

complaint

Mr A is unhappy with how National House-Building Council (“NHBC”) handled his claim under his building warranty.

background

Mr A bought a new-build property in March 2017 which came with a NHBC warranty. Under the warranty, any claims made within the first two years would be dealt with by the developer – who I’ll call “C”. NHBC would be responsible for claims from year three onwards, or if C failed to put things right in the first two years. The warranty runs for 10 years.

Mr A made a claim in November 2017. NHBC decided to carry out its resolution service and arranged for an assessment of the defects Mr A had reported. NHBC’s resolution report was issued in September 2018, asking C to complete repairs by 26 October 2018.

Mr A complained as the repairs hadn’t been completed by the deadline and he felt that NHBC should have stepped in at that point to assume C’s responsibilities. He was also unhappy with the period of time he’d waited so far and said he didn’t always receive a response when he contacted NHBC.

NHBC said that claims within the first two years of the warranty were for C to deal with and that the resolution service was offered at NHBC’s own discretion. NHBC said it didn’t assume C’s responsibilities when the deadline passed because C asked for an extension and queried some of the items on the resolution report. NHBC felt that C was willing to complete the repair so it didn’t need to do anything more.

By the time of its final response to Mr A’s complaint, NHBC had arranged a further resolution report with an updated deadline of 31 January 2019. NHBC accepted there had been some unnecessary delays and that it could have responded quicker on some occasions – so it offered Mr A £450 compensation.

Mr A remained unhappy and asked this service to step in for an independent review. He added a concern about some items that had been changed on the new resolution report. Our investigator upheld the complaint and said NHBC should have assumed C’s responsibilities when the deadline for the first resolution report expired. She also said that the compensation offered so far was fair.

NHBC agreed to take over C’s responsibilities, but it queried whether this should be as per the first resolution report or the second one. It said the second one was issued because C told it that Mr A had already received a cash settlement for some items. It was concerned that Mr A might receive payment twice.

Our investigator asked Mr A about this and he said he’d received reimbursement for some repair work that was done privately – carpet and paint work. But he said this was before the resolution reports.

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’m upholding this complaint and I’ll explain why.

what I can consider

I'd like to explain what I can and can't look at as part of my decision. This service can only consider complaints about certain things a financial business does. Of relevance to this complaint, that includes dealing with insurance claims. With an NHBC warranty, any claims raised within the first two years are considered under section two of the warranty. As part of this, NHBC carried out its resolution service and issued a resolution report which set out what C needs to repair and by when. But this part of NHBC's role isn't part of the insurance it provides under the warranty. So any complaint about it isn't something I can look into.

Mr A has mentioned concerns about the way C and NHBC handled his claim from the start, as well as expressing concerns with the details of the resolution report. I don't know whether these concerns are valid, but even if I did, I wouldn't be able to say so as this service has no power to investigate NHBC's actions at that stage. I appreciate that Mr A may be disappointed by this but I can only make decisions on matters I have the powers to do so.

Additionally, some of Mr A's concerns arose after NHBC's final response letter – dated 11 December 2018. So NHBC hasn't had the chance to address these points before this service stepped in to review Mr A's complaint. If Mr A would like these issues investigated, he'd need to raise it with NHBC in the first instance and allow it to respond before this service has the power to step in.

should NHBC assume C's responsibility?

Complaints about claims made within the first two years of the warranty only come under this service's remit once the following has happened:

- a resolution report has been completed
- the report has directed the builder or developer to do something by a deadline
- the builder/developer has failed to complete the works by the deadline, or is insolvent.

NHBC carried out its resolution service and issued its first resolution report in September 2018, setting out the deadline for C to complete the repairs by. C didn't complete the repairs by this deadline so I'm satisfied this complaint comes under our remit. The insurance element under the first two years of the policy kicks in when the deadline passed, so from that point NHBC was effectively dealing with Mr A's insurance claim – it was no longer acting as a facilitator between Mr A and C but as Mr A's insurer. So NHBC had a duty to treat Mr A fairly. I don't think it did and I think it should've stepped in at this point to assume C's responsibilities.

NHBC says it was asked by C for more time and that C queried some of the items set out in the first resolution report. C also mentioned that the contractor it instructed made contact with Mr A proposing that the repairs start on the week commencing 19 November 2018.

I can appreciate why NHBC thinks a request by C for an extension shouldn't deem it necessary for it to step in and assume C's responsibilities. Sometimes, a request for an extension would be reasonable. However, it's apparent here that C hadn't even started the repair work and the proposed start date was several weeks after the original deadline. So there was no realistic prospect of the repairs being completed on time. Additionally, C waited

until the deadline date to contact NHBC to request an extension and query the resolution report.

I think at this point, NHBC should have decided to step in and assume C's responsibilities. Mr A's claim had almost reached a year and C doesn't seem to have been proactive enough in trying to complete the repairs by the deadline. So I think NHBC acted unfairly when it arranged a second resolution report instead of deciding to settle the claim itself in line with the warranty.

I'm pleased to see that NHBC has now agreed to take over C's responsibilities under the terms of the warranty. I'm nevertheless aware of the potential double compensation if Mr A has already received payment for some of the work. I note what Mr A has said in this respect and I've no reason to doubt it – I haven't seen anything from NHBC detailing precisely what payments Mr A received from C and what those payments were for. So I make it clear here that the fair resolution in my opinion is for NHBC to take over C's responsibilities in respect of the items detailed in the *first* resolution report, less any issues that C has already dealt with.

compensation

As a result of NHBC's failing, Mr A has experienced a delay in having his home repaired. He's also had to live in a new-build home that has a number of defects and he's been in touch with NHBC several times to resolve these issues. This caused him some distress and inconvenience.

NHBC has offered Mr A £450 compensation. This is within the region of what I would have asked it to pay for the distress and inconvenience it caused Mr A by not agreeing to assume C's responsibilities earlier. So I think this amount is fair.

my final decision

For the reasons set out above, I uphold this complaint.

To put things right, I require National House-Building Council to:

- assume C's responsibilities and settle Mr A's claim in line with the terms of the warranty – Mr A shouldn't receive double benefit, so National House-Building Council can deduct the total of any cash settlement Mr A has already been paid in relation to this claim
- if it hasn't done so already, pay Mr A £450 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 November 2019.

Paul Daniel
ombudsman