

## **The complaint**

Mrs and Mr D have complained about National House-Building Council (NHBC). They are unhappy about the settlement of their claim on their building warranty following the developer's refusal to carry out the required rectification work.

## **What happened**

Mrs and Mr D bought a new-build property and had an ongoing problem with the drainage system outside their property. When NHBC looked into the claim it offered a cash settlement in line with its proposed schedule of repair works following some excavation work and a brief trial under man made conditions following the insertion of a trial pit. But when Mrs and Mr D and their own surveyor kept an eye on the trial pit over a winter period it became obvious that the trial pit wasn't working.

As the site still wasn't draining as it should they asked NHBC to reattend and have a look at the position, but it wouldn't. So, their surveyor put in place a further, more extensive, trial which was observed over a sustained period and appeared to be successful. And on the back of this Mrs and Mr D felt that NHBC should increase the cash settlement offer in order to take account of the higher cost to undertake their surveyor's proposal. But NHBC refused to consider this.

Mrs D and Mr D weren't happy about this, so they complained to NHBC. It maintained its position and so they complained to this Service. They wanted the cash settlement originally offered to be lifted to cover the additional work their surveyor identified; to be reimbursed their surveyor costs; for a 12% contingency plan to cover any unexpected costs; and compensation for the inconvenience caused by NHBC's delay in resolving matters and the difficulties they faced due to the ongoing water damage.

Our investigator looked into things for Mrs D and Mr D and partly upheld their complaint. Although she explained that some issues raised were brought to this Service too late and were outside our jurisdiction she thought NHBC should carry out the rectification work in line with their surveyor's recommendations or pay the cash equivalent (£124,849.66). And she thought it should pay Mrs and Mr D's surveyor costs (subject to proof) and £300 compensation for the stress and inconvenience caused. But she didn't feel the 12% contingency plan was fair.

Although Mrs D and Mr D accepted the investigator's position NHBC felt that its original proposed schedule of works was sufficient. So 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.

Having done so I agree that the complaint should be upheld. I'll explain why.

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.

I know NHBC feels its original cash settlement offer was fair. And this followed a brief trial of a proposed method of drainage that it was hoped would ease the difficulties Mrs D and Mr D faced at their property which had been ongoing for a significant period of time. However, that trial was brief and wasn't exposed to the elements over winter. And given the ongoing nature of the problem and the need for a long lasting and effective repair their surveyor undertook a more detailed and prolonged trial. And this trial, over a longer period covering real life conditions, showed NHBC's proposals to be inadequate.

NHBC's original investigation trial hand dug a pit directly behind the affected wall in order to investigate the drainage system that was in situ. The conclusion was that the back of the wall drainage system that was in place wasn't adequate as it had been backfilled with clay and that the weep holes had effectively been blocked. The proposal was to open the weep holes to allow water to flow through and to excavate a trench behind the retaining wall.

However, when Mrs D and Mr D's own surveyor undertook a more detailed review and trial he didn't think the steps were adequate. His detailed trial and report suggested the proposed remedy didn't go far enough and that the depth of the excavation behind the retaining wall needed to be deeper and the weep holes wider. And he suggested that the settlement NHBC proposed didn't consider how water in the area dispersed amongst other things.

As our investigator explained this Service relies on expert opinion in cases like this in order to try and establish what seems fair and reasonable. And in this instance, although I accept NHBC thought its initial proposal was fair and covered the drainage issue, it hasn't engaged with Mrs D and Mr D's further report and the detail provided. It has simply maintained that its original proposal was sufficient and suggested all parties agreed with its original proposal at the time. While I accept this point generally, although Mr D has said he and his surveyor weren't in full agreement with the proposal when it was tested, the position changed when it became clear that the proposal didn't go far enough and wouldn't solve the drainage problem Mrs and Mr D faced. And I'm more persuaded by Mrs D and Mr D's report here which clearly shows that the original proposal didn't go far enough to rectify the ongoing and difficult drainage issue.

Ultimately, NHBC hasn't provided any real evidence or explanation as to why the additional works aren't required in order to ensure a lasting and effective repair. Indeed, it didn't engage with Mrs and Mr D's points in its final response letter. NHBC simply implied it wasn't responsible for costs increasing (suggesting that this was solely because of the delay in commencing work) as opposed to considering the increase in the level of work proposed following Mrs and Mr D's surveyor's findings which inevitably increased costs. And Mrs and Mr D have provided persuasive evidence that the original scope of work isn't sufficient. Their surveyor's report followed an in-depth investigation and monitoring and clearly explained what was required and why the original suggested scope of work was insufficient. Their report shows that NHBC's proposed solution doesn't prevent water from collecting behind the retaining wall so it wouldn't be a lasting and effective repair.

I know NHBC feel the drainage issues in relation to the garden shouldn't be part of the resolution here as gardens aren't covered under the policy as they aren't defined as part of the home. But it is clear here that the drainage problem immediately affects the house which is covered. I accept there may be a knock-on effect here that could prevent the garden from flooding as well, but it would appear that the two issues are linked. And the original proposed schedule of works would have had a similar affect in any event if they had been successful.

Given all of this I think the fair and reasonable thing to do, in the particular circumstances of this case, is for NHBC to undertake the repairs as per Mrs D and Mr D's own surveyor's report or to pay a cash settlement (£124,849.96 or more if this cost has increased given the

quote was more than a year ago subject to new quotes). And to pay the surveyor's costs as it is clear that his expert opinion has moved things forward here.

Finally, I agree that the poor service, especially the delay, has caused Mrs D and Mr D a fair degree of stress and inconvenience here and so they should be awarded £300 compensation.

### **My final decision**

It follows, for the reasons given above, that I'm upholding this complaint. I require National House-Building Council to either carry out the repairs identified by Mrs and Mr D's surveyor or to pay the equivalent cash settlement of £124,849.96 (subject to any potential cost increase and reasonable proof). And pay Mrs and Mr D's surveyor costs subject to reasonable proof and £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 29 September 2023.

Colin Keegan  
**Ombudsman**