

The complaint

Mr and Mrs S complain about the way National House-Building Council (“NHBC”) has handled a claim they made on their policy for a defective tanking system.

What happened

Mr and Mrs S purchased a home in 2017. It came with an NHBC warranty, which had started in 2012.

Mr and Mrs S reported damp in the walls of the ground floor of the property, so made a claim on the warranty. NHBC accepted it under section three of the policy, which covers for physical damage to the property. It accepted that the original tanking installed had been defective, which was causing the damp issue. It proposed to install a cavity drainage management (CDM) system and a sump and pump system to manage the issue.

After some discussion, Mr and Mrs S accepted the proposal but said the CDM system would have an ongoing maintenance cost, given the pump would need servicing annually. NHBC said it would offer £3,000 as a gesture of goodwill to contribute to these ongoing maintenance costs for around a ten-year period. That reflected the length of the CDM guarantee.

Mr and Mrs S wanted other options to be pursued. But said if that wasn't possible, they said £8,000 would be more appropriate. They said this would guard against the likely rising cost of any service linked to inflation, and any unexpected costs they might incur, such as if a fault occurs with the system. NHBC didn't agree to increase its offer any further. It did say if anything went wrong with the pump within the ten-year guarantee period Mr and Mrs S could come back to NHBC. It also offered Mr and Mrs S the option to cash settle and carry out the works themselves. Mr and Mrs S didn't accept that and so complained to our service.

Our investigator thought NHBC's offer was fair in the circumstances, so he didn't think it should pay anymore.

Mr and Mrs S didn't agree, they made a number of points but in summary were concerned that with inflation the £3,000 wouldn't cover as many services as NHBC said it would. They were also concerned about the impact of running the system on their energy bills, and that the guarantee for the pump part of the system only ran for three years. They asked for NHBC to add an indemnity clause to their offer that said if the pump needed to be replaced within the ten-year guarantee of the CDM system, that NHBC would fund that replacement.

As the matter hasn't been resolved, it has come 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.

It's not in dispute that the damage reported by Mr and Mrs S is covered under section three. There has been discussion as to the proposed method of repair. I note Mr and Mrs S have accepted NHBC's proposal on the basis it will offer more than £3,000 compensation, given it will cause less disruption to them when the repair happens. So before considering the

compensation offered, I've reviewed whether I think its proposed repair is fair based on the evidence I have.

NHBC said it's looked at other solutions for Mr and Mrs S' property, but based on its location, the one it's proposed is most suitable. I've reviewed the report it's relied on which confirms this. Even though I appreciate the method of repair means they'll have a different waterproofing system to neighbouring properties.

NHBC has considered alternatives, such as a similar system that doesn't require the use of a pump. But given the location of the property, and the uncertainty as to the drainage, it said pursuing that option would be costly and still could turn out to be unsuitable. I haven't seen any other evidence, such as from Mr and Mrs S, that shows another repair would be more suitable for their property, so on balance I'm satisfied NHBC's proposed repair works are reasonable.

I've then considered NHBC's offer of £3,000 as a contribution to the ongoing maintenance of the CDM system, which will be required.

I understand Mr and Mrs S' concern; they've bought a relatively newly built home, and now, through no fault of their own, face an additional maintenance commitment they didn't expect when they bought it. However, NHBC has agreed to contribute to those ongoing maintenance costs, which I think was reasonable to do.

NHBC's rationale was that given an annual service would likely cost around £250+VAT, the £3,000 would offer around 10 years contribution to the service, which is how long the CDM system is guaranteed for. I think this is a reasonable length of time. When the claim was raised, Mr and Mrs S had five years left on their NHBC warranty. This means its offer exceeds its liability in terms of putting right any defects in the property. And under the policy, I can't see any term that suggests any ongoing costs incurred will be covered. So NHBC's offer of a contribution is a fair and reasonable one, given the circumstances.

I've considered all of Mr and Mrs S' points as to why £8,000 would be a more appropriate figure. But I'm not persuaded their arguments mean NHBC's offer should be increased. They're concerned that whilst the CDM system has a guarantee of ten years, the pump has a guarantee of three years. They've said this means the entire system could stop working within a few years.

I agree it's a possibility, but I consider it is also likely, with proper maintenance, that the pump will be functional longer than the guarantee. Mr and Mrs S haven't been told they'll need to replace it in three years' time, it should be operational for much longer than that. I've also considered that no home appliance will ever last indefinitely. And homeowners do incur costs – sometimes unexpected ones – when running a home.

I've also considered that NHBC has said if the pump does fail outside of its warranty period, it would consider a claim from Mr and Mrs S on this. Mr and Mrs S said this doesn't go far enough, but they'd accept an indemnity style clause which guaranteed NHBC would honour a replacement of the pump within the ten-year period.

I don't think it's reasonable for me to ask NHBC to guarantee a replacement of the pump, because it would depend, if it did fail, on the reason for that. For example, it wouldn't be reasonable to ask NHBC to guarantee a replacement in a ten-year period, only for it to be found the pump hadn't been serviced during that time. Or it failed due to some other event typically covered by a home insurance policy.

It has provided assurance that it would consider any claim, I think that's sufficient. And it goes beyond what the policy requires it to do; there is no provision for future losses that I can see under this policy.

NHBC hasn't set out explicitly – from what I can see – over what time period it would consider a claim. But from everything I've seen I think NHBC means it will consider any

replacement to the pump after the warranty period for it ends, up to the ten-year mark of the CDM system being installed.

Mr and Mr S have said the offer doesn't account for the potential rising costs of the service, or the impact of running the system on their energy bills. Having the money up front does give Mr and Mrs S the option to earn interest on the amount. Whilst this may not offset inflation relating increases, I think overall NHBC has made a reasonable offer of support for a considerable length of time.

They've also said they're concerned about whether having this system installed will impact the value of their property, should they come to sell it. I can understand the concern, but the NHBC policy is quite clear in that it won't be liable for any reduction in the value of their home. And in any event, I haven't been provided with any evidence that this system would have a negative impact in the future.

Mr and Mrs S has said that this proposed option for NHBC will save it money because it won't incur alternative accommodation costs when the repairs are carried out. I can see the costs of alternative accommodation are covered under the policy if it's necessary for the work to be done. I haven't seen anything on the file that shows me a decision has been made on whether alternative accommodation is needed for this type of repair. So I don't intend to make a finding on whether it should be given or not. I think Mr and Mrs S' point is that, if they stay in the property, NHBC will incur fewer costs in the repair, so it then should increase it's offer of contributions for the maintenance. But I've also considered that not going into alternative accommodation also means much less disruption for Mr and Mrs S. Overall, for the reasons I've set out because I think NHBC's offer is a reasonable one, I'm not going to ask it to increase it.

My final decision

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 5 March 2024.

Michelle Henderson
Ombudsman