

The complaint

Mr and Mrs C complain that National House-Building Council (“NHBC”) have unfairly declined a claim made under their buildings warranty.

Reference to Mr and Mrs C or NHBC includes any respective agents or representatives.

What happened

The background of this complaint is well known to all parties and has been detailed by our Investigator previously at length, so I’ve summarised events.

- Mr and Mrs C bought a property that carried an NHBC warranty.
- They’ve raised several claims to NHBC about issues across the property. These included concerns about a boundary wall, patio slabs, and other issues.
- Mr and Mrs C raised a previous complaint with our Service that considered matters up until October 2020 – the date of NHBC’s final response letter. In March 2021, the Investigator upheld the complaint, awarding compensation, and directed NHBC to further investigate the patio claim, and act on the boundary wall claim swiftly. Both parties accepted this view.
- Further complaints were raised with NHBC regarding the events that followed.
- Mr and Mrs C say NHBC appointed an engineer to carry out a visual inspection. With its findings being shared in June 2021. Mr and Mrs C say this was full of inaccuracies, and its conclusion was that the front elevation recessed external masonry wasn’t caused by a defect in any part of their home, nor was there any evidence of detriment to stability of the structure.
- NHBC said it had carried out follow up investigations regarding the patio but was unable to identify a cause of their movement but said it would offer a goodwill payment to relay the patio area.
- Our Investigator looked into what happened and didn’t uphold the complaint.
 - She said damage to the retaining wall was caused by its foundations. And under the warranty, cover would only be provided if this caused instability to the main structure. But here the evidence didn’t support this was the case, even if the foundations had impacted paving slabs at the front of the property. So, she said NHBC’s proposed further monitoring was reasonable.
 - She reviewed the evidence on the subject of the driveway from 2016 and 2021 and said its suggestion to reconsider the matter was fair. And highlighted the report which suggested the driveway wasn’t sinking, but had variations due to a minor settlement.
 - NHBC’s offer to either cash settle or carry out repairs to the rear patio slabs after Mr and Mrs C carried out repairs to the front of the property was fair.
- Mr and Mrs C disagreed, saying:

- Physical damage to the property had already occurred and impacted its structural stability which was recognised by NHBC's proposals to measure future displacement.
 - NHBC's policy made no reference to progressive movement or a lack thereof. So structural damage should not be ruled out.
 - The driveway block paving should be considered under Section 2 of the policy given they raised this matter within the first two years.
- Mr and Mrs C also reviewed NHBC's evidence and commented that its engineer's report and commentary was inaccurate as it suggested the damage may have always been present and uncovered when paving was replaced. And they said NHBC had now agreed to cash settle for the rear property works and were investigating the front. But NHBC had still declined to cover any repairs to the house.
 - Mr and Mrs C have most recently been in touch to say NHBC now accepts their claim and provided its Resolution Report from 17 June 2022, saying it now recognises there is progressive movement to the substructure which would cause eventual displacement. But this states the external masonry wall is structurally sound which Mr and Mrs C disagree with. They say its delays of two years to accept the claim resulted in further damage which was supported within its monitoring.
 - NHBC said it had carried out engineering investigations from September 2021 onwards including trial pits and monitoring. It said these findings led it to accept some failings under the warranty which it would look to cash settle.
 - Mr and Mrs C also said they've moved out of the property and now have tenants in situ given the stress this has caused them, with both Mr and Mrs C taking extended leave from work for mental health reasons. They said should the tenants need to be moved out of the home that NHBC guarantees the provision of alternative accommodation.

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.

- This Service does not manage ongoing claims. Within this decision I've considered events between October 2020 and 21 September 2021, the date of NHBC's final response letter. I understand matters may have progressed since, but I will be focusing on NHBC's claim handling across this period in light of the available information and what is fair and reasonable in the circumstances.

Boundary wall/retaining wall

- There's no dispute that warranty requires instability to the main structure to have taken place for an event to be covered. Nor is there a dispute there was conflicting expert opinion about the cause of any such instability with NHBC reaching a different conclusion to Mr and Mrs C's own expert.
- So NHBC said it would carry out further monitoring. In light of the conflicting opinion and the expertise of the parties putting the opinions forward, I think this was a reasonable and pragmatic step for NHBC to take. So, I don't consider this to be a failing on its part.
- Since the monitoring has taken place, it has accepted part of the claim. But the

ongoing disagreement about this matter will sit outside of the scope of this complaint.

Rear Patio

- NHBC had agreed to repair the rear patio, but on the condition the issues at the front of the home were first addressed to allow for safe access. Alternatively, it said it would offer a cash settlement. I think these were reasonable options in the circumstances and I'm not going to ask it to do anything further.

Claims handling and other issues

- Mr and Mrs C have been clear they believe NHBC is responsible for delays across the life of this claim. But as I've outlined, I'm not considering the entire claim within this case. This is because some of these matters have been considered by this Service previously, and many have taken place past 21 September 2021.
- And taking into account the life of the complaint, taking into account NHBC's obligations to handle the claim fairly and promptly, I'm satisfied it has largely met these requirements. And any slight delays or issues with handling across the time I can consider under this complaint wouldn't be to the extent I would look to make a compensatory award for.
- Mr and Mrs C have also sought assurances about the claim going forward and guarantees for alternative accommodation for their tenants. But these matters will first need to be considered by NHBC for the reasons outlined above and previously.
- Mr and Mrs C raised concerns about the driveway block paving since the complaint came to our Service. As our Investigator outlined, these will need to be addressed by NHBC in the first instance.

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 and Mrs C to accept or reject my decision before 14 December 2022.

Jack Baldry
Ombudsman