

complaint

Mr and Mrs P have complained about the way National House-Building Council (NHBC) has handled their claim under their new home building warranty after they found numerous defects both outside and inside their house.

background

I issued a provisional decision in this case in February 2020. That provisional decision is set out below and forms part of my final decision.

Both parties have confirmed they've received my provisional decision.

And both parties have replied. I've set out my responses in my findings below.

provisional decision

When Mr and Mrs P bought a new house in April 2016 it came with a ten year building warranty underwritten by NHBC. This warranty provided cover for defects found and reported in the first two years, and damage caused by defects in years three to ten. Initial responsibility for putting right any defects lay with the house builder. If Mr and Mrs P were dissatisfied with the builder's response to reported defects, they could make a claim to NHBC. Before providing cover, NHBC could ask the parties to make use of a resolution service to determine what action, if any, the builder was required to take. If the builder failed to comply with the recommendations in a resolution service report then NHBC would provide cover under the warranty.

Mr and Mrs P had some issues with the house right from the beginning. So they complained to the NHBC resolution service who inspected the property and compiled a report in March 2017. Some work was carried out and the report was updated as the work was deemed as completed in June 2017. But Mr and Mrs P weren't happy that the works had been completed, so a further report was carried out in March 2018. Following this report Mr and Mrs P again complained to NHBC. A final response was issued in July 2018, and a further email was issued in August stating that a cash settlement had been agreed for some work and a final deadline set. Its unknown what this cash amounted to or if this deadline was ever met.

Mr and Mrs P remain unhappy. They say that the NHBC has shown a clear bias towards the builder and this has caused them considerable distress with financial implications over a long period of time. They say that the NHBC have behaved in such a way that there needs to be a full investigation into how they've treated this case and in particular they've called into question the judgement and findings of the original NHBC Investigator.

An investigator in our service looked at this case and advised Mr and Mrs P that the case was outside of our remit. She said that the resolution service offered by NHBC isn't a regulated activity. And in order for us to look into a complaint, the activity that is being complained about would need to be classed as a regulated activity and fall under the Financial Conduct Authority (FCA's) remit.

Mr and Mrs P disagree. They say that after the original report in March 2017 the repairs were not completed to their satisfaction. They insisted on another investigation in March 2018, which has proven that the remedial work was sub-standard. And as the builder has

failed to complete the works by the deadline the complaint now comes within our jurisdiction. They've asked for an ombudsman's final decision.

provisional findings

jurisdiction

Not all complaints that are brought to this service are ones we can look at. When we receive a complaint we always check whether it's within our jurisdiction. We do this by considering the rules laid down in the Financial Conduct Authority Handbook. The rules say that we can only consider a complaint if it relates to an act or omission by a firm in carrying on regulated activities. This means that in order to look into a complaint, the activity that is being complained about would need to be classed as a regulated activity and fall under the Financial Conduct Authority (FCA's) remit. The rules go on to say that, for an insurer those activities are effecting or (more usually) carrying out contracts of insurance.

NHBC isn't an insurer in the conventional sense. Part of its remit is to provide insurance covering (amongst other things) damage caused by defects in year's three to ten after a property has been completed. It also carries out a number of other (non-insurance, nonregulated) activities including setting standards for UK house builders, ensuring that new homes are built to certain standards and, most relevant to this complaint, providing a dispute resolution service in the first two years of the warranty. The dispute resolution service is intended to help the builder and the homeowner resolve any differences they may have in that period. The primary responsibility for putting right defects during this time lies with the builder.

The dispute resolution service isn't a regulated activity in itself (in part because it doesn't amount to a contract of insurance). So complaints about this aren't in our jurisdiction. This includes complaints about the insurer's decision to not offer the service, what faults are and are not identified, what repairs are deemed necessary and the projected completion date.

As a service we can only get involved with claims in years 0-2 when the following has happened:

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

In this case a resolution report has been completed and the report has directed the builder to do something by a deadline. The dispute arises about whether the builder has failed to complete the works by the deadline.

Mr and Mrs P say the tiling throughout the property failed to meet NHBC standards and that it was never in the builder's interest to agree to carry out the repairs. They say that they pushed hard to get NHBC to carry out a second report and that this report was damning and condemned the tiling. Mr and Mrs P say that this service's interpretation of the NHBC's responsibilities isn't correct, and we should be able to look at this case.

