

The complaint

Mr and Mrs P complain about how HSB Engineering Insurance has handled their claim on their LABC building warranty policy.

What happened

Mr and Mrs P bought a new home that's covered by a ten-year building warranty policy. The insurance is underwritten by HSB, and the cover started in July 2022.

Mr and Mrs P submitted snagging lists to the developer, before escalating the issues to HSB in May 2023. During the first two years of the policy the applicable cover is Section 3.2. The following terms apply under Section 3.2.1:

- *"The Underwriter will indemnify the Policyholder during the Defects Insurance Period against the cost of repairing, replacing or rectifying any Defect and resultant damage to the Home for which the Developer is responsible and which: a) is discovered and notified in writing to the Developer during the Defects Insurance Period; and b) is notified in writing to the Scheme Administrator no later than 6 months after the expiry of the Defects Insurance Period."*

Section 3.2.2 goes on to explain that HSB won't have any liability in the first two years unless certain conditions are met in relation to the developer and HSB's Dispute Resolution Service ('DRS').

The policy defines the DRS as: *"A consensual process whereby the Scheme Administrator may (at its sole discretion) appoint a building surveyor to attempt to resolve a dispute between the Developer and Policyholder."*

Mr and Mrs P were unhappy with how their Section 3.2 claim was being handled and with the progress being made in respect of the issues at their property. They made a complaint in November 2024, which they later referred to our service.

Mr and Mrs P's complaint can be summarised as follows:

- HSB (through its DRS) required the developer to act in relation to seven reported issues as per its Technical Manual Report. Some, or all, of those actions, and the related issues, remain outstanding.
- Mr and Mrs P reported multiple issues to the developer, and later, to HSB. Many have since been rectified and they accept others aren't covered by the policy because they don't meet the policy definition of a 'defect' (*i.e.*, *"a failure to comply with a Functional Requirement of the Technical Manual"*). However, Mr and Mrs P consider there to be issues outstanding, in addition to the seven I've referenced above, that still need to be addressed by HSB (as per their 'customer comments' column and their colour coding on the DRS tracker they updated in August 2024).

- That said, Mr and Mrs P also consider HSB to be liable for *all* the issues yet to be rectified, regardless of whether they meet the policy definition of a defect. This is because they consider HSB to have undermined their prospects of getting the developer to rectify the issues not found to be a defect under the policy terms.
- Mr and Mrs P are unhappy with the service they received. Throughout their complaint they have referred to multiple errors with the DRS tracker and its inconsistency with the Technical Manual Report, which has caused delays and confusion. They have also referred to misinformation being given by the case handler, emails sent to incorrect parties, and the DRS being unfairly withdrawn.

One of our investigators considered part of Mr and Mrs P's complaint, which she upheld. HSB disagreed that part should be upheld, so the complaint was passed to me to decide.

I explained to both parties that I'm satisfied we have jurisdiction to consider the complaint – as summarised above – in its entirety, before setting out my provisional decision on those matters. In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'll set out my provisional findings under the below four headings.

HSB's general points about why it's not responsible under Section 3.2

HSB has made two general points about why it's not responsible under Section 3.2 of the policy.

Firstly, HSB says it withdrew the DRS because the developer and Mr and Mrs P disagreed with the Technical Manual Report. HSB points to Section 7 of the policy which sets out the DRS process. One of the potential outcomes is that if one or both parties don't accept the report's findings, or if the DRS fails to resolve a dispute, then the parties can opt for other forms of dispute resolution. However, I've not seen that Mr and Mrs P disagreed with the actions HSB required of the developer in respect of the seven "accepted" issues. In any event, the fact Mr and Mrs P are free to explore alternative means of dispute resolution doesn't, in my view, mean HSB isn't liable under Section 3.2.

Secondly, HSB points towards an indemnity agreement between itself and the developer. HSB says the developer is contractually required to repair any defects discovered and notified within the first two years. However, Mr and Mrs P aren't party to the indemnity agreement and nor does it release HSB of its responsibilities under Section 3.2. But rather, HSB retains subrogation rights should it want to recover its losses from the parties it considers responsible.

