

complaint

Mr B has complained about the provider of the building warranty for his home, National House-Building Council (NHBC), in relation to claims he made regarding defects to his home.

background

Mr B bought a property in 2012 and within two years contacted the builder and then NHBC regarding issues he'd found. NHBC began mediating between Mr B and the developer and issued resolution reports setting out what defects it accepted were present and needed rectifying. NHBC later took over completion of the work it had said the developer needed to complete.

Mr B was ultimately unhappy with how NHBC was handling things and complained. It issued its final response on that complaint on 9 January 2017. Mr B complained to this service on 5 July 2017 and in August he followed this up with a letter setting out his concerns in detail.

Our investigator considered everything and said NHBC should ensure the outstanding work, as set out by Mr B, was completed by February 2018. It wasn't. Mr B asked us to look at matters further and NHBC issued further final responses. The last one of these was dated 19 February 2019 and NHBC advised us that, around that same time further, final work was being completed at the property.

The complaint was passed to me for a decision to be made. As Mr B remained unhappy and as further final responses had been issued by NHBC, it made sense to me to look at everything together under this one complaint. I did so and made some provisional findings. I felt that NHBC had failed Mr B in some aspects and that, as a result, it should pay him a total of £1,250 compensation. I also said it should insulate a soil pipe which traverses from the bathroom under the bedroom floor. The parties have responded to my findings and I'm now ready to issue my final decision.

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 copied my provisional decision below in italics, it now forms part of this final decision. I've inserted, where appropriate, in normal font, the parties' responses and my replies.

my provisional findings

"period of consideration

We can't always look at every aspect of every complaint that comes before us. Not every activity NHBC carries out is regulated. Anything it does in respect of mediation isn't regulated, that includes completing its resolution reports. This means I can't consider any issue related to items that NHBC considered within the resolution report but in respect of which no recommendation for remedial work was recommended.

NHBC's role as mediator is seen to end when a deadline for remedial work to be completed by the developer has passed without it being completed. Once the deadline passes without

recommended work being completed NHBC is seen to be carrying out regulated activity. In this case two reports were issued, covering different work with respective deadlines given of 12 September 2014 and 29 August 2014. Which means activity, related to that recommended work, from those dates forward, can be considered by me.

NHBC has said that anything prior to January 2017 can't be considered because Mr B didn't complain within six months of the date of that letter which considered how it had handled things to that point. However, as set out in my background above, Mr B did complain within six months of NHBC's January 2017 letter and so I can consider everything from the deadline dates for completion of work onwards.

following the deadlines passing

I'm satisfied that, initially, NHBC was given to believe that the developer still wanted to resolve the problems at Mr B's home and NHBC gave it leave to do so. I think that was reasonable. But by February 2015 it was clear to NHBC this wasn't going to progress and it decided to take over the claim.

NHBC then visited Mr B's home to draw up a schedule of work and this was issued at the end of July 2015. Whilst I know there were a lot of issues to consider I can't see any good reason why this took so long – conservatively I'd say there was at least two months of delay during this time.

NHBC's appointed contractor went to Mr B's home at the beginning of August but it was identified that the scope didn't include a lot of the work that NHBC had recommended the developer complete. NHBC said the work that had been scoped for could start and it would make additions for the 'missing' items. But I accept that the fact of it having been missed was frustrating for Mr B. At the end of September, having issued the additions to the scope, NHBC asked its contractor for an update. None was received.

In January 2016 NHBC asked again for an update. No work had started – seemingly much was weather dependent. Regarding that which wasn't the contractor confirmed materials had been agreed and were on order. And Mr B had also requested the involvement of a particular member of staff whose calendar was busy and there were some holidays to account for too. A start date for the work was set for 23 May 2016.

Work began but into June further authorisation from NHBC was sought for additional external work. NHCB agreed this. The contractor also requested a further meeting as Mr B had asked for things to be added or included within the scope for internal works. I appreciate that Mr B was becoming frustrated by this time but arranging variations to scopes and meetings to discuss works were necessary at this point and these will naturally cause some delay. Ideally this would have been avoided by them not being missed from the scope in the first place – but this was a large complex claim and I'm satisfied that NHBC did act appropriately once it was aware of the error to put things right. And I'm satisfied that because of the way NHBC handled matters, the error didn't cause any delays.

