

The complaint

Ms J complains National House-Building Council (NHBC) hasn't treated her fairly, following a claim on her building warranty policy.

What happened

Ms J bought a new-build property that's covered by a ten-year building warranty policy. In the first two years, she made a claim for various issues.

During the first two years of cover, section 2 of the policy applies. The builder of the property is, in the first instance, responsible for any issues that arise during years 0-2. However, if there's a dispute between the homeowner and the builder, NHBC provides its resolution service. NHBC will investigate whether there was a breach of the 'NHBC Requirements' during construction and issue a resolution report with its findings. If NHBC requires the builder to act, and the builder doesn't comply, NHBC becomes responsible for those required actions.

In May 2022, NHBC issued a resolution report covering eight items. Four items – items 1, 2, 4, and 8 – required action by the builder. NHBC set a deadline of 14 June 2022. But in May 2022, NHBC agreed to extend the deadline to 21 June 2022.

On 17 June 2022, the builder told NHBC that whilst the actions hadn't been completed, it had offered dates to Ms J. So, on 20 June 2022, NHBC told Ms J the involvement of its resolution service had now ended. NHBC said it wasn't its role to become involved in negotiations regarding access. Ms J complained.

On 28 June 2022, NHBC issued a final response to Ms J's complaint. NHBC accepted Ms J had provided clear dates to the builder, and it shouldn't have closed her case. NHBC said both parties were to put forward available dates, with the deadline being 5 August 2022. NHBC noted this was the last extension to be given to the builder. NHBC said if actions remain outstanding after 5 August 2022, it will consider taking over.

On 4 July 2022, in view of the work involved, the builder asked for another extension. NHBC agreed, with the new deadline being 12 August 2022. Ms J went on to make a second complaint. Ms J wanted NHBC to take over the outstanding work.

On 9 August 2022, NHBC issued a second final response. NHBC said the builder's further extension request wasn't unreasonable in principle, but it accepted Ms J wasn't available between 6 August and 12 August 2022. NHBC also acknowledged the further extension contradicted its previous final response, but it noted the proposed extension was now irrelevant given it had since agreed to attend and review the outstanding items. NHBC offered £100 compensation for the delays.

Ms J remained unhappy, so she referred her complaint to our service. NHBC has told us it attended on 24 August 2022, and it's now taking over the actions required of the builder. NHBC has also told us the £100 compensation has since been paid.

One of our investigators didn't think we could consider events before 14 June 2021, and she concluded £100 was fair compensation for the delays after that date. Ms J remained unhappy, so her complaint has been passed to me to decide. Ms J considers the compensation should be increased to between £500 and £1,000.

I've already issued a jurisdiction decision setting out what points we can, and can't, consider. I said we *can't* consider any matters relating to items 3, 5, 6 and 7, or any matters relating to items that weren't considered by NHBC's resolution service. However, we *can* consider matters relating to items 1, 2, 4, and 8, providing they occurred between 22 June and 9 August 2022.

I will now set out my findings about the matters we can consider.

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.

Although I've carefully considered all the submissions, it isn't my role to comment on every point made. It's for me to determine the crux of the complaint, and to address the issues I consider relevant to its outcome. Where I've not directly commented on points that are within our jurisdiction, this isn't intended as a discourtesy. It's simply a reflection of the informal nature of our service, its remit, and my role in it.

As explained in my jurisdiction decision, I'm satisfied NHBC became responsible for the required actions on items 1, 2, 4, and 8 when the builder failed to meet the deadline of 21 June 2022. The policy terms state the following:

- *"If the builder failed to meet the NHBC requirements when building your home(s) and has not put things right after the resolution service says they should we will either pay you or your managing agent what it would cost us to have the work done or, if we choose to, we will undertake the work."*

As such, I accept Ms J's point that NHBC didn't comply with the policy terms by continuing to give the builder further opportunities, rather than cash settling, or carrying out the required actions itself. However, given the builder hadn't refused to carry out the actions and it was open to arranging dates, I'm not persuaded NHBC was acting unfairly or unreasonably by giving the builder until 5 August 2022. This remained the quickest solution for Ms J.

I'll turn now to the further extension of 12 August 2022. On the one hand, I don't consider the extension was unreasonable given it was requested whilst the builder was planning the work and it was only for one further week. I also don't find it unreasonable that NHBC explained it would need to extend the deadline by another week if Ms J wasn't available from 8 August to 12 August 2022.

But on the other hand, I can understand Ms J's upset given NHBC's commitment no further extensions would be given; particularly as she wasn't available during the week in question. I can also understand Ms J's upset that NHBC said its resolution service may be withdrawn if an extension couldn't be agreed beyond 12 August 2022 to accommodate her availability. As noted above, NHBC had already become responsible for the required actions, so it no longer had the option to withdraw.

Ultimately, having considered the above, I've not seen anything that persuades me the compensation ought reasonably to be increased above £100.

I understand Ms J is unhappy with NHBC's actions and/or its proposed settlement method following its visit on 24 August 2022. If so, Ms J needs to make a new complaint to NHBC about those matters before this service can become involved. If she doesn't receive a final response within eight weeks of making her complaint, or if she's unhappy after receiving the final response, she can refer the complaint to our service.

I also understand Ms J has complained to NHBC about a new claim. Again, if she doesn't receive a final response within eight weeks of when she made her complaint, or if she's unhappy after receiving the final response, she can refer the complaint to our service.

My final decision

I'm sorry to disappoint Ms J. But for the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 17 January 2023.

Vince Martin
Ombudsman