

complaint

Ms O is unhappy with the proposals by National House-Building Council (NHBC) for dealing with several defects under section 2 of her building warranty (years 1 and 2).

background

Ms O bought a new property with the benefit of a warranty with NHBC in November 2016. After she told NHBC of a number of defects, that needed remedying under section 2 of the warranty, NHBC agreed to operate its resolution scheme.

NHBC issued reports in March and May 2017 following site visits. It issued two further desktop reports in September and December 2017 giving the builders further deadlines, the last one being 26 January 2018. I issued a jurisdiction decision, setting out the issues that came within our jurisdiction. These were those that hadn't been resolved by the 28 July 2017 deadline and were the following (numbering taken from previous reports):

- 1 Heating makes a loud grinding noise when boiler/fan shuts down.*
- 4 Bath panel.*
- 13 Master bed - furniture moves when walking on floor.*
- 14 Kitchen - French doors have defects*
- 16 Draughts are coming through doors and windows.*
- 20 Master bed - box requires vents/access opening/repair/redcoration.*
- 22 Living room - door is sticking, and cracking sound.*

Ms O says those matters (or works associated with them) have not been carried out (or carried out satisfactorily). She is unwilling to have the builders back to her home, mainly because she feels they have been incompetent but also because of the way they have treated her (which she describes as bullying and harassment). Further she applied for arbitration under the Consumers Code for Home Builders to the Centre for Effective Dispute Resolution (CEDR) in respect of issues not resolved by the builders. That action was dismissed as the builders weren't party to the contract for sale. NHBC has confirmed that it doesn't affect the warranty between it and Ms O.

After referral to this service our investigator said that NHBC should have taken over the works after the July deadline, instead of allowing the builders further time. She proposed that it pay compensation of £500 and take over the outstanding work. NHBC agreed to the compensation figure but pointed out that the policy stated that if it chose to, it will pay the policyholder what it would cost it to have the work done. It said we seemed to imply that it is responsible to take over the works required when this is not the case and under normal circumstances, it would meet its liability under the terms of the policy by paying a cash settlement sum. It was willing to carry out a reinspection of any outstanding matters, but said it would have to consider any new evidence Ms O provided.

As highlighted by Ms O, in a further view our investigator proposed that the compensation be increased to £600, NHBC pay Ms O's cost of postage for sending in evidence after 28 July 2017, and consider the costs of any independent reports Ms O sent in.

I issued a provisional decision. In it I said that NHBC should take over the issues set out above (save for the heating, which I'll mention below). It should arrange for the work to be carried out by contractors other than the builders. With regard to the windows and french doors I said that NHBC should arrange a site visit to establish what works needed to be carried out over and above those recommended by the windows installer having regard to Ms O's expert report. I also said it should pay the proposed compensation.

NHBC accepted my provisional decision. It wanted to emphasise that with regard to the windows, its visit will be to assess the windows for compliance with its technical requirements (standards). As I have said, this may not mean it will be carrying out work as suggested in the report from Ms O's expert.

Ms O didn't accept my decision. As her comments are so detailed, I will summarise them in my findings as they relate to each issue.

my findings

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

As a preliminary point, as Ms O's comments are so detailed, I intend only to comment on those points I think are relevant to the consideration of her complaint. I won't change the style of my decision nor shall I be changing my findings (which are now final), except where set out below.

scope of this decision

In my provisional decision I said:

"I have already explained the issues I will be considering. I remain of the view that all the other issues raised in the resolution reports are outside my jurisdiction. In addition, I won't be considering the following:

- *NHBC's handling of Ms O's complaints. Complaints handling by a business isn't a regulated activity so doesn't come under my powers to deal with. I would observe that a good deal of the correspondence with NHBC concerned the other issues in the resolution reports which again don't come under my powers to consider.*
- *This service's handling of Ms O's complaints. My role as an ombudsman is to consider the merits of a complaint. To that end I won't be listening to recordings of telephone conversations Ms O or NHBC have had with the investigator. Any action agreed is well documented.*
- *Whether this service's file is complete. This service operates as an alternative dispute resolution service to resolve complaints informally between the parties. I think it reasonable to assume that we have all the information the parties have given us. As has been explained to Ms O if she believes we haven't seen any particular document then she should provide it or indicate when it was created and what she believes it says. I should also add that I won't be setting out a detailed analysis of the complaints or the evidence. I will set out only those points I consider relevant to resolving the dispute.*