The revised schedule following some agreed variations/additions was issued on 23 August 2016. Into September, a further variation request was made. And in October 2016 NHBC agreed to send the latest revised scope to Mr B for him to check everything was included and where he felt something was missing NHBC would review that against the originally recommended work. Whilst I can understand why NHBC would want Mr B's views in this respect – I think it probably shouldn't have left him to carry out this complicated task.

Really, given it had already missed some things off, it should have carried out a comprehensive review itself first. Work regarding the agreed scope was still in progress at this time though and Mr B was concerned about the dust being created.

In November 2016 there was a further meeting at the property to try and resolve Mr B's concerns regarding what work was to be done. During the meeting an option of a cash settlement was put forward and NHBC's contractor began work to calculate what value that would be. But by mid-December the contractor reported that things were back on track for it to complete the remaining work. In January 2017 NHBC asked the contractor for an update and issued a final response letter, regarding the delays to date, and in which it offered Mr B £500 compensation."

Mr B has said any time spent looking at the cash settlement was wasted, as he told NHBC during the meeting he wasn't interested in this option.

I can see Mr B took minutes of the November meeting and these record that he and Mrs B were unhappy with the idea of a cash settlement. However, settling in cash is a tool often considered by insurers and I can see that following the meeting Mrs B wrote to NHBC setting out an option for settling in cash. NHBC considered this but said that it wasn't agreeable to that, and the claim moved on. I also see that during this time a plumber did attend the property. So I'm not persuaded the time was entirely wasted but I do think that things could probably have moved on a little quicker.

"Following this Mr B sought further clarification from NHBC regarding the fire safety rating of some doors at the property. It was also stated that compensation wasn't the issue, what was required was for NHBC to confirm how their property would be made to comply with NHBC's standards. A further meeting took place at the end of January 2017 and further clarification was sought from NHBC on various points. Answers were provided by mid-February 2017.

Works continued and, during March 2017 Mr B requested they be suspended for a short period. They recommenced towards the end of the month. In April the contractor sought further consent from NHBC for further work. No clear reason for this late variation was given but the work seems to have been agreed."

Mr B said that he doesn't recall asking for the works to halt in March 2017.

Reviewing the file I can see that when NHBC asked the builder for an update in March, the builder reported that Mr B had asked for work to go on hold for a few weeks whilst a family member visited. This may jog Mr B's memory. But, even if Mr B didn't ask for a hold, as the builder reported, that wouldn't affect the outcome. I say that because even provisionally I explained that I wasn't minded to find that any delay caused or requested by Mr B had negated the failings I'd found NHBC had made during this claim. I'm still of that view.

"The management company for the development pointed out that some of the communal driveway bricks had been taken up. NHBC confirmed these would be reinstated.

Towards the end of May 2017 Mr B asked for a copy of the most recent schedule of work and for clarification regarding investigations undertaken to determine what insulation was in the floor void. He didn't receive this for a few weeks."

Mr B concurred that there was a delay in NHBC responding on these issues.

“In July 2017 NHBC finally accepted that it hadn’t, to that point, satisfactorily discharged its liability in respect of the fire rating of doors at the property. In a 2014 resolution report it had recommended that the fire rating be established. It had made some enquiries during the interim but hadn’t actually determined if the doors were likely compliant. NHBC wrote to Mr B noting its failure and confirming that further enquiries would now be made. Despite the length of time this had gone unresolved and the various enquiries Mr B had made in this respect, NHBC didn’t apologise for its intransigence (to that point) and failure in this respect. Nor was any compensation offered.

By the end of July NHBC told Mr B by letter that it had made enquiries with the local authority, which had signed the property off as compliant with building regulations. NHBC said as no issues were noted with the doors and a completion certificate for the property was issued, it deemed they were likely compliant. In this letter NHBC also apologised for items from the resolution report having been missed from the schedules of work. It sent the latest schedule of works to Mr B.

In August Mr B told NHBC that there was still an item missing from the latest schedule. He was also unhappy about the length of time it had taken for various answers, at various times to be provided. In November 2017 Mr B told us what work was outstanding at his home. NHBC advised it hoped to have this completed by the end of February 2018.”

Mr B said he didn’t object at this time as he understood that NHBC was happy to comply.

From what I’ve seen I think NHBC did intend to complete work as suggested. However, that intention didn’t come to fruition and the problems Mr B had been experiencing with getting the claim resolved continued. That is part of the reason why I was able to review the situation and offer a decision based on everything that had gone on up to the point of NHBC’s final response issued in February 2019.

