

The complaint

Miss E complains about National House-Building Council's handling and settlement of a claim made under her property warranty policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a very brief summary here.

I'd like to assure Miss E and NHBC that I am familiar with all of the evidence and information we have on file. But I'll concentrate on the issues which remain in dispute and on the key evidence and information around those issues.

Miss E bought a new build home in 2011. The property had a buildings warranty policy underwritten by NHBC.

In short, there have been a number of problems with Miss E's property, which were in evidence pretty soon after she moved in. Attempts were made to resolve these with the builder, but that company was dissolved in 2013.

NHBC accepted a claim under the warranty policy and carried out remedial works. Miss E complained to NHBC about delays and other issues. These included issues with the remedial works which Miss E felt weren't complete and/or, in some cases, effective.

Miss E wasn't happy with NHBC's response to her complaint, so she brought it to us. Our investigator looked into it and thought NHBC hadn't acted fairly and reasonably towards Miss E.

Our investigator thought, in brief, that NHBC should:

- pay Miss E £13,000 to cover further repair works;
- and where Miss E had provided invoices for those works, pay her interest on those payments at 8% simple per annum calculated from the date Miss E paid out to the date NHBC reimbursed her;
- pay Miss E £2,500 as a cash settlement for repairs to her (shared) driveway;
- pay Miss E for electrical work she'd had carried out and for which she'd provided invoices (adding interest at 8% simple as above);
- pay Miss E £400 to cover investigations she wished to commission to determine whether tiling at the home was sound;
- investigate any further issues, as and when they arose, relating to the works already carried out by NHBC;
- consider evidence from Miss E about damage to her garage which she felt ought to be covered by NHBC;
- confirm whether the background ventilation at the property met the relevant building regulations;
- update the certificate of repair NHBC had previously provided to Miss E; and
- pay Miss E £5,000 in compensation for the trouble and upset she been caused by

NHBC's errors or omissions.

NHBC have agreed to most, if not all, of those proposals, although they have sought clarity about what exactly was required.

Miss E was uncomfortable about a lack of specificity in some of the proposals. She thought that, in some cases, NHBC hadn't actually agreed to what she'd asked for. And she felt greater clarity was required in terms of what exactly NHBC were required to do.

So, Miss E asked for a final decision from an ombudsman.

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'll say something first about the role of our service.

We're here – and given powers by statutory rules – to resolve disputes between financial businesses and their customers. We deal with complaints about things that have happened in the past. Where we think a business has made errors, we determine what we think is the appropriate way for them to put things right for the customer.

Our service is less formal, less expensive and speedier than going through the courts. We're not here to act as a substitute or alternative claims handler. We're not here to direct businesses about things that might hypothetically happen in future. And we're not here to "referee" on-going insurance claims between businesses and customers.

Our rules specifically allow us to look into things only where the business concerned has already had a chance to do so themselves and to try to resolve things with their customer.

We have tried very hard to mediate between the parties in this case - and to bring things to a conclusion with an outcome that both parties were willing to accept. That may have resulted in some confusion about our role.

Now that we're at the final decision stage – after which this particular complaint is resolved and will not be re-opened – it's my role to issue an outcome, which will be our final involvement in the case and cannot be re-negotiated or re-considered.

As we've explained to her already, if Miss E is unhappy with the outcome set out below, she is entitled not to accept my final decision. In which case, we will close our case and she will be free to pursue the matter through the courts if she wishes to do so. NHBC would not then be bound by this decision.

I am pleased that much of this complaint has been resolved already by agreement, as set out in the views issued by our investigator.

I'm satisfied that the parties are agreed that the following represent a fair and reasonable way to resolve things.

One – NHBC will pay Miss E £13,000 to complete the repairs (other than those specifically mentioned below) at the property. I'm aware that there remains a degree of uncertainty about the interest to be added to some of this payment and I'll deal with that below.

Two – NHBC will pay Miss E £2,500 to cover repairs to the driveway she shares with a number of other properties.

