

complaint

Mr and Mrs B complain about the way National House-Building Council (NHBC) has handled the claim they made under their building warranty for defects associated with their newly built home.

background

Mr and Mrs B purchased their new build home in May 2014 which came with an NHBC *Buildmark* 10 year warranty. The snags that occurred during the first year or so were notified to the builder who attended to deal with them. When the builder stopped attending, Mr and Mrs B made a claim under their warranty. In all, 8 claims were made, the second of which was brought in September 2015 and was initially dealt with by NHBC under section 2 of the policy – its resolution service – and NHBC issued a Resolution Report in February 2016. In March 2016 NHBC took over responsibility for the claim from the builder.

Mr and Mrs B's home was the subject of numerous visits and works over about a 5 year period. At times, delays occurred and works were left incomplete. Many of the structural defects identified in the Resolution Report for the second claim remained outstanding. In early 2018, there were discussions between Mr and Mrs B and NHBC about what work needed to be done. Meeting notes and a proposed list of actions were given to Mr and Mrs B in March 2018. Further discussions followed as Mr and Mrs B felt that certain issues that needed remedying had been left off the list.

NHBC responded in early May 2018 providing comment on the issues associated with creaking to the first floor of the house. NHBC instructed contractors and chased them to commit to a start date through June 2018. The contractors confirmed a provisional start date of 23 July 2018 but that then slipped to late August when a job overran.

Mr and Mrs B were sent a rough schedule of works in August 2018 but they felt it lacked necessary detail and that certain items were missing altogether. A revised schedule was sent a little after along with an agreed programme of works with a start date agreed of 13 September 2018 works to be completed by 23 October 2018. As per the agreed programme, an engineer was to be instructed to carry out further investigations. He attended on 27 September but didn't send his report until 26 October. Some of the works the contractors were engaged to carry out were dependent on the engineer's findings so they were unable to complete the works within the agreed timeframe. So they stopped attending from 9 October 2018 pending further instruction.

Mr and Mrs B felt that the engineer's inspection hadn't been sufficient specifically because the bathroom hadn't been inspected as agreed, nor had some of the flooring been fully lifted. In addition, the engineer had only investigated the creaking to the second floor, not the first, because this was the only area of creaking discussed within the report. Unhappy with the lack of progress, the delays and the failure to stick to the agreed schedule, Mr and Mrs B complained to NHBC.

NHBC looked into Mr and Mrs B's complaint. It noted that they had complained before and that it had issued its findings into their previous complaint in October 2017. So it said it could only look now at events that had occurred since then. NHBC acknowledged that Mr and Mrs B were still in a position where they were uncertain about what works had taken place and what the contractor had been instructed to attend to do. It said the claims team had been notified of Mr and Mrs B's concerns, particularly relating to what works had been

agreed, what had been carried out and how things were progressing. And it said that the claims team were in discussions with the contractors.

NHBC also said it accepted there was a dispute about the works to the first floor and that the claims team were seeking clarification from the contractor. Mr and Mrs B had also complained that they'd not received a copy of the engineer's report they'd been promised but NHBC said all such reports were for internal use only and couldn't be disclosed. It said feedback had been provided to the relevant department about the misinformation about the sharing of the report. NHBC said that it'd asked the claims team to update Mr and Mrs B as soon as possible about how matters were to progress. It also said an addendum resolution report would need to be produced now the engineer had provided his report to ensure the correct schedule of works was put together. It said it was confident that once this was done it would be clear what works NHBC would and wouldn't be seeing to.

Finally NHBC offered Mr and Mrs B a goodwill payment of £500 in recognition of the incorrect information they'd been given about the report and for the delays they'd experienced since October 2017.

Unhappy with the outcome of NHBC's review of their complaint, Mr and Mrs B complained to this service a week or so later. They said they remained unhappy that the works were unfinished and that the agreed timetable for doing so had not been kept to. Mr and Mrs B said that whilst there may've been some delay as a result of needing to wait for the engineer's report, there were other non-related works that could've proceeded in the meanwhile.

Around the same time a senior NHBC manager visited Mr and Mrs B to discuss the claim. A second final response letter was then issued in mid-November 2018 in which NHBC acknowledged the unacceptable delays and said it was making sure the claims handler was doing their utmost to ensure progress on their claim. NHBC said it was pleased to note that works had resumed and a plan of action had been provided to them. And it said it understood the required works to the second floor were in the process of being finalised and that it would soon be in a position to provide them with an update on how things would progress with the first floor. It said that update was due no later than 26 November 2018.

NHBC went on to say that whilst the claim had moved on, some uncertainties remained, namely in relation to the provision of alternative accommodation and what would happen with the first floor. It also apologised for the strain that had been placed on Mr and Mrs B's family by the claim.

Our investigator looked into Mr and Mrs B's complaint and issued his findings in April 2019. He recommended that the complaint was upheld. For the delays Mr and Mrs B had experienced he recommended that NHBC pay them further compensation of £500 (in addition to the £500 already offered in October 2018). He noted that Mr B had said he felt he should be compensated for loss of earnings but said that wasn't something this service awarded compensation for.

Mr and Mrs B replied to our investigator and said they didn't accept his findings. They said the recommended compensation didn't fairly reflect the trouble and upset they'd been caused or the fact that the delays had caused Mr B to lose £43,000 in earnings. They also said that whilst they had received a daily disturbance allowance from NHBC, that was paid for their two children (who had had to move out of the house) and that they'd received nothing for themselves. They also said that our investigator's recommendations didn't

resolve the problem they had with NHBC getting the work completed sooner rather than later.

NHBC replied and said that if Mr and Mrs B had accepted our investigator's findings then it would've accepted them too.

