a VCL in the areas it's now repairing, it has no liability to install a VCL throughout the remainder of the roof. NHBC said, unless Mr and Mrs P allow it to complete the repairs that are covered, it would have to offer a cash settlement for its remaining liability.

One of our investigators has since considered Mr and Mrs P's complaint. She thought NHBC should have taken responsibility for resolving the issues before 2018, and that matters were unreasonably delayed after its fifth resolution report. She recommended the compensation be increased to £600. However, she thought NHBC had acted fairly in respect of the proposed scope of work and the VCL.

NHBC accepted our investigator's findings. But because Mr and Mrs P remained unhappy, their complaint has been passed to me for a 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.

I can understand why Mr and Mrs P would like the VCL issue to be rectified throughout their roof. However, NHBC is only liable for the issue that was raised with the builder during the first two years of cover, *i.e.* the water ingress above the en-suite. I haven't seen anything that shows the missing VCL in other areas of the roof is contributing to the water ingress above the en-suite.

The missing VCL was identified after the policy had expired. But even if NHBC had identified the VCL was missing after it became involved in 2015 and before the policy expired, during the last eight years of cover, the defect must be causing damage for the policy to assist. I haven't seen anything that shows the missing VCL, in the areas not being repaired by NHBC, has led to damage.

I also haven't seen anything that suggests NHBC's latest scope of work won't rectify the water ingress issue above the en-suite. As such, I can't reasonably decide NHBC's proposed remedy is unreasonable.

Mr and Mrs P would now like a cash settlement, so they can arrange the repairs themselves. However, NHBC will only need to pay them the amount it would have paid its own contractors for the remaining repairs on its latest scope of work.

I acknowledge the issue has been ongoing for ten years, which has affected Mr and Mrs P's enjoyment of their home and caused them upset. But NHBC didn't cause the original defect and nor was it responsible for the builder's original workmanship. NHBC also wasn't made aware of the issue until 2015, and since then it's been trying to help resolve it.

There's the question of whether NHBC should have taken responsibility before 2018, given the builder hadn't rectified the issue as required by the resolution reports. There's also the question of whether NHBC did enough in its attempts to repair, given its repairs weren't successful. However, whilst it's not disputed that NHBC could have done some things differently, I've not seen its overall actions or attempted repairs were unreasonable.

So, for those reasons, I'm not further increasing the compensation award. Overall, I consider the £600 recommended by our investigator to be fair.

My final decision

For the reasons I've set out above, I uphold this complaint in part. My final decision is National House-Building Council should:

- complete the remaining repairs as per its latest scope of work, or if Mr and Mrs P prefer, pay them the amount it would have paid its contractors to complete those repairs; and
- pay Mr and Mrs P £600 compensation, in total (if £450 has already been paid, a further £150 would be due).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 29 June 2022.

Vince Martin
Ombudsman