

## **The complaint**

Mr and Mrs B complain about the way National House-Building Council (“NHBC”) have handled a claim made under their Buildmark policy.

## **What happened**

In 2019 Mr and Mrs B purchased a newly built property which came with the benefit of a 10-year Buildmark building warranty underwritten by NHBC.

Mr and Mrs B identified a number of issues with the property straight away, and contacted the builder to rectify these. NHBC also began to assess the claim under Section 2 of the Buildmark policy.

At the beginning of 2020, Mr and Mrs B contacted NHBC, as they were having difficulties with the builder not resolving matters to their satisfaction. NHBC got in touch with the builder but as the builder said it was still dealing with the matter, NHBC didn’t get involved at that point. However, in October 2020, Mr and Mrs B contacted NHBC again to complain about outstanding items and the quality of the work. Soon after this, NHBC began its Resolution Service to try to put things right for Mr and Mrs B.

A resolution meeting took place in December 2020 and further work was agreed for the builder to carry out by a deadline of 22 February 2021. The first resolution report indicated that only two of the 13 items listed required action to ensure that the build complied with NHBC’s Technical Requirements.

In March 2021 another claim was raised and two further resolution reports were produced in May 2021. Again, only a couple of items on the list required remedial action to ensure compliance with technical requirements. The builder was given until June 2021 to complete repairs.

In October 2021, NHBC decided to take over the builder’s responsibilities as the builder hadn’t complied with previous resolution reports. NHBC offered to cash settle the claim and Mr and Mrs B were unhappy with the amount offered and the schedule of works. So they complained to NHBC.

NHBC responded to the complaint, saying it had investigated matters and was satisfied that it had addressed everything fairly and had made a reasonable offer to cash settle the claim. Mr and Mrs B remained unhappy, so they referred their complaint to this service.

Our investigator considered all the information but didn’t recommend the complaint be upheld. Because Mr and Mrs B didn’t agree with our investigator’s assessment, the complaint has now come to me to decide.

## **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.

Having done so, I'm afraid I won't be upholding this complaint. I'll explain why.

I can see there are numerous issues with Mr and Mrs B's property, which have been evidenced by the several photographs, videos and reports we've received. From the evidence provided I'm satisfied that considerable work is required to rectify the property to the standard that Mr and Mrs B quite rightly expected when they purchased it. And I do very much sympathise with Mr and Mrs B, that their property is not yet up to the expected standard.

However, my consideration in this complaint can only extend to what NHBC is liable to rectify under the terms of the warranty Mr and Mrs B have in place with it. A Buildmark warranty doesn't protect a consumer against everything that might be wrong with a home, but only against the events outlined in the policy.

So, I've looked closely at the warranty terms and at the resolution reports provided by NHBC. During years 0-2 of the warranty period, the warranty requires the builder to resolve any damage or defects discovered in the home which do not comply with NHBC's Technical Requirements. If the builder doesn't cooperate or fails to carry out necessary repairs, then the insurer can step in and take over in certain circumstances.

But the terms "damage" and "defects" don't refer to everything that could possibly be wrong with a new build home. The warranty only covers the "Damage" or "Defects" listed and defined within the policy. Mr and Mrs B say that there are several structural defects, and have provided photographs to try to evidence this. But from the photos I can predominantly see aesthetic problems, not structural ones, and there's no report from a qualified professional to support what Mr and Mrs B are saying about there being structural problems. Without this, I can't agree that there were structural defects with the home which haven't been compensated for or put right.

For example, Mr and Mrs B say, among other things, that their roof doesn't comply with building regulations, namely BS5543. But I don't have enough evidence to support this claim, such as an independent report from a structural engineer which might suggest that there is an issue with the structural integrity of the roof. And all the resolution reports following the various inspections do not confirm that there is a serious structural defect with the roof which doesn't meet NHBC's technical requirements. So I can't agree that the roof is structurally defective.

So considering NHBC's obligations during years 0-2 of the warranty period were to investigate whether any of the issues with the property meant that it didn't meet its technical requirements and to instruct the builder to put things right, I've looked at the resolution reports it produced and I've noted the following:

The resolution report dated 15 December 2020 set out work for the builder to carry out by February 2021. I can't see that NHBC did anything wrong in relation to this report, as its responsibility, as I've mentioned above, was to investigate the defects and set out what the builder needed to do to ensure compliance with technical requirements. I'm satisfied it did this and the onus was then on the builder to carry out the required repairs.

The resolution reports dated May 2021 confirmed that the action required by the builders from the previous report had been carried out, and NHBC instructed the builders to carry out further work that was required, so I'm satisfied it fulfilled its obligations at that time.

In October 2021, when NHBC took the decision to step in and take over the responsibilities of the builder, I consider this to have been a fair and reasonable step to take as the builder hadn't complied with previous instructions. NHBC decided to offer Mr and Mrs B a cash

settlement for what it would cost it to arrange to carry out any outstanding items which it had responsibility for under the terms of the warranty.

As the terms of the warranty allow NHBC to do this, rather than arrange to have the work carried out, I'm satisfied NHBC didn't act unfairly by offering a cash settlement. It agreed that there were several items outstanding that the builder either didn't rectify or that had become defective again. And it also said that if the amount offered wasn't sufficient to get the required repairs carried out, then Mr and Mrs B could provide NHBC with two detailed quotations which NHBC would then consider before reassessing their settlement offer. I find this to have been a fair suggestion to make. So, all in all, I don't consider NHBC to have acted unfairly here.

I'm sorry to disappoint Mr and Mrs B, and I can appreciate there are several issues with their property which they still feel deeply unhappy about and which have caused them considerable stress and anxiety.

I want to reassure them that I've considered the many photos, video evidence and written submissions they've provided. But that doesn't mean that the issues they've raised are covered by the NHBC warranty – as the warranty doesn't guarantee that a property will be free from all defects. It only provides cover for the things listed in the policy, such as structural defects. And for the reasons I've explained, I don't have sufficient evidence to satisfy me that the outstanding matters which have been complained about constitute structural defects which NHBC is responsible to rectify under the terms of its warranty. It follows therefore, that I won't be upholding this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 22 March 2023.

Ifrah Malik  
**Ombudsman**