The seven "accepted" issues HSB required the developer to act on

HSB, under the provision of its DRS, required the developer to take the following actions by a date in September 2024 (as per its Technical Manual Report):

- *Shower door leak – replace the glazed panel/gasket to ensure the shower cubicle prevents water escaping when in use.*
- *Oven hood – missing carbon filter to be installed.*

- Towel rails – to be checked by a suitably qualified electrician to ensure they adequately heat the rooms as required.
- Bathroom water temperature and water pressure (includes three issues grouped together) – plumbing specialist to investigate further and establish/report on their findings. Remediation should be completed as required to meet the Functional Requirements of the Technical Manual.
- Study draft – fill and decorate the hole below the window board.

As a starting point, under Section 3.2, HSB will indemnify the insured for the issues that meet the policy definition of a defect providing certain conditions (as set out in Section 3.2.2) are met. The two conditions relevant here are:

- “d) the Developer has accepted the decision of a building surveyor after using the Dispute Resolution Service but has failed to carry out the works or repairs recommended in the surveyor’s report within the time stipulated; and/or
- e) the Developer has not effected the relevant repairs or works determined by the Dispute Resolution Service or Arbitration;”

It’s not clear from the submissions which of those actions remained outstanding after the September 2024 deadline or which remain outstanding today. However, given the policy terms, it follows that any of the actions outstanding by the deadline became HSB’s responsibility.

The correspondence I’ve seen focuses on the bathroom heating, the water temperature and the water pressure. I’ll address the arguments made in relation to those issues. However, if the shower leak, oven hood, or study draft actions remain outstanding, I intend to decide HSB needs to carry them out.

With regards to the bathroom heating, water temperature, and water pressure issues, HSB points towards Mr and Mrs P not servicing the boiler, which it says can lead to the reported issues. However, Mr and Mrs P have explained they didn’t do so for fear of the servicing engineer being blamed for the faults, and in any event, they have since had their boiler serviced and it isn’t causing the issues.

HSB also says it’s realistic for water to suddenly go cold in a bathroom if the water exchange is opened at a priority source, such as the kitchen. HSB says this issue was never evidenced and nor could it be replicated during the inspection. However, Mr and Mrs P have explained that the issue also occurs when water isn’t being used in another room, and the reason the issue wasn’t replicated during the inspection is because they weren’t asked to replicate it.

Overall, I find Mr and Mrs P’s responses to be reasonable, but ultimately, I don’t consider HSB’s points or Mr and Mrs P’s responses to be material to my decision. I’ll explain why.

HSB required a qualified electrician to check the towel rails and a plumbing specialist to investigate the water temperature and water pressure. I’m satisfied that, if those actions weren’t carried out by the deadline, then under the terms of the policy, HSB became responsible for undertaking them, irrespective of the points HSB now makes.

If those investigations identify defects (as defined by the policy), HSB is then responsible for remedying them just as the developer would have been. If no defects are identified, it would be for Mr and Mrs P to demonstrate otherwise. I’ll say more about that under the next heading.

The other reported unresolved issues

Mr and Mrs P wants HSB to “revise the DRS tracker so it correctly reflects the situation and clearly identifies the outstanding issues”. I agree HSB needs to engage with them so both parties are clear about what issues have been raised under Section 3.2, which of those issues have so far been investigated by HSB, and which were found to meet the policy definition of a defect or require further investigation. It will be for HSB to decide how it achieves this.

I understand Mr and Mrs P accept some unresolved issues don't meet the policy definition of a defect and there isn't cover for them under their policy. However, if they wish to dispute the findings of HSB on such unresolved issues, the onus is on them to demonstrate to HSB that those issues are defects (as defined by the policy), usually by the way of their own expert reports. Similarly, the same will be true should they disagree with the outcome of HSB's qualified electrician and plumbing specialist investigations. Should agreements not be reached about those matters, a new complaint could be made.

