

The complaint

Mr and Mrs G complain National House-Building Council (NHBC) has unfairly declined a claim they made for foul water drainage under the warranty.

Mr G has been the main correspondent for this claim and complaint, as such I've only referred to him in the main body of this decision.

What happened

Mr G's home benefits from an NHBC warranty which started in 2021 and will run until 2031.

In May 2022 Mr G contacted NHBC to make a claim under his policy, he said he didn't think the builder had connected the drainage from the house to the main sewer.

NHBC, noting that the builder was now insolvent, agreed to carry out investigations as part of the resolution service. It arranged for a drainage survey to be taken out. The findings of that survey were that there was likely an issue, but that it was 1.5 metres downstream, beyond the boundary of Mr G's property. And so not covered by the warranty, which only covers drainage Mr G is responsible for. NHBC recommended that the water authority be contacted to excavate the public path to expose the pipe to find out the issue.

Mr G made enquiries with the water authority after that point, which resulted in unsuccessful legal action. So in late September 2024, Mr G reverted back to NHBC, he thought the court's findings showed it had unreasonably rejected his claim in 2022.

NHBC issued a complaint response in October 2024. It was satisfied it made a reasonable decision to decline the claim in 2022. It said it would review matters further if Mr G could provide evidence that he was legally responsible for the affected pipework, and that there was a 'defect' with it, as defined by the policy.

Unsatisfied with NHBC's response, Mr G referred the complaint to this Service in April 2025. As a resolution Mr G wanted NHBC to accept the claim, refund his legal costs incurred against the water authority and the developer, as well as his cost incurred in commissioning expert reports and having waste removed from the property. He also wanted reimbursement of costs for alternative accommodation when his family had to stay elsewhere due to the smell in the property, as well as compensation for the distress and inconvenience. He also said a payment for the diminution in value of the property should be awarded.

At the same time as referring his complaint to this Service, Mr G issued a pre-action letter against NHBC. Mr G later informed this Service that NHBC had now accepted his claim for foul drainage under the policy.

Our Investigator said she would consider the complaint up to NHBC's response of October 2024. She said any complaint about matters beyond that point would need to be first raised to NHBC before this Service could consider them. She was satisfied, as of NHBC's October 2024 complaint response, that it had reasonably refused to accept the claim. She also said she didn't think it was reasonable to require NHBC to cover Mr G's legal costs. She said NHBC hadn't told Mr G to take the water authority, or the developer to court, and it wasn't responsible for that court action being unsuccessful. She said Mr G should refer his costs for his emergency waste removal to NHBC as part of its now accepted claim for the damage.

Mr G asked for an Ombudsman to consider matters. He didn't accept that NHBC's review of matters in 2022 was reasonable, nor its initial decision to refuse any further assistance in 2024. He said NHBC had only now partially reimbursed his emergency sewage costs, and he feels the Ombudsman should award them all.

As matters haven't been resolved, it has now come to me to decide.

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 think it's important to set out to Mr G that this Service reviews complaints, not claims. I understand this has been a long running and exceptionally difficult period for him and his family, but I cannot, as part of this decision, review NHBC's decision to only reimburse part of his emergency sewage removal costs now that it has accepted the claim.

Mr G has complained to this Service about NHBC's October 2024 refusal to accept his claim (and therefore reimburse his sewage removal costs). However, NHBC's decision to accept the claim and make a partial offer of those costs happened after October 2024 – a period which this decision is not covering. As such, Mr G needs to raise a further complaint with NHBC (if he hasn't already) about its refusal – as part of the claim it has now accepted – to meet all of those costs. This Service will then be able to consider that separately.

I appreciate this will cause Mr G frustration, but NHBC has not agreed to this Service considering matters after its October 2024 complaint response, and so I don't know its reasons for it not agreeing the full amount. And so, I cannot reasonably issue any findings on it here.

I have reviewed whether NHBC reasonably refused to accept the claim when it was first raised in 2022. And whether it's further refusal to accept the claim in October 2024 was also reasonable. And I'm satisfied I can, like our Investigator, make a finding on Mr G's request for reimbursement of legal costs, and his request for compensation, diminution of value in the property, and his request for alternative accommodation costs. Having done so, I find my outcome to be the same as that of our Investigator. I've explained why below.

NHBC's 2022 decline of the claim

Mr G says in March 2022 he found issues with his foul drainage backing up, and having contacted the local water authority, it had said that the property's sewer line hadn't been connected to any public sewer. And that the foul waste from the property was collecting under the house in, essentially, a cesspit with no outlet. He said given this was a breach of building regulations, the claim should have been accepted by NHBC.

NHBC, accepted to undertake investigations under section two of the warranty. Under this section, for claims it accepts NHBC will meet the costs of remedying a 'defect'. With a defect being defined as "*the breach of any mandatory **NHBC requirement**, by the builder*".

NHBC instructed a drainage expert to carry out a report, which was done in June 2022. The findings of that report were that the issue was most likely a collapsed pipe, but that was around 1.5m downstream and beyond the boundary of Mr G's property. As such, the expert recommended the water authority would need to carry out the excavation. So NHBC declined the claim because it said the policy terms state only drains serving the home which the policyholder is responsible for, are covered under the terms of the policy. And Mr G is only responsible for drains within the boundary of his home.

