

complaint

Ms S has complained about National House-Building Council's (NHBC's) handling of a claim she made under her NHBC Buildmark warranty for defects with her drainage system and septic tank.

background

Ms S discovered issues with the drainage system for her new build property during landscaping of her garden. Incorrect pipework had been used for the drainage field and it had been laid too close to both the boundary and the property. There were also concerns about the septic tank. Ms S initially reported these issues to the builder but when they refused to cooperate, she contacted NHBC in August 2017.

NHBC considered the issues under section 2 of the Buildmark cover – the builder's liability period. It issued a resolution report requiring the builder to put right the issues with the drainage field, but not the septic tank. It later accepted further investigation of the septic tank was needed. But following this, it maintained that remedial work was only required to the drainage field.

The remedial works were completed in March 2019. Ms S is unhappy with the length of time her claim took to resolve. She says NHBC allowed the builder to miss several deadlines and that it should have taken over settlement of her claim, in line with the terms of the policy, once the first deadline had been missed. She's also unhappy that NHBC didn't take steps to ensure that the builder carried out adequate tests during the timescales set out in the resolution report. She says the works should have been able to be resolved within two weeks but ended up taking around 19 months.

NHBC has explained that because the builder was engaging with the resolution process and not refusing to complete works, that it didn't consider taking over the claim. NHBC accepts that Ms S' claim has taken too long to resolve and that she has suffered distress and inconvenience as a result. It has paid/offered her £750 over two complaints, to compensate her for this. The first £250 is for the first complaint which covers April 2017 to July 2018, and £500 is for the second which covers July 2018 to completion of the remedial works.

One of our investigators looked into Ms S' complaint. She explained that our service doesn't have the power to consider all of the issues brought by Ms S. This was because NHBC had issued its initial final response letter (FRL) in July 2018 (received by Ms S in September 2018) and Ms S hadn't brought her complaint to our service within six months of that FRL. But she said we did have the power to consider everything that happened between 27 July 2018 and completion of the works.

Ms S didn't agree with our investigator, so the matter was considered by an ombudsman. The ombudsman decided that our service didn't have the power to consider events before 29 June 2018 because the resolution service didn't amount to a regulated activity until that date. She also decided that we didn't have the power to consider events between 29 June 2018 and 27 July 2018 because Ms S didn't refer her complaint to us within six months of NHBC's FRL. She confirmed our service can consider events that occurred between 27 July 2018 and completion of the works, as these were addressed in NHBC's second FRL in May 2019.

Our investigator considered the elements of Ms S' complaint that fall within our jurisdiction. She pointed out that during the timeframe she could consider, the builder missed a deadline to complete the works in August 2018. Following this NHBC failed to set a new deadline until February 2019 – which was also missed before the works were eventually completed in March 2019.

Our investigator didn't think NHBC had acted unfairly by not taking over the claim, because the builder was cooperating with NHBC. But she felt NHBC ought to have managed the claim better such as by setting a new resolution date once the August 2018 date had been missed by the builder. She considered the impact the delays from 27 July 2018 onward had on Ms S but felt that the £500 NHBC had already offered for this period was fair and reasonable in the circumstances.

Ms S didn't accept our investigator's opinion. So, because no agreement has been able to be reached, the complaint has been passed to me to decide.

my findings

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

While Ms S has highlighted several concerns, my decision focuses only on the issues I consider to be material to the outcome of her complaint. But I have carefully considered the full timeline of events when reaching my decision.

Our service's powers in relation to this complaint have already been decided by an ombudsman here. This means I'll only be considering events that took place, and the impact they had, between 27 July 2018 and completion of the remedial works. I won't be considering anything that took place before 27 July 2018 or the cumulative impact of anything which may or may not have gone wrong before that date.

Section 2 of the Buildmark warranty is the relevant section in this complaint. Under section 2, responsibility for putting right any defects rests with the builder.