It's not clear from the submissions whether there are unresolved issues that were discovered and notified within the Section 3.2 period which HSB (via its DRS) is yet to investigate, but if so, I intend to decide HSB now needs to offer its DRS for those issues. It follows that HSB would then be liable for any of those issues that are found to be defects (as defined by the policy) where the conditions of Section 3.2.2 are met. To be clear, as per those conditions, if the developer doesn't consent to using the DRS to resolve such issues, or respond to a request to do so, then HSB would be liable for any found to be defects (as defined by the policy).

I'm mindful HSB may argue it's only liable for defects under Section 3.2 if certain conditions relating to its DRS are met, so it's not liable for issues not considered by its DRS, and the provision of its DRS is discretionary. However, as I set out to HSB prior to my provisional decision, I'm satisfied that Section 3.2 forms part of the contract of insurance, and under Section 3.2, HSB “will indemnify” the policyholders for defects. That isn't a discretionary undertaking. Although certain policy conditions apply, they must be applied fairly.

In my view, this means that HSB must consider any evidence Mr and Mrs P wish to provide to dispute the finding an issue doesn't meet the policy definition of a defect. Equally, it also means HSB offering its DRS for any unresolved issues not yet considered by its DRS surveyor (providing they were discovered and notified within the Section 3.2 period).

However, I don't consider HSB can reasonably be held responsible for all the outstanding issues irrespective of whether they meet the policy definition of a defect. Simply because HSB didn't find the policy definition of a defect had been met for some of the issues, and therefore, didn't require the developer to act in relation to them, doesn't mean HSB is responsible for the developer's lack of engagement outside of the building warranty.

Claim experience and compensation

Our investigator concluded that, because HSB hadn't assumed responsibility for the actions in relation to the seven “accepted” issues, it had caused a year's delay. She also noted the likely day-to-day impact on Mr and Mrs P due to the nature of those seven issues, and the inconvenience caused to them by having to chase. She recommended HSB pay £1,000 compensation.

In response, HSB disputed it was responsible for that delay. HSB reiterated its DRS process had failed to resolve the dispute and the next step was alternative dispute resolution. HSB also suggested Mr and Mrs P could have appealed its complaint response, rather than waiting a long time to raise their complaint with our service.

As set out above, I'm satisfied that, under the policy terms, HSB became responsible for the outstanding actions in relation to the seven "accepted" issues once the deadline given to the developer had passed in September 2024. As such, it follows that I also consider HSB to be responsible for the 16-month delay since then and the impact on Mr and Mrs P.

Furthermore, Mr and Mrs P referred their complaint to our service soon after receiving HSB's response, as they were entitled to do so.

Mr and Mrs P raised 20 complaint points with HSB. I don't find it necessary to address each of those points separately. Ultimately, HSB has already acknowledged Mr and Mrs P didn't receive the service it aims to provide, and it caused confusion due to the inaccuracy of its DRS tracker.

Considering HSB has, in my view, unfairly declined responsibility for the outstanding actions in relation to the seven "accepted" issues, the significant delays caused by doing so, the service issues, and the impact of those matters on Mr and Mrs P, I intend to award the £1,000 compensation recommended by our investigator."

Mr and Mrs P accepted my provisional decision. However, HSB hasn't responded and the deadline to do so has now passed.

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.

Neither party has provided further comments or evidence for me to consider. Having reconsidered the information that was previously provided, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

My final decision

For the reasons explained above and in my provisional decision, I uphold this complaint and direct HSB Engineering Insurance to:

- Complete the outstanding repairs and investigations set out in its Technical Manual Report in relation to the seven "accepted" issues – and should the investigations determine there are defects (as defined by the policy), remedy them.
- Engage with Mr and Mrs P so both parties are clear about what issues have been raised under Section 3.2, which of those issues have so far been investigated by HSB, and which were found to meet the policy definition of a defect or require further investigation.
- Consider any evidence Mr and Mrs P provide should they wish to dispute HSB's conclusions about whether certain issues meet the policy definition of a defect.
- Offer its DRS for any issues discovered and notified within the Section 3.2 period that are yet to be investigated by its DRS – and then assume liability for any defects (as defined by the policy) where the conditions of Section 3.2.2 are met.

- Pay Mr and Mrs P £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 13 March 2026.

Vince Martin
Ombudsman