- *The dispute between Ms O and the builders referred to under the Consumer's code. I have already said (in my jurisdiction decision) that the fact that the builders have successfully had the arbitration dismissed for not being a party to the sale, has no bearing on NHBC's liability under the warranty. In so far as Ms O wants to raise a complaint about NHBC's failure to ensure that the builders were parties to the house sale it that is a new issue which she should raise with NHBC. I can't consider it as part of this complaint."*

Ms O says that she had been assured by this service that we can consider the way NHBC handled her complaints. She has quoted to me points from a number of decisions on our website where she says we dealt with complaints handling. I have set out the position factually and legally here – complaints handling by a business isn't a regulated activity. I have to distinguish here between complaints about the claim and how NHBC handled it, and how it addressed her complaints. All the decisions she quoted and our investigator's views don't deal with complaints handling. The latter would include Ms O's complaints to the CEO of NHBC, any chasing up she had to do of that complaint and any delays in the complaints procedure. I can't see anywhere that she has been told by us that we would deal with NHBC's complaints handling.

To the extent that she objects to what I say in the ensuing two paragraphs I think it important not to raise expectations. Ms O's complaints to us raised a lot of issues which simply don't come within my power to consider.

Regarding the Consumer Code Ms O says her complaint is that NHBC admit that the builder is bound to adhere to the code, yet he has refused to do so. Again that's a new issue and I don't see it as being relevant to the complaints I'm considering here.

1 heating makes a loud grinding noise when boiler/fan shuts down

In my provisional decision I said:

"Following Ms O's concerns about the noise made by the boiler, the builders replaced the original boiler. Ms O remained concerned about the noise and It was agreed that the boiler manufacturer and plumber would undertake a joint visit. At that visit it was found that a pressure relief valve housed within the front bedroom service boxing was set to zero, effectively preventing pressure relief of the heating system during operation. The valve was re-set, but, NHBC's investigator commented that this work was undertaken several months after replacement of the original. In the resolution report of 12 May 2017 NHBC recommended that the builders arrange a fully independent inspection of the heating system to check for any un-diagnosed faults with the installation. As the resolution report said that the guidance in that report must be followed, by implication the builders were to correct any such faults.

That report was issued in July 2017. It found no faults with the system, but said that the inhibitor level (preventing scale and corrosion) was too low. It recommended flushing the system and refilling with the correct level of inhibitor. NHBC was satisfied that this was done, noting in its December 2017 report that the inhibitor levels and residual scale presence were checked by water sample testing undertaken and confirmed that the system levels were acceptable.

Ms O advises us that the builders confirmed no such flush was done when the new boiler was fitted, and she doesn't believe it was carried out after the report. She has shown us her email correspondence with the manufacturers of the boiler which says that:

- it is entirely possible that the system bypass being closed and/or the system having debris in it could both cause problems within the boiler, (possibly with the pump).*
- whether a scale build up will cause an issue depends on the severity of it.*

Ms O also had the water samples taken in July 2017 and in December 2017 independently checked (as did NHBC). Both confirmed that the December 2017 sample showed there to be appropriate levels of inhibitor.

I understand that the original problem with the noise was remedied by the replacement of the motorised valve on the system.

Ms O has also done her own research and believes that the whole system was incorrectly fitted. She doesn't accept that the report was independent or correct. She would like a new independent report to be carried out.

Whilst I appreciate Ms O's research, I can't find that there are any further faults with the system. I think it reasonable to rely on the expert report commissioned – I've seen no expert evidence to counter it. As to whether a system flush was carried out, I've noted that the December 2017 sample testing reported that the inhibitor level and residual scale presence were acceptable (also confirmed by the testing Ms O had carried out). So, it seems likely to me that such a flush was carried out, so this complied with NHBC's resolution.