Three – NHBC will pay for the electrical works for which Miss E has provided invoices (adding interest at 8% simple per annum calculated from the date Miss E paid out to the date NHBC pay Miss E).

Four – NHBC will pay Miss E £400 for her to commission an investigation into her tiling. I'm aware there remains an issue about what those investigations will cover, and I'll deal with that below.

Five – NHBC will investigate any further issues arising at the property resulting from the work they've carried out.

Six – NHBC will consider any evidence provided by Miss E about repairs to her garage. Again, I'm aware this needs some clarification and I'll also deal with that below.

Seven – NHBC will carry out an inspection to determine whether the background ventilation at the property meets the requirements of the building regulations (at the relevant time).

Eight – NHBC will provide an updated certificate of repair to Miss E, taking into account the works that have been carried out since the previous certificate was issued.

Nine – NHBC will pay Miss E £5,000 in compensation for her trouble and upset. I think this is fair compensation and I'll explain why below.

I'll deal with the remaining issues in the order set out above.

Interest on elements of the £13,000 payment

Miss E and NHBC have agreed a £13,000 payment to cover the remaining "snagging" works at the property. I'm not going to interfere in any way with that or re-open the debate about it.

I say that because it's not a figure that was arrived at by mathematical dissection of the remaining works and their costs. It might best be described as a compromise figure that all parties were willing to agree.

That payment has been delayed pending the completion of our investigations. However, Miss E has already - and some time ago in some cases - paid out to get elements of that work completed.

In principle, as our investigator has said, because Miss E has been out of pocket after paying out for those works, it's right that NHBC should pay interest – at 8% simple per annum – on any element of the £13,000 payment they now make that is to cover those already completed works.

Miss E says she's provided invoices to NHBC for a total of around £9,400. NHBC say they've received invoices for around £9,700 for those works. Although they say they thought some of those works should not have been covered by the claim.

I'm not sure NHBC's logic adds up here, because as I say, the £13,000 was a compromise figure – arrived at, at least in part, so that NHBC and Miss E didn't have to continue to debate what works should or should not be covered.

That being the case, I'm going to require NHBC to pay interest on the around £9,700 figure they themselves quoted as the total of the invoices Miss E provided.

NHBC are aware that the interest should be calculated from the date of Miss E's payment of the invoice to the date they pay her. In other words, they will have to calculate the interest separately for each invoice. And it is interest at 8% simple *per annum*.

The tiling investigations

Miss E wishes to commission investigations to determine whether the tiling at her property (internal and external) met the relevant building requirements at the time. NHBC have agreed to pay her £400 to facilitate that.

Miss E is concerned that NHBC, in their communications with us, seem only to have referred to the internal tiling.

There may have been some confusion in the communications on this point, but I don't think it matters in terms of the outcome.

Miss E can commission the investigations, using the £400. If it proves more expensive than that when she asks the investigators to look into the external tiles too, then I would expect NHBC to make up the difference if – and only if – the investigations show a defect and damage to the external tiles that NHBC are required to cover under the terms of the policy.

The garage

There has been some considerable debate and discussion about whether the garage is actually covered by the policy. It was a pre-existing garage, which pre-dated the new build of Miss E's property. I don't intend to open that debate again. I am satisfied the garage is covered and NHBC have conceded that point too.

Miss E says the garage had significant cracks in its walls and was damp. She's provided photographs that appear to confirm this. It's not altogether surprising because, judging by other photographs Miss E provided, the garage appears to be relatively old - and it seems the builder didn't do much more than render the inside and outside walls (and apply paint).

The NHBC policy is designed to cover new builds, but also rebuilds and restorations. So, the work carried out by the builder to the pre-existing garage *is* covered.

Miss E has now had the garage demolished and a new one built in its place. She says this has cost her over £90,000 (plus VAT, plus demolition costs). As Miss E says, she did give NHBC more than sufficient notice to inspect the old garage before it was demolished.

