

complaint

Miss C is unhappy with National House-Building Council's (NHBC) handling and settlement of a claim made under her building warranty.

background

Miss C purchased a property, and it came with an NHBC building warranty with around five years of the ten-year policy remaining. During works to the property, damp was discovered and this was reported to NHBC. When NHBC visited to inspect the damp issue, the kitchen had been removed and tanking had been installed. The flooring had also been lifted.

NHBC asked one of its specialists to look into the damp issues further, and the claim was accepted as valid under Section Three of the policy. NHBC subsequently offered a cash settlement for repairs to resolve the damp problem, and to fill the cracks in the floor.

Miss C was unhappy with being offered a cash settlement due to her circumstances, as she wasn't in a position to arrange for the works to be carried out. She was also unhappy that the settlement offered didn't include the cost of the tanking she'd already had installed, a replacement kitchen or flooring. She also thought NHBC should pay for alternative accommodation. So, Miss C complained to NHBC.

NHBC upheld the complaint in part. They accepted that they shouldn't have offered a cash settlement, and arranged for their own contractors to carry out repairs. They also offered £750 compensation. But NHBC didn't accept they were responsible for the kitchen, tanking, flooring or alternative accommodation.

As Miss C was unhappy with NHBC's response, she approached this service. Our investigator looked into everything but didn't recommend NHBC do anything further. She agreed NHBC shouldn't have offered a cash settlement, but thought arranging for their own contractors to complete repairs and offering £750 compensation was reasonable in the circumstances. She also didn't think NHBC was responsible for covering the other costs, or alternative accommodation.

Miss C disagreed with our investigator and asked for a final decision from an ombudsman.

my 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'm not going to ask NHBC to do anything further. I'll explain why.

I'd also like to mention that whilst I haven't commented on every event which occurred, I'd like to reassure both Miss C and NHBC that I've considered all the information provided by both parties when reaching my decision.

claim settlement

Miss C is unhappy with the claim settlement offered by NHBC. Whilst NHBC included repair works to resolve the damp problem and cracks in the flooring, Miss C says NHBC should also pay for a replacement kitchen, flooring and tanking that she had installed.

But the tanking was installed, the kitchen removed, and the flooring lifted before NHBC attended and inspected. And whilst Miss C says she sent photos to NHBC and needed to do this, I do note it was only two days after being first reported that NHBC's representative attended. And by this time, this had already been carried out. So NHBC didn't have an opportunity to see the kitchen or flooring or that it was damaged by the damp.

Having looked at the schedule of works to resolve the damp problem, this was mainly external works, which included removing the patio doors to get access. These wouldn't have necessitated the removal of the kitchen, tanking being installed or replacing the flooring. And there hasn't been any evidence provided to show the kitchen and flooring were damaged as a result of the damp issue. Or that tanking was required in addition to the external works to resolve the damp issue – which was caused by an issue with the damp proof course and cavity tray.

Based on the evidence provided, it hasn't been shown the kitchen or flooring were damaged as a result of the damp, or that tanking was needed to resolve the damp problem. So, I'm unable to conclude NHBC should cover the cost of replacing the kitchen, flooring or paying for tanking to be installed.

alternative accommodation

Miss C says NHBC should pay for alternative accommodation as the property was uninhabitable. And the policy does cover this if it is necessary for anyone normally living in the home to move out, so that work covered by the policy can be completed.

But the property didn't have a kitchen or flooring because Miss C's contractors removed this, and other extensive works were already being carried out, which included removing a wall between the kitchen and dining room.

The works needed to resolve the damp issue were external, so wouldn't have made the property uninhabitable themselves. So I'm unable to say the property was uninhabitable solely because of the damp issue, or due to the repairs that needed to be carried out to resolve it. So I can't say that NHBC is responsible for covering alternative accommodation for the damp repairs to take place.

I also note that Miss C feels the works to the flooring would have made the property uninhabitable as there were cracks that needed filling in different rooms and areas. NHBC has explained how the repairs would be carried out if the property wasn't already unoccupied. Isolated repairs in each room would have been completed, requiring ventilating, rather than moving out of the property. Due to the way the resin was inserted into the floor, sealed in each area, the leakage into the atmosphere would have been limited.

Whilst I appreciate Miss C disagrees with this due to her circumstances with children, Miss C already wasn't living at the property at that time, because of the rest of the works already being carried out, which included works unrelated to the damp repairs.

So, based on the evidence provided, I'm unable to conclude the property was uninhabitable solely because of the damp issue or cracks in the floor, or the works needed to resolve this. So I can't ask NHBC to pay for alternative accommodation.

compensation

It's not in dispute that NHBC should have taken into account Miss C's circumstances and shouldn't have offered a cash settlement or expected Miss C to arrange for the repairs herself. It also seems NHBC offered the cash settlement on the basis Miss C had contractors in the property, which wasn't correct at that time as they were going to return and carry on, after NHBC had completed the works under the claim.

But, NHBC has offered £750 to Miss C for this. And this was to take into account that this caused delays in NHBC's repairs being completed overall. If they hadn't offered a cash settlement and had appointed a contractor in the first instance, then NHBC's repairs would have been completed much sooner.

I note Miss C's view that if it weren't for the defect being present in the first place then she would have been able to move into the property sooner, as works would never have been required at all. But NHBC didn't build the house, and I'm not able to consider the construction of the property by the builder, or sign off as complete, as that isn't a regulated activity, so doesn't fall within my remit.

So I can't say that NHBC should compensate Miss C for there being a defect due to the way the builder constructed the property, which necessitated repairs in the first place.

Rather I can only consider how NHBC has acted when dealing with the claim made under the policy, and here, whether its handling of this specifically caused delays, rather than the defect itself being present. And I think the level of compensation NHBC has offered for this is reasonable in the circumstances, so I'm not going to ask NHBC to increase this amount.

my final decision

It is my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 5 June 2020.

Callum Milne
Ombudsman