The correspondence with the manufacturer's points to possible faults in the future if a scale build up had taken place or in connection with the setting of the pressure valve. I understand that Ms O has had the boiler serviced but still has concerns that the warranty might have been invalidated. But from the point of view of NHBC's liability, which is after the deadline expired for builders to carry out recommended work, on 28 July, it has arranged for the work it recommended to be carried out.

I don't propose to require NHBC to take any more action concerning the heating system. Ms O incurred costs for testing the water samples but I don't propose to require NHBC to reimburse that outlay as the tests didn't produce any different result from the action already taken.

Ms O wants her cost of the boiler service to be refunded as the warranty is likely to have been invalidated. I've seen no evidence that it has. Servicing the boiler is the homeowner's responsibility and something a prudent homeowner does regardless of any warranty in order to ensure the long-life of the boiler and avoid faults developing with the heating system."

Ms O says the builders are simply lying when they say they flushed the system. She also says that I said I'd seen no evidence to contradict the builder's heating report of July 2017. I didn't say that – I said I'd seen no expert evidence to counter it. While I appreciate that she has produced correspondence with the manufacturer, they didn't come and inspect the system, so there's no expert report to counter the expert commissioned. If there are faults with the boiler they are technical ones which need technical expertise to find. If for example I were to tell NHBC to flush the system, I don't know whether that would harm it if it had already been flushed. And I can't say from the evidence that it hasn't.

Nevertheless Ms O has said in response that the heating is still making a grinding noise and has shown us photos of corrosion at the bottom of her radiators. I've put those to NHBC and proposed that it go out again and check the system to see if it complies with its technical requirements and if not to carry out any necessary work. It has agreed to do so and I will make a direction accordingly.

4 bath panel

In my provisional decision I said:

"The bath panel was removed – it was refitted but not resealed. I understand this was done badly, so remains to be completed. NHBC should arrange for the work to be carried out in accordance with my directions below."

Ms O wonders why I have not highlighted (or awarded for) the fact that the NHBC have done nothing about this since Spring 2018 (almost 2 years ago), when it previously accepted that this had been done badly by the builder. She makes the further point that NHBC has accepted the previous views of the investigator so I should also be addressing why they have never done anything about anything (in 2 more years) under these circumstances.

NHBC accepted the investigator's views but Ms O didn't, including her views about our jurisdiction. Put simply Ms O was unwilling for NHBC to come out and do the work unless it accepted all the items under the resolution scheme which she disputed. It was expected that an ombudsman's decision would be issued following the investigator's views which for various reasons hasn't happened until now. I don't think I can criticise NHBC for not taking action in response to our views when Ms O didn't accept them.

13 master bed - furniture moves when walking on floor

In my provisional decision I said:

"The recommendation is that the builders remove the floor covering to allow for localised re-fixing of the floor deck in the bedroom. It also confirmed that the builders would deal with the uneven step at the top of the stairs and the step in the floor covering between the lounge and the kitchen."

Ms O also raised concerns following the above work regarding stability of the bannister rail. NHBC said this should be assessed and rectified if defective along with any unresolved carpet re-laying work.

I believe some re-fixing likely took place but Ms O says the work wasn't satisfactory, with protruding nails. To clarify, NHBC's liability is to carry out any work identified in its resolution report which the builders hadn't carried out by the deadline (28 July 2017). It would have expected the builder to carry that out to a reasonable standard. So, it should arrange for the work (including remedying any defective repair) to be done as set out above again in accordance with my directions below."

I note that Ms O thinks I should make it clear what works need to be done, or NHBC will twist out of it. I don't need to – the work is set out in the resolution report and NHBC will have to carry out that work. Should it not be done satisfactorily or completely Ms O will have the right to raise a further complaint about it.

*14 kitchen – french doors have defects
16 draughts are coming through doors and windows*

In my provisional decision I said:

“These issues essentially relate to the same problem – faulty glazed units (some of them are scratched) and faulty seals. NHBC required the builders to commission from the window installers an inspection and defects report covering the scratched double-glazed units (DGU), the draughts through the windows and the cause of the DGU spacer bar seal defects and confirmation of whether they will be replaced. In November 2017 the window installers produced a detailed list of work to the areas which require attention.

