

## **complaint**

Mr B is unhappy with his building warranty provider National House-Building Council (NHBC), he says it hasn't handled his claim for snagging issues with his new home very well or taken action against the developer for failing to carry out repairs.

## **background**

Mr B bought his new home in January 2016. In February he sent a list of over 100 snagging issues to the developer. When it had done nothing by March, Mr B complained to NHBC.

NHBC organised a meeting, found defects at the property and set a deadline of 31 August 2016 for the developer to do the work by. It also found that some issues Mr B had raised weren't defects according to the policy and so, in those respects, didn't recommend that any work be done. The recommendations it had made weren't completed in time.

Mr B had also submitted a further snagging list of around 80 items in May 2016. NHBC considered it but thought there was a lot of duplication. It asked the developer to comment on the items within the list but nothing was forthcoming.

In 2017 NHBC arranged a further appointment to visit Mr B's home and assess the outstanding work. This took place in June. Just prior to this, in May, NHBC issued its final response to Mr B. It referred to the re-visit and answered some other concerns Mr B had raised to that point.

The re-visit went ahead, items on both lists were considered and some, on the first list, were marked as resolved. For the outstanding items that were classed as defects, the developer was given until 30 September 2017 to complete repairs. This deadline wasn't met but NHBC acknowledged that it had been somewhat delayed in issuing its report following the June meeting – this was only issued in August. In November Mr B told NHBC that no work had been done. NHBC sought clarification from Mr B as it thought some work had been. In a call Mr B told it that some work from the first list had been done but nothing from the second list.

In December 2017 NHBC wrote to both Mr B and the developer, attaching the lists from the June meeting and asking both to clarify, point by point, what had been done and what remained unresolved. Two days later NHBC issued a further final response to Mr B. It said work had taken longer than it would have liked but as the developer was still willing to be involved it wasn't appropriate for it to take over. However, once it received detail from both about what work had been done it would review the situation and decide how best to complete the claim. It said it had always chased the developer and had kept Mr B informed of what was happening, replying to his contacts. It said it wouldn't change his case handler at this point as they'd done nothing wrong and had invaluable insight into his claim history.

Mr B was unhappy and complained to us. As well as setting out detail about what had occurred to date regarding his first two snagging lists he said a third list and issues set out in a surveyor's report had been ignored by NHBC. He said NHBC had now offered him around £10,000 in settlement of his claim but this wasn't enough and he didn't think it covered all the issues. He said NHBC should pay him compensation for everything he'd been through having bought a new house which he'd reasonably expected to be perfect. He said it should also compensate him for all the annual leave he'd had to take.

Our investigator noted the response NHBC had issued to Mr B in May 2017 and that when he'd complained to us it had been more than six months later. So she said she'd look at things from the point of that response onwards.

She noted that NHBC had previously worked with the developer to get work done and had since offered to pay for everything outstanding. She said Mr B hadn't shown its offer was unfair and we couldn't challenge the content of the NHBC reports. She thought there were items that NHBC needed to consider from the third snagging list and surveyor's report but that Mr B should speak with NHBC directly about this.

Mr B was unhappy. He detailed that he'd paid for some things himself. He provided an estimate for repair in the region of £28,000. He said this would likely increase once work started. The estimate said it was to cover snagging issues.

The complaint was passed to me and, having considered it, I felt I needed to issue a provisional decision. That was because I didn't think the cash settlement or the third snagging list were things I could look at under this complaint. I did think NHBC should pay Mr B £250 compensation though for some delays I felt it had caused. My provisional findings were:

*"resolution service*

*NHBC's warranty isn't just an insurance policy. That means that some of the actions NHBC undertakes aren't insurance related. The resolution service NHBC offers is one of those things – it is intended to help the homeowner and developer resolve any differences they have but it isn't an insurance activity.*

*At this service we can only consider complaints about insurance (or regulated) activities. So any complaints or parts of complaints that are about things that NHBC does as part of the resolution service aren't within our jurisdiction to consider.*

*That means that if NHBC creates a resolution report as part of the resolution service which, for example, says that not all snagging issues equate to defects as covered by the policy (so no repairs are recommended) and the complainant disagrees – we can't consider that.*

*Likewise, if the complainant is unhappy with repairs or how long they take, or that the developer misses appointments and their time is wasted – we can't look at that. Not as long as NHBC isn't carrying out a regulated activity.*

*This service though considers that NHBC begins carrying out regulated activity when:*

- *A resolution report has been issued, and*
- *The developer has failed to complete the work in the report by the deadline set.*

