

The complaint

Mrs B complains that National House-Building Council trading as NHBC has failed to deal with a claim she made under her NHBC Buildmark warranty fairly.

Mrs B doesn't think NHBC has demonstrated it is not responsible for damage to her property following a blockage in a surface water drain.

What happened

Mrs B has been represented while making her claim and bringing her complaint. But for ease of reference throughout my decision, I'll refer collectively to Mrs B or her representative as Mrs B. Equally, any reference to NHBC will refer to it or its agents when dealing with this claim.

A claim was made by Mrs B to NHBC in July 2023 to consider damage to her property under Section 3 of the policy which provides cover for damaged caused by defects to certain parts of the home. Mrs B had the works completed to her property to repair the damage at her own cost and asked that NHBC reimburse these costs, together with the associated costs incurred.

Here it has not been disputed that damage is present at the property with damage to the boundary wall and the driveway subsiding. NHBC doesn't think the policy provides cover for the damage as it believes this has not been caused by below ground drainage that Mrs B is responsible for.

NHBC declined the claim in January 2024 and Mrs B asked it to review this and questioned the decision at the time. NHBC continued to investigate the claim and in January 2025, it declined the claim as it remained of the opinion that the cause of the damage was not related to a defect of the parts listed within the policy.

Mrs B complained about the claim decision and the service provided by NHBC when dealing with her claim, and the time it took for the claim decision to be reached.

NHBC accepted there was poor communication and times when updates were not provided and it upheld the complaint. It also accepted there was some avoidable delays and the claim may have been declined prematurely in January 2024. When it was looked into again, some of the inspections on the property were inconclusive and time was added when other specialists had to be appointed. And this time couldn't have been avoided.

To recognise the poor handling of the claim, NHBC offered Mrs B £150 but it maintained the claim decision had been fairly reached and no further action would be taken with the claim.

Mrs B brought her complaint to this Service and asked that we consider whether NHBC acted fairly with its claim handling. She also explained the costs she's incurred when dealing with the claim and using a representative, she asked for these costs to be covered by NHBC. Our investigator looked at this complaint and said the following:

- The evidence suggests the defect to the drainage is not the responsibility of Mrs B and therefore is not a defect that would be covered by the terms of the warranty.
- She was not persuaded the defect itself had caused major damage to the property, as defined, in any event.
- The cover Mrs B holds does not include building control insurance.
- The fees Mrs B had incurred when using a representative to assist with the claim would not reasonably need to be met by NHBC as it was fair for it to decline the claim.
- They felt compensation for the service should be increased from £150 to £300. There was several small failings with the communication and some delays added. But they felt the cause of the distress to Mrs B primarily, was the claim decision and this not being upheld and they didn't agree the claim decision was unfair.

Mrs B responded to explain why she didn't agree setting out the following:

- The builder has not complied with building standards, and this has not been considered. Specifically, Mrs B referenced Section 5.3 of the technical standards.
- NHBC has not provided proof the area of the defect does not belong to Mrs B, and she disagrees that the burden of proof should fall to the policyholder.
- This Service has not considered cover for common parts as provided within the policy terms.
- The defect is not the blocked pipework on the other side of the boundary, which is the consequence of the defect, but the illegal installation of the pipe.
- The builder did not obtain permission from the water provider to install the pipework, which is an automatic breach of NHBC standards and therefore a defect. And this is supported by one of the reports.
- Mrs B would like this Service to comment on the illegality of the below ground drainage.
- Mrs B has referred to a previous decision made by this Service, in relation to underground services – which was upheld in favour of the complainant.

The case was reviewed by another investigator to deal with the response. They explained why the outcome first reached was agreed with.

They felt the evidence provided supported the position of NHBC and that the escape of water from the underground drainage pipe was caused by a blockage in the boundary of the neighbouring property. It is likely the installation of the pipe contributed to the damage. However, because the pipe was not one Mrs B was legally responsible for, it was not something NHBC and the policy was liable to cover.