“On 11 April 2018 NHBC said the work was completed but Mr B disputed this. He wrote to NHBC on 19 April but it was July before an NHBC assessor came to consider the state of the work in order to determine if, in its view, anything further needed to be done. NHBC accepted there was still work outstanding and said it would make a cash settlement offer to resolve the claim. This was received in September 2018 and rejected by Mr B. In December 2018 NHBC said it would complete the work and by late-January 2019 it had agreed to appoint new contractors.”

Mr B said NHBC’s offer of cash, and its emails around this time made him feel as though he had no choice but to accept that form of settlement for his claim.

I appreciate that NHBC trying to resolve the matter in this way, at that time, was frustrating for Mr B. But I note that NHBC did continue with the remedial work.

“Around this time NHBC wrote to Mr B. It accepted its communication in some respects had been poor. It offered £250 compensation. It then wrote a further letter to Mr B addressing some specific questions he’d raised. It noted the final phase of work was due to start soon.

length of claim and claim handling

As at the point of NHBC’s last contact with Mr B (referred to in my paragraph above), final work was still to be completed, I won’t include anything regarding that final phase of work here.

But I do think it's relevant and appropriate for me to comment on the complaint to that stage. And, whilst I think this was a difficult claim, it isn't, in my view, that unusual in terms of the nature of claims that NHBC usually sees. Quite often they involve multiple numbers of defects that have been recommended for repair. I can accept that some initial points might be missed from the schedule but time and again during this claim points were found to have been missed and had to be added.

I also appreciate that some work was weather dependent and that Mr B wanted certain people to be involved and/or occasionally asked for work to halt for a time. But I'm not convinced any of that really accounts for all of the delays I've seen during my assessment of this complaint.

I've also seen at times that NHBC has completely failed to respond to Mr B's reasonably raised concerns. Eventually responses have been given but there have been delays – ranging from a few weeks to several months. So I can fully understand why Mr B's patience has worn thin.

I accept that at every point the contractor asked for variations NHBC acted on those requests and often – whether it communicated with Mr B about it or not – agreed to the requested changes without much delay. But as time went on I could see the contractor becoming more frustrated with the situation he was being left in whilst trying to complete the work he'd been employed to do. I don't doubt this affected the relationship with Mr B.

I can also see he was getting pressure from the neighbours and the management company for the complex to have this work completed, I know the contractors were keeping things tidy but on-going work still impacts the surrounding community and I accept Mr B was caused distress as a result.

I also think Mr B's frustration increased as time went on and work remained outstanding, particularly into 2018 when issues with what were meant to have been the 'final' works were found.

I further note that into 2019 NHBC accepted it hadn't fulfilled one of the recommendations within the 2014 resolution report regarding the utility room tap. I understand NHBC are reviewing this but I accept this long outstanding point caused additional frustration for Mr B.

During the course of the complaint I can see that NHBC has offered Mr B a total of £750 compensation. Looking at everything I'm not persuaded that is fair and reasonable. I think a total of £1,250 is fairly and reasonably due."

NHBC said that, in addition to the compensation offers I'd detailed, it had offered £250 in January 2018. Making the total it had offered £1,000, not £750. It didn't say whether any of these offers had been paid. Mr B confirmed he'd had the offer of £250 in January 2018. He didn't say whether he'd received any payment. He asked whether my figure was in addition to the £800 mentioned by our investigator when agreement had been reached to complete work by February 2018.

My decision overrides the view issued by the investigator. I said provisionally that I felt a total of £1,250 was fair and reasonable. Having reconsidered the matter, and taken into account Mr B's responses to my provisional findings, I remain of that view. If NHBC has paid any amount of compensation to Mr B already (I accept that a total of £1,000 has been offered) then it will now only have to pay any sum remaining from that total figure I've awarded.

"items Mr B wants action on and which NHBC has refused

Fire rating – The resolution report said the developer had to confirm that the doors had the required fire rating. This was what NHBC took over liability for when it took control of the claim. NHBC made enquiries with building control. And Mr B provided a check NHBC had carried out at the time the warranty was issued. Having seen both I'm satisfied that NHBC has satisfied the recommendation in the resolution report; it's reasonable in my view for NHBC to have concluded based on the evidence it holds that the doors have the correct rating.