*This means that, in respect of the third snagging list and surveyors report, NHBC hasn't ever started to carry out any regulated activity. That's because it hasn't issued a resolution report containing recommendation and a completion deadline which then hasn't been met. So I can't consider anything that has happened or failed to happen in respect of this part of Mr B's complaint. I know he wants his cost refunding for the surveyor's report but that isn't something I can look at.*

*Regarding the other lists; NHBC was carrying out a regulated activity:*

- *In respect of the first snagging list from the resolution report deadline set and that wasn't met – 31 August 2016.*
- *In respect of the second snagging list, which didn't have a resolution report issued until August 2017, from the deadline date NHBC set and that wasn't met – 30 September 2017.*

*However, I still can't look at everything that occurred from August 2016 onwards. That's because of NHBC's letter issued in May 2017.*

*final response letter May 2017*

*As well as only being able to look at complaints about regulated activities this service can only consider complaints, or parts of complaints, that have been brought to us within certain timeframes. One such period is when a complaint is made to us more than six months after a final response letter issued.*

*NHBC's issued its first final response to Mr B in May 2017. But Mr B didn't complain to this service until January 2018, after it had issued a further final response in December 2017. For Mr B this means that I can't look at anything that he's complained about that was dealt with by NHBC in its May 2017 letter. So I can't look at whether NHBC unreasonably delayed his claim or acted unfairly in any way between August 2016 (when it first began carrying out regulated activity) and May 2017.*

*My assessment can only start from May 2017 onwards. And it can only go as far as NHBC's second final response letter dated 22 December 2017. I can't look at the cash settlement offer NHBC made in February 2018.*

*cash settlement February 2018*

*When an insurer issues a final response on a complaint that allows the complainant to ask us to consider their concerns. Any complaint, as I've said above has to be made within six-months from the date of the final response letter. NHBC's last final response letter was issued on 22 December 2017, before its cash offer was made. This occurred two months later, and one month after Mr B first complained to this service. So the offer is not part of his complaint as made to NHBC and forwarded to us to consider. And NHBC hasn't provided us any evidence in respect of how it came to make that cash offer or said that we can include consideration of this issue within this complaint.*

*work Mr B has paid for*

*Whilst Mr B paid for some work himself it seems this occurred after the 22 December 2017 letter. So I can't consider that here. Even if he did some work before this time, the nature of that work (if it was something NHBC should have done) and the cost of it would have to be considered alongside the settlement offer NHBC made in February 2018 (and that I've commented on in my section immediately above this one). That's because those costs may well have been factored fairly into the sum NHBC offered. So the two issues go hand-in-hand, meaning as I can't consider the offer, I can't consider whether NHBC needs to reimburse Mr B for his outlay for the work he's had done and paid for.*

17 May 2017 to 22 December 2017

*This then is the period in which I can consider NHBC's actions. And in doing that I have to keep in mind that, in respect of the second snagging list, NHBC only began carrying out regulated activity on 30 September 2017.*

*Following the May letter, I think that it was always important for NHBC to go back to the property to look at what had and hadn't been done. I understand that the first point such a meeting could be arranged was June 2017. The necessary delay this caused, from the point of the May letter, was reasonable. There was then a delay whilst the assessor made his report. I've seen the reasons given for this delay, I think this delay was unreasonable and could have been avoided. I accept it caused Mr B some frustration, however, it didn't affect the deadline given for work to be completed – this wasn't extended. And the deadline still has relevance here, in my opinion, because of the complication created by the second snagging list and the fact that, at the point of the June 2017 meeting, NHBC was only carrying out regulated activity regarding the first list.*

*If there was only the first snagging list, or if NHBC had been carrying out regulated activity in respect of both lists at the point of its meeting in June 2017, then I'd likely have said that NHBC should reasonably have got involved directly to at that point to sort out all of the unresolved work, either within the only list there was or across both of the lists. But the second list and lack of regulated activity in respect of it, as at June 2017, affect that.*

*NHBC has a contractual arrangement in respect of its warranties with the developers of the property. The developer is liable in those first two years for fixing defects but NHBC will try and facilitate repair under its resolution scheme. It can't step in though, to take over from the developer, until the developer has had a chance to do it and failed. So whilst by June 2017 the developer had had that chance and failed in respect of the first snagging list, it hadn't had that chance regarding the second. I understand that NHBC was obliged to give it that opportunity. And that being the case I couldn't reasonably expect NHBC to take over in respect of the first list whilst simultaneously asking the developer to resolve list two. Not in the circumstances here where there are so many issues in each list that affect almost all areas of the home. It would be an impractical arrangement at best.*

