

complaint

Mr Y complains that National House-Building Council ('NHBC') won't provide cover under a building warranty for damage caused by flooding to his basement, and other issues with his home.

background

Mr Y bought a new home, and his developer provided him with a ten-year NHBC warranty.

Mr Y's basement flooded shortly after he moved into the property. The developer had been made insolvent, and Mr Y made a claim under the warranty.

NHBC said Mr Y could only claim under section one of the warranty (which covered insurance before completion), because final checks hadn't been carried out by NHBC before the developer went insolvent. However, it turned down a claim under section one as it thought the property had been completed by the developer.

Meanwhile, Mr Y arranged for the damage caused by the flooding to be repaired by an NHBC registered contractor, who then found further issues with the property that needed to be put right.

Mr Y brought a complaint to this service. He thought NHBC had caused unnecessary delays completing the final checks to the property. He was of the view that if the final checks had been done before the developer became insolvent, NHBC would have found the property hadn't been completed to its requirements. He thinks if that had happened, the problems would have been put right by the developer, therefore the flooding wouldn't have happened, and he wouldn't have needed to pay another contractor to rectify the developer's errors.

I issued a provisional decision on 12 June 2020. My provisional findings were:

"Mr Y has raised concerns about NHBC not carrying out the final checks before the developer went insolvent, and therefore not signing off the property as complete. However, this isn't a regulated activity and so this service has no jurisdiction over this matter.

I've therefore only considered how NHBC has acted when dealing with the claim made under the warranty.

NHBC says that Mr Y is only able to claim under section one of the warranty. The warranty is split into five sections. Each section explains when a claim can be made. Under section one, a claim can be made up to the completion date. Under sections two – five, a claim can only be made after the completion date.

'Completion date' is defined within the warranty as:

- "This is the later of the following dates for a **home***
- a The date of legal completion...of the purchase by the first **owner**.*
 - b The date of the **Buildmark confirmation**..."*

'Buildmark confirmation' is defined as:

*“The document **we** issue to the **builder** to confirm a home is protected by **Buildmark**.”*

‘Buildmark’ is defined as:

*“The protection provided by **NHBC** and the **builder** as explained in this document.”*

The warranty also says:

*“The protection under Sections 2-5 will only come into force if **we** issue a **Buildmark confirmation** and is limited to the cover described in this document...”*

NHBC didn’t issue a ‘Buildmark confirmation’ document to the developer, because the developer became insolvent before NHBC was able to complete its final checks. That unfortunately means Mr Y doesn’t have any cover under sections two – five, and so I’m satisfied his ability to claim is limited to section one, which is the insurance that applies before completion.

I’ve therefore considered whether Mr Y has a valid claim under section one.

Section one says:

“This section applies if you lose your deposit or have to pay more to complete the building of your home because the builder is insolvent or commits fraud.”

And

“We will reimburse your deposit or we will pay you the reasonable extra cost above the contract price for work necessary to complete your home to the NHBC requirements. Alternatively, if we choose to, we will take responsibility for having the work done to complete your home.”

NHBC has turned down a claim under section one. It thought the property, at the time the developer became insolvent, was near to completion. It said Mr Y was already living there, and a document called ‘Valuation 19’ had all items marked at 100% by the developer. Consequently, it didn’t think Mr Y needed to pay more to complete the building of his home.

Under the warranty, NHBC is obliged to pay the reasonable extra cost above the contract price for work necessary to complete the home to NHBC requirements. Whilst I appreciate the developer had thought all items were completed, we don’t know that these were to NHBC’s requirements as NHBC didn’t carry out final checks on the property. Though given the problems that were found a short while later, it seems unlikely that the property had been completed to NHBC requirements.

It therefore seems to me that NHBC ought to cover the cost of the fees that were paid above the contract price to complete the property to NHBC requirements. To be clear, that does not extend to work carried out to Mr Y's own specifications.

However, NHBC is only required to cover the costs of completing the home. It isn't required under section one to cover any damage that has happened because the developer failed to comply with NHBC's requirements – that would normally be dealt with under other sections of the policy, which Mr Y can't claim under. I therefore don't intend to require NHBC to cover the cost of putting right the damage caused by the flooding."

I asked both parties to provide me with any further comments they wished to make.

NHBC responded to confirm it accepted my provisional findings.

Mr Y's representative responded to say it accepted my provisional decision, though it reserved its position concerning the damage which occurred to the property. It also included the costs it thought NHBC ought to pay under section one of cover.

my findings

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

Mr Y's representative has estimated the costs it thinks NHBC ought to pay in order to complete the property to NHBC requirements. To be clear, I'm not making a finding on those costs within this decision as they haven't yet been considered by NHBC. The two parties will need to discuss the work that has been done in order to complete the property, and reach an appropriate settlement figure. If an agreement can't be reached, Mr Y can make a new complaint about that matter.

I note Mr Y's representative has included a figure for costs to put right the damage caused by the flooding. However, as I've explained in my provisional decision, I don't require NHBC to cover the cost of putting right this damage.

my final decision

My final decision is that I uphold this complaint in part. I require National House-Building Council to reimburse Mr Y for the costs he paid above the contract price to have his home completed to NHBC requirements, in line with the remaining policy terms. That does not include any costs to put right the damage caused by the flooding.

Interest should be added at the rate of 8% simple per annum from the date Mr Y paid the invoice/s to the date of settlement¹.

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

Chantelle Hurn-Ryan
ombudsman

¹If NHBC considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr Y how much it's taken off. It should also give Mr Y a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.