

The complaint

Mr B has complained about his building warranty insurer, National House-Building Council (NHBC) in relation to defects at his property.

Mr B complained to the Financial Ombudsman Service in summer 2023, in doing so he set out concerns about how the claim had been handled by NHBC since 2017. I've issued a decision which explains that this Service can only look at NHBC's claim handling activity from January 2021 onwards. So this decision, as far as claim handling is concerned, will only cover January 2021 to December 2023.

What happened

Mr B bought his home in 2014 and identified concerns with the property to the builder. NHBC formally took over dealing with those concerns in 2017 under the defects part of the warranty. It has been working at the property since to try and resolve the defect issues.

In August 2023 Mr B was unhappy about how matters were progressing. He complained to the Financial Ombudsman Service. As well as setting out concerns about NHBC's claim handling and the stress caused, Mr B detailed an outstanding issue with the property which he thought NHBC should be resolving. He explained that NHBC had still failed, in his view, to resolve an issue of heat loss at the property – he said warmth from heating dissipates quickly and there are draughts throughout. He said NHBC was, at that time, not answering his concerns in that respect and, with a view to improving matters before winter, he had completed some work that had been recommended following a thermal imaging survey in 2022 but there was more to be done. He said there was also an issue with an odour in a bedroom, caused by NHBC's works – he fixed that too.

NHBC, in December 2023 issued a final response letter (FRL) in answer to a number of concerns raised by Mr B. Regarding those he had brought to this Service, it accepted that there had been delays in the claim, caused by it, since it last considered claim handling issues in an FRL of January 2021. It said it would pay £700 compensation. Regarding the heat loss it said the latest test results it had completed, before Mr B completed work, showed the property was performing in-line with requirements – so there was no issue for it to put right and his costs for works, in the main, would not be reimbursed. Regarding the odour in the bedroom – it noted Mr B had undertaken work to resolve this issue and said it would pay £1,828.06 for him having completed that work (based on a scope drawn up by its contractor). It said it would not cover Mr B's legal fees incurred and regarding his having taken annual leave to deal with the claim, it apologised.

Mr B told our Investigator that he was happy to accept the £1,828.06 in settlement of the bedroom issue. But he was unhappy that NHBC had included that offer in its FRL, alongside the compensation offer which he was not prepared to accept.

Our Investigator felt NHBC had shown the property, in terms of heat loss, was functioning as expected. She noted Mr B's concern about NHBC's offer for the bedroom work, but felt that it making that offer within its FRL was reasonable. Regarding the delays – she was minded to make NHBC pay only the £700 offered, she felt that was a fair and reasonable sum.

Mr B said NHBC should, at least, pay the settlement for the bedroom issue without delay – he noted various other offers of settlement from it made over the years had not been paid. Regarding the heat loss Mr B said it was obvious that there had been, and still were, significant issues at the property. He said that, for example, the gaps between plasterboard on the walls and the floor are not compliant with the design drawings for the building – so that means there is a defect. He said it was things like this which he has acted to rectify because NHBC would not – it hadn't determined the cause of the heat loss and draughts, nor carried out the recommended investigations from the 2022 survey.

In terms of delays Mr B noted there'd been a significant wait in 2021 for concrete slab works to be done. He said that when these were done, they were noisy and disruptive and were completed over the course of a few weeks during their summer break. He felt that it took too long for NHBC to arrange its 2022 investigations.

The complaint was referred to me for an Ombudsman's decision. Having reviewed matters, I wasn't minded to make NHBC pay or do anything more regarding the heat loss. I noted its offer of settlement for the bedroom odour issue and compensation. I thought it should pay those sums, with the former, in my view, reasonably attracting an application of interest. I also thought NHBC should be making a cash settlement to Mr B regarding two outstanding claim issues. I explained I would offer comment also on some previous offers of compensation – with a view to helping the parties finally resolve this long, on-going matter.

My provisional findings were:

"Proffered sums not paid"

I understand that it is NHBC's process to offer compensation, and other claim payments, but to only pay the sums put forward if they are accepted by its complainant. Whilst I appreciate it has its processes in this respect, this Service encourages insurers to pay monies they accept are due, to complainants, without delay and without the need for the complainant to accept the payment in settlement of their issue. Where proffered sums aren't paid – and related complaints, brought to this Service, result in a final decision issued by an Ombudsman – the Ombudsman, if they find such a sum is fairly and reasonably due, will make an award in that respect. So I intend to do just that here.