*However, I think that NHBC should reasonably have kept a weather eye on the progress of work and, once the deadline for work on both lists had passed at the end of September with no real progress having occurred, it should have taken action straight away to take this out of the hands of the developer. I think it could also reasonably have prepared for the likely eventuality that little progress would be made by putting some provisional arrangements in place for shortly after the deadline ended so as to avoid further delay in resolving the claim. Leaving it to progress beyond this point and merely asking Mr B and the developer for updates was unreasonable. I think that it carrying on in this vein between 1 October 2017 (the day after the deadline expired) and 22 December 2017 (the date of its final response) caused Mr B a fair deal of frustration and upset. I think it should pay him £250 compensation to make up for this.*

*reimbursement of surveyors report and annual leave*

*I'm not going to make NHBC do anything regarding these two issues.*

*Mr B submitted the surveyor's report to NHBC by way of showing it snagging issues that it hadn't considered already within the first two snagging lists (as I mentioned earlier on in my*

*findings). So this report hasn't been made in respect of any regulated activity NHBC was carrying out. Even if it includes somethings that were on the first and second list but not completed by the developer, I don't think the report has reasonably influenced either NHBC's actions or my decision.*

*Furthermore, the report essentially shows pictures of issue Mr B has with his home. NHBC isn't responsible for every issue Mr B might find. As it has explained before, the warranty cover, in respect of issues notified to the developer in the first two years, only applies to defects. Defects have a particular definition within the warranty and not every problem a homeowner finds will fall within that definition. So sending photos of problems – or even a repair estimate that refers to fixing all snagging issues, doesn't show that NHBC is responsible for the issue in question. So even if the report relates to regulated activity, I'm not minded to make NHBC reimburse the cost of it.*

*Mr B would always have needed to attend some meetings to resolve the problems he found with his home. NHBC isn't responsible for the fact his home has defects. I know it carried out an inspection before the building was completed – but that wasn't done with a view to guaranteeing no defects with the house were present. And when NHBC did this check it wasn't carrying out regulated activity, so its actions aren't something I can look at.*

*As I said above I think the June 2017 meeting was always necessary. It isn't clear to me if Mr B then had to attend meetings after this time and before 22 December 2017. The fact that he reports no work was done suggests he didn't have any need to take time off to meet the developer or its contractor. But even if there were a few necessary meetings that wouldn't be unusual – there reasonably has to be some input by a homeowner when work is being done. So whilst it's unfortunate that Mr B had to take time off, this isn't something I can reasonably require NHBC to compensate him for.”*

### **responses to my provisional decision**

NHBC said it accepted my provisional findings. Mr B was dissatisfied with my findings.

Mr B said NHBC had confirmed it had failed him by not initially dealing with his claim following his first contact with it in February 2016. He said he'd never received NHBC's first letter to him. He felt too much attention had been given to processes and not enough consideration had been given to what had actually gone on.

### **my findings**

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

At the time Mr B first contacted NHBC, NHBC wasn't carrying out a regulated activity. As I explained provisionally I can't consider any acts of omissions of NHBC when it wasn't carrying out a regulated activity. In respect of Mr B's first snagging list that didn't begin until 31 August 2016. But I also explained that I couldn't look at what NHBC did between then and its first letter of response to Mr B in May 2017.

Even if Mr B didn't receive that, I'd only have to be satisfied that NHBC sent it, which I am. But, in any event, Mr B supplied a copy of this letter to this service as part of his initial complaint submissions.

I appreciate that the processes and rules are frustrating but they can't be ignored. And the result of applying the processes and rules means that most of Mr B's concerns can't be considered by this service. That means that I can't, for the most part, look at what went on.

There is a short period that I can consider and have reached an outcome on; 17 May 2017 until 22 December 2017. I've reached my conclusion on what happened during this time based on my experience and knowledge. The date of the meeting in June and deadline dates for work are facts known to Mr B and NHBC. Taking these events into account against the backdrop of all of the work both parties were aware needed resolving, only part of which NHBC could reasonably have stepped in and taken over, allowed me to conclude that NHBC should have acted differently. It should have been prepared to start all work on 1 October 2017, rather than merely chasing Mr B and the developer for updates over the following months (to the point of its December response). For the upset caused as a result of this I'm satisfied that £250 compensation is fairly and reasonably due.

#### **my final decision**

It is my decision, as explained above, that there are parts of Mr B's complaint, as made to this service in January 2018, that I can't consider. Therefore, in respect of these aspects of the complaint, I can't and haven't considered their merits.

Regarding the rest of the complaint that I am able to and have considered, I uphold it in part. In that respect, I require National House-Building Council to pay Mr B £250 compensation. I don't make any other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 February 2019.

Fiona Robinson  
**ombudsman**