

The complaint

Mr and Mrs T complain about the way National House-Building Council (“NHBC”) handled a claim they made under their new-build warranty.

What happened

Mr and Mrs T moved into their home in 2019 and were provided with a ten-year NHBC Buildmark warranty. Since moving in, they experienced excessive draughts and cold temperatures. The builders agreed to carry out some remedial works following discussions, but these works never rectified the issue.

When the builders refused to carry out further work, Mr and Mrs T referred the matter to NHBC. In late 2023 NHBC visited the property to conduct a survey and provided a resolution report. The report acknowledged excessive draughts from the front door but NHBC refused to review the same issue in relation to the windows – which Mr and Mrs T believed was the major contributing factor. So Mr and Mrs T made a complaint. They said NHBC hadn’t responded to emails, that neither it nor the builder had rectified the problem, and that it had been biased in favour of the builder, among other things.

In its response to the complaint, NHBC said whilst it hadn’t always responded to Mr and Mrs T in a timely manner throughout the claim, it didn’t agree that it’d been biased towards the builder. It accepted that the builder hadn’t met the deadline set out in the resolution report for completing the works and apologised for this and for any trouble and upset it had caused. It offered Mr and Mrs T £350 compensation for the instances when its handling of the claim could’ve been better.

Mr and Mrs T didn’t accept NHBC’s response, so they referred their complaint to this service. Our Investigator considered the complaint, but thought the compensation NHBC had offered was fair in the circumstances. Mr and Mrs T didn’t agree. They say they’d incurred substantial losses including excessive heating bills as well as costs they’d incurred for private works to resolve the issue. They also said the situation had caused them emotional and physical distress – particularly due to the builders’ and NHBC’s refusal to act to rectify the issues.

Because Mr and Mrs T asked for their complaint to be referred to the next and final stage of our process, the complaint has now 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.

As this is an informal service, I’m not going to respond here to every point or piece of evidence Mr and Mrs T and NHBC have provided. Instead, I’ve focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have read everything submitted. And having done so, I’m not upholding this complaint. I’ll explain why.

NHBC isn't an insurer in the conventional sense. And not everything it does falls under our remit for consideration. For example, we can only consider regulated activities, which includes things like claims handling, or "carrying out contracts of insurance". And not all of the issues raised in this complaint would fall into that category. Mr and Mrs T's claim arose during the first two years of the warranty and so it was considered under section 2, in which the builder is required to resolve damage or defects. And if the builder fails to do so, NHBC can take over in certain circumstances.

But the fact there is a warranty doesn't mean the property is held out as being "defect free". Rather the warranty offers cover if certain things are found to be defective in the first ten years after completion. And "damage" or "defects" aren't terms that include everything that might be wrong. It refers only to damage or defects as defined in the policy.

As Mr and Mrs T's claim arose in the first two years of the ten-year period, NHBC's role during this time was to act as a mediator in order to identify faults, decide what needed to be done and decide when repairs needed to be completed by – also known as the "resolution" or "conciliation" service. But resolution or conciliation aren't regulated activities (partly because they don't amount to contracts of insurance). So complaints about this fall outside our jurisdiction. We can however consider the complaint from the point at which NHBC agreed that further repairs were needed and the deadline given to the builder had passed, as it's at this point that NHBC's role was to take over the claim as the insurer and arrange for any outstanding works to be completed.

The builders were given a deadline of 12 January 2024 to complete works by – as specified in the resolution report. So we can only consider the actions of NHBC after this date. This means I'm unable to comment on the points made by Mr and Mrs T in relation to the tests that were carried out as part of the resolution service, as those activities fall outside our jurisdiction.

But in relation to the part of the complaint I can consider, I can see from the evidence provided that Mr and Mrs T had to contact NHBC's claims team on a number of occasions because the required work hadn't been completed – and NHBC didn't respond to them. So I've found that NHBC's handling of the claim should've been better. I consider its offer of £350 to be fair and reasonable in the circumstances, as this amount reflects that NHBC's actions caused Mr and Mrs T significant distress and inconvenience, and the issues required a lot of extra effort to sort out, with the impact lasting a considerable amount of time.

I can also see that NHBC offered, in its final response letter, to arrange for the builder to undertake repairs to the front door to fix the excessive draught issue which was identified as a defect. Unfortunately, I can't comment on the issue with the windows or require this to be rectified, as this wasn't identified as a defect in the resolution report – and therefore it falls outside my remit for consideration.

I've read Mr and Mrs T's comments in response to our Investigator's opinion, and I'm sorry to disappoint them, but I haven't seen evidence of any bias in NHBC's actions – and won't be requiring it to do anything in addition to what it's already agreed to.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 25 January 2025.

Ifrah Malik
Ombudsman