

complaint

Mr and Mrs F have complained about National House-Building Council (NHBC). It provides a building warranty for their home and they have an outstanding claim regarding the home's heating system.

background

In 2012 Mr and Mrs F found problems with their electric powered heating system and notified NHBC. They said it wasn't heating their home effectively – some rooms never got warm, and their bills were significantly higher than expected. The warranty was in its first two-year period which gives cover for defects. During this period NHBC's first route of remedy is usually to mediate the position between the warranty-holder and the developer of the property. With that in mind, in July 2013 NHBC issued a resolution report on the system.

The resolution report stated that the heating system didn't comply with technical requirements and was, therefore, defective. The report said work had to be carried out by the developer by August 2013.

Sometime in 2014 a towel rail was fitted at the property by the developer. It isn't clear if any more work than this was done. NHBC seemed to believe the issue with the heating had been resolved but Mr and Mrs F remained unconvinced and complained to this service.

In February 2017 our adjudicator noted the deadline from the recommendation report in July 2013 had passed without work being completed. So he was satisfied that as of August 2013 NHBC was carrying out a regulated activity in respect of Mr and Mrs F's claim.

He said works should really have been completed by April 14 at the latest and if it had been the extra costs Mr and Mrs F had incurred in respect of heating their home would have stopped at that point. He said he couldn't be sure how much those extra costs had been but felt he could fairly accept that around 50% of the bill costs could be said to be due to the defective system. He said that from April 2014 until the heating system was remedied, NHBC should pay 50% of Mr and Mrs F's electricity usage costs.

Regarding resolving the heating system issues, our adjudicator said that NHBC had to take over the work needed to ensure this happened (to that point it had been letting the developer control the work). He said it would have to complete any investigations it felt were necessary and then complete the work necessary to remedy the system.

Both parties agreed to this. Mrs F felt that now NHBC was in control things would move quickly. However, NHBC didn't take things over from the developer straightaway. This didn't happen until August/September 2017. By this point Mrs F had already got back in touch with this service to advise that matters hadn't conclude as expected following our view.

An investigator began reviewing the complaint (as the previous adjudicator had left). Around this time NHBC carried out some investigations at Mr and Mrs F's home. This was to assess what temperature was being achieved in certain rooms of the home by the heating system. The contractor carrying out this assessment passed its report to NHBC in March 2018.

NHBC assessed the report, asked some questions and determined (over the course of several months) that the heating system was heating the various rooms adequately and in line with its technical requirements. NHBC, therefore, concluded that the heating system

wasn't breaching its technical requirements, meaning it wasn't defective and, in turn, meaning no work needed to be carried out to rectify it.

Mr and Mrs F were also very unhappy when NHBC told them it was now not planning on carrying out any work on the system. They said the system (powered by electricity) should be replaced by a gas powered one.

NHBC made this decision towards the end of 2018, and after our investigator had made some initial findings. To this point NHBC had paid and was still paying 50% of Mr and Mrs F's electricity usage costs. NHBC stopped making payments towards the usage costs in March 2019.

Mr and Mrs F said the payments made by NHBC regarding electricity costs weren't enough. They said the costs they were incurring were around three-quarters more than what they should be.

As Mr and Mrs F remained unhappy the complaint was passed to me for an ombudsman's decision to be made. I felt NHBC had failed Mr and Mrs F and that in order to resolve matters it would need to replace their heating system, pay 50% of their electricity bills (as directed) and £1,500 compensation. My provisional findings were:

"what I can consider

Mr and Mrs F complained to us about their claim in 2016. Because an agreement was reached by our adjudicator in 2017 the complaint, at that time, didn't proceed to an ombudsman's consideration.

However, that agreement broke down. NHBC didn't take over responsibility for the works straight away as agreed. In fact in around June 2017 it sought to renegotiate with Mrs F and asked if she'd allow it to continue to use the developer. As the agreement broke down Mr and Mrs F were entitled to revert to this service in order to receive an ombudsman's consideration. So I'm going to give them that as part of this decision.

In terms of their claim to NHBC, it began carrying out regulated activity in August 2013 when the deadline set in the resolution report passed without recommended work being completed. So I will be looking at and taking into account everything that happened from August 2013 onwards as part of my decision on this complaint.

Further, NHBC's claim decision, which came after Mr and Mrs F had reverted to us following the 2017 view, directly concerns a key issue at the heart of this complaint – the costs Mr and Mrs F have been incurring for electricity usage. And they've always maintained the system needs changing. Therefore, I need to consider NHBC's claim decision as part of this complaint as well.

