

## The complaint

Ms J complains about the extent of work National House-Building Council (NHBC) carried out in relation to a claim she made under her new home warranty.

Reference to Ms J includes her representative.

## What happened

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

- Ms J bought a home covered by a ten-year NHBC warranty. She got in touch with NHBC about damp to the render and the height of the damp proof course (DPC).
- NHBC declined the claim because it said there wasn't any damage beyond cosmetic staining. Ms J referred a complaint to this Service and, in 2021, an Ombudsman decided that NHBC had acted fairly.
- Ms J carried out work which revealed rot around the doors. NHBC then accepted a claim for damp and rot in this area under Section 3 of the warranty. It agreed to carry out repairs. They involved, in summary, removing the damaged areas and reinstating them in a damp-proof manner.
- A further complaint arose about a delay beginning those repairs, which NHBC responded to in February 2022. That complaint wasn't referred to this Service.
- Repairs went ahead around that time and were completed by August 2022. NHBC later provided Ms J with its schedule of work and a supporting 'letter of comfort'.
- Ms J raised a number of concerns and complained in June 2023. In summary:
  - NHBC should have carried out further work in order to comply with NHBC's standards. Namely, reducing the ground levels around the home. It didn't, so Ms J paid to have this work done herself.
  - NHBC didn't provide a detailed and accurate description of the work.
  - NHBC's letter of comfort effectively provided a workmanship guarantee for five years, but it should have been considerably longer, perhaps thirty years or more.
- NHBC said it was satisfied with the extent of work it carried out and the documentation it had provided. It also said Ms J was welcome to let it know if any issues directly related to NHBC's work arose in the future.
- Our investigator thought NHBC had acted fairly. She said the warranty provided cover for putting right damage caused by a defect – and NHBC had fulfilled that by carrying out the repairs it did. As there was no other damage to put right, NHBC was entitled not to carry out or pay for the further work Ms J asked it to. She also thought

NHBC had provided reasonable documentation in relation to the other points.

- Ms J didn't agree, so the complaint has been passed to me.

### **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.

This has been a long running matter, subject to previous complaints, and Ms J has concerns about a number of parties and activities. So I'll set out the scope of this complaint before moving on to the merits of the complaint.

#### *Scope of the complaint*

- It's clear Ms J feels let down by various parties when finding her newly built home had suffered damage. Naturally she expected it to be free of defects – but she encountered problems and has had to invest time and money to put them right. So I can understand her disappointment and frustration.
- However, it's important to be clear that the only party I can consider a complaint about is NHBC. And that consideration is limited to how it acted in its role as underwriter of the warranty – which means the way it handled the claim. I can't consider the actions of any other party mentioned by Ms J, as they don't fall within the jurisdiction of this Service. Nor can I consider how NHBC acted in its role inspecting the build and issuing the warranty as these activities don't fall within this Service's jurisdiction as they're not part of the contract of insurance.
- I can't re-consider the first NHBC complaint, about the claim being declined initially, that was the subject of an Ombudsman's decision. Nor can I consider the second complaint, about delays, that NHBC answered in February 2022, as it wasn't referred to this Service. So I'll focus on the third complaint and the points Ms J has raised about the way NHBC handled the claim after February 2022 and up to its complaint response in June 2023. Namely, the extent of work carried out, the accuracy of the scope of repair, and the length of the guarantee.

#### *Merits of the complaint*

- The relevant part of the warranty covers, in summary, the cost of putting right damage caused by a defect. That means a defect alone isn't covered – it must cause damage in order for the warranty to provide cover.
- There's no dispute the rot and damp was covered by the warranty and has been repaired by NHBC. I haven't seen anything to show that work, in itself, failed to properly deal with the rot and damp damage – and I don't think that's what Ms J is suggesting. Her main complaint point is that NHBC should have carried out additional work to lower the ground levels around her home in order to reduce the chance of further rot or damp problems.
- Ms J says NHBC standards require a lower ground level – so she thinks this means NHBC should carry out work to adhere to those standards. I don't think NHBC disputes her interpretation of the standards, so the ground level height may amount to a defect. But NHBC notes the warranty only provides cover where a defect causes damage – and here, it says the ground level height hasn't caused any damage. I

haven't seen any evidence to show it has caused any damage.

- This means NHBC wasn't required by the warranty to carry out, or pay for, any work to reduce the ground level. So I'm satisfied it acted fairly on this point.
- NHBC has provided Ms J with its schedule of work and the 'letter of comfort' which summarised the work. I would expect the schedule to be reasonably accurate and detailed, such that it's a useful record of the work carried out.
- Ms J sent NHBC an email in June 2023 pointing out a number of challenges to the schedule of work. NHBC didn't engage in those challenges or provide a substantive response. It now accepts it ought to have done and has agreed to do so as a resolution to this complaint point. I think that's the reasonable thing to do.
- NHBC says in line with its usual process, it prepared an initial schedule of work when it accepted the claim. And this may have varied when its contractors carried out the work. I accept that – the initial schedule can't reasonably include all work that may become necessary once work is actually carried out. Variations during work is quite common and understandable.
- However, NHBC says it wouldn't usually update the schedule based on these variations. I find that quite unusual. In my experience, insurers will update the schedule to reflect variations so that they have a finalised, accurate schedule – and share this with their policyholder. So that's what I'd expect NHBC to do too.
- NHBC says an inaccurate schedule doesn't necessarily mean the work wasn't up to standard. I agree with that – and there's no suggestion here that the work carried out was poor or has caused problems. But I think Ms J is entitled to a schedule of work to accurately reflect what was carried out to a reasonable level of detail.
- The next steps are for NHBC to reconsider the schedule of work by exploring the challenges set out in the email and to respond to Ms J accordingly – including with an updated schedule of work if any changes are made.
- When carrying out work under a contract of insurance, I would expect NHBC to do so in a lasting and effective manner. That means it should properly deal with the insured problem and for a reasonable period of time. And if it doesn't achieve that, it will remain responsible for doing so. That responsibility is indefinite. However, in practice, any future problem would have to be directly linked to NHBC's work for NHBC to be required to take responsibility for putting the problem right.
- Whilst the 'letter of comfort' noted statutory limitations if a problem were to arise, it said that meant five years was a 'likely' limit. So it didn't say there was an absolute limit of five years. And in any case, I'm not satisfied any such limit would outweigh NHBC's responsibility I outlined in the previous bullet point.
- I think NHBC has recognised its responsibility. In its complaint response to Ms J, it noted she was welcome to let it know of any issues directly related to the work for it to consider further – and didn't specify a time limit. I'm satisfied that's a reasonable position for NHBC to take on this point
- Overall, I've found NHBC acted fairly in relation to the merits of this complaint. So I won't uphold it or require NHBC to take any further action.

**My final decision**

I uphold this complaint.

I require National House-Building Council to reconsider the schedule of work.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 28 August 2024.

James Neville  
**Ombudsman**