

## **The complaint**

Mr M complains about the way National House-Building Council (NHBC) handled a claim he made under his new home warranty.

## **What happened**

The circumstances aren't in dispute, so I'll summarise the background:

- Mr M bought a new home covered by a ten-year NHBC warranty. His complaint concerns three main problems he referred to NHBC. In summary:
  - Garden. Mr M discovered a number of rocks and concrete slabs underneath his garden which meant plants wouldn't grow. He paid to have them excavated and removed but NHBC didn't agree to reimburse that cost.
  - Kitchen drainage. The pipe which drains water from the sink and dishwasher has a 'belly' and a shallow fall, which means it sometimes holds water, grease or debris, and the sink doesn't always drain properly. NHBC said a water jet should be used to remove the build-up of debris and clear the pipe but the cost of this wasn't covered. It also said the pipe didn't need replacing.
  - Bathroom drainage. The main bathroom pipework wasn't connected to the main sewer pipe, which meant it wasn't draining away properly. Mr M arranged for a CCTV survey and, at NHBC's request, a second one, which showed the problem. NHBC then arranged its own survey which showed the same thing. It accepted the claim and paid for the problem to be fixed.
  - Mr M says he was caused inconvenience by this problem as he had to take seven days off work to facilitate the surveys and repairs, including a missed appointment, as well as his initial attempts to rectify the problem. He's also concerned the pipework has been leaking under his home since it was built.
- NHBC responded to Mr M's complaint as follows:
  - In April 2022 NHBC said it had assessed the garden problem under its Resolution Service but was unable to help as Mr M had already put the problem right himself and had pursued the builder in court.
  - In September 2022 NHBC said Mr M had arranged a CCTV survey. He thought the company was due to arrive at 9 but they didn't arrive until 10, by which time Mr M had gone out. They left before he returned, which meant the survey had to be re-arranged. NHBC apologised but thought it would have been reasonable for Mr M to have waited longer for the company to arrive.
  - In November 2022 NHBC reiterated its position that the kitchen pipe didn't need replacing.

- Our investigator said we couldn't consider any complaint about the builder. Nor could we consider the garden problem that NHBC responded to in April 2022 as it had been referred to us too late and didn't relate to a Regulated Activity. He thought it was unnecessary for NHBC to carry out a third CCTV survey and asked it to pay £200 compensation for the inconvenience caused. He also said NHBC should replace the kitchen pipe. Other than that, he thought NHBC had acted fairly.
- Both parties disagreed. NHBC said the kitchen pipe hadn't breached its Requirements, so it was fair to decline the claim. However, once the pipe had been cleared, if problems persisted, it was prepared to consider the matter further. It said the third CCTV survey was necessary and didn't agree to pay compensation.
- Mr M didn't think the compensation went far enough to reflect the distress and inconvenience he'd experienced as a result of the defects and the time and effort it'd taken to try to get them resolved.

### **My provisional decision**

I issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- It's clear Mr M feels badly let down by the way his home was built. Naturally he expected a newly built home to be free of defects – but he encountered problems with it and has had to invest time and money to put them right. So I can understand his disappointment and frustration.
- However, it's important to be clear about the scope of this complaint. I can't consider how the builder acted or how NHBC acted in its role inspecting the build and issuing the warranty. These aren't Regulated Activities. I can only consider how NHBC acted in its role as underwriter of the warranty – which is limited to how it handled the claim.
- So I can't hold NHBC responsible for any distress and inconvenience to Mr M which may have arisen from the defects themselves. Or from the time and effort reasonably required to deal with the claim. I can only hold it responsible for any distress and inconvenience it unreasonably caused during the claim.

### *Garden*

- Our investigator explained why we couldn't consider the garden problem at all. In summary, because it was referred to us too late and NHBC's Resolution Service doesn't amount to a Regulated Activity. Mr M hasn't challenged that, so I understand he accepts the position. As a result, I won't comment on this further other than to say I agree with the investigator.

### *Bathroom drainage*

- NHBC accepted the claim for the bathroom drainage problem and paid for Mr M to have it put right. I understand that's been done, so the problem is resolved.
- Mr M has complained about this point for two main reasons. Firstly, that the problem shouldn't have arisen at all. However, for the reasons given above, I can't take into account the problems caused by the defect itself. That includes the time and cost to

Mr M of trying to put the problem right initially or any surveys or repairs reasonably required to investigate the defect. Secondly, for the way NHBC handled the claim – requiring three surveys and the missed appointment. I can consider that.

- Mr M arranged for a drainage company, P, to carry out a CCTV survey. P said the bathroom drainage wasn't connected to the main sewer pipe. I haven't seen a report from P, although it did provide the CCTV footage. He arranged for another drainage company, C, to survey and report. It did so, and also quoted for putting the problem right. NHBC arranged for a drainage company, U, to carry out a survey. It agreed with C's findings and NHBC settled the claim on C's quote.
- This meant Mr M had to accommodate three separate visits, taking time off work for each. He doesn't think this should have been necessary.
- I can understand why P's survey alone wasn't sufficient for NHBC. There's no report and C described it as "not a great survey". NHBC has said C provided "insufficient information" but it's not clear what it thinks was missing. C's report and quote appears to me to be broadly similar to U's. However, I don't think it was unreasonable for NHBC to get a second opinion, given the limitations of P's survey meant it only had C's to consider. So I'm not satisfied Mr M was caused any unreasonable distress and inconvenience by the number of surveys carried out.
- I can see why Mr M was unhappy with what happened at the missed appointment. By that time, he'd dealt with the original problem in the bathroom, had to stop using it, and had already accommodated two surveys. I expect he just wanted the problem solved. He understood the third survey had been arranged for 9, so when U wasn't there and hadn't called by that time, it must have been frustrating. However, U arrived by 10 and there seems to have been some misunderstanding about what time had been agreed. In these circumstances, I'm satisfied NHBC's apology was a reasonable response and I won't be requiring it to take further action.
- I can't consider to what extent, if any, the builder and/or NHBC may have been responsible for the defect which led to the bathroom drainage problem and any consequential leak under Mr M's home. And, for the reasons above, I don't think NHBC was responsible for any significant delays handling the claim to put the defect right. Nor have I seen any evidence to suggest the leak has caused, or is likely to cause, damage. So I won't be requiring NHBC to take any action about this.