Insulation under bedroom floor – NHBC said whilst it is now clear that insulation in this area is too thin, it won't rectify it because the initial complaint as per its resolution report only related to noise from the pipe in the bathroom. Mr B said the same pipe runs under the bedroom but NHBC wouldn't agree to change the bedroom insulation. The resolution report actually says:

"The branch pipe serving the ground floor bathroom is very noisy within the adjacent bedroom when flushed".

It was recommended that the developer carried out work to insulate the pipe. So I don't think NHBC can fairly dismiss Mr B's concerns about the lack of insulation as the pipe continues into the bedroom. I think it needs to rectify this.

Rusty bolts – These are in the vicinity of the ridge beam. NHBC said it would replace the bolts that it may have installed during a previous repair under the policy to the ridge beam. But not any other bolts; they hadn't been raised as defective within the defects period and weren't causing damage as would be required outside of that time. I haven't seen reference to the bolts in the early years of the claim and NHBC is correct in stating that after the defects period the warranty only responds when defects cause physical damage.

Rusting window furniture – NHBC said this wasn't identified as an issue in the defect period. I've seen nothing that makes me think it was wrong in this respect. And I note there is no suggestion damage is being caused, such that might allow a claim outside of the defects period to succeed."

These points, excluding the fire rating but in addition to two others, were the subject of NHBC's February 2019 final response. In response to my provisional findings, Mr B shared with me his response to that letter. Whilst I understand from that he still had concerns, my comments above set out my views on these points, and Mr B's response doesn't change them. Mr B, in responding to my provisional findings, said he understood that I didn't address one of the issues because it related to a problem which wasn't found to be a defect within the original recommendation report. Regarding the other issue I didn't specifically address – NHBC accepted Mr B might have a valid concern in that respect (about insulation between the kitchen and the bedroom) and agreed to review that. As I said provisionally I'm not going to go beyond NHBC's February response to consider what happened after that time. That is still my position.

On that note NHBC has said it's completed work (around the time my provisional decision was issued) to install additional insulation in the bedroom floor to resolve the bathroom soil pipe issue. I'm not sure if this has been done or not – the email NHBC sent to evidence this said work was planned, it doesn't show it was carried out. I'm still satisfied that part of the remedy for this complaint is for NHBC to do that work, so I'm going to leave my direction in this respect in place. If work has been done it won't have to be done again.

“interpretation of the policy

Mr B has said that as the resolution report requires the developer, and latterly NHBC, to ensure the property complies with its technical requirements – that means that any defect found during the remedial work must also be rectified. Because NHBC took over liability for completing the resolution report, Mr B's concern in this respect related to NHBC's regulated activity, which means I can consider this aspect of Mr B's complaint.

Having done so, whilst I appreciate Mr B's view on this, I don't agree with it. The resolution report sets out the issues that require rectification and in rectifying them the NHBC is ensuring that the specific element of the property in question is compliant. I'm not minded to think that NHBC in taking on liability for completing the recommendations set out in its resolution report, has become liable for rectifying any defect found within the property during that remedial work”

Mr B said that NHBC told him it would pick up any other defects found during the work. He said this was proven to him when NHBC agreed to put extra insulation into the stud wall between the bathroom and the bedroom when it removed defective plasterboard (in the bathroom). The insulation wasn't an initial defect recommended for repair, but NHBC agreed to resolve it anyway. It, therefore, makes no sense, Mr B says, for NHBC to refuse to resolve defects on the windows that it removed and then re-fitted, just because these defects weren't noted during the resolution process.

The policy doesn't require NHBC to fix any defect found during its repair work. NHBC may choose to repair some additional things, but it isn't bound to. I can see that regarding the stud wall NHBC took the view that insulation was needed in this area as part of it carrying out the recommended repair in respect of the soil pipe. So it wasn't fixing an additional defect or an extra defective part, it was all part of complying with the original recommendation set out in its resolution report. I remain of the view that NHBC isn't bound to fix everything – it only has to do anything necessary to ensure the recommendations set out in the resolution reports are complied with.

my final decision

I uphold this complaint. I require National House-Building Council to:

- If it hasn't already been done, insulate the soil pipe from the bathroom as it runs into and through the adjacent bedroom so that it complies with its technical requirements.
- Pay Mr B a total of £1,250 compensation, but if any amount has already been paid to and received by him (not just offered) that can be deducted from this overall sum.

Fiona Robinson

ombudsman