The investigator also said the drainage run connected to the existing drainage which was present prior to the construction of the property and this was where the blockage occurred. The water provider had undertaken repairs and confirmed its responsibility for this and there was nothing to demonstrate that the defect was the responsibility of Mrs B. And while Mrs B disputed that the onus was on her to show she is responsible for the section of the drainage network, they were satisfied a policyholder has a responsibility to evidence that the claim is valid.

If an insurer seeks to rely on an exclusion to decline a claim, the responsibility shifts to them to demonstrate the exclusion is fairly applied. Here, NHBC had not declined the claim because of an exclusion, but because of it not being evidenced that the defect that caused physical damage to the property is listed within the policy terms. NHBC had taken reasonable steps to determine whether the defect that caused the damage was something included within the policy terms and they were persuaded it hadn't been shown to be

something Mrs B was responsible for.

The investigator didn't think common parts cover was applicable and the previous decision shared by Mrs B did have a different outcome. But in contrast to Mrs B and her case, there was no dispute on who was responsible for the underground services in the highlighted case. But regardless, each case is considered on its own merits.

Overall, they maintained there had been failings with the progression of the claim and communication. They felt £300 in total to recognise this was fair and it reflected the added distress of these failings.

Mrs B disagreed with the investigators opinion but provided no further comments and asked that it be referred for 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 decided to uphold this complaint, for much the same reasons as our investigator. I appreciate Mrs B will be disappointed by this as the outcome does not go as far as she would like, but I'll explain why I have reached this decision.

With the level of detail covered by our investigator in their previous assessment and because I am in agreement with what they have said, I have not looked to set out my decision in as much detail. I mean no discourtesy by this, but with references having been made to the surveys and quotes relied on previously, I see no reason in setting this all out again.

It is not disputed that damage has been caused to Mrs B's property but it is whether the cause of this damage is something NHBC has a responsibility to provide cover for. The relevant section of the policy is Section 3 and the details of this have been provided to Mrs B a number of times, so I don't intend to set out the policy wording again. But in short, NHBC will cover the cost to put right damage to a property if caused by a defect in respect to the listed parts of it. This includes "*below-ground drainage for which you are responsible*".

The wording does not go as far as to define responsibility and I appreciate this is part of the concern with this claim and complaint. In the absence of a definition, I don't think it is unreasonable to take this as Mrs B having an obligation to do something or have control over the area.

Defect is defined in the policy as:

"The breach of any mandatory NHBC Requirement by the builder or anyone employed or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means."

Mrs B has made a number of arguments about the drainage system and whether there is a defect present. The focus on this has been with both the faulty installation of the entire drainage system and a failure of the builder, building control and NHBC to sign off the drainage system and comply with the technical requirements of the sign off. This is because the builder failed to obtain the relevant permission to connect to the mains drainage.

It is accepted there is a defect with the drainage pipe – with it installed and bent upwards. But it is whether this is present in the below ground drainage for an area Mrs B is

responsible for. Mrs B feels the damage has been caused by the installation of the drainage system by the builder and it is incorrect to say this is the result of a blockage to the pipe under the neighbouring property resulting from the defect with the pipe here.

The storm drainage system at the property serves a number of properties and runs downstream below the retaining wall and into curtilage of the neighbouring property. The survey completed in September 2023 said there was a break noted 1.50m into the pipe and 2.41m. The survey also said:

“The rain water is a shared line and the breaks noted in the Survey are past XX’s boundary into next door.”

The survey identified the backup of water caused by the pipe break, close to the boundary of the neighbouring property with around 2 meters of clay/sludge filling the pipe due to the break.

It is clear there is a failure of the drainage system with a break but this is past the boundary causing the backup of water as a result of the blockage. But what is not clear is whether the drainage system for which Mrs B is responsible for is defective and that there was a faulty installation of the entire system which caused the damage to Mrs B’s home.

The policy only provides cover for damage if the cause of the damage is the below ground drainage for which Mrs B is responsible for. Although Mrs B has needed to replace the downpipe at her property, I think the evidence presented shows this is the result of damage caused by the break and resulting blockage. As our investigator has pointed out, it appears there has been an error with the installation of the pipe, where connecting to the main drain, which caused the blockage and damage to the pipe Mrs B is responsible for. However, this stems from the defect which is outside of the property boundary and not something Mrs B has a responsibility over.