I agree with our investigator that NHBC should now consider evidence provided by Miss E about the state of the garage before it was taken down. And I'm satisfied NHBC should pay Miss E the amount it would have cost them, at the time, to repair the rendering works carried out by the builder.

I understand this won't be an exact science, given that the garage is no longer available for inspection, but the photographs do show the damage to the rendered walls quite clearly.

I do need to try to manage Miss E's expectations in this respect though. Insurance policies are (usually) there to indemnify the policyholder. If something unexpected and unfortunate happens, the insurer is obliged to put the policyholder back in the position they were in before the insured event occurred.

Miss E had what appears to be a garage constructed in the previous century, from concrete blocks, which had been rendered and painted. NHBC should assess the damage evidenced by Miss E and pay her what it would have cost them, under the terms of the policy, to repair that garage.

However, if you insure your car, you don't expect to write off a Skoda (no disrespect intended) and have the insurer pay you to replace it with a Ferrari. Similarly, Miss E shouldn't expect NHBC to pick up her bill for in excess of £100,000 for a brand new and (presumably) high specification garage when her policy covered a very old and worn garage with rendered walls.

Putting things right

I've set out above how I think NHBC have already agreed to put things right for Miss E. And I've added to that where I think it's necessary. And clarified what I understand by it where appropriate. I'll also reiterate in the section below the steps I'm requiring NHBC to take now.

I'll briefly clarify my thinking on the compensation I'm going to require NHBC to pay.

Miss E has experienced severe delays in the handling of her claim. Many of them due to NHBC not agreeing to do things that we've said they should have done in the first place – and which they now agree to do.

She's had to chase NHBC to get answers to her queries and questions and has had to push very hard for progress. And all of that time, she has been living away from her home, for a prolonged period, or in her home whilst disruptive works have been carried out. She has suffered the stress and anxiety of not knowing if, when or how her property would be repaired and restored.

It's not NHBC's fault that the house had so many problems. And some degree of stress, frustration and upset was inevitable in a claim of this sort. But NHBC have unnecessarily added to that with delays and poor service – and by failing on occasion to meet their obligations under the policy.

A compensation award of £5,000 is at the top end of our normal range. We make awards of up to £5,000 in cases where a business's mistakes cause sustained distress, potentially affecting someone's health, or severe disruption to daily life typically lasting more than a year.

In my view, Miss E *has* suffered sustained distress and severe disruption - for considerably more than a year - due to NHBC's errors or omissions. And so, I think an award of £5,000 is fair and reasonable in this case.

Finally, I should note that Miss E has raised a new issue with us very recently about NHBC's contractors causing damage affecting her internet connection. That's not for me to deal with here since it's a new complaint point. However, I do of course expect that NHBC will deal with it in a fair and timely manner.

My final decision

For the reasons set out above, I uphold Miss E's complaint.

National House-Building Council must:

- pay Miss E £13,000 to complete the repairs (other than those specifically mentioned below) at the property (adding interest at 8% simple per annum for any invoiced work, as specified above, calculated from the date Miss E paid out to the date NHBC pay Miss E);
- pay Miss E £2,500 to cover repairs to the shared driveway;
- pay for the electrical works for which Miss E has provided invoices (adding interest at 8% simple per annum calculated from the date Miss E paid out to the date NHBC pay Miss E);
- pay Miss E £400 for her to commission an investigation into her tiling;
- investigate in future any further issues arising at the property resulting from the work they've carried out;
- consider any evidence provided by Miss E about her garage and pay for repairs to any damage that would have been covered;
- carry out an inspection to determine whether the background ventilation at the property meets the requirements of the building regulations (at the relevant time);
- provide an updated certificate of repair to Miss E, taking into account the works that have been carried out since the previous certificate was issued; and
- pay Miss E £5,000 in compensation for her trouble and upset.

If NHBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss E how much it's taken off. It should also give Miss E a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 14 November 2024.

Neil Marshall
Ombudsman