

## **The complaint**

Mr M has complained about National House-Building Council (NHBC). He feels it hasn't treated him fairly after he made a claim on his building warranty policy.

## **What happened**

Mr M faced a number of ongoing issues after he bought a new-build property that was covered by a ten-year warranty policy through NHBC. During the first two years of cover, he reported a number of issues with his new property which was when section 2 of the policy applies. Although there was dispute about whether Mr M made the builder or NHBC aware of a number of issues in the first two years some of these were subsequently accepted by NHBC under section 2.

Under section 2, the builder is responsible for the issues that are reported during the first two years. The builder must put right the issues that have been caused by its failure to meet the mandatory NHBC technical requirements during construction. However, if there's a dispute between the homeowner and the builder about the construction issues reported during the first two years, NHBC will offer its resolution service to determine whether there was a failure to meet its mandatory technical requirements. If NHBC issues a resolution report requiring the builder to act, and the homeowner accepts the report in full, but the builder fails to comply, NHBC becomes responsible for those required actions. We aren't able to consider all complaints made under this section of the warranty as they fall outside our jurisdiction as the resolution/conciliation service isn't a regulated activity in itself.

Our investigator explained to Mr M that this Service couldn't look at issues raised under section 2 as they were outside of our jurisdiction which Mr M accepted. And she explained that Mr M's other complaint points, which were dealt with by NHBC's final response letter (FRL) of 26 March 2021, were out of time as they were brought to this Service more than six months after the date of the FRL and so were also outside our jurisdiction.

So, when Mr M complained to this Service our investigator focussed on the complaint points she could consider in relation to Mr M's further FRL of 24 September 2021, focussing on the points raised that were in this Service's jurisdiction. And although she accepted NHBC could've handled the claim better and that there was some delay she thought its offer of £450 compensation in acknowledgement of this was fair.

As Mr M didn't agree the matter has been passed to me for review.

## **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 think it's important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my

informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

Although I can understand Mr M's clear frustration about how the issues at his property have been advanced by his builder and NHBC I must highlight again that his complaint points that relate to section 2 of the NHBC policy and the points raised in the FRL of March 2021 are not being considered here. As our investigator explained, and Mr M accepted, the points raised in his March FRL were brought to this Service too late (more than six months after the FRL). And the issues that have been raised in relation to section 2 are also out of our jurisdiction.

I know Mr M feels that all his complaint can't be considered here without bringing all the elements mentioned above (dealt with in the March 2021 FRL and under section 2) into consideration, but I can't look at them under this complaint as he's been made aware. And Mr M would have to raise any new issues, not dealt with in the previous FRL's, directly with NHBC now before they can be considered by this Service. And I know Mr M has gone on to question whether the issues with his balcony should be considered under section 2 of the policy, as opposed to being advanced at present under section 3, but he would have to raise this with NHBC as a complaint in the first instance and the insurer's decision here may well fall out of our jurisdiction.

Turning to the issues I can consider here I agree with our investigator that £450 compensation (in addition to the compensation NHBC has already paid in relation to the other complaints of £1,200) seems fair. I'll explain why.

As Mr M highlights, and has accepted, it is difficult to know what happened between NHBC and the local council planning department or what was discussed. I know there was comment from our investigator here about what *may* have happened, but I don't feel it is necessary to explore this any further as Mr M accepts that it is difficult to know what happened here, in a direct discussion between two parties without any independent evidence. So, I don't intend to comment any further on this issue.

I know Mr M feels NHBC should pay more in compensation for the ongoing stress and inconvenience all this has caused him. And I know he has faced potential loss of rental income. But our awards are traditionally modest, and the policy doesn't extend to covering his loss of rent. As such, I think the £450 compensation NHBC has offered is in line with the kind of award I would tend to make in circumstances like this, especially when considered alongside the additional £1,200 compensation already awarded. And I note NHBC increased its offer by £150 when it reviewed Mr M's complaint again which seems fair.

There has clearly been a delay in the appointment of new contractors due to the questions around the poor quality of works carried out by the previous contractor. So, the appointment of new contractors appears reasonable although this has impacted on the timeliness here as it has taken time to appoint new contractors to ensure lasting and quality repairs are undertaken. And I understand NHBC will review whether Mr M's tenants should be moved out while works are ongoing which seems appropriate given Mr M's concerns about whether the work can be undertaken with them in the property. Mr M feels that this hasn't provided accountability and that the repairs were unsatisfactory and continued the problem rather than fixed it. However, although NHBC's appointed representative could've dealt with the claim and repair better I feel £450 compensation, in addition to the previous award, seems fair.

Given all of this, I agree with our investigator that £450 is a fair amount of compensation in this case. I don't think any amount of compensation would cover the stress and

inconvenience Mr M has felt here, but I do think NHBC's offer feels fair. And I'll simply leave it to Mr M to advance his additional complaint points, that I can't consider here, to NHBC if he wishes.

### **My final decision**

It follows, for the reasons given above, that I feel National House-Building Council's response to this complaint (paying Mr M an additional £450 compensation) feels fair.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 January 2023.

Colin Keegan  
**Ombudsman**