

complaint

Mr F complains about the way National House-Building Council (NHBC) handled a claim he made under a buildings warranty.

To keep things simple, any reference to NHBC within this decision includes any of its contractors and representatives unless specified.

background

Mr F moved into his newly built property in June 2012. His home included a buildings warranty provided by NHBC. And in March 2015 Mr F contacted NHBC to notify it of cracking throughout his home and movement to the walls, amongst other issues. NHBC investigated and declined the claim, saying the cracking was as a result of thermal shrinkage and wasn't covered under the warranty.

In June 2017 Mr F contacted NHBC again saying the issues had worsened. NHBC completed further investigations into the property and wrote to Mr F in November 2017. It explained that under the warranty it would pay the full cost (subject to terms and limits) of repairing any actual physical damage caused by a defect within certain parts of his home.

In late 2017 NHBC carried out initial tests in regard to failing mortar. But due to mistakes in the testing, this had to be repeated. NHBC apologised for its error and in December 2017 it offered him £300. NHBC carried on its investigations and in January 2018 it said the damage had occurred due to poor performance of the mortar within the external walls of the property and it would accept Mr F's claim under the warranty.

In April 2018 NHBC completed a detailed report and made recommendations to put things right. It scoped out the necessary works, and said it hoped to begin works within the following month. Mr F continued to raise concerns he had about the property. In June 2018 NHBC told him that many of these issues were cosmetic only, so under the warranty, they wouldn't be covered.

In July 2018 contractors attended Mr F's property and began to remove the faulty mortar. Around this time Mr F complained to NHBC, saying its contractors had departed from the original specification they were given and what was agreed with him. This included a decision to re-point walls instead of rebuilding, and not using a mortar gun method to apply mortar – despite this having been agreed. He said he'd just visited a cemetery on a very significant date for him when discovering this which was very upsetting for him.

NHBC acknowledged Mr F's concerns and said its contractors had let it down through their workmanship and actions. So NHBC agreed for those companies to leave and be replaced, and it increased its offer of compensation to Mr F from £300 to £500.

In August 2018 NHBC told Mr F it would settle his claim by purchasing his property. As part of this offer, it said it'd also pay any reasonable costs incurred as part of the sale of his home and purchase of his next property (including moving costs). Mr F agreed and the purchase was completed in October 2018.

In November 2018 NHBC apologised again and said it recognised there'd been multiple problems with the way it handled the claim. And it said while the warranty didn't extend to distress and inconvenience, in this case its actions had caused problems beyond what would normally be expected. So it offered Mr F an additional £2,000.

Mr F then brought his complaint to our service. He said NHBC's actions had prevented him from seeing his terminally ill brother, who has since passed away, as it was necessary for him to oversee the works. Mr F also provided medical notes which say he has suffered from anxiety and stress due to the quality and build of his home.

Mr F said alongside compensation he wanted NHBC to pay for his solicitor's fees, as well as costs for new furniture he'd bought. He said NHBC should've put him into a hotel during the claim, and that the offer of £25 per day it made was intended to upset him. Within Mr F's complaint, he has complained that the building company hadn't built the property correctly. This included concerns about cracks in mortar due to being made from a poor mix, displaced brickwork, amongst other concerns.

One of our investigators looked into the matter. The investigator recognised that the mortar sample testing hadn't initially been completed correctly, and that this caused an avoidable delay. But she said there was no evidence to suggest that any later testing was carried out to cover up the results of the first tests.

She said NHBC should've been clearer with Mr F about its methods of repair. And while she'd seen evidence to suggest there were multiple methods to address a problem with the mortar – either repointing or taking down walls and rebuilding – it seemed Mr F was only told of the latter which caused him distress. The investigator also said she was satisfied that NHBC had asked its contractors to use a mortar gun for re-pointing the property. But that its contractors hadn't used this method which caused Mr F further distress.

The investigator said NHBC could've put Mr F into a hotel over this time, but she thought the sum of £25 it gave him per day of works to account for the disruption caused seemed to be a reasonable solution. She also wasn't persuaded that NHBC had acted maliciously when suggesting Mr F may want to get away or visit a relative. She went on to say that NHBC's purchase of his property was quick and no further delays were caused after this point.

The investigator said NHBC wouldn't be required to pay for new furniture under the warranty, and its offer of reasonable costs couldn't reasonably be extended to new furniture as it had been Mr F's choice on how he chose to furnish his home.

The investigator also said she wouldn't expect NHBC to cover any solicitor costs in this case. This was because she didn't think Mr F's solicitor was necessary to either progress the claim or complain about any of the problems with the home.

Overall the investigator said NHBC made multiple mistakes when handling the claim, and taking these into account was satisfied its offer of £2,500 was fair and reasonable. Mr F disagreed so the complaint was passed to me for an ombudsman's final decision.

my findings

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 upholding this complaint. I'll explain why but to avoid any doubt, when considering this complaint, I'm only looking at the actions of NHBC under the terms of this warranty and whether these have been fair and reasonable. I'm not considering a complaint against the builder of Mr F's home – or considering its obligations.