In summary, this decision will look at what has happened from August 2013 up to the point NHBC made its claim decision and then stopped making payments against the electricity usage. I'll decide whether NHBC's actions in respect of all of that were fair and reasonable or not, and if they weren't what it must do to as a result.

claim decision

In this case the warranty requires the developer to resolve any defect reported to it in the first

two years. And the warranty defines a defect as something which is in breach of NHBC's technical guidance. As mentioned above, if the developer doesn't resolve a defect by the deadline set in the resolution report, NHBC is seen to take over liability for resolving that.

The resolution report in 2013 found the system was defective – that it wasn't achieving the temperatures set out in NHBC's technical requirements. The report also set out a litany of faults and issues with the system that all pointed to it not being fit for purpose, but no clarification was given as to whether these faults and issues breached NHBC's technical requirements. The report said the developer, as well as carrying out works, needed to show that the system had been designed and installed in line with BSRIA AG12 and AG13 (two long guidance documents advising on the correct design and installation of underfloor heating systems), as well as manufacturer's instructions.

I've seen the technical requirements. They refer to the system needing to provide certain temperatures in certain rooms when the external temperature is minus 3C. They also say systems have to be in-line with BSRIA AG12 and AG13.

Whilst the 2013 report said the property wasn't achieving the required temperatures, when, in 2018 NHBC tested the property again, it decided the correct temperatures were being achieved. Even though it's only been shown that the only works accepted as being carried out at the property was the fitment of a towel radiator. Having reviewed the report on the temperatures, as well as weather data, I think NHBC is wrong in this respect.

The requirements say the living room has to achieve a temperature of 21C when it's minus three outside. When the property was tested in 2018 the minimum recorded temperature in the living room was 20.7C and the maximum 24.2. But at no time during this measuring period did the external temperature drop to minus three. So NHBC hasn't shown the system meets that technical requirement.

Furthermore, the report on the temperatures achieved specifically states that they will likely fall below that required by the requirements if the outside temperature drops below zero.

I think that conclusion makes sense because when the weather isn't below zero the living room can't always achieve the required temperature of 21C. So, I think it's highly unlikely, that, when the outside temperature is at minus three, the living room would achieve 21C. That means the system isn't working in line with NHBC's technical requirements on temperature.

Furthermore, NHBC hasn't shown that the system was designed and installed in-line with the BSRIA guidance that is required as part of its technical requirements. And the 2013 resolution report makes me think it wasn't – or at least can't be shown to have been.

For example the BSRIA guidance sets out various checks that need to be done to ensure the design and installation have been properly completed. The 2013 resolution report notes that none of these checks are available in relation to Mr and Mrs F's home. BSRIA also shows that the underfloor heating pipes should be in contact with the floor and backed with insulation or reflective materials to ensure heat isn't lost "downwards". The 2013 report notes that many of the system's pipes in Mr and Mrs F's home aren't in contact with the floor and don't have the benefit of any reflective backing material to prevent heat being lost.

There may well be other issues that mean the system isn't in line with the BSRIA guidance. But the ones I've identified here, along with the fact that NHBC hasn't sought to show the system has been designed and installed in line with this guidance, satisfies me that there are

breaches in this respect. That means that the system doesn't meet NHBC's technical requirement of being installed in-line with BSRIA AG12 and AG13. It is, therefore, defective.

remedy

The 2013 report said works were needed to bring the system in line with the requirements, but it never said what those works were. NHBC is adamant the system is working fine, although, given what I've said above, it clearly isn't in-line with its technical requirements. I'm mindful of the breaches I've found, such as pipes not being in contact with the floor, and think that resolving something like this could be horrendously costly and inconvenient. Furthermore, as it isn't yet clear the extent of all the breaches, and NHBC has so far been reluctant to accept that defects exist as well as so far ignoring the BSRIA part of the requirements completely, I think telling NHBC to "bring the system in line with technical requirements" would be an award that is fated to fail.

Mr and Mrs F want a gas system installing. Having considered everything I think that is a reasonable way to resolve the problem. I think it would likely cost less and be less disruptive. And as it would remove the room for any argument about what work needs to be done – the required works to achieve the remedy would be clear. Essentially, changing the system entirely makes for a much neater and quicker resolution, so in my view it's fair and reasonable to make this award. The old system will need to be decommissioned and/or disconnected as well.

