

The complaint

Mr B complains that National House-Building Council's (NHBC's) offer of settlement for a claim he made under his Buildmark warranty is unfair.

What happened

Mr B's claim is for defective tiling around the dormer windows on the roof of his property.

NHBC has accepted the claim under section 2 of the warranty. NHBC has offered a cash settlement of £6,643.24 (not inc VAT) based on a schedule of works put forward by its claim investigator. NHBC says it will reimburse the VAT element upon receipt of VAT invoices to show Mr B incurred those costs.

Mr B has provided four roofer's quotes which he says show the works required are significantly greater and more expensive than NHBC says. He says NHBC's claim investigator didn't get up on the roof, or use drones, to carry out his inspection and so he doesn't think it's reasonable for NHBC to rely on that report over the roofer's quotes Mr B has provided. Mr B wants NHBC to meet the cost of one of his quotes.

NHBC say the inspection was sufficient to identify a breach of technical requirements and the works required to correct it. It says if Mr B believes further works are necessary as a result of further breaches of its technical requirements, he should obtain and provide an expert report to this effect for consideration.

Our investigator considered the complaint but didn't think it should be upheld. She said NHBC is entitled to decide how to settle the claim and that its cash settlement offer is fair, based on a detailed schedule of works provided. She said Mr B's invoices included works not deemed necessary by NHBC and so she wouldn't expect NHBC to cover those works.

Mr B didn't accept our investigator's findings. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give the parties the opportunity to respond, before I reached my final decision. Here's what I said:

"What I've provisionally 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'm minded to reach a different outcome to our investigator. So, I'm issuing a provisional decision, to give the parties the opportunity to respond before I reach my final decision.

Like our investigator, I'm satisfied it is fair for NHBC to base its settlement on the detailed schedule works put together by its claim investigator. But, unlike our investigator, I don't think it's fair for NHBC to base the cash settlement amount on the amount NHBC's contractors could have completed the works for.

I'll explain why addressing each issue in turn.

The basis of the cash settlement

The relevant section of the policy applicable to Mr B's claim is section 2. Under this section responsibility for putting right any defects with the construction of the property rests with the builder in the first instance. Should a dispute with the builder arise, NHBC offers to provide a mediation service – called the resolution service – between the builder and policyholder to resolve the dispute. Where this proves unsuccessful, NHBC are required to take over responsibility for the works required, in certain circumstances. This is called the NHBC Guarantee.

In this case, NHBC has taken over the builder's responsibilities, under the guarantee, in respect of the claim for the issues with the tiling around the dormer windows.

The policy document explains how NHBC will put things right under the guarantee:

"You are protected by the NHBC guarantee for what we (in a resolution report) or a court (in a judgement or, in Scotland, a decree) decides the builder should have done to meet their responsibilities under section 2 of Buildmark.

If the builder does not meet these responsibilities, we will do so on their behalf. Or, if we choose to, we will pay you what it would cost us to have the work done."

Based on this, NHBC's guarantee provides cover for the works set out in its resolution report, if the builder hasn't met its responsibilities.

NHBC's claim investigator set out the works he felt were required in the resolution report issued in November 2022:

"The builder must carry out works to make sure that this item complies with our Technical Requirements, R4, Chapter 7.2

...

The builder should ensure the lath at either sides of the dormer are notched and trimmed correctly where the pass over the fibreglass to the dormer roofs."

The same claim investigator produced the schedule of works the cash settlement offer has been based on. So, I'm persuaded that NHBC's offer to meet the cost of the works outlined in its resolution report is in line with the terms of the policy.

Mr B has argued that the claim investigator's investigation was inadequate because he didn't go up on the roof or use a drone to get a closer look. Instead, his report was based on a visual inspection from the ground. Mr B has provided four separate roofer's quotes, all of which include works not accounted for in the claims investigator's schedule. And as his roofers got up on the roof, Mr B considers they are more reliable than NHBC's report.

I've thought carefully about this point. But ultimately, I don't agree that Mr B's roofer's quotes are persuasive evidence that the works the roofers have quoted for are necessary in order to meet NHBC's technical requirements – and this is ultimately what the warranty covers. None of the quotes explain why NHBC's schedule of works is inadequate, or why the additional works quoted for are necessary in order to correct the defect. So, in the absence of more persuasive evidence, I'm not intending to direct NHBC to meet the cost of any of Mr B's roofer's quotes.

NHBC has suggested that Mr B can obtain and provide his own report, if he feels the claim investigator's report and schedule don't properly reflect the level of defects or works required. I think this is fair.