Heat loss

It seems to me that the parties are viewing this issue in different ways. NHBC's final position focused on whether the house, as a whole, has a heat loss issue and is or is not, therefore, defective. Whereas Mr B is focusing in on certain design issues of the home, that may impact its overall ability to maintain heat. It is in respect of these 'individual' issues that Mr B has been undertaking work – for example to pack/insulate the gap at the bottom of internal walls between the bottom of plasterboard and the floor. I see that Mr B thinks there is a clear defect in the build in respect of the gaps left because they aren't reflected on the design drawings for the property.

I can see why Mr B is viewing matters like this as a defect. And I know that thermal imaging showed cold points in these areas. So I understand why Mr B thinks this 'defect' (and other matters that follow a similar logic) are causing heat loss at his home. But I bear in mind that NHBC has explained that there is no requirement in its building requirements for the amount of gap between plasterboard and a floor.

I understand that, generally, in building homes, a gap like this is often left to avoid a bridge being caused between the floor and wall which can, in some cases, cause issues with

moisture transfer and/or prevent different materials from moving naturally due to things like temperature changes. So it doesn't surprise or concern me that some gap was left between the walls and floors in Mr B's home. I also understand that NHBC doesn't determine what constitutes a 'defect' by comparing design drawings to what has later been installed. Rather NHBC has building requirements which it expects contractors, seeking to have a warranty issued for their building, to comply with. If it is later shown that aspects of the building do not comply, or were not installed in-line, with the building requirements – then they may well be seen as defects under the policy. So where there's no requirement – such as for the amount of gap to be left at the bottom of walls – there's no defect for NHBC to respond to.

From what I have seen, NHBC accepts that the house, overall, should be capable of achieving or performing within certain thermal parameters. I understand from that that the building shouldn't allow too much heat to leach out into the surrounding environment. I also understand that once tests have been completed to gather data about heat loss – the calculations required to determine what that data means are quite complex – requiring expert technical consideration. NHBC utilised experts to gather data and then assess the same. The result of that expert involvement was that the house was found to be performing in-line with thermal parameters as applied when it was built. Which means there is no defect for NHBC to either continue to investigate or to resolve.

I know that Mr B, at one stage, did undertake to replace loft insulation – and NHBC reimbursed that outlay. I also know that Mr B, after the investigations were completed and the results shared with him, progressed with completing other works he feels are necessary to resolve the heat issues he is experiencing at his home – such as insulating the gap at the bottom of walls. An issue which he still firmly believes is caused by a defect or multiple defects with the property. Given what I've seen here though I'm not minded to require NHBC to do or pay anything more in respect of the heat loss issue. That's because I'm satisfied its shown, on balance, there's no defect for it to respond to.

Bedroom odour

NHBC has offered £1,828.06 to settle this matter – but it has not paid this sum to Mr B. Mr B has said he is prepared to accept that sum in resolution of that matter. So I don't need to discuss NHBC's liability for settlement in this respect any further. But, as this sum has not been paid, I'm going to require NHBC to pay this sum to Mr B, plus interest applied from 20 December 2023 until settlement is made.

Delays and claim handling

Prior to its December 2023 FRL, NHBC last answered concerns from Mr B about delays and claim handling in January 2021. So my review of what happened and what went wrong, picks up from that January 2021 FRL.

As of January 2021 NHBC was intending to do some work to the concrete floor slab at Mr B's property. However, as of January 2021 restrictions applied to movement in the UK due to the Covid-19 pandemic. So that work couldn't be organised. Those restrictions were lifted at the start of April 2021 – but it was July/August 2021 when the works took place.

I think there was, at most, a two-month delay by NHBC during this period with getting this work organised. Getting work arranged and undertaken as the country came out of restricted periods related to the Covid-19 pandemic was difficult and I reasonably have to take that into account – such that I don't think it would be fair to say NHBC should have ensured that work was underway within a couple of weeks of restrictions lifting. But I do think the delay until late July 2021 was too long. I think it's fair to say it should have ensured this work started in late May/ early June.

Starting earlier would have meant less disruption for Mr B, as his summer break wouldn't have been impacted. I accept that, when his break was impacted, this was frustrating and inconvenient. I understand the work was messy – but I think that was a natural consequence of needing work like this doing.

I can see that NHBC, at that time, apart from needing to adjust windows and doors, felt the issue was resolved. I realise that Mr B did not share that view. But I understand it was 2022 when he then sent it expert evidence – in the form of a thermal imaging survey – to challenge its position. I'll comment briefly about the windows and doors further on in this decision, but regarding this part of the claim timeline, I don't think NHBC caused any unreasonable delays. I think it was fair of it – as of autumn 2021 – to think the matter was largely resolved and to only act further when – in May 2022 – expert evidence, that suggested that possibly wasn't the case, was received.

