

Complaint

Mr and Mrs S are unhappy National House-Building Council (NHBC) didn't step in and take over a claim made under their building warranty.

Background

Mr and Mrs S purchased a new home which came with a ten-year building warranty provided by NHBC.

There were issues with the render of Mr and Mrs S home and they reported this to NHBC. As inspections were already being undertaken on a neighbour's home, NHBC were awaiting the results of this. Once confirmed, NHBC issued an initial resolution report in February 2018. This said the builder needed to confirm its intentions to carry out repairs by 9 March 2018 and NHBC would issue an updated report after this.

Mr and Mrs S complained to NHBC about the lack of progress with the claim. NHBC said further investigations were required and gave £100 compensation for the inconvenience caused.

A further resolution inspection was carried out in May 2018 which required the builder to carry out further investigations by July 2018.

The deadline wasn't met and there were further discussions between NHBC and the builder. Mr and Mrs S complained to NHBC and asked them to take over the claim. They issued a final response in September 2018 in which they said there was ongoing communication with the builder who was willing to do the works, so they wouldn't take over at that stage.

As Mr and Mrs S were unhappy NHBC hadn't taken over, they approached this service.

Our investigator upheld the part of the complaint they could consider. They said that this service couldn't consider complaints Mr and Mrs S had about the builder, but they felt NHBC should have stepped in and taken over the claim. They recommended NHBC pay Mr and Mrs S £450 compensation.

NHBC agreed to the recommended compensation.

Mr and Mrs S didn't agree. They said the compensation wasn't enough to deter NHBC from acting in a poor manner, so they asked for a decision from an ombudsman.

My findings

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

I should explain that I've only considered events which are in my jurisdiction, and up to the point NHBC issued its final response on 11 September 2018. I note Mr and Mrs S ultimately agreed for the builder to do works, and this was after discussions with NHBC. And they remain unhappy with the works which have ultimately been carried out. But this all happened after the complaint was brought to this service and hasn't been addressed by NHBC yet, or our investigator as part of this complaint.

I also understand Mr and Mrs S are unhappy with the actions of the builder and how they've acted, up to the final response in September 2018. However, I can't look at Mr and Mrs S' complaints about the builder specifically. This is because I can only consider complaints about businesses regulated by the Financial Conduct Authority (FCA), and the builder isn't a regulated business that falls within this service's remit.

In the FCA handbook DISP rules, another requirement which enables this service to investigate complaints is that the activity being complained about needs to be a regulated activity. This can be found in DISP 2.3.

The issue with Mr and Mrs S' home was reported within the first two years of their NHBC building warranty. This means the claim was considered under Section Two of the cover.

During this part of the policy, it's the builder's responsibility to rectify damage or defects where they haven't complied with NHBC's technical requirements. If they fail to do so, NHBC can carry out a resolution report to establish whether there is damage or defects (as defined in the policy terms). This is part of mediation between NHBC, the builder and the homeowner. This in itself isn't a regulated activity so I can't consider this.

This service deems a regulated activity to have happened – which means we can look at the complaint – when the follow has happened:

- A resolution report has been completed by NHBC
- The resolution report directs the builder to do something by a deadline
- The builder fails to complete the works by the deadline given

Once these three steps have been completed, the insurance part of the warranty starts and NHBC can take over the claim. This is a regulated activity, so after the above steps are completed, I can look into the complaint about NHBC. Anything before this isn't a regulated activity so I can't consider it.

But as mentioned, whether it happened before or after this point, I still can't consider Mr and Mrs S' concerns about the builder, I can only consider NHBC's actions after this point.

When looking at this complaint, I've considered whether it was reasonable for NHBC not to have taken over the claim when the deadline expired in July 2018, and whether it was still reasonable not to when they issued the final response in September 2018.

An initial resolution inspection was carried out in February 2018. During this it was noted the neighbour's property was suffering from the same render problems, and the report directed the builder to confirm its intentions to resolve the issue by 9 March 2018. NHBC would then consider the proposals, and then issue a further resolution report.

In May 2018 Mr and Mrs S complained about the time taken. NHBC issued a final response and gave £100 compensation for the delays. They said further investigations were required and an updated report would be issued shortly after to move the claim forward.

NHBC accepted that inconvenience had been caused as the deadline hadn't been met in March 2018, and they said to the builder that they *could* step in and take over. But as further testing was required to determine the issue with the render, they said a further resolution

report would be carried out. In my view, the £100 compensation NHBC paid at this point was reasonable. I also note that Mr and Mrs S accepted it at the time.

Following this, there was some further correspondence with the builder and NHBC and they carried out a second and updated resolution report on 18 May 2018. In this they said the builder was to undertake further testing by 9 July 2018 to determine the cause of the render issue. However testing wasn't completed by the deadline, and acceptable proposals weren't made to NHBC.

After the deadline, I can see there was ongoing correspondence between NHBC and the builder around the repair methods up to when NHBC issued its final response in September 2018. And in this, NHBC said it wouldn't step in whilst the builder was willing to investigate and do the works.

However, I agree with our investigator that NHBC should have taken over when the deadline had expired in July 2018.

Whilst there was correspondence with the builder who confirmed they intended to carry out investigations, they had already had time from the resolution report being completed up to the deadline, and hadn't proposed resolutions which were acceptable to NHBC by this point.

Following the expiry of the deadline, Mr and Mrs S were continually in contact with NHBC about the lack of progress. And NHBC reminded the builder of their obligations, and that the deadline had already passed. NHBC also had multiple questions about the repairs being proposed and an agreement still hadn't been reached. Despite this, NHBC still didn't step in even when it issued its final response in September 2018, some three months after the deadline had already expired.

Whilst I accept that the builder was still corresponding about the repairs, the claim had been ongoing for a considerable time, the deadline hadn't been met and even following this, repair proposals still weren't agreed when NHBC issued its final response – still not taking over the claim.

As mentioned above, I understand that the claim has moved on from the position of the final response and the builder has carried out repairs (albeit Mr and Mrs S aren't happy with them). But I haven't considered what happened after the final response in September 2018 as part of this decision.

Up to the point the final response was issued, 11 September 2018, I think the £450 compensation recommended by our investigator for NHBC not stepping in and taking over is reasonable in the circumstances. This is separate to the £100 NHBC gave in March 2018.

I note that Mr and Mrs S feel that the level of compensation proposed by our investigator isn't enough to deter NHBC from acting in the way it did. But that isn't the role of this service.

Our recommended awards aren't intended to be punishments for a business. But we can recommend compensation for the impact on the individual consumer, for example as a result of a business error, delays or customer service issues. And I think £450 compensation is appropriate in the circumstances.

My final decision

It's my final decision that I uphold this complaint.

National House-Building Council should pay Mr and Mrs S £450 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 13 April 2020.

Callum Milne
ombudsman