

complaint

Ms N is unhappy with the provider of her building warranty, National House-Building Council (NHBC). It has settled her claim under section 1 of its policy and she thinks it should deal with it under section 2.

background

Ms N contracted with a builder to build a house on land she owned. A building warranty provided by NHBC was part of that contract. The original contract price was £319,598.20. Further monies were later asked for by the builder, some of which Ms N paid.

In 2014 Ms N moved into the house but the work hadn't been finished to an appropriate standard. In 2016 NHBC visited the home but were only able to do a partial inspection. The house wasn't signed off as being complete (substantially compliant with its technical requirements).

In 2017, with Ms N having begun legal proceedings against it, the builder went into administration. Ms N made a claim to NHBC.

NHBC said that it would consider the claim under section 1. This section of the policy applied because the build hadn't reached completion. It said section 1 had a policy limit of 10% of the original purchase price. An offer of £31,959.90 was made.

Ms N said the offer was insufficient – that her costs for remedial works were in excess of £200,000. She said NHBC should use its discretion and deal with this under section 2 because she was and had been living in the house for more than two years. Essentially it was complete, just to a poor standard. When NHBC wouldn't change its mind Ms N complained to this service.

Our investigator felt NHBC had acted fairly. Ms N said it wasn't fair to use the lack of legal completion against her as she had completed her side of the bargain by paying the builder.

my findings

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

Not everything NHBC does in relation to its warranty is done in its role as insurer. Matters such as signing off work aren't considered to be insurance activities. But, as relevant to the circumstances here, when a builder becomes insolvent NHBC's liability as an insurer begins.

The policy defines what NHBC means by the word "*completion*". And that is important because section 1 applies *before* completion and section 2, where damage and defects are notified during the first two years *after* completion.

"Completion [where] the builder builds the Home under a building contract (for example on land owned by or to be purchased separately by the first Owner)....then 'Completion' means the date on which NHBC agrees that the Home substantially complies with NHBC Requirements."

NHBC says it tried to assess the property in 2016 but was unable to do so as it was only allowed into one room. It says it didn't, therefore, sign the property off as being compliant with its requirements. I think it's fair to say then that completion, as required by the policy, hadn't occurred. Which means I think NHBC was correct when it said this was a claim under section 1.

I know Ms N thinks NHBC should have done more to check the work and to keep her informed during the works as to what was happening. Whilst I can't comment on that non-insurance activity (because NHBC wasn't acting as an insurer), if it seemed most likely that completion hadn't been achieved due to a mere technicality – for example a necessary form or document not being received perhaps – then I might say it would be fair for NHBC to look at this under section 2 instead of 1. I say that especially here as Ms N had been living in the house. However, in this case, completion wasn't a mere technicality because, as Ms N says, the works were done *"to such a poor standard, that they were not fit for purpose or more importantly fit for habitation or completed to a tolerable standard..."*. In this case then I think it would be unfair to say NHBC should overlook its policy wording and proceed with the claim under section 2.

Section 1 does carry a policy limit. It says NHBC will only have to pay 10% of the original purchase price. The contract Ms N entered into was for payment of £319,598.20. NHBC offer of settlement of £31,959.90, therefore, seems fair. I know Ms N paid more to the builder than the contract sum but this was the price agreed. I know the remedial works will cost far in excess of this but that doesn't mean NHBC has to forego the limit it has set in its policy wording and, therefore, agreed to be liable for.

With regret for any upset this will cause Ms N, I'm not persuaded to make NHBC do anything in respect of her complaint. I'm satisfied it has acted fairly and reasonably.

my final decision

I don't uphold this complaint. I don't make any award against National House-Building Council.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 24 October 2018.

Fiona Robinson
ombudsman