DRN-5611487

The complaint

Mr W and Miss F have complained about their building warranty provider National House-Building Council regarding claims they've made for defects and damage at their new build home.

What happened

In November 2023 Mr W noticed areas of the property's driveway were sunken. He made a claim to NHBC, with the 10 year warranty in place being in its third year of cover. NHBC sent a claim investigator and drainage team to the property in December 2023. A report was issued in January 2024, with the claim being declined.

Subsequently Mr W obtained the drainage report from December 2023 and, in June 2024, a further drainage report was completed. NHBC opened a further claim and accepted that work to the drains was required. It offered £3,045.80 for the work it accepted as necessary. It said it would pay VAT in addition, if VAT was incurred. But it didn't agree with Mr W that the drains had likely caused the driveway to sink in places.

In a final response letter of November 2024, NHBC responded to several concerns Mr W had raised with it about the claims. In short, it maintained there was no evidence of a non-compliance with its building standards having caused the driveway to sink and that its offer to repair the drains was fair. Responding to some requests for redress put forward by Mr W, it said it would not be carrying out any checks on the house and nor would it extend the period of the warranty. Mr W remained unhappy with NHBC, so complained to the Financial Ombudsman Service.

NHBC said it still maintained the driveway had sunken due to usual settlement. However, it said it was willing to carry out further investigations into the foundations of the driveway.

Our Investigator considered Mr W's complaint and NHBC's offer. Apart from in respect of NHBC's offer, she wasn't minded to uphold the complaint.

Mr W remained unhappy. He said if this Service doesn't require NHBC to act, we won't be protecting him and other homeowners from builders and insurers. He said any further investigations carried out by NHBC needed to be done by a structural engineer. Mr W said the settlement offer for the drains did not address the pooling at the rear of the garage. He said NHBC had known about one of the drainage issues since its report in 2023 – if it had told him then, then the claim would have moved on more swiftly.

On a wider note, about the issues at his home, Mr W said that NHBC had been responsible for overseeing the build and any errors which occurred were its fault. He said it was, therefore, responsible for the repairs which were now required and things like the loss of enjoyment and use of parts of their home which the building issues had caused. And, Mr W said, by not agreeing to do the work, NHBC was removing itself from future liabilities which, at least in part, was why the period of the warranty should be extended.

Our Investigator replied further to Mr W. When he remained unhappy the complaint was referred for an Ombudsman's 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.

Having done so I'm not minded to reach a markedly different decision to the view issued by our Investigator. I've set out my views on the complaint below. I'd like to assure both parties that in considering all of the evidence and comments they've provided, I've taken account of their views. I understand that Mr W is particularly frustrated and feels he has been through a lot in recent years because of what he sees as NHBC's failure to properly oversee the construction of his home. So I'm aware of how important this issue is for Mr W.

With Mr W's strength of feeling on this issue noted, I'll set out at the start that our role is to consider the warranty in place and whether, in respect of Mr W's complaint, NHBC has fairly and reasonably complied with it. We don't look at the build process itself, or the builder, or NHBC's role in the property being built. We aren't here to protect homeowners – that is more the role of a regulator. So whilst I realise that Mr W thinks NHBC is responsible for the damage he is seeing, because certain aspects of the build were not properly completed, and that NHBC should therefore reinstate the property as it was, or should have been, when it was completed – that, is simply outside of the reach of my consideration. As is making awards so others are protected.

Turning to the warranty itself, it's not a guarantee against any failures in the build or damage occurring. Nor does it promise to place the warranty holder back into the position they were or should have been in but for the failure/damage. Rather it offers certain cover for failures which appear or damage which arises, at certain times during the ten years after the build is complete. In years three to ten of the warranty, the cover available is for; "physical damage to your home because the builder failed to build [certain] parts of your home to meet the NHBC requirements". And Mr W's claim/claims for the sunken parts of the driveway and the drains were made in years three to ten.

Mr W thinks his driveway has sunk. NHBC seems to accept it is showing signs of physical damage. But NHBC does not currently accept that damage has been caused by a failure to meet requirements when building the property (which I'll refer to from this point as a "defect").

I appreciate that Mr W has shared detail from NHBC's technical requirements which he believes shows NHBC should be accepting the claim for the sunken parts of the driveway. However, that detail speaks to the overall finish of the driveway. If it were accepted that the driveway was not finished in line with NHBC requirements then that would only serve to show the driveway has a defect, not damage caused by a defect. With the latter being what is covered by the warranty in this case.

NHBC has recently said it will carry out further investigations to see if the damage is being/has been caused by a defect. I understand it plans to do that by checking the foundations of the driveway. I think that is a reasonable thing for NHBC to do.