#### *Kitchen drainage*

- It's accepted there's a 'belly' in the pipe beneath the kitchen sink and a shallow fall. C said that meant the pipe held water/grease, so it wasn't functioning as it should. It recommended the pipe was replaced with a proper fall. Similarly, P said the belly was holding water and should be replaced. U said a high pressure water jet should be used to remove the grease to stop waste/water from building up in the pipe. NHBC says the cost of this isn't covered by the policy. It suggested Mr M arrange for it and, if problems continue after that, to contact NHBC for further investigation.
- The policy covers damage as a result of the builder failing to meet NHBC requirements. These are the specific requirements set out in the NHBC Standards document. Mr M has pointed to a section of the document about drainage gradients. NHBC has shown that this section is guidance, rather than a specific requirement. That means the builder didn't have to follow the guidance – provided it met the overall requirement to ensure the design provides 'satisfactory performance'.

- NHBC says there's no evidence the drainage run isn't performing and this can only be assessed once the grease and any standing water or debris is removed.
- This suggests the only way to fully understand the problem – and decide whether it's a failure to meet NHBC requirements such that the warranty covers it – is to carry out U's recommendation to water jet and clear the pipe. In which case, this is something I'd expect NHBC to pay for to investigate the claim. I also note its report about the drainage included and accepted U's recommendation and didn't indicate there was any reason not to proceed with the water jetting.
- As a result, I think it would be fair for NHBC to pay for this and consider the matter further. Given the comments of P and C, and U's acceptance there is a belly in the pipe, it seems likely problems will persist and it's only a matter of time before the pipe collects more grease, water and/or debris. That may not amount to 'satisfactory performance'. So once the jet wash clears the pipe, NHBC should make an assessment about whether the problem is covered by the warranty.
- I think NHBC could have handled this part of the claim better. If it had carried out U's recommendations, this point would have progressed much sooner. That may not have resulted in NHBC agreeing to replace the pipe – we don't know at this stage what the claim outcome will be – but it would have at least saved Mr M the distress and inconvenience of having to wait for a prolonged period of time to find out the outcome. As a result, I'm satisfied a payment of £200 compensation would be reasonable in the circumstances.

### **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.

- NHBC said it accepted my provisional decision and had no further comments to add.
- Mr M didn't accept my provisional decision and provided further comments.
- He said the belly always holds not water – not sometimes, as I'd said – and always will, so the pipe needs to be replaced. He questioned how jet washing the pipe would resolve the problem and asked why he should have to jet wash the pipe regularly.
- To clarify, NHBC said the next step to consider the problem was to jet wash the pipe so the pipework can be assessed when clean. In my view, that's something NHBC should do to investigate the matter further. Once it has cleaned and assessed the pipe, it should consider whether the builder failed to meet NHBC requirements and therefore whether the claim is covered by the warranty. And, as I noted above, that will include considering whether the design of the pipe is providing 'satisfactory performance'. So neither NHBC nor I have said the jet washing in itself will resolve the problem – it's simply the next step.
- Mr M questioned the level of compensation, bearing in mind the inconvenience he'd suffered as a result of the defects. I won't repeat my provisional decision but, in summary, I can only consider how NHBC acted in its role as underwriter of the warranty – not in any other role it may have performed, such as signing off the work. So I can't take into account any distress and inconvenience that may have flowed from the defects and the time taken to deal with putting them right. I can only take

into account any *unreasonable, additional* distress and inconvenience caused by the way NHBC handled the claim for resolving the defects and their damage. In my view, that's limited to the delay in taking the next steps investigating the kitchen drainage.

- Mr M says he was inconvenienced by the three drainage surveys. He says he shouldn't have had to accommodate any. As I said in my provisional decision, I can appreciate that it would likely have been disappointing and frustrating to buy a new home and find defects to the drainage system. But, when thinking about how NHBC handled the claim, it was reasonable for it to ask for a survey of the drainage system to establish what the problem was. P's survey was insufficient to do that, so I think it was reasonable for NHBC to ask for another, which was C's. And I don't think it was unreasonable for NHBC to ask U for a second opinion on C's findings. Whilst I acknowledge all of this cost Mr M time and money, that's a result of the defect itself – not because NHBC handled the claim unfairly. And, for the reasons above, that's not something I can hold against NHBC.
- Mr M asked why I ignored the garden problem. As I set out in my provisional decision, I'm unable to consider it because it was referred to us too late and NHBC's Resolution Service doesn't amount to a Regulated Activity.
- I recognise Mr M doesn't think my provisional decision goes far enough to put things right for him. But, having considered everything he's said in response, for the reasons above, I haven't been persuaded to change my mind. I remain satisfied the outcome is fair and reasonable in the circumstances.

### **My final decision**

I uphold this complaint.

I require National House-Building Council to:

- Pay to water jet and clear the kitchen sink pipe.
- Pay £200 compensation.

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

James Neville  
**Ombudsman**