Ms O was dissatisfied with the list of work – although noted that a substantial number of the panes of glass needed replacing. She noted that the list didn’t deal with the spacer bar defects and that it dismissed the need to do anything about the excess of sealant around some of the panes which is unsightly. It didn’t recognise that there were any problems with the handles which just needed lubricating. She commissioned her own report from an expert who found that there were substantial problems with the seals, excess sealant and handles.

NHBC was sent that report but pointed out that the windows had to comply with its technical requirements which might be different to the standard required by Ms O’s expert. It has however agreed to assess additional issues raised by the report to determine if these works are also required as well as the works already agreed at the time of issue of the report.

Since Ms O’s report specifically deals with issues not dealt with (although intended to be) by the window installers, I think NHBC should reassess the windows in the light of Ms O’s expert report. It will need to do a site visit in that respect so I can’t presume that the windows, apart from the issues identified by the installers, don’t comply with NHBC requirements. It should arrange to carry out any repairs identified by the window installers and any further ones identified by its site visit. The work should be arranged directly between NHBC and the window installers.

Ms O has incurred costs of £903.72 from paying an expert. As the report identified further issues not dealt with by the window installers, I propose to require NHBC to pay those costs.”

In her response, in summary Ms O objects to the window installers coming back to do the repairs as she says they are incompetent and are legally part of and answerable to the builders. I can understand Ms O’s objections, but the situation here is slightly different to the builders. So as far as I know there’s no breakdown in the relationship with the window installers and they are, I can confirm, a different company to the builders. I’m also aware that there could be problems in getting another window installer in to repair the work of another installer.

Ms O says the windows installer is only willing to carry out the work it deems necessary. But if NHBC requires work to be done it would expect the windows installer to do it, or appoint someone else. Nevertheless I’ll remove the requirement for NHBC to use the original window installers. It can just take over the work and if it proposes to use an installer Ms O doesn’t want, it will have to either appoint an alternative or cash settle. But if it cash settles NHBC might say it will only pay what it would have cost it to carry out the repairs. I should also add NHBC’s caveat here – the site visit will be to assess the windows in the light of Ms O’s expert report. This may not mean it will be carrying out work as suggested in the report from Ms O’s expert. If Ms O, after the site visit still remains unhappy she can still raise a further complaint about the matter.

Ms O has paid her expert and wants me to add interest to NHBC's payment – I'm happy to do so.

20 master bed - box requires vents/access opening/repair/redecoration

In my provisional decision I said:

"The boxing in the front bedroom was accessed to do work on heating valves, however the boxing was damaged during removal of the lid. It was agreed that the boxing would be replaced with a new unit which would be accessible, ventilated and free from damage.

NHBC recorded in its December 2017 report that this work had been carried out. As I understand it Ms O says that this was carried out poorly. According to NHBC's internal emails it agreed that this was poor, incomplete and not as required. Unless Ms O is now satisfied with the work, it should arrange for this to be carried out again in accordance with my directions below."

Ms O believes I have been inconsistent here, accepting NHBC's word on other items but not on this. I can only say that I'm assessing each matter on the evidence. The issue here is that the work has been done poorly and Ms O has shown us photos of it. Unlike the boiler I don't need a technical expert to decide the matter. I stand by my finding.

22 living room - door is sticking, and cracking sound.

In my provisional decision I said:

"NHBC recommended that the builders ease the bedroom door and re-fix/ decorate the lounge frame architrave.

It reported this to be resolved, however Ms O has concerns that re-decoration of the door and frame is still required and that the hinges are now grinding and the repairs to the door frame at the hinge are unsightly NHBC said this should be assessed and rectified as required. It should arrange for this to be carried out, again in accordance with my directions below."