I understand that Mr and Mrs F would like to have their own contractor install the new system. Whilst I understand the frustration they've had with NHBC over the years – that has been generated by NHBC's lack of willingness to take this work on and get it sorted. It's not the case that NHBC has carried out poor or sub-standard work. I'm not convinced that NHBC's failures here are so bad as to warrant me not allowing it to carry out this work. Although it is possible that NHBC may prefer not to take on liability in this respect.

If NHBC says it doesn't want to do the work then it will have to pay Mr and Mrs F's costs for installing the new system (and adequately decommissioning/disconnecting the old one). If NHBC is prepared to do the work but Mr and Mrs F won't let it, then it will only have to pay them what it would have cost it to do that. Mr and Mrs F should be aware that this might be markedly less than the price they'd be charged. And NHBC wouldn't be liable for any faults or issues with the installation (or any decommissioning work) moving forwards.

electricity usage

NHBC began carrying out regulated activity in respect of this claim in August 2013. At that time the recommendations of the 2013 report hadn't been fulfilled. NHBC should have taken control of things at that point to ensure that did happen and it should have checked what the developer was doing and been more careful about information it was given. As I've highlighted, even in 2018 NHBC missed a key issue regarding the temperatures achieved in the home, and that, as well as it not looking at the BSRIA guidance, meant it reached an unfair claim outcome.

If NHBC had got things right, it could have identified the relevant breaches in requirements, set out a clear plan for resolving those and completed that work. I accept that the claim situation is complicated (whilst Mr and Mrs F have a single warranty for their home, NHBC is responsible for some other properties facing similar issues) and that it would have taken some time for NHBC to do that. Our adjudicator previously said it should have been done by

April 2014. I don't think that's an unreasonable estimate. And I'm mindful that NHBC accepted this view previously.

That would mean that the increased electricity costs would have ceased in April 2014. Knowing exactly what those increased costs are is impossible. There are many factors in the 2013 report that show inefficiencies with the system, but as I said above not all have been shown to be related to breaches in NHBC's technical requirements. In addition we don't know what Mr and Mrs F's costs would be with a technically compliant system.

I appreciate that Mr and Mrs F have put great store in what the EPC (Energy Performance Certificate) for their property says. However, the 2013 resolution report notes that the EPC seemed to be based on incorrect data. That isn't something that is NHBC's fault. But, and setting aside the fact that estimates set out in EPC's don't guarantee usage at a property, it does mean the EPC can't be used as a likely signpost for what Mr and Mrs F's usage should have been.

Our adjudicator previously said payment of 50% of electricity costs seemed reasonable.

Whilst I regret any disappointment caused to Mr and Mrs F, I've not seen anything to make me think his view was unreasonable. For example, I've not seen any calculation to evidence their view that their costs are around three-quarters more than what they should be. But even if there are some calculations in this respect, I have to bear in mind that it seems likely that not all of the inefficiencies of the system are related to breaches of NHBC's technical requirements. So not all of the extra costs incurred are due to NHBC not having resolved the defects by April 2014 as it should have done. Therefore, I can't see any reasonable grounds for me to say NHBC should be paying more than 50%.

NHBC stopped paying the 50% in March 2019. Given my findings above, I think it needs to continue paying that sum beyond that point and until a new gas system is installed, thus ending any draw on the electricity costs from the heating system. If NHBC installs the system it will be up to it to do so in a reasonable time. Therefore, it will fairly be responsible for extra costs until this is done. However, if Mr and Mrs F do this work NHBC won't have any control over how and when it progresses. Therefore, I need to place a cap on its liability for extra electricity costs. I think six months is a reasonable but generous time to allow Mr and Mrs F to get quotes and get this work completed.

electricity usage debt

Mr and Mrs F have a debt of around £12,000 with the utility company (although I've only seen bills dating to March 2018). They feel NHBC should pay this off. I'm not going to require NHBC to do that.

Following our view in 2017 NHBC made payments to Mr and Mrs F which equated to half the electricity usage cost from April 2014 through to March 2017. Then, as further bills were received, NHBC paid 50% of those to Mr and Mrs F as well. To the end of March 2018 NHBC had paid 5,540.43 to Mr and Mrs F. But the debt on their electricity account remained unpaid. As of that point the account balance stood at £12,134.35, and none of the bills show that Mr and Mrs F have passed on to their electricity supplier any of the payments made to them by NHBC.