I've reviewed all the evidence and I agree with Mr and Mrs P. The report from March 2017 listed 27 items to be reviewed with further rectification work to be completed on 15 of the 27

items by 14 April 2017. Included on this list was wall and floor tiling in both the main and ensuite bathroom. A follow up report in June 2017 only listed one item, "wall tiling in the ensuite bathroom" with no further action required.

However, the report dated June 2018 lists 11 items for rectification, and again the tiling in both the main bathroom and the ensuite bathroom is listed. Its noted that the finish was poor and that concerns had been raised about "lipping" between tiles.

It looks to me like the deadline that was set in the first report was never adhered to. Although the June 2017 report said the work was deemed as completed, the June 2018 report shows this wasn't the case. It showed further action to the tiles was required and as I've set out above, if the builder fails to complete the works then NHBC would provide cover under the warranty.

At this point the insurance element of the warranty should've kicked in. And at this point NHBC should've assumed the builder's responsibilities. So it follows that our service can consider the issue complained about as it's become a regulated activity.

merits

In normal circumstances we would likely recommend that NHBC now assumes the builders responsibilities immediately. And if Mr and Mrs P have any issues with the claim or with the service provided our service can then deal with the complaint that follows. But in this case that can't happen. A second report has been completed, and even now it's not clear what work was finalised by the second deadline agreed. We've asked NHBC to confirm this on several occasions without response. All we know at this stage is that some sort of a cash settlement was made for the tiling issues, but we haven't received any confirmation if the deadline set in August 2018 was ever adhered to. We also know that Mr and Mrs P sold the house, and they say it was sold at a loss due to the issues that they've complained about.

It's very difficult in these circumstances to say that the quality of rectification work had any bearing on the price that Mr and Mrs P received for their property. I'm also conscious that Mr and Mrs P talk about the outside tiles/paving as being something that the new buyer picked up on as influencing his offer for the house. But that this wasn't something that was mentioned in the second NHBC report from March 2018. So I can't consider this when I'm making my recommendations.

I'm also mindful that the core of Mr and Mrs P's complaint surrounds the actions of the investigator from the NHBC. So, I feel I need to stress again that the dispute resolution service provided by NHBC isn't a regulated activity in itself (in part because it doesn't amount to a contract of insurance). So, complaints about this aren't in our jurisdiction. This includes complaints about the insurer's decision to not offer the service, what faults are and are not identified, what repairs are deemed necessary, the actions of the investigator and the projected completion date

But I do think NHBC made an error and should've stepped in with its insurance cover much sooner, probably after the follow-on report in June 2017 but most definitely once the second report was completed in March 2018. And I believe that there has been a certain amount of distress and inconvenience suffered by Mr and Mrs P because NHBC didn't act correctly. So, I'm recommending that NHBC pay Mr and Mrs P £350 in compensation for the distress and inconvenience caused by not stepping in and activating cover when it should have.

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've considered very carefully the points made by both parties in response to my provisional decision. But I'm not persuaded though that I should change my mind.

I will deal with the NHBC response first. But before I continue, I want to clarify a date. In my provisional decision I referred to a resolution report dated June 2018. This was an error and the report is actually dated March 2018.

what NHBC say

NHBC say Mr and Mrs P have logged five complaints. But only one complaint can be looked at by the Financial Ombudsman Service, as the rest are time barred under the six-month rule.

NHBC say the content of the decision is incorrect. They say they wouldn't have stepped in as early as June 2017 as this report dealt with the wall tiles in the en-suite only, which were then found to comply.

NHBC say that the consumers have specifically mentioned the en-suite tiling on their complaint form and also tiling in general. But that it's not clear what tiling Mr and Mrs P are unhappy with.

NHBC say the floor tiling in the en-suite and main bathroom wasn't initially complained about. And that it was only at a later inspection that Mr P mentioned that he wasn't happy with the repairs to the wall tiles in the en-suite bathroom. NHBC say this issue was later found to meet NHBC's requirements. They also say that the floor tiling in the en-suite and main bathroom, was a new issue that was dealt with in the March 2018 report and was resolved following a cash settlement from the Builder.

NHBC say the provisional decision is mixing two separate issues together and that a valid resolution report may have been issued for both the wall tiles in the en-suite and main bathroom but the works were completed within the extension time provided. NHBC have questioned whether the Financial Ombudsman has jurisdiction to even look at this and they don't agree that compensation is warranted as all issues were resolved.

did Mr P bring his complaint to this service in time?