Whilst I note that Ms O wishes me to expand on this and set out the work she believes needs doing, I won't do so. NHBC has to ensure the work complies with its technical requirements.

carrying out of the work

In my provisional decision I said:

"I don't think it's practical, or fair to Ms O to expect her to have the builders return to complete the work. She has had substantial issues with them over poor workmanship. And while NHBC could compel them, contractually to return, I don't think from the tenor of the correspondence with Ms O, that they would do so willingly. I shall therefore require that NHBC formally take over the work from the builders and arrange to have any work I've identified above (save for the windows/doors) carried out by a different contractor. Regarding the windows and doors, as is I said above NHBC first needs to do a site visit and then it can arrange for any necessary, outstanding work to be done. If it's not willing to do this, it should pay a cash settlement to Ms O to enable her to have the work carried out by a contractor of her choice. If that applies, NHBC should pay the cost of the work a reasonable private contractor rate, rather than any rate it might get by arranging for the work itself. But it will still

have to assess the windows because its best placed to determine, in the first instance, if they comply with its technical requirements.”

Ms O would like me to make a more direct criticism of the builder and to go into more detail about the correspondence. She also says I shouldn't say that NHBC could contractually compel the builders to return. I should point out here that I was addressing Ms O's concerns that the builder might return. Normally NHBC can, if it thinks it appropriate, appoint the original builder to carry out repairs even after it has taken the matter over. It doesn't have in-house contractors. I don't intend to go further into the actions of the builder. This complaint concerns NHBC.

compensation

In my provisional decision I said:

“I'm aware that Ms O has been caused a great deal of distress by the work that has had to be carried out to her property, and the way it was dealt with. She has raised with us substantial issues about her health and how it's affected her employment. But I have to bear in mind that a lot of the work was carried out under the resolution scheme for which as Ms O is aware I have no power to make any awards. Her substantial dealings with the builders over and above the work listed in this decision also do not, as I've said above come under my powers to deal with.

For the complaints I have upheld that fall within my jurisdiction, I believe a suitable award of compensation is the £500 award proposed. I take into account, but only after 28 July 2017, that NHBC should have taken over the matter much sooner, rather than issue desktop resolution reports without carrying out a site visit. I also think NHBC didn't take sufficient account of some of the poor workmanship in carrying out repairs. I should add that I don't think Ms O failed to co-operate with the repairs/site visits, as the builders reported to NHBC.

I won't award compensation for the work involved in Ms O dealing with NHBC's complaints process, or this office's process and I won't make any award for Ms O's expenses or her time incurred in typing up and sending us her complaints. We don't usually award costs of a consumer's expenses of presenting a complaint, bearing in mind that this is a free service to consumers. This would only be appropriate if the consumer needed to pay for technical expertise in presenting their complaint, and I don't believe that to be the case here.”

I would correct the award here – it is £600. Ms O believes I should look at correspondence from January 2017 onwards and that the award is derisory. She believes it doesn't take account of the health issues she has suffered nor of her employer's letters, detailing how it affected her employment. She has suffered for over two and a half years which she thinks I should take account of. She further believes that we do award consumers' expenses which I should make an award for here.

As I've said above this issue hasn't been outstanding since Spring 2018 because of NHBC's failure to take action. As I've also said our jurisdiction over NHBC starts after July 2017 when it should have taken over the work. I simply don't have the power to look at matters before then. I think for the period in question and bearing in mind the limit of my powers here, the compensation to be paid is fair and reasonable taking into account Ms O's health issues. My view is that, although occasionally we have awarded consumers' expenses in making a complaint it's not appropriate to do so here.

I have noted that in our view of May 2018 it was proposed that NHBC pay Ms O's costs of postage, for Ms O sending the evidence to it after 28 July 2017, which it accepted. So it should pay those costs, plus interest. Ms O should produce the relevant receipts she wants payment for to NHBC.

bullying

In my provisional decision I said:

"Ms O complains of NHBC's failure to deal appropriately with, or to tackle, bullying and intimidating behaviour on the part of the builders towards her. Most of the contact with the builders took place whilst it was being dealt with under the resolution scheme. Under the warranty the builders had the primary responsibility for carrying out any work. NHBC can, as in this case instruct the builders to carry out work but it's not responsible for the builder's conduct. I note in any event that the builders deny any bullying or intimidating behaviour. We carry out investigations of the documents but where there is an allegation like this it isn't usually possible, without corroborative evidence, to make a finding."

