

complaint

Ms J and Ms A have complained about National House-Building Council's (NHBC) refusal to settle their claim for a damaged staircase. They also say that NHBC (including its solicitor) handled the claim badly causing distress and inconvenience.

background

Ms J and Ms A jointly own a property which is subject to a building warranty provided by NHBC. The warranty was put in place in 2003. In 2005 Ms A's husband made a complaint to the builder about the staircase. It was agreed that the staircase would be replaced but, after trying unsuccessfully for some time to achieve this, a cash settlement was agreed. A payment of £6,000 for replacement of the staircase and compensation was made. The letter confirming the settlement and the related cheque were written to Ms A's husband.

In 2013 Ms J and Ms A complained to NHBC that the staircase was unstable. NHBC began looking into this but then declined liability for the staircase on the basis of the previous payment by the builder. NHBC also said that, regardless of this payment, it was clear there had been problems with the staircase for a long time. It felt Ms J and Ms A had delayed bringing a claim to it and this had prejudiced its position. NHBC also said this breached the term of the warranty that required claims to be made "as soon as possible".

Ms J and Ms A felt the builder had erred by making the payment in 2005; they said they, as co-owners, had never benefited from the payment. They therefore felt it was unfair for NHBC to rely on this to defeat their claim to it. They said they had made the claim within the time limit set down by the policy. Ms J and Ms A were also upset about the conduct and allegations made by NHBC's solicitor. NHBC maintained that no further payment for the staircase was due. It said that it/its solicitor had done nothing wrong by investigating the things it had. Ms J and Ms A remained dissatisfied and complained to this service. I issued a provisional decision and I've reproduced my provisional findings below in italics.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't think NHBC has to make any payment to Ms J and Ms A.

the builder's actions

I can't consider whether the builder acted fairly and reasonably in making the payment he did. That payment was made under section two of the policy to the builder and section two claims against builders aren't considered by this service because they aren't related to an insurer's actions. However, if a builder, under a section two claim doesn't fulfil its obligations and an insurer, NHBC in this case, becomes involved then we will look at the insurer's involvement. But Ms J and Ms A's contact with NHBC here didn't arise due to a dispute over the section two claim. Rather they made a section three claim direct to NHBC for the stairs.

section three claim for the staircase

In 2013 Ms J and Ms A made a claim for the damaged staircase. NHBC appeared to accept that it was defective and damaged and that the policy would come into effect. However,

when it was making enquiries about carrying out the necessary repairs it found out about the previous payment by the builder. It said it then wouldn't make any further payment.

Given it's known that a payment for replacing the stairs has been made, I find it difficult to fairly say NHBC must make a further settlement under the policy. The policy gives cover for damage caused by defects; but a claim for the defective and damaged stairs has already been settled by the builder. Admittedly there is a dispute about how that settlement was made but that doesn't mean liability should automatically attach to NHBC for making a further payment. The payment by the builder can't just be ignored. The fact a payment was made in settlement of damage caused by a defect means NHBC can fairly, in my view, decline to make any further settlement in that respect.

claims handling

The 2013 claim seems, as far as I can see, to have progressed smoothly and without complaint until NHBC declined it. Generally, I don't think it delayed or acted in any way to cause Ms J and Ms A distress and inconvenience. Ms J and Ms A's specific concern in this respect relate to allegations and enquiries made by NHBC's solicitor. In the end NHBC doesn't seem to have relied upon these concerns when declining the claim but I accept that Ms J and Ms A would have been upset by them.

However, an insurer and its agents are entitled to investigate claims that have been made and sometimes this naturally generates issues that are unpleasant for a policyholder to hear. If such allegations were known by the agent or insurer to be entirely baseless before they were even made then I might take issue with that. But I don't see that was the case here.

responses to my provisional decision

NHBC said it had nothing further to add. Ms J and Ms A were unhappy with my findings; they felt they were too brief and didn't provide any comment on their allegation of things like breach of contract (because payment was made to Ms A's husband). They reiterated that they as policyholders had never benefitted from the policy in respect of the stairs and, if a payment had been made for the stairs, it had been paid negligently which NHBC was surely responsible for. Ms J and Ms A also said I hadn't considered the allegations made by NHBC's solicitor; that these were deliberately antagonistic and made without foundation. They said they were irrelevant to the claim and, as they were about Ms A, they certainly had no relevance to Ms J. They felt I had chosen to ignore these concerns.

my findings

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

If NHBC had made a payment to a non-policyholder without checking that this was the right person to make a payment to then I might well take a view that it had acted unfairly and unreasonably in this respect. But NHBC had no liability under the policy or responsibility to Ms J and Ms A until they made the claim to it under section three in 2013. I can't consider the right or wrong of anything the builder did and because NHBC hadn't become involved under the disputes part of section two of the policy – it isn't responsible for anything the builder did at that time. Ms J and Ms A remain free to pursue their concerns about the payment made by the builder against the builder.

I didn't ignore Ms J and Ms A's concerns about NHBC's solicitor's actions. I said insurers (and their agents) are entitled, in fact have a duty, to investigate claims and those investigations sometimes take a direction that a policyholder might dislike. Even if allegations made are eventually proven to be incorrect, I would not criticise an insurer for making them as long as they have some relevance and are not obviously baseless.

Here NHBC's solicitor seemed to have some concern about how Ms A had presented herself to it during the claim. All insurance policies are based on good faith and if an insurer thinks that a policyholder is not acting in that way it can look into that. Furthermore, even where a joint policy is in place an insurer can look into the actions of just one of the policyholders. What an insurer can then reasonably do, given it's a joint policy, will depend on the accusation, the claim at hand and the outcome of any investigation. Overall, while I do understand Ms J and Ms A's concerns over these enquiries, I don't agree with them that they were entirely irrelevant or unreasonable. Nor do I think they were done purely to antagonise and/or cause detriment to Ms J and Ms A's position/claim.

my final decision

I don't uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J and Ms A to accept or reject my decision before 30 October 2015.

Fiona Robinson
ombudsman