I don't consider this was an unreasonable position for NHBC to take. I've reviewed the letter from the water authority dated May 2022 – but I don't think this says what Mr G thinks it does. The letter provided says "*we have found that when the new foul and surface water lines were done, the Developers who had carried out the works did not contact [the water authority] to inspect the connection to our sewer*". As a result, the water authority said a

completion certificate hadn't been given by it for the drains, and so the pipework hadn't been adopted by it. But there is nothing in this letter that supports Mr G's claim that there was never a connection made, or that sewage was collecting under the property.

The May 2022 letter set out three visits made to Mr G's property by the water authority. In its March 2022 visit (the second visit), it was satisfied the issue was likely off the boundary of his property. However, in a further visit in April 2022, it thought the blockage was within the boundary of Mr G's property, as such it said it was a private issue he'd need to resolve. However, I note that the letter wasn't very specific in relation to where the blockage was, concluding it was "*getting stuck at a location within your property*".

Having reviewed the evidence, I don't think NHBC was unreasonable in relying on its expert report dated June 2022. I find its report more persuasive than the water authority's inconsistent and brief comments about where the issue might be. I think it's also important to note that a blockage – whether it's within the boundary of Mr G's property or not – doesn't mean there is a 'defect' as defined in the policy. Whilst Mr G says NHBC's report wasn't independent, he hasn't persuaded me it reasonably cannot be relied on. And it seems to me that both the water authority and NHBC's expert concluded the issue was a 'blockage'. Which, as I've said, doesn't mean that there is a 'defect' as defined by the policy.

Mr G did say to NHBC in June 2022 that he considered the developer hadn't connected the drain to the sewer, instead essentially creating a cesspit beneath the property. But he didn't provide anything in support of that claim, and neither the reports from the water authority nor NHBC's expert made any suggestion of that. As such, I'm satisfied NHBC reasonably declined the claim in 2022, based on the evidence it had at the time. I appreciate that since referring matters to this Service, Mr G says the claim is accepted, but that alone doesn't show NHBC's actions in 2022 – based on what it knew then – were flawed or unreasonable.

NHBC's October 2024 response

I've next reviewed whether NHBC's response in 2024, was reasonable. After NHBC's claim decline of June 2022, the next substantive contact with NHBC wasn't until September 2024, shortly after his claim against the water authority had been struck out by the court.

Mr G said that the court's judgment set out that the property's sewer was never connected to the public system, and so the water authority had no duty to maintain or fix it. He says this shows the problem was on private property and due to a construction defect and so NHBC should have accepted the claim.

NHBC's position, in its October 2024 response, was that there was no evidence Mr G was responsible for the drainage pipework under a public pathway, or that it had been shown any issue with the drains had been down to a defect. It said it would review matters if Mr G provided further information, but Mr G didn't do that until April 2025, around the time he referred matters to this Service.

Having read Mr G's court documents, I don't think that was an unreasonable position for NHBC to take. The court documents Mr G has provided, to both NHBC and this Service, dated 19 September 2024, don't make any finding about a defect. It simply says that Mr G's claim against the water authority is "struck out". The document gives no supporting reason other than pointing to one of the civil procedure rules that allows a claim to be struck out if there are no reasonable grounds for it. But I don't think this means that NHBC should then have accepted the claim. That is because there is nothing in those court documents, or Mr G's communication with NHBC, which evidences that a) he's responsible for the drains and b) any issue with them was caused by a defect as defined by the policy.

As such, I find NHBC's position to not accept the claim, as of that October 2024 complaint response, to be reasonable.

Legal costs

I also consider NHBC has reasonably refused Mr G's claim for legal costs incurred between 2023 and September 2024. Put simply, I can't hold NHBC responsible for Mr G's decision to initiate legal action against the developer or the water authority. He says NHBC essentially told him to start the legal action, but I don't agree with that. Providing Mr G with a drainage report which indicated the issue was for the water authority to resolve, is not, in my view, directing or encouraging Mr G to start legal action. And I've seen nothing which persuades me, as of October 2024, that NHBC's initial refusal of the claim – dating back to 2022 and following which Mr G opted to take court action – was unreasonable. So, I can't say that any failure of NHBC is the most likely reason Mr G incurred these legal costs.

Other costs and Compensation

I've no doubt this has been a very worrying and distressing time for Mr G and his family. It is certainly not unreasonable for him to assume, when buying a newbuild property, that it would be free from major issues. But in order for me to award compensation to him, I need to be satisfied that the worry caused has been as a result of any act or omission of NHBC, and for the reasons set out above, and in respect of the time period I am considering, I'm not satisfied that it was. So it follows I'm not going to require NHBC, as part of this complaint, to pay any compensation to Mr G. And for the same reasons, I can't require NHBC to compensate Mr G for any diminution of value of the property or any costs incurred for alternative accommodation. Because to do so, I'd have to be persuaded that NHBC should have acted earlier, and its failure to do so has been the cause of Mr G's losses. I haven't found that to be the case.

Mr G also asked for reimbursement of his costs incurred for expert reports, but he hasn't provided any reports to this Service – except the one from the water authority which I assume he didn't pay for. And even if he did, that report doesn't persuade me that NHBC acted unreasonably, so I wouldn't reasonably require it to reimburse that cost to Mr G. If Mr G has provided NHBC with expert reports after October 2024, then I'd expect it, as part of considering the claim, to review those costs. But any dispute about any decision it makes about reimbursing that outlay would need to be considered separately by it in the first instance. If Mr G remains unhappy with any complaint response it offers he can revert to this Service and we'll review that complaint in line with our usual rules.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 24 March 2026.

Michelle Henderson
Ombudsman