I haven't seen the bills from 2019 from when NHCB stopped paying the 50%. If a debt remains I'm not persuaded it's because of any failure of NHBC to pay what was required of it.

And as I've said above, I'm not minded to make it pay beyond the 50% that was agreed to in 2017 and it has since paid. Therefore, I see no reason to require NHBC to pay off any part of any debt that Mr and Mrs F owe to the electricity supplier.

I'm also aware that at some point a debt on the electricity account has affected Mr F's credit rating. Whilst I understand this is upsetting, given what I've said above, I'm not persuaded that NHBC can reasonably be said to have any liability for that marker. So I'm not going to take into account against NHBC any upset or inconvenience caused by that record being made. Nor am I going to require NHBC to take any action regarding this record; such as provide a written statement of explanation to be placed on the credit file.

claim handling

This has been a very long claim for Mr and Mrs F. As I said above it should have all been resolved in April 2014 – but in late 2018 NHBC suddenly made a complete U-turn and told Mr and Mrs F it wasn't going to do any work at all. That was even though the resolution report in 2013 and everything NHBC had done since pointed to the system needing changing and that it was going to do that, or something to remedy the problems at the home.

So not only have Mr and Mrs F lived with the issues for around four years longer than they should reasonably have had to – they had the immense upset and frustration caused by that decision. A decision which I've found was unsound, unfair and unreasonable. They haven't been able to enjoy their house in the way they should due the inappropriate temperature of it, and whilst their financial loss has been compensated for, the loss caused them a lot of stress too. I'm minded to say that £1,500 compensation is fairly and reasonably due here.

I'm not sure what compensation Mr and Mrs F have received to date. I know that NHBC at one time sent them £650 but that Mr and Mrs F didn't cash that cheque. A further £300 was offered in 2018 – but I'm not clear whether this was paid to Mr and Mrs F or whether they accepted it. In any event, my award is a total amount. So NHBC will only have to pay any part of it that it hasn't accounted for already by making previous compensation payments (which Mr and Mrs F have accepted)."

Following my provisional decision both parties suggested that installing a gas system was likely not possible, Mr and Mrs F obtained a quote for installing a different type of pump, they said they need to install radiators upstairs as well and do some work in the garden (where the pump would be situated). The estimate for the new system was £24,650, plus VAT and Mr and Mrs F estimated the other work would cost around £10,000. They clarified that payments for bills had stopped in 2018, not 2019. The cost details were sent to NHBC but it didn't comment. I then issued some further findings to let both parties know what I thought a fair and reasonable remedy would be in the circumstances at hand. I said:

"Mrs F has only been able to provide one quote. Ideally there would be three. However, I know Mrs F did try and get another quote and the contractor let her down. I also know Mrs F has some "health concerns" currently that need to be taken into account. I'm satisfied then that NHBC should pay Mrs F the quoted price of £24,650. This sum excludes VAT. When Mrs F gets the work done and VAT becomes due she can send a VAT invoice to NHBC for it to pay.

However, Mrs F reports that the quote necessitates but doesn't include costs for installing radiators upstairs, digging up and reinstating the garden to install the pump housing, and building the pumphouse. Having considered the quote I accept that this work will need doing

as part of the work to install the new system. NHBC will, therefore, need to make a payment to cover the cost of this. So far though the costs haven't been quantified. Mrs F has guessed at a figure of £10,000 but hasn't obtained any quotes. NHBC hasn't commented but, in theory, I think it may be able to cost this work (even though it doesn't want to be involved in completing it). All I can do, at this time, and being mindful that it is already two months since my provisional decision was issued, is say I intend to direct NHBC to be responsible for the cost of this work. Unless clear, acceptable costs can be established in the next two weeks, I'm not going to be able to award a monetary amount for NHBC to pay.

Mrs F says the insulation at her home needs resolving too. Whilst I appreciate Mrs F feels the insulation is deficient – that doesn't necessarily mean what is in place breaches NHBC's technical requirements. I also haven't seen that poor insulation was ever raised as an issue with the builder or NHBC in the first two years of cover, or that a resolution report regarding insulation was completed with recommendations for rectifying it being made. So I'm not going to say that NHBC should cover any costs for rectifying the insulation at Mrs F's home (save for the insulation mentioned in the quote, which is required as part of installing the new system).