I do appreciate Mr B feels strongly that the claim investigator should have gotten up onto the roof or used a drone. But ultimately, the claim investigator is the technical expert here and clearly felt he could reach a conclusion based on the inspection he carried out. In the absence of more persuasive evidence to contradict the claims investigator's findings, such as a detailed report explaining why his schedule of works would be insufficient to remedy the defect(s) and meet NHBC requirements, I find his report and schedule of works to be the most persuasive evidence currently available. So, I don't think it's unfair or unreasonable for NHBC to limit the settlement to the works set out on the schedule of works.

Mr B has questioned whether NHBC would reimburse him for the cost of a further report, if they are unwilling to arrange one themselves.

As explained above, I think NHBC is entitled to rely on the report and schedule produced by its claim investigator at this stage, based on the evidence available. So, I don't consider that NHBC is required to carry out any further investigations. However, if Mr B paid for a more detailed roofer's report, and this report were to show that NHBC's claim investigator was wrong, and that additional works are required in order to correct the defect and meet NHBC's technical requirements, then I would expect NHBC to reimburse the cost of the report. This is because the report would fundamentally make a difference to the outcome of the claim. Conversely, if a new report did not change the claim outcome, I would not expect NHBC to reimburse Mr B.

Should Mr B decide to pay for a new report, he should submit it to NHBC for consideration. And should any further dispute arise out of this, it would need to be dealt with as a new complaint.

The cash settlement amount

NHBC's cash offer is based on the schedule of works put together by its claim investigator. This schedule explains that the rates it is based on are mostly NHBC's own rates, where it says:

“ Use NHBC rates as much as possible”.*

Insurers typically have preferential rates agreed with a network of contractors, owing to the large amount of business they can provide. These rates are unlikely to be obtainable by the average policyholder.

As stated above, the policy booklet does explain that NHBC may pay a cash settlement limited to what it would cost for NHBC to do the works. But, as an ombudsman, I'm not bound to a strict application of the policy terms. Instead, my role is to decide what is fair and reasonable in all the circumstances.

It is a long standing and well-established approach of the Financial Ombudsman Service, that it isn't fair or reasonable for insurers to apply their preferential contractor rates to cash settlement offers, unless they are willing to carry out the works using a network contractor, but the policyholder has refused. Or unless there is a genuine reason for the insurer insisting on a cash settlement, such as particularly unreasonable behaviour on the part of the policyholder.

I can't see that either of these scenarios apply in this case. So, as it doesn't appear that NHBC has offered to carry out its schedule of works using a network contractor, I consider it unfair for it to limit the cash settlement offer to its preferential rates. In order to fairly put things right, I think NHBC needs to either offer to complete the works using a network contractor, or to recalculate the settlement based on the amount it would reasonably cost Mr B to carry out the works outlined on NHBC's schedule of works.

That said, if NHBC does offer to carry out the works, but Mr B refuses this option, then I agree NHBC can fairly and reasonably rely on the policy wording and limit the cash settlement offer to its own rates. This is because carrying out the work would cost NHBC the amount on its schedule of works. So, in those circumstances, it wouldn't be fair to expect NHBC to pay more than that amount, based on Mr B's decision not to accept NHBC's contractor.

If NHBC elects to increase the cash offer instead, it should also add 8% simple interest to the additional amount owed to Mr B, from the date of NHBC's initial settlement, to the date the increased settlement is paid. This is to compensate Mr B for being deprived of funds I believe he was reasonably entitled to under the terms of his policy.

In this scenario, should a subsequent dispute arise over the additional amount NHBC offers to pay, this will need to be dealt with as a separate complaint with NHBC. And should Mr B remain unhappy following NHBC's final response to this hypothetical complaint, he'll be able to refer the new complaint to our service, subject to our normal rules and timescales.

Distress and inconvenience

Experiencing defects with a new home would be understandably distressing and making insurance claims is often inconvenient by its very nature. Neither of these would necessarily be the fault of NHBC.

However, in this case, I think Mr B has suffered from avoidable, unnecessary additional distress and inconvenience as a result of NHBC's, in my view, unfair claim decision to date. For example, the inconvenience of having to raise a complaint and pursue it all the way through the Financial Ombudsman Service, just to receive a reasonable settlement for a valid claim.

So, in addition to the potential remedies set out in the above section, I'm intending to direct NHBC to pay Mr B £200 compensation for the avoidable distress and inconvenience it has caused him."

I asked both sides to provide any further comments or evidence they wanted me to consider within two weeks.