I know Mr W wants those investigations to be completed by an engineer. But, as this is the first instance of invasive assessment of the sub-base of the driveway, it is reasonable for a suitably experienced contractor to undertake that assessment. Depending on the results of that assessment, if the tested area only requires reinstatement that may result in a 'patch' to the drive. That is an unavoidable consequence of the claim.

In respect of the drains, Mr W would like NHBC to do the work. NHBC though does reserve the right in its policy to choose whether to complete work or settle in cash with the warranty holder for the work. That is a right reserved by most property insurers as well as building warranty providers. It is not a term this Service views to generally be unfair. As long at the settlement is paid at the value of the repair cost to the policy/warranty holder. Currently NHBC's settlement is based on the cost set by a drain company – as far as I'm aware that price would be available to Mr W. If he finds the cost to him is more, then NHBC has said it will consider that cost (for the work agreed). It's also said it will reimburse VAT if Mr W incurs it. I'm satisfied that's all fair.

I know Mr W has had concerns about the water pooling at the back of the garage. Our Investigator asked NHBC for more detail on this – about how/why it thinks the drain work at the rear of the garage will resolve the pooling issue. NHBC has said that if, as Mr W suspects, the pooling is being caused by the drain at the front of the garage – then fixing that will, over time allow any previously escaped water to dissipate. It's also said that working on the ground at the rear, when that drain is reinstated, may also help the ground, where water is pooling, recover. NHBC has said that if pooling continues and Mr W wants it to consider the matter further, he can make a claim for that, which will allow it to review its liability under the warranty.

In principle I think that is fair and makes sense. But I bear in mind that Mr W says there was a prior claim for boggy soil in the rear garden, and he was told to revert to NHBC with any further issues. So Mr W is concerned that a new 'claim' may not be fair – he is not an expert and this pooling may not be being caused by the drain issue at the front of the garage (although that will not have helped matters). Instead, Mr W says, this pooling may be related to the prior issue which caused the boggy soil. On that note I find I'm unable to comment – as I understand it, that claim was resolved with work done, so it hasn't been the subject of a complaint at this Service and I don't know whether it's likely the two could be connected. But, what is clear, is that NHBC hasn't taken this pooling issue on as a claim so it hasn't assessed its liability. And it is not uncommon for an insurer, in this type of situation to first deal with the issue as a new claim. Having a claim open allows an insurer to become involved and then, once the matter is investigated, if it's accepted that matter is a resurgence of a prior claim, the records can be adjusted. I'm satisfied NHBC needs to investigate this matter further and it has agreed to do so. If Mr W does ask it to deal with this matter, as part of a new claim initially, and he is then unhappy with how that evolves and any decision NHBC makes, he'll be able to make a further complaint.

I know Mr W thinks NHBC has caused delays – that it should have told him in late 2023/early 2024 when the first drainage issue was found. As it was, he only found out about it months later after seeking copies of the reports and the drain company reattending his home – at which point the second, more significant, drain issue was found too. I understand that Mr W thinks that if he'd been told about the first issue sooner, that would have meant the second issue would have been identified earlier too, which would have avoided large amounts of rain water discharging into the ground. However, I have to think about what it was reasonable for NHBC to have needed to do.

In late 2023 NHBC was considering Mr W's claim that the driveway had sunk in places. The drain assessment was therefore undertaken to check for leaks or issues with the drain connecting to the manhole situated in the most sunken part of the drive. The assessment found a drain leading from the back of the garage to the manhole had bellied and was holding water. But the drain wasn't leaking and didn't appear, in the claim investigator's opinion at that time, to be causing damage to the driveway. The drain investigation was undertaken to inform NHBC of its liability for the driveway and there was no damage being caused by the pipe – so I think it was reasonable, at that time, for NHBC to not inform Mr W of the bellied pipe.

I know Mr W's experience with the claims investigator was frustrating – that she often wasn't available, that sometimes her phone message left regarding availability didn't match her email messages. Ideally miscommunication like that should be avoided. But being able to speak to a claims investigator can sometimes be difficult regardless – as NHBC has explained, its investigators aren't desk based – they are often out completing assessments at properties. I can see the investigator did acknowledge email contact – even if the responses provided didn't contain much detail.

I see that Mr W first got back in touch with the claims investigator in June 2024, the drain issue was reviewed, with the further investigations being undertaken and an offer of settlement made to Mr W by October 2024. I understand that, with investigations and work pending Mr W has felt unable to use his garden or complete some planned, unrelated works. I realise that will have been a source of disappointment and frustration. However, I'm satisfied the issue was handled in a reasonably timely manner by NHBC.

My final decision

NHBC has offered to complete further investigations into the base of the driveway, and to investigate the pooling if Mr W raises a claim. I'm satisfied that's a reasonable resolution and so will require it to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr W to accept or reject my decision before 2 October 2025.

Fiona Robinson
Ombudsman