Finally, I need to comment on the payment regarding usage. When I assessed the complaint prior to issuing my provisional decision, I seem to have been under the impression that NHBC continued to pay 50% of Mrs F's electricity bills until March 2019. Mrs F says the payments stopped in March 2018. Having reviewed the file the last clear payment I can see in this respect being made was in April/May 2018, and for bills from Jan, Feb and Mar 2018. Unless NHBC can show me that payments beyond that date have been made, my final decision will likely reflect that it will have to pay 50% of the usage from (and including) April 2018's bill and until six months after my final decision is accepted by Mr and Mrs F.

I'm not currently minded to amend my compensation award."

In response Mr and Mrs F said they'd obtain some quotes for the further work. NHBC responded and said it could price the work but that would take time and would likely require it to visit Mr and Mrs F's home. To avoid delay it said it would agree to pay £10,000 for this work but that would be on the understanding it was full and final settlement – Mr and Mrs F wouldn't be able to ask for any more later on if they found costs exceeded this figure. The offer was put to Mr and Mrs F. They agreed to forego getting quotes in exchange for full and final settlement now of £10,000 for the additional work necessary to install the new system.

NHBC agreed to pay bills from April 2018 onwards, upon sight of proof.

NHBC had agreed the compensation amount. Mr and Mrs F had made some comment in this respect. Essentially they felt it was too little and that it shouldn't be subject to deduction for other compensation amounts already paid.

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 note NHBC's agreement to everything so I won't go over its full response which explains why it thinks its initial resolution report was wrong and that there likely isn't a technical fault with the system. But I have considered its full response and, for the record, I'm not persuaded by its reasoning. As I say though, NHBC has agreed to my findings and it says

that is largely because it recognises how long things have gone on, meaning my findings and award are seen to be fair in the circumstances.

Both parties are happy for me to make a money award to reflect the system installation costs as evidenced, plus £10,000 for additional work that is accepted as necessary but hasn't been properly costed. Mr and Mr F understand that in foregoing the cost process, further delays are avoided but they won't be able to re-visit the issue of the cost later if they should find the work is more expensive than the agreed settlement sum.

I remain of the view, as stated in my further findings, that I can't reasonably require NHBC to take action regarding any lack of insulation at Mr and Mrs F's home, save for the costs necessary for insulation required as part of the new system installation and as dealt with in the estimate I am requiring NHBC to pay for (which it has agreed).

NHBC seems to accept it hasn't paid any money to Mr and Mrs F for their electricity bills since the payment I referred to in my further findings from April/May 2018 for bills up to and including March 2018. We have bills on file for 2018 through 2019 and including January 2020 and our investigator will pass these to NHBC to assist it with making payment to Mr and Mrs F.

I know Mr and Mrs F feel that £1,500 total compensation isn't enough but, having reviewed matters I remain of the view this is fair and reasonable in the circumstances. I'm also still of the view that NHBC can deduct from this sum any compensation it has already paid in respect of this claim (and that Mr and Mrs F have banked). Our adjudicator on the previous complaint awarded compensation and I believe this sum has been paid by NHBC and banked by Mr and Mrs F. It would be unfair for me to say NHBC should ignore this payment and pay compensation over and above it. That's because this sum was awarded for the same complaint circumstances. But my review has gone past the point our adjudicator considered up until and my review of everything has determined that in total £1,500 is fairly and reasonably due. If Mr and Mrs F have already had the benefit of some money that makes up that figure, I can't fairly ignore that and ask NHBC to pay twice. If I were to do that I'd effectively be saying that more than £1,500 compensation was fairly and reasonably due and I'm not persuaded that is the case.

Having reviewed everything, I remain satisfied by my provisional findings, as amended by my further findings. All my previous findings now form part of this, my final decision.

my final decision

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

- Pay Mr and Mrs F £24,650 in settlement of the cost to install the new system as per the estimate for that, and, when VAT invoices are provided, pay the VAT value to them.
- Pay Mr and Mrs F £10,000 in full and final settlement for installing radiators upstairs, building a pump house in the garden and work necessary in the garden (including its reinstatement after work) to lay necessary cables and piping.
- Pay Mr and Mrs F 50% of the electricity usage from the point payments in this respect stopped in March 2018 until the new system is installed. If Mr and Mrs F take on the installation themselves, pay until six months after my final decision is accepted by them.
- Pay Mr and Mrs F a total of £1,500 compensation. If any part of this sum has already been paid (and received by Mr and Mrs F), only the remainder outstanding will now need to be paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 12 March 2020.

Fiona Robinson
ombudsman