Yes. We've received two final responses on this case. The first one is dated 19 December 2017 and the second is dated 11 July 2018. Mr P first contacted the Financial Ombudsman Service on 9 January 2018 and a new complaint was set up. He did contact us again on 16 July 2018, and another complaint was set up. But this was deemed to be a duplicate of the first complaint, so the original reference from 9 January 2018 was deemed correct. This means he's deemed to have brought this complaint to us within six months of the date the first final response letter was sent. So, under the rules it's deemed a valid complaint.

jurisdiction

NHBC say that I'm mixing two separate issues together and that a resolution report on the issues raised in March 2018 would've become available if the issues hadn't been resolved, but they feel they have.

But I don't think that's the main point in this complaint. The NHBC insurance policy is supposed to kick in once a report is completed and the deadline has been exceeded. In effect the insurance kicks in once the resolution service had failed. And I think in this instance it was clear that the resolution service was failing long before the March 2018 report, and the policy should've kicked in before this date.

And even though NHBC say the issues raised in June 2017 are different to those raised in March 2018, I don't agree. From what I can see the June 2017 report didn't deal with all the issues to everyone's satisfaction. And this cascaded over the coming months. So even though the updated report from June 2017 showed only one fault, and this was deemed to have been rectified, this was clearly not the case and there were further meetings and updates to that report. From what I can see there was a further updated inspection on 28 September 2017, a further report in October 2017, another meeting in December 2017, with a further report on 26 January 2017 and a final meeting on 11 January with a report on 19 January 2018. And this was all before the meeting in March 2018.

I know NHBC disagree on whether our service has jurisdiction over this issue. And they've pinpointed specific issues that they say were only raised at differing points in time. But even though NHBC has pinpointed specific dates where specific rooms and areas have been highlighted, I think it's pretty clear from the letter of complaint dated 6 November 2017, that there were question marks over the tiling throughout the whole property. And this is supported in the notes and recommendations from all of the above additional meetings.

And the common thread amongst all of these meetings was the quality of the tiling throughout the whole house. In his letter dated 6 November 2017 Mr P specifically points out and provides evidence of his dissatisfaction with the following: en-suite wall tiles, downstairs floor tiles, bathroom floor tiles, bathroom wall tiles, sloping tiles in bathroom, en-suite tiling above the door, floor tiling in downstairs W.C, floor tiling in hall and kitchen, downstairs floor tiling, hall, W.C. and kitchen. So, I don't think it's fair for NHBC to say that Mr and Mrs P weren't clear on what tiling they were unhappy with given the detail set out in this specific letter and the 100's of photos and video files that were submitted as evidence.

Further to this these issues aren't dealt with in the final response letter from December 2017. And I think Mr P's issues are justified, given that the March 2018 resolution report recommends action on the bathroom floor tiles, floor tiling in conservatory, wc, utility, kitchen/diner, cloakroom, the sloped wall from en-suite to bedroom and tiles in the en-suite.

So, I do think NHBC made an error. It's clear there was unresolved issues even after deadlines were set and NHBC should've stepped in with its insurance cover much sooner. And I believe that there has been a certain amount of distress and inconvenience suffered by Mr and Mrs P because NHBC didn't act correctly.

what Mr and Mrs P say

Mr and Mrs P have also responded. I've considered their submission, and I need to make clear that I will only be dealing with new information I've received since the provisional decision, in this final decision.

What's now become clear is the total cash settlements received by Mr and Mrs P following the March 2018 resolution report. These settlements total £5,285. Mr P feels that more compensation is due as he says that he reluctantly accepted the payments and that the builder got a good deal.

I appreciate having read through all of the correspondence we've received in relation to this file, that this has not been an easy journey for anyone. It's been fractious and at times I think it's been stressful on both parties. But I'm conscious of our rules and what I'm allowed to consider. The dispute resolution service provided by NHBC isn't a regulated activity in itself (in part because it doesn't amount to a contract of insurance). So, complaints about this aren't in our jurisdiction. So, any distress that Mr and Mrs P felt during this time is not something I can consider. I'm also satisfied that the amount of cash settlement received by Mr and Mrs P covers any losses sustained when they sold the house.

However, as I've set out in my provisional decision, I think that the resolution service that was being provided failed, and the NHBC insurance policy should've kicked in sooner. I previously recommended that NHBC pay Mr and Mrs P £350 in compensation for this error and following the responses from both parties I still consider this to be a fair and reasonable outcome.

So, I'm recommending that NHBC pay Mr and Mrs P £350 in compensation for the distress and inconvenience caused by not stepping in and activating cover when it should have.

my final decision

My final decision is to uphold this complaint

I require National House-Building Council to:

- pay £350 in compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 1 May 2020

Derek Dunne
ombudsman