Under section 2 of the warranty booklet it states:

“What the builder must do

If you tell the builder during the builder warranty period that they have failed to meet the NHBC requirements, they must put this right within a reasonable time. This includes:

- repairing physical damage to your home resulting from their failure;*
- taking action to treat, isolate or remove contamination from the land in line with any statutory notice that applies, or improve the condition of the land to prevent a statutory notice from being issued; and*
- paying for the reasonable cost of removing and storing your possessions and alternative accommodation, if necessary, while work is being done.*

.....

Our resolution service

If you agree to us providing our resolution service, we will contact the builder about the problems you reported to us.

If the builder still does not deal with the matter to your satisfaction, we will investigate and then decide what the builder must do to meet their responsibilities. We will then tell you and the builder what we decide in a written resolution report.

Our guarantee

You are protected by the NHBC guarantee for what we (in a resolution report) or a court (in a judgment or, in Scotland, a decree) decides the builder should have done to meet their responsibilities under the builder warranty.

If the builder does not meet these responsibilities, we will do so on their behalf. Or, if we choose to, we will pay you what it would cost us to have the work done.”

It isn't in dispute that the works to Ms S' drainage field amounted to a defect under the terms of the warranty. And the works have now been satisfactorily completed by the builder. What remains for me to decide is whether the compensation offered by NHBC is fair, in light of the issues it caused and the impact they had on Ms S.

Ms S has argued that the builder failed to complete the works within a “reasonable time” as set out in the warranty. She's unhappy that NHBC failed to take over settlement of the claim despite her making numerous requests for it to do so. She says it took months to arrange a satisfactory percolation test and that NHBC failed to do anything about it. She says the work should only ever have taken two weeks to complete, so issues caused by the builder and NHBC have resulted in the claim taking far longer than it should have done to resolve.

NHBC says the builder was engaging with the resolution process and not disputing that it would carry out the works. Because of this, it says it didn't consider taking over settlement of the claim, even though deadlines it set were missed.

NHBC doesn't dispute that the builder failed to keep to several deadlines it set in its resolution reports. It also doesn't dispute that it failed to set a new resolution date, once the builder failed to meet the resolution date set for August 2018, until February 2019. Because of these issues, Ms S was left without the use of her garden for a significant amount of time. She also had to suffer with foul smells coming from the drainage system and the embarrassment this caused her with her neighbours. I can also see Ms S spent a lot of time and effort corresponding with NHBC about her claim and complaint.

I've carefully considered the arguments put forward by both sides. While I do sympathise with Ms S' frustration with the builder missing deadlines, the percolation tests and the overall time taken, I don't think it was unreasonable for NHBC not to take over the claim. I say this because the builder was engaging with NHBC and remained willing to carry out the works. Under section 2, responsibility for putting right any defects remains with the builder, and the decision to take over settlement of the claim remains at NHBC's discretion. I do fully appreciate there were several delays and issues caused by the both NHBC and the builder, but I don't think this means NHBC was required to take over the claim.

That said, I do think NHBC has caused Ms S unnecessary distress and inconvenience in its handling of her claim since July 2018. In particular, its failure to set a new resolution date promptly once the August 2018 date expired. I've thought carefully about the delays this caused, and the impact all the issues caused by NHBC, since July 2018, have had on Ms S. I've also thought carefully about the fact that the Buildmark policy specifically excludes:

“Not being able to use or enjoy your home or the land, financial loss (such as loss of rent or other income), inconvenience and distress.”

Despite the above exclusion, NHBC has recognised that it, and its agents, have caused Ms S unnecessary distress and has offered £500 compensation. Had it not done so, I would have awarded compensation, taking into account the specific circumstances of the complaint. But having considered everything that went wrong between July 2018 and completion of works, I think the £500 offered by NHBC is enough to fairly compensate Ms S for the impact these issues had on her. Had NHBC not offered any compensation, I would have awarded a similar amount.

my final decision

For the reasons I've explained, I uphold Ms S' complaint.

National House-Building Council has already made an offer to pay £500 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that National House-Building Council should pay Ms S £500 compensation – if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 10 September 2020.

Adam Golding
ombudsman