

The complaint

Mr B complains about how National House-Building Council (“NHBC”) have dealt with claims under a building warranty policy.

What happened

Mr B purchased a new property in 2016 and noticed there were many issues with it. He has made a number of claims to NHBC over the years. And he has also raised complaints about those claims to NHBC and asked this service to consider them.

In January 2019 an Ombudsman, Fiona Robinson, awarded Mr B compensation for the way in which two claims had been handled by NHBC. She said NHBC should have acted more quickly to take on the claims from the developer. The Ombudsman did not award the cost of an inspection report Mr B had arranged.

NHBC awarded compensation in a further two final responses which were not considered by this service as they were brought too late.

In March 2021, an Ombudsman, Michael Baronti, made a decision that NHBC should cash settle the two claims which had been subject to the January 2019 decision. He said that should be at the rates it would cost Mr B to undertake the repairs. The Ombudsman said NHBC would be entitled to validate any quotes Mr B provided. The Ombudsman also awarded a further £500 compensation to Mr B for the way the claims had been handled in the meantime.

In May 2022 a further Ombudsman, Neil Marshall, issued a final decision about NHBC's decision to merge a third and fourth claim together, which he said was a reasonable decision to make. He also concluded all of the issues Mr B had raised, and that were valid, were all covered within the three claims.

Within the May 2022 decision the Ombudsman also concluded that NHBC should pay the costs Mr B had incurred for window cleaning and gutter repairs. He didn't however think that NHBC should pay the costs of two further reports Mr B had carried out on his property as NHBC were still considering the claims, it hadn't declined them or refused to carry or pay for any repairs. The Ombudsman also reiterated the previous direction from the March 2021 decision that claims one and two should be cash settled. Neil concluded that if Mr B was charged extra for getting an independent contractor to quote for the work NHBC should cover this, subject to Mr B providing evidence. The Ombudsman said the claims should be cash settled as soon as NHBC is able to validate the quotes provided by Mr B.

Mr B has since provided a quote to NHBC which covers all three claims. NHBC has said that the quote isn't sufficient as it is only looking to cash settle the first two claims at this point in line with the Ombudsman's direction in March 2021. It explains that within the quote for those two claims items have also been included that NHBC has not agreed to cover under the policy. NHBC has asked Mr B to obtain a report with itemised costings so that it is able to validate the cost of the work it has agreed to cover.

Mr B is unhappy he is being asked to provide a further itemised report. He has said the builder will charge extra for this and has estimated a figure of £3,000 on the basis it may take the builder three days to provide this. Mr B also says that he thinks this is 'double standards' on NHBC's part as when he previously asked for a breakdown of a quote when NHBC was offering to cash settle based on its own internal rates, NHBC refused this. He complained to NHBC about this.

NHBC said that should the builder be able to provide justification why a further charge would be required it would be prepared to consider this. It also provided Mr B with scopes of work for the two claims to help the builder put the quote together for the works covered under the two claims. In its final response NHBC said that it would also be willing to instruct an independent contractor to provide a quote at market rates so the matter could be finalised. But it said a site visit may be necessary to ensure this quote was as accurate as possible. After the complaint had been brought to the service, as a further alternative NHBC said it would bring its internal costs up to date and then offer Mr B that amount plus an extra 10%.

Mr B remains unhappy and thinks NHBC should simply be instructed to pay the quote he has provided as he believes that is what the previous Ombudsman have instructed. He doesn't think it is reasonable NHBC is asking for anything more of him.

Our Investigator looked at the complaint and concluded the position NHBC had taken was reasonable. He agreed the quote Mr B had provided didn't give enough information to enable NHBC to validate the costs of the covered insured works. He also concluded that it had reasonably offered alternative ways in which the matter could be settled.

Mr B disagreed and asked for the matter to be referred to an Ombudsman. He reiterated that he thinks NHBC should be required to pay the quote he has provided.

My provisional findings

I issued my provisional findings on 8 March 2024; I said I intended to uphold the complaint for the following reasons:

"I understand Mr B feels very strongly about the matter and everything that has happened so far. However, I'm mindful that he has made many complaints about this and has also received final decisions from Ombudsman at this service previously. I cannot revisit the decisions those Ombudsmen have made.

The decisions of March 2021 and May 2022 confirm the respective ombudsman was satisfied that all valid works are covered within the three claims. So while I appreciate Mr B may disagree with this and has asked the builder to quote for all works he believes are necessary, that issue has already been determined.

