

## **The complaint**

Miss E and Mr E's complaint is about National House-Building Council trading as NHBC's handling of a claim made under their building warranty.

All references to NHBC include its appointed agents.

## **What happened**

Miss E and Mr E own a property covered by a ten-year Buildmark policy provided by NHBC. The start and end dates of the policy fall between 2015 and 2025.

The crux of this complaint concerns the progression of a claim NHBC accepted under the Buildmark policy some years ago. The defects and damage to Miss E and Mr E's property also affect other properties in the row. So NHBC says investigations are required in order to provide a lasting and effective structural repair to all of the properties.

Miss E and Mr E say there's been delays in NHBC's handling of the claim, and that the repairs haven't progressed in a reasonable and timely manner. They say this has impacted them in selling the property, including when the market was favourable, and in potential loss of rent. Miss E and Mr E also highlighted the disruption the claim has had on their lives.

NHBC responded to Miss E and Mr E and provided a number of final response letters in relation to the matter. NHBC's most recent final response considered events between August 2020 and February 2022. It upheld Miss E and Mr E's concerns about the handling of their claim and offered £1,500 compensation for the distress and inconvenience caused.

Miss E and Mr E didn't agree with NHBC's response and referred the matter to our service.

Our investigator looked at everything and recommended the complaint be upheld. They concluded that NHBC should pay a further £500 compensation for the distress and inconvenience caused to Miss E and Mr E since August 2020. Bringing the total amount of compensation to £2,000.

Miss E and Mr E disagreed with our investigator's findings. They didn't think the compensation amount fairly reflected:

- The distress and inconvenience caused by NHBC.
- The costs of them not being able to rent the property out.
- Potential problems to the property because of the delay in repairing the original defects.
- The freelance jobs Miss E had to turn down to deal with the claim.

NHBC also disagreed with our investigator's findings. It said that £1,500 compensation was fair and reasonable for the timescale being considered and felt that the investigator had taken into account issues which were outside of the scope of this complaint.

The complaint has now been passed 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.

I'm aware I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focused on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

For the purposes of my decision, I'm satisfied that I only have jurisdiction to consider the events between NHBC's previous final response around August 2020 up to the date of its final response around February 2022, a period of around 18 months. I'm not considering any ongoing issues with the claim or what's happened before or since those dates.

Having considered everything, I agree with the conclusions reached by our investigator for these reasons:

- Miss E and Mr E have asked for compensation linked to the failed sale of their property, and for being unable to rent it out. And they've outlined the future plans they would've had, but for NHBC's delay. I've carefully considered the information they've provided here, whilst taking into account the timescales I have jurisdiction to look at above.
- As things stood in February 2022, the claim hadn't been concluded, nor was there any guarantee that it would do so given the level of investigations NHBC was required to carry out.
- To be able to uphold this point, I'd need to be persuaded that NHBC's actions were directly responsible for causing Miss E and Mr E a consequential loss through either the sale of the property or in loss of rent, as opposed to the circumstances of the claim itself. I say this because I can't see that Miss E and Mr E's policy covers loss of rent. And the policy also states, "*NHBC will not be liable for the following:...i) Any loss of enjoyment, loss of use, loss of income or business opportunity, inconvenience or distress, or any loss arising or cost incurred (or both) only indirectly, as a result of the events or circumstances that led to your claim or complaint.*"
- Having carefully considered all the evidence available, I'm more persuaded that the losses Miss E and Mr E are claiming for here are predominantly to do with the events and circumstances of the claim, as opposed to any direct actions taken by NHBC. So, I'm not going to hold NHBC responsible for these losses.
- I do have some sympathy with Miss E and Mr E's experience of this claim. And I can understand their frustration with matters that haven't progressed more quickly to date. But I can only consider the delays and service that NHBC is directly responsible for here.

- In determining whether our investigator's recommendation for compensation is fair I've considered a number of factors. I've looked at any avoidable delays in the timeframe set out above, and NHBC's overall service – which includes the actions of its agents. I've also considered the amount of time Miss E and Mr E spent dealing with the various issues in proportion to the overall complexity of the claim.
- I have given much thought to the level of compensation that should be paid to Miss E and Mr E, and I have concluded that the sum of £2,000 total recommended by the investigator is fair. I appreciate that Miss E and Mr E think it should be greater, and that NHBC think £1,500 is enough. But I must bear in mind that whilst I am considering an 18-month period of the claim, the longer the claim goes on (as this has done for some years), the more heightened and compounded the distress and inconvenience is going to be for the consumers until it is resolved.
- Therefore, whilst I can understand everyone's point of view here, calculating awards for distress and inconvenience isn't an exact science. So, in all the circumstances, and bearing in mind the general level of awards our service makes in this area, I consider a total of £2,000 compensation is fair and reasonable.

For these reasons, I uphold this complaint.

### **My final decision**

My final decision is that I uphold this complaint about National House-Building Council trading as NHBC and I direct it to pay Miss E and Mr E an additional £500, bringing the total compensation to £2,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Mr E to accept or reject my decision before 16 December 2022.

Dan Prevett  
**Ombudsman**