Ms O believes the bullying has continued to the present day eg the builder sending out invitations to buy their new homes. And that she has produced evidence of the bullying behaviour which I should assess. I don't think I can add much more to what I've said. NHBC isn't responsible for the conduct of the builder while it's operating its resolution scheme. Nor is it responsible for actions taken by the builder which have nothing to do with the repair work at the property.

bias

In my provisional decision I said:

"Ms O believes NHBC's claims investigator was biased – being over friendly with the builders. She believes he may have worked for the builders in the past. Given that NHBC denies this, I can't really take this any further. I don't find the resolution reports, completed by NHBC after it should have taken over the claim in July 2017, to be out of the ordinary."

Ms O says she has produced countless examples of bias eg the claims investigator discussing matters with the builder without involving her. I can understand that Ms O had the perception here that the investigator was biased against her.

I think for me to make a finding I would have to say that I thought NHBC deliberately made decisions against Ms O and against its own requirements, because of its relationship with the builder. Rather than a decision Ms O disagreed with (even if it was overturned later by evidence). I don't think there was any bias (as I've defined it) here.

rule 27

Ms O is disappointed that I haven't addressed this. She believes that NHBC had the option to take over all future works at her property under R27 because of the breakdown in relations with the builder. And that I should require it to do so. Rule (not regulation) 27 is part of the terms and conditions between NHBC and the builder. It sets out what NHBC will do, and what the builder's liability is, if it takes over any work. The rule is operated entirely at NHBC's option. As far as I'm aware NHBC won't use R27 in respect of future works which haven't yet been identified. I certainly have no power to require it to do so as no complaint

within my jurisdiction has yet been made whereby it might be required. NHBC has taken (or will be taking over) the works listed here, so effectively will be invoking R27.

NHBC deliberately blocking claims

Ms O believes that as I've upheld complaints, this proves that NHBC deliberately blocked the claims in an effort to avoid payment of them. As the issues I've upheld relate to resolution reports in which NHBC specifically set out work for the builder to do, I don't think it can be said it deliberately blocked it.

my final decision

I uphold the complaints and require National House-Building Council to:

- Carry out an inspection of the boiler and heating system to establish if it complies with NHBC's technical requirements. Thereafter to arrange for any works identified by that process to be carried out by contractors other than the builders. If it isn't willing to do that it should pay a cash settlement to Ms O at the rate she would have to pay a private contractor.
- Take over the following works (as set out in more detail above) and arrange for them to be carried out by contractors other than the builders. If it isn't willing to do that it should pay a cash settlement to Ms O at the rate she would have to pay a private contractor:
 - *4 Bath panel.*
 - *13 Master bed - furniture moves when walking on floor.*
 - *20 Master bed - box requires vents/access opening/repair/redecoration.*
 - *22 Living room - door is sticking, and cracking sound.*
- Take over the following works and arrange a site visit to establish what works need to be carried out (if any) over and above those recommended by the windows installer, having regard to Ms O's expert report, in accordance with NHBC's technical requirements. Thereafter, arrange for any such works to be carried out in respect of the following issues in the resolution reports:
 - *14 kitchen – French doors have defects*
 - *16 draughts are coming through doors and windows.*
- pay £903.72 to Ms O in respect of her expert report and add simple interest* at 8% per year from the date Ms O paid it to the date of payment.
- pay Ms O's cost of postage in respect of sending evidence to it, on production of the relevant receipts, from 28 July 2017 and add simple interest* at 8% per year from the date Ms O paid each item to the date of payment.
- pay £600 compensation to Ms O.

*National House-Building Council is required by HM Revenue and Customs to deduct tax from any interest paid. Should Ms O request it, National House-Building Council should provide her with a certificate showing how much tax has been taken off so that, if appropriate, she can reclaim it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 3 April 2020.

Ray Lawley
ombudsman