Whilst that evidence was received in May 2022 – it was then October 2022 before a meeting took place to fully review and discuss that evidence, with a view to making a plan for moving matters forwards. That was a long time and I appreciate that through all of it Mr B was worried about his home and living in such a way as to mitigate the heat loss he was experiencing. However, I bear in mind that this was not a straightforward issue for the parties to agree on – Mr B was experiencing difficulties in the home, the thermal imaging survey showed areas where heat was being lost, but NHBC – with its focus on 'defects' – wasn't convinced the images evidenced a defect. I also understand that both parties had solicitors involved at this time, with the involvement of such professionals often adding extra time into the correspondence process.

I'm aware that as of the October 2022 meeting, the parties began discussing what investigations would be undertaken. I know an agreement was subsequently reached and that the planned investigations would be disruptive to the family. I also know that up until around March 2023 arrangements in respect of these investigations were on-going. I appreciate the situation was complex – but I think NHBC could have moved matters on more quickly at this time.

I know that, as of March 2023, the plans changed – that NHBC had found an alternative way of determining if there was a defect with the property in terms of heat loss, one which would involve less disruption for the family. I'm not sure why this wasn't found or explored before by NHBC. I think it probably should have been and this would have saved months of delay and worry for Mr B. It would also have saved him a lot of the effort he put in, between October 2022 and March 2023, in trying to agree and make the necessary arrangements for the invasive testing.

The new plan put forward in March 2023 was then implemented quickly, with tests and assessments being carried out over the next couple of months, and NHBC sharing its initial views on the results with Mr B in June 2023. It then confirmed those views in writing in September 2023. NHBC's FRL was then issued in December 2023. I don't think there was any delay caused by NHBC during this period.

I understand that the investigations completed in the spring of 2023 did require the family to leave the home overnight. I realise that was inconvenient for them. However, that disruption was a natural result of NHBC completing its enquiries.

Taking into account the details I've set out above, I'm not persuaded that NHBC caused unreasonable delays, consistently handling the claim poorly, during the whole two-year period from January 2021 to December 2023. Rather I think the claim, by and large, reasonably took time to progress, with NHBC causing a short delay in works of around two

months in 2021 and it having delayed the spring 2023 investigations by likely a few months. Taking those time periods into account, and the upset Mr B was caused, including the inconvenience he faced during them, I'm satisfied that £700 compensation, as offered by NHBC in its FRL, is fairly and reasonably due to Mr B. I'm also satisfied that sum takes into account, that, on occasion, Mr B had to use annual leave to deal with matters either subject to delay and/or which NHBC could have handled better. As NHBC has not paid this sum to Mr B, I'll award it to him.

I understand that Mr B felt the smell in the bedroom meant the room couldn't be used for a long-time. I appreciate he undertook repairs to resolve matters. I accept all of that was distressing and inconvenient. However, I'm mindful that Mr B never presented any expert evidence to NHBC of a fault/smell in the bedroom. I'm aware that once he felt he had to act to resolve matters, he gave NHBC a week to attend – NHBC did not attend. It is on the basis of it not attending that it agreed the cash settlement referenced above. I think NHBC accepts that it could have handled this situation a little better – but it's still by no means clear that, if it had, it would have accepted Mr B's position regarding the smell. Given the uncertainties of this issue, I'm not minded to award compensation to Mr B in respect of this particular matter.

Legal fees

Mr B involved a solicitor. NHBC said that the costs he incurred in that respect aren't covered by the policy. I'm satisfied that is a reasonable response from NHBC. I appreciate the claim was somewhat complex and certainly on-going over a long period. I also appreciate that, at times, Mr B felt he wasn't getting anywhere with NHBC. But it was his choice to go to the expense of appointing a solicitor – he could instead have chosen to complain to the Financial Ombudsman Service at an earlier stage, with our process being informal and free of charge. I'm not persuaded it would be fair to require NHBC to reimburse the costs Mr B incurred appointing a solicitor.

Windows and door – liability accepted but matters unresolved

The windows have been a source of contention between the parties for a long time. In short NHBC felt they could be adjusted but Mr B wasn't convinced that was viable. I can't get into the reasonableness of the viability of NHBC's plan to adjust the windows because it gave its answer in that respect in an FRL of January 2022 – with Mr B only complaining to this Service in August 2023 (which was too late for us to consider that issue). However, NHBC did remind Mr B of its offer to carry out adjustments in its February 2023 FRL.