The complaint was passed to me for a 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 can only look here at what happened in relation to Mr and Mrs B's claim between October 2017 (when NHBC issued its previous final response letter) and mid-November 2018 when it issued its second final response letter in relation to their complaint about the ongoing delays and confusion about what works were to be carried out. I've seen Mr B's emails to our investigator and I know that, at least until April 2019, they were still experiencing delays and issues with the claim. But whilst I fully understand Mr B's ongoing frustration, I'm afraid that I can only look here at what happened up to and including NHBC's letter of mid-November 2018. Anything that Mr and Mrs B remain unhappy about after that point will first need to be raised as a new complaint with NHBC so that it can have the chance to investigate.

It seems to me that, to a certain degree, NHBC has lost control of this claim. Consequently some avoidable delays have resulted which have caused Mr and Mrs B a significant degree of trouble and upset.

Having reviewed the file I'm unclear why the engineer wasn't instructed to report *ahead* of the contractors starting work. Obviously if a proportion of the contractor's works were dependent on an engineer's report then it would be prudent to obtain the report before works commence. So it's reasonable to think that the delay caused by the contractors having to pull off site in October 2018 (as a result of not knowing what the engineer would recommend was required) could've been avoided if the claim had been handled better; the contractors could've carried out the necessary works as scheduled thereby avoiding an un-necessary delay.

I can see that that the engineer was instructed to assess the cause of the noisy floors but confined his inspection to the second floor only. And I can see from an internal email in early November 2018 that NHBC accepted that the instruction it gave the engineer wasn't detailed enough so that the inspection didn't achieve all that was necessary. This meant that NHBC was still reviewing – into December 2018 – what to do about the issues with the first floor. It's not unreasonable to think the delay in deciding what to do about the first floor was also an avoidable one. There was discussion about it in May 2018 so it's unclear to me why a decision still hadn't been taken on what to do about the creaking to the first floor in December 2018.

Then I can see there was a period of about two months in the spring of 2018 where Mr and Mrs B's emails went unanswered. And there was a delay in the contractors committing to a definite start date. Mr and Mrs B had to wait 4 months before any works commenced (only to have them halt again whilst the engineer's report was pending).

Having reviewed the photographs and read the reports it's clear to me that this is a complex claim. And complex claims can take longer than normal to resolve; that's to be expected. It will take a while to fully assess the damage, devise a schedule of works, engage contractors etc. But complex claims take careful management so that *avoidable* delays don't occur. Where there are avoidable delays, this service can recommend consumers are financially compensated for the trouble and upset that flows from them.

I can see that NHBC offered Mr and Mrs B compensation of £500 in its final response letter of 12 October 2018. It's unclear to me if this was ever paid to them. I don't think that compensation of £500 fairly reflects the level of avoidable upset and inconvenience Mr and Mrs B have experienced during the period in question. They have explained that family life has been disrupted and that their children have had to move out until the works are completed. And NHBC itself accepted in its second final response letter that Mr and Mrs B's claim had been subjected to unacceptable delays.

When deciding what fair compensation to make a business pay, I have to have regard to this service's approach to such awards. I think that payment of a further sum of £500 (in addition to the amount of £500 already offered in November 2018), taking the full amount of compensation paid for the trouble and upset caused between October 2017 and October 2018 to £1,000, is fair in all the circumstances. It is also in line with awards made by this service in similar circumstances. I am glad to note that NHBC agreed that it would've paid this amount if Mr and Mrs B had accepted our investigator's findings.

I appreciate that Mr and Mrs B don't think a further amount of £500 fairly reflects the trouble and upset that they've been caused. And I know that Mr B has recently said to our investigator that he believes the claim has cost him £43,000 in lost earnings. But I have to have regard to the warranty terms, this service's approach to such awards and all the circumstances of the complaint. The warranty terms make no provision for loss of earnings and I'm not aware that Mr B has specifically raised the issue of lost earnings with NHBC or provided it with any evidence. Without NHBC having had the opportunity to consider any claim for lost earnings, or any evidence that such occurred, I can't reasonably consider Mr B's recent claim for lost income here.

Mr and Mrs B mentioned that the disturbance allowance they'd received was for their children who had moved out of the home, not themselves (NHBC paid £25 per day for each of their children for the disturbance of having to move out for 39 days up to 30 November 2018). I've not seen any evidence that the house, during the period in question, was without the essential services of a kitchen and/or a bathroom. This service can require a business to pay consumers a disturbance allowance (typically at a rate of £10 per adult per day) but will only do so where they have been left without the use of essential services and I'm afraid I've not seen any evidence that they were.

I understand Mr and Mrs B's frustration that an award of compensation doesn't make their claim move forward or resolve any ongoing problems they are having with NHBC. But this service is unable to become involved with the actual handling of insurance claims. We can only look to see if an insurer has treated its policyholder fairly and reasonably in the way it has handled their claim. For the reasons I've given above, I don't think that NHBC has treated Mr and Mrs B reasonably and I think overall compensation of £1,000 is fair compensation for the avoidable trouble and upset Mr and Mrs B experienced from October 2017 to November 2018.

my final decision

My final decision is that I uphold this complaint and I require National House-Building Council to pay Mr and Mrs B compensation of £500 (in addition to the £500 they were offered in October 2018) for the trouble and upset they were caused by the way their claim has been handled. If National House-Building Council has yet to pay the £500 it offered Mr and Mrs B in October 2018 then it should now pay them a total of £1,000 in settlement of my award. If National House-Building Council has already paid Mr and Mrs B £500 then it need only now pay them £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 20 May 2020.

Claire Woollerson
ombudsman