I don’t think the failure of the builder to comply with the technical requirements shows the entire drainage system was installed incorrectly with the drainage surveys not making any conclusive conclusion on this. And what has been supported by the evidence is a defect but this not being present in the below ground drainage that Mrs B is responsible for. It follows that NHBC has made a fair claim decision when saying there is no cover for the damage under Section 3 of the policy.

Mrs B has also questioned whether the retaining wall and driveway have been affected by a defect. Both fall under the definition of home within Section 3 and for damage to be covered under Section 3, it needs to be caused by a defect in one of the parts listed within the section.

The survey completed in 2023 said the escape of water as the result of the blockage would not have caused all the posts to move along the retaining wall and this may have highlighted an existing issue.

Mrs B has also raised questions about whether the driveway was built as it should have been. But it hasn’t been shown there was a defect in the construction of this, Mrs B has made reference to where she thinks there is failings here, but it hasn’t been shown this is the case. And even if I was persuaded that the damage to the driveway and retaining wall was caused by the escape of water, with this being a consequential loss stemming from something that Mrs B is not responsible for, it doesn’t change the outcome of my decision and whether NHBC has acted fairly when declining to provide cover for the damage.

If Mrs B is able to provide evidence to demonstrate the damage to the driveway or retaining

wall has been caused because of a defect to one of the parts listed in Section 3 of the policy, I'd expect NHBC to review this and consider the claim decision and whether it should be changed, but in the absence of anything at this point, I am not persuaded it needs to take any further steps.

I have not seen anything to demonstrate the common parts cover within the policy is relevant to the areas of damage claimed for. This is because this extends to any areas where the owner is legally obliged to share responsibility for the cost and upkeep with other owners of homes covered by the policy. The drainage system, although shared, isn't shown to be something Mrs B has legal responsibility to share the cost of the upkeep with others, nor has it been shown the other homeowners are covered by the policy. So, with this, and the evidence supporting the damage to the drain is not something Mrs B is responsible for, I agree NHBC has acted fairly when not considering the common parts cover and whether this is relevant.

Delays

NHBC has accepted the claim decision was delayed when it declined the claim in January 2024. It says it didn't have enough information to reasonably make this decision and it was a premature claim outcome.

As the claimant, Mrs B has the responsibility on her to demonstrate she has a valid claim with a loss suffered as a result of an insured peril. So, Mrs B needed to evidence the loss and NHBC needed to support her with what was needed and the claim journey, ensuring the claim was handled promptly and not unreasonably declined.

Our investigator highlighted there has been some delays with NHBC and its handling of the claim. This could have been better and reduced the time Mrs B was waiting for the claim outcome, but there was also delays added which were outside of NHBC's control and the complex nature of this claim meant, it was likely it was always going to take some time for a decision to be reached.

Mrs B has asked for her professional costs to be covered that she has incurred when bringing this claim. I appreciate with the nature of this claim why she has sought representation and expert opinion, but the decision to do this is one she has made and not something the policy sets out is needed when a claim is brought. It hasn't demonstrated the claim outcome reached is unfair and it follows that it wouldn't be fair to ask NHBC to cover these costs.

However, it is right that NHBC recognises the impact of the claim handling delays where things haven't moved forward as quickly as they could have. While the overall impact on the claim journey may have been minimal with the unavoidable delays still being in place, NHBC has added distress. With the overall distress of the claim not being accepted and the disappointment of the claim decision, it may feel like the award does not reflect the strength of feeling overall, but it is not intended to compensate for the disappointment of the claim decision. I appreciate it is disappointing with the costs incurred by Mrs B, but I feel this has been fairly reached – albeit later than it could have been.

But to recognise the impact of the delays on Mrs B, NHBC should pay £300 in total for the distress added.

Putting things right

NHBC needs to pay Mrs B £300 in total for the distress added with claim delays.

If the £150 previously offered has been paid, it need now only pay the additional £150.

My final decision

For the reasons I've explained above, I uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 March 2026.

Thomas Brissenden
Ombudsman