NHBC's cover is designed to cover a home owner if:

1. the home builder becomes insolvent or fails to meet their obligations before the completion of the property, or during the first two years after completion; *and*
2. against damage caused by defects in specified parts of the home during years three to ten.

In this case NHBC has been clear that Mr F's property suffered from multiple faults and defects. And the claim itself isn't in question by either party – particularly as the property has since been purchased by NHBC.

So I've not needed to consider the scope of the claim in that regard. Instead Mr F's complaint is about the behaviour of NHBC's representatives, and its communication and the service it provided when handling his claim. And it's these points I've focused on within my decision.

We expect insurers to handle claims promptly and fairly, as well as providing appropriate information on the progress of a claim.

NHBC has acknowledged that it has made a number of mistakes throughout the life of this claim. And it has recognised these mistakes caused delays, and that its miscommunication and errors caused distress for Mr F.

When considering the impact of these mistakes, I've thought about Mr F's points in turn. As a lot has happened throughout the life of this claim, I've summarised events in places.

NHBC's initial mortar tests weren't taken correctly so further tests were required. I'm satisfied this caused avoidable delays. Mr F since said NHBC had carried out subsequent tests to cover up initial results. But I've been given nothing to substantiate this, so I'm not persuaded that this was the case.

Mr F has raised a number of complaints about the way NHBC has carried out its repairs. He says he was told that walls would be taken down and rebuilt. But NHBC didn't do this, and instead used another method for repair (re-pointing). NHBC has given us a report from the time that says there were different options it could consider when completing the repair. And NHBC said it hadn't given an assurance the rebuild would be the method it used. However based on Mr F's testimony I'm satisfied this message wasn't ever made clear to him. As a result, it's clear to me this caused unnecessary distress and upset to Mr F.

NHBC also told Mr F it would be using a "gun method" when re-pointing his property. Mr F discovered this wasn't the method that was being used, and this caused further frustration for him as it wasn't what had been agreed previously. And I think it's particularly unfortunate that Mr F discovered this on such a significant day for him which added to his distress.

Further to this, having read NHBC's notes it refers on a number of occasions to Mr F being worried and stressed over the claim. And it recognised that he'd said the claim had prevented him from being able to see his brother. It also said the stress was adding to his anxiety as his neighbours had been enquiring what was wrong with his home.

While claims of this nature are always likely to have a degree of stress and upheaval, I'm persuaded that NHBC's actions did exacerbate this.

Following these problems, NHBC's decision to purchase Mr F's home took place quickly, and thankfully, he was able to find and move into another property within a few months. This offer was beyond the terms of the warranty. And given the circumstances it seems this did help prevent any further distress to Mr F.

Within this offer NHBC agreed to pay for any reasonable costs associated with the sale of Mr F's home and purchase of his new property. From what I've seen, it's fulfilled the agreement it made. Mr F has said he wants NHBC to cover the cost of new furniture as his new home is a different size so will appear bare without it.

This offer was made outside of the terms of the warranty so I have no terms or conditions to consider in relation to this. So taking into account what I think is fair and reasonable, I wouldn't agree that furnishings are a reasonable cost associated with the sale or purchase of a home. I'd say instead furnishing the home was a stylistic choice or preference as many people wouldn't and don't purchase new furniture when moving home.

Mr F has also said NHBC should cover his legal costs as he approached a solicitor early on within his claim. I've seen nothing within the warranty that says it would cover the costs associated with seeking legal advice. And Mr F hasn't presented anything to show that these costs were ever agreed with NHBC, nor that their actions were material to either the progression or resolution of his claim. So I see no reason for NHBC to cover these costs.

Mr F has also complained that NHBC didn't put him in a hotel during the period of this claim. Under the terms of the warranty it says NHBC will cover:

"Any reasonable costs you incur by prior agreement with us for removal, storage and appropriate alternative accommodation if anyone normally living in the Home has to move out so that work can be done."

It doesn't seem Mr F did have to move out of his home during this period. So I can't see that NHBC acted unreasonably by not providing alternative accommodation for him. I'm also aware that NHBC gave Mr F £25 a day to allow him to go out for the day when work was being carried out. This seems reasonable in the circumstances and was likely an attempt by NHBC to reduce some of the ongoing stress that was being caused by the works.

Overall, I've considered all of the delays and mistakes that NHBC has caused over the life of this claim. And having done so, I'm satisfied its decision to purchase Mr F's home, cover the associated moving costs, and offer £2,500 compensation to him for the trouble and upset caused is fair in the circumstances. And I won't be asking it to do anything further.

my final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 February 2020

Jack Baldry
ombudsman