It has also previously been explained to Mr B that the jurisdiction of this service does not extend to the Resolution Service that NHBC offers, so we can't comment on which items NHBC decide to include or exclude as part of that process.

The March 2021 decision determined that the first two claims should be cash settled with NHBC paying Mr B what it would cost him if he arranged for the works to be completed. With NHBC being entitled to validate any quote Mr B provided.

I realise Mr B thinks that it is unfair NHBC has asked for an itemised costed quote of all the work covered when it refused to provide the same to him when he asked for it. However, I disagree it's unfair. We generally don't require insurers to provide commercially sensitive information about rates they can obtain work at. So, I think NHBC acted reasonably when it

previously refused to provide this detail to Mr B, as it would be considered commercially sensitive.

The quote Mr B has provided to NHBC does not provide enough information to enable NHBC to validate the costs of the work it is required to pay for under the first two claims. A process which the previous Ombudsman said it was entitled to undertake. As such I don't think NHBC has acted unreasonably by not making a payment to Mr B at this stage.

However, I am mindful that the claims process has now been ongoing for many years, and it's been nearly three years since the Ombudsman first directed the matter to be cash settled. As such, I think it's now time for the matter to be brought to a swift conclusion. But one which is fair to both sides.

I think it's fair that Mr B has a final chance to present to NHBC what it will cost him to have the agreed insured work done. But, in order to achieve that fairness to both sides, I think that opportunity has to be balanced by a method for moving things on if Mr B can't or won't provide that detail. So I propose that if, within the next three months Mr B is unable to provide a sufficiently itemised costed quote in order to enable NHBC to cash settle the first two claims NHBC should obtain its own quote for the covered works priced at market rates (i.e. what Mr B would be charged – not what it would have to pay for the work). It should do this within a month and then, within two weeks of obtaining that price, make this payment to Mr B to bring this matter to a conclusion.

NHBC has said it is possible a site visit would be needed to ensure that quote was the most accurate. If this is ideally required and Mr B does not allow access to his property, as he is entitled to do, then NHBC should make sure the quote is as accurate as possible based on all of the information available to it before making the payment to Mr B.

If Mr B is able to provide a sufficiently itemised costed quote within that time frame which enables NHBC to settle the two claims, and he is charged an additional amount for it by the builder, then I think NHBC's offer here to consider that is reasonable. If the builder can justify the charge and it is reasonable, then NHBC should pay it. Subject to Mr B providing this information and evidence that he has paid it.

I've considered NHBC's alternative offer to uplift its internal costs by 10% however I think it is more likely than not that this will not produce an amount sufficient to fully indemnify Mr B, given the rising costs of material and labour recently seen in the market. I'm satisfied that NHBC settling based on market rates is a more accurate, and therefore the most reasonable, method of settling this.

Overall, I don't think NHBC has done anything wrong in not paying the claim yet, as it has not been provided with sufficient information by Mr B to allow it to do so. As such I don't think any compensation is fairly and reasonably due here.

I'm aware there is a third claim that is currently outstanding which includes all the remaining accepted repair issues not covered by the first two claims. NHBC has explained that this claim is still within its Resolution Service, and it is waiting for Mr B to verify the list of items to be assessed. Currently, as has previously been explained to Mr B, there is nothing this service can do to assist with this as NHBC's Resolution Service is not a regulated activity and therefore is not something we can review or become involved in. Mr B will need to contact and co-operate with NHBC to move this matter forward.

My provisional decision

I intend to uphold Mr B's complaint. I think National House-Building Council's alternative

offer to arrange a market value quote and pay an equivalent amount to Mr B, to bring the claim to a conclusion, is reasonable.

I intend to direct the matter is resolved in the following way:

If Mr B is able to provide a sufficiently itemised costed quote to NHBC within the next three months which enables NHBC to settle the two claims, it should pay Mr B the sum of the validated quote. And, if Mr B is charged an additional amount for that quote by the builder, NHBC should pay that charge providing it is reasonable, has been sufficiently justified and Mr B provides evidence that he has paid it.

If Mr B is unable to provide a sufficiently itemised costed quote to NHBC within the next three months, then NHBC should arrange for a market value quote to be produced based on the scope of works identified for the valid items of the two claims. It should do that within one month and then within two weeks of obtaining that price, pay an equivalent amount to Mr B, to bring the claim to a conclusion.”