NHBC responded to say the dispute here was about the level of works included in its schedule of works, not the cash offer. It said it told the Financial Ombudsman Service, when providing its complaint file, that Mr B could provide two quotes from his own contractors, solely for the works included within its schedule of works, and it would reconsider the cash offer. So, it didn't agree with my provisional finding that it had reached an unfair claim decision or that it should pay Mr B any compensation.

Mr B didn't provide any further comments or evidence. And as the deadline to do so has now passed, I'm moving forward with my final decision.

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.

I've also carefully considered the responses to my provisional decision. But having done so, my conclusions on a fair and reasonable resolution to this complaint remain the same. I'll explain why.

NHBC has highlighted that the primary issue in dispute is the level of works required to put right the issues that are covered under the terms of the warranty. I accept this, and I set out in my provisional decision the reasons why I thought it was reasonable for NHBC to base any claim settlement on the works outlined in its schedule of works. I've had no further comments or evidence to consider around this point, and so my conclusions here remain the same as outlined in my provisional decision, and for the same reasons.

NHBC says it told the Financial Ombudsman Service, when providing its complaint file, that Mr B could provide two quotes from his own contractors, solely for the works included within its schedule of works, and it would reconsider the cash offer. NHBC says if its policyholder says they're unable to get the works completed for the amount it has cash settled for, they will always be given the opportunity to provide their own quotations. But the issue here has been that Mr B's quotes have included works he believes are required, which NHBC disagrees with, and so the quotes are not like for like.

While I can see that NHBC did include this offer within its complaint file, I've seen nothing to demonstrate that this option was clearly explained to Mr B at the relevant time. Instead, various communications from NHBC, including its two final response letters, its claim offer letter and a separate letter also sent on 3 July 2023 collectively explain NHBC's intention to cash settle at the amount it would cost for it to complete the works, and that Mr B could dispute the works included within the schedule of works if he provided further evidence. None of these documents suggest that Mr B could provide his own quotes for the works NHBC accepted were required, in order to receive an adequate cash settlement.

Given the above and that part of my role here is to try and bring finality to Mr B's complaint, rather than answering one element of it in isolation, I remain of the view that the cash offer on the table from NHBC before the case came to us was unfair. To put things right, I think NHBC should either offer to complete the works set out within its schedule through one of its network contractors, or that it should increase the cash settlement offer to what it would cost Mr B to have the works done (which it appears to have now offered since the case came to us).

NHBC has said its willing to consider two quotes from Mr B to demonstrate what the works on its schedule would costs for him to have completed, and this seems reasonable to me. So, if NHBC elects not to carry out the works (which it is entitled to do under the terms of the policy and which I wouldn't consider to be unfair in the circumstances of this particular complaint) Mr B should obtain and provide two quotes in order to have the cash settlement amount reassessed. If Mr B doesn't do this, then NHBC does not need to increase the settlement payment.

Should NHBC maintain its decision to cash settle, and if Mr B providing two quotes results in an increase to the settlement amount, I remain of the view that NHBC should also add 8% simple interest to any outstanding amount due, from the date the initial cash offer was made, until the date of settlement because I can't see that Mr B was appropriately made aware of this option at the time.

I do appreciate that Mr B's concerns with the cash offer focused more on the works included, rather than the amount paid for the works NHBC accepted were needed. So, Mr B may well have always raised a complaint with the Financial Ombudsman Service about his concerns with the works on the schedule. But I also remain of the view that part of the reason Mr B has needed to go through the inconvenience of making a complaint to the Financial Ombudsman Service, in order to receive a fair settlement for his claim, is due to NHBC's unfair cash settlement offer and its poor communication around how this could more fairly be calculated. So, in the circumstances, I still think NHBC should pay Mr B £200 compensation for the impact of its errors here.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr B's complaint in part.

National House-Building Council must either:

- Appoint one of its network contractors to carry out the works set out in its schedule of works – subject to agreement from Mr B.

Should NHBC offer to do the works, but Mr B refuses to allow this, then NHBC can fairly and reasonably maintain its decision to limit the cash settlement offer to its own preferential rates.

Or

- Recalculate the cash settlement offer based on what it would cost for Mr B to get the works set out on its schedule of works done – not NHBC's preferential rates – subject to Mr B providing two quotes for this work for consideration.

Should this option be chosen, NHBC should also add 8% simple interest* to any additional amount owed to Mr B, from the date of NHBC's initial settlement offer, to the date the increased settlement is paid.

And it must

- Pay Mr B £200 for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 May 2024.

**If National House-Building Council considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Adam Golding
Ombudsman