In that FRL NHBC also accepted liability for an unsealed threshold of an external door. It said it would complete that work or pay a cash settlement for it.

At this stage, I understand that Mr B does not want NHBC to complete further work at his home and he had replaced the door in question. I also understand that, in 2021, he was offered a cash settlement for the windows, in lieu of NHBC completing the disputed adjustments. I think, to draw matters for both parties to a close, and given NHBC has accepted liability for both of these repairs, it should provide Mr B with a cash settlement for both pieces of work. I don't think it would best serve either of them for NHBC to attempt further repairs and, as Mr B has his own views about what repairs are needed, he can use any cash settlement paid as he sees fit to undertake the work he feels is necessary.

Other sums not paid by NHBC

Mr B has provided a list of other sums NHBC has offered him during the course of this claim but hasn't paid. I understand they are all previous compensation offers – £1,500, £250 and £150. Complaints about the issues related to those sums have not been brought to this

Service. So I can't make an award here for them. But it may help the parties finalise their involvement, now I've given my views above on the heat loss and delay issues, if perhaps between them a way forward in respect of these outstanding sums could be found."

Mr B did not reply to my provisional decision. NHBC did reply.

NHBC accepted my suggested award for the two outstanding claim issues. It confirmed that its previous offers of compensation are still open to Mr B – he can let it know if he would like to accept them.

NHBC objected to some of my findings. In summary it said:

- Proffered sums – it is physically unable to make a payment when making a settlement offer – that is because it does not hold bank details for its policyholders. So it asks them to accept the settlement and provide payment details.
- Bedroom odour settlement – it doesn't think interest should be applied to this sum.

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 note Mr B has not objected to my findings. I note that NHBC has accepted some of what I've said. I've reviewed NHBC's objections and would comment on them as below.

Regarding proffered settlements, NHBC has said it asks its complainants to accept the offer and provide payment details. It has also said though "To clarify, we don't necessarily need policyholders to accept our offers before we make payment but we do require them to provide us with details on how they wish to be paid before we can make any payments." I'm not sure though how any complainant would know that acceptance was not "necessarily" required. NHBC, as it has said, asks for acceptance to be given. In Mr B's circumstance, NHBC put two offers to him in the one letter. But it did not tell him that he could accept one sum and not the other, nor did it tell him he could accept either or both sums and still complain to this Service. Finally it did not opt to send Mr B a cheque for settlement in recognition of the fact it had accepted these sums were fairly owed to Mr B. I remain satisfied it's fair for me to direct NHBC to now make these payments.

In respect of interest, NHBC argues that the settlement for the bedroom odour issue was purely a goodwill gesture. It notes that in my provisional findings I acknowledge the uncertainty of the odour issue – and the possibility that if it had undertaken further enquiries, it may never have agreed with Mr B that it was liable for resolving the problem. I'm not persuaded though that, any of that makes a difference regarding interest.

As of December 2023, NHBC accepted that it had failed Mr B regarding the bedroom odour issue and that payment from it was reasonably due to make up for its failure. Mr B, to mitigate the situation that it had failed to deal with adequately, had incurred a financial outlay. NHBC's offer of settlement, had it been paid to him in December 2023, could have put money he had spent back in his pocket. However, because NHBC neither made it clear to Mr B that he could accept that settlement and still complain, nor paid that amount to him, he remained out of pocket. It stands to reason to me, that NHBC, therefore, has to pay interest, applied to the sum offered but not paid.

I've treated the bedroom odour settlement differently regarding interest to the offer of £700 compensation. The compensation sum was offered in recognition of upset caused, rather than in respect of something Mr B had had a financial outlay in respect of.

Having reviewed matters, I've not been persuaded to change my views provisionally stated. As such my provisional findings, along with my comments here, are now the findings of this my final decision.

Putting things right

I require NHBC to pay Mr B:

- £1,828.06 in settlement for the works completed to resolve the bedroom odour, plus interest* from the 20 December 2023 until settlement is made.
- £700 as compensation for the distress and inconvenience it has caused.
- An amount as a cash settlement for the work it accepted liability for in respect of adjusting windows and resolving a threshold seal on a door.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require NHBC to take off tax from this interest. If asked, it must give Mr B a certificate showing how much tax it's taken off.

My final decision

For the reasons set out above, I require National House-Building Council to provide the redress detailed under "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 December 2024.

Fiona Robinson
Ombudsman