Responses to my provisional decision

NHBC said while it welcomed the opportunity to bring the matter to a conclusion, it didn't agree with my assessment that uplifting its internal rates by 10% wouldn't produce an outcome that was fair and reasonable. It provided some commercially sensitive figures, which it said demonstrated that by taking this approach it is possible Mr B may receive more, in some instances, than a market rate calculation. It also questioned my intended direction that it should make a payment to Mr B within two weeks of receiving the market rate quote. It pointed out it would need to request Mr B's bank details in the meantime which may mean it would be unable to meet that timeframe.

Mr B acknowledged that I intended to uphold his complaint and provided a detailed response, which I can confirm I have read and considered. In summary he said he didn't think some of my findings were fair and he reiterated the following:

- He didn't think it was fair he was being asked to provide a costed broken-down quote, when NHBC didn't provide the same previously when he asked for it. He thinks my finding shows bias to NHBC.
- NHBC missed items on the snagging list previously.
- He thinks that by saying I cannot revisit the decisions previous ombudsman have made I am criticising him for raising previous complaints.

Mr B asked for a timescale of six months to provide information to NHBC.

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.

My role here is to reach an outcome that I feel is fair and reasonable based on all of the information provided to me. It is a natural part of this process that one or both parties may be disappointed with the outcome I reach. However, I provided my thoughts and reasoning in my provisional findings to both parties, to allow them to opportunity to comment further.

I thank both parties for their responses and I have considered them carefully along with all of the information and arguments previously provided.

Any reference to past decisions is not intended to be a criticism of Mr B, he is entitled to raise complaints about matters he is unhappy with. I simply need to explain that I can not revisit anything my fellow ombudsman have already considered and decided upon.

For the same reason as set out in my provisional decision, I am satisfied that the rates at which insurers can contract suppliers to undertake work at, is commercially sensitive. So, I remain of the opinion that NHBC acted reasonably in not disclosing this information to Mr B.

Mr B has said previously this also meant he couldn't check the quote that NHBC provided to him and that it missed items in its prior investigations, so he couldn't confirm everything had been covered. That may be the case, however the matter has moved on significantly from that point. And, as I mentioned in my provisional findings another ombudsman, Neil Marshall, found in his May 2022 decision, that all of the items had been accounted for at that point. It is now for Mr B to provide NHBC with an itemised costed quote for the agreed insured repairs for the first two claims.

I've considered NHBC representations about what could happen if it uplifted its internal costs by 10% however, I still think, more likely than not, the most accurate calculation would be an independent market rate quote. This also means the quote is fully transparent and all information can be disclosed to Mr B.

Having considered the matter again I'm minded to reach broadly the same outcome as I set out in my provisional findings and for the same reasons.

I've considered both parties representations about the timescales I set out. I appreciate Mr B has set out his health difficulties, by I'm also mindful of how long this claim has been ongoing so far. I remain of the opinion that three months is a reasonable timeframe in which to obtain a quote.

I think it would be reasonable for NHBC to make contact with Mr B for his payment details now, so that it can go on to make a payment to him, in the future, without delay. Therefore, it should still make a payment to Mr B within two weeks of receiving the quote. If Mr B hasn't provided them by that point, NHBC will need to ensure it goes on to make payment to him within two weeks of receiving those details. This assumes NHBC chooses to make an electronic payment. Should it choose to make a payment by cheque it should do this within the initial two weeks.

I uphold Mr B's complaint against NHBC.

Putting things right

- NHBC should contact Mr B and ask for his payment details so that it is able to make future payments to him in a timely manner.
- If Mr B is able to provide a sufficiently itemised costed quote to NHBC within the next three months which enables NHBC to settle the two claims, it should pay Mr B the sum of the validated quote. And, if Mr B is charged an additional amount for that quote by the builder, NHBC should pay that charge providing it is reasonable, has been sufficiently justified and Mr B provides evidence that he has paid it.

- If Mr B is unable to provide a sufficiently itemised costed quote to NHBC within the next three months, then NHBC should arrange for a market value quote to be produced based on the scope of works identified for the valid items of the two claims. It should do that within one month and then within two weeks of obtaining that price, make payment to Mr B. If Mr B hasn't provided his payment details by that point, NHBC will need to ensure it goes on to make payment to him within two weeks of receiving those details. This assumes NHBC chooses to make an electronic payment. Should it choose to make a payment by cheque it should do this within the initial two weeks.

My final decision

My final decision is that I uphold Mr B's complaint against National House-Building Council. I direct it to put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 April 2024.

Alison Gore
Ombudsman