

complaint

Mr and Mrs W have complained about National House-Building Council (NHBC). It provides the building warranty for their home.

background

Mr and Mrs W bought their home with a warranty which began in 2002. They report that they always had problems with the roof which were often addressed verbally with the developer, who lived locally. In 2011 they reported water damage to NHBC and it said the developer had to carry out repairs. These were done in 2012.

Problems persisted for Mr and Mrs W. In 2016 NHBC accepted there was still on-going issues of water ingress in the same areas as previous repairs and further remedial work was undertaken in early 2017.

In the summer of 2017, Mr and Mrs W reported further water damage. NHBC initially declined to assist. In 2018 it reviewed that position and visited Mr and Mrs W's home to assess the damage. It accepted that water was ingressing in the same area as a previous repair. A problem with the tile overlap was identified and NHBC agreed to resolve this in the area where water was getting in.

Mr and Mrs W said NHBC should resolve the tile problem where it occurred across the whole of their roof. They said NHBC had failed them by passing a property which had a roof that wasn't fit for purpose. Mr and Mrs W said this wasn't about what the policy provided for but that it shouldn't be up to them to have to fix the roof when they'd bought a property that was meant to have been checked and which had a warranty. They said this had been going on for years and NHBC's service had been poor.

NHBC apologised for having initially declined to assist Mr and Mrs W when they came back to it in 2017. It also accepted that it had caused delays in 2016/2017. It offered £700 compensation for the upset caused. But it explained that it wouldn't be resolving the issue across the whole of Mr and Mrs W's roof; just in the area identified in its report of and visit in 2018. It said the issue of the overlap had only been identified outside of the term of the warranty. But, in any event, the issue didn't equate to a defect as defined by the warranty (which in certain circumstances it would be required to resolve). Mr and Mrs W complained to this service.

Our investigator explained that not every activity carried out by NHBC falls under our jurisdiction for consideration. She felt that NHBC had acted in line with the warranty and said she couldn't reasonably recommend that it carry out further repairs. She noted it had caused delays but felt that the compensation offered was fair and reasonable.

Mr and Mrs W were unhappy. They said they felt NHBC's role was to protect them. What had happened here, they said, was that they were being left in the position of having to fix their roof themselves because every repair NHBC did failed within 6 years. They couldn't understand why NHBC had fixed the overlap issue in one area but wouldn't do so across the whole roof. They said that the repair that had been done wasn't satisfactory because the replacement tiles didn't match or fit properly with the existing ones.

my findings

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

Not all complaints or all aspects of all complaints, that are brought to this service can be considered by us. When we receive a complaint we always check whether it's within our jurisdiction. We do this by considering the rules laid down in the Financial Conduct Authority Handbook.

The rules say that we can only consider a complaint if it relates to an act or omission by a firm in carrying on regulated activities. The rules go on to say that, for an insurer those activities are effecting or (more usually) carrying out contracts of insurance.

NHBC isn't an insurer in the conventional sense. Part of its remit is to provide insurance but it also carries out a number of other (non-insurance, non-regulated) activities including setting standards for UK house builders, ensuring that new homes are built to certain standards and providing a dispute resolution service for the homeowner and developer in the first two years of the warranty.

So whilst I feel for Mr and Mrs W in the position they've found themselves in, I can't get involved with or comment on the concerns they've raised about NHBC not checking their property, or not doing so properly, whilst it was being built.

What I have to focus on is whether NHBC, in its role as insurer, has acted fairly and reasonably. And if it didn't, what does it need to do to put matters right.

The warranty was in effect for 10 years, starting in 2002. Whilst I know Mr and Mrs W had some contact with the developer prior to 2011, it was only in 2011 that issues with the roof were notified to NHBC. And there's no record – or none that I've been shown – that shows a problem with the roof tiles was brought to the attention of the developer during the first two-year, defect period, of the warranty.

As water ingress from the roof was first notified to NHBC in 2011, the issue fell for consideration under the cover provided for years 3 – 10 of the warranty. The cover at this point is more limited than that provided in the first two years. During years 3 – 10, NHBC is only liable for resolving physical damage caused by a defect in certain areas of the home.

In resolving physical damage NHBC, like any other insurer carrying out a repair, has to ensure the work is effective. That might mean, in some circumstances, that NHBC will resolve the defect, or an area of it, as well (in order to protect the damage repair). It also means that if repairs fail even once the warranty has ended NHBC can't reasonably just deny liability for the problem purely on the basis that the warranty has ended.

Whilst in 2011 NHBC left the water ingress issue to the builder to resolve it did identify that the problem at that time was likely being caused by a defect with the roof valley. And that, to ensure that the water damage repairs were effective, the defective valley would need resolving as well. The repairs that NHBC then carried out in 2018, after the warranty had ended, stemmed from the fact that the developer's repairs had failed. At that stage though a new problem was found, and fixed in the area of the water damage repair – the tiles not overlapping sufficiently. I think that was likely done to ensure further damage to the repaired area didn't occur. NHBC's investigations showed that repairs in other areas hadn't failed.

But if new areas of damage appear, or new defects are found, when the warranty is no longer in effect, NHBC doesn't have any liability under the warranty for resolving either. That's because the warranty only applies over a fixed term and, as explained, in respect of certain aspects at specific times within that period. So when the problem with the roof tiles was found NHBC didn't have any liability under the warranty for that issue.

NHBC also says that the problem with the tiles doesn't equate to a defect as defined. So even if it had been found during the term of the warranty it wouldn't have resolved it anyway. The policy defines what NHBC views a defect to be. Essentially anything that isn't in line with its technical requirements. Its technical requirements are a set, or sets, or criteria it has drawn up that it considers buildings subject to its warranties should comply with. So it isn't enough to show that a house is suffering from a problem – such as a leaking roof, or that a part of a house has, in some way, been built contrary to manufacturer's guidance issued in respect of the materials used, for example.

Therefore, with regret for any upset this causes Mr and Mrs W, I'm satisfied that NHBC, in only resolving the tile overlap issue in a small area of the roof has acted fairly and reasonably. It's acted in line with the policy and carried out work as I'd expect it to, to make sure its insured repairs remain effective. I can't reasonably require it to do more than that.

I understand that Mr and Mrs W have some concerns about the repairs NHBC carried out in 2018, after their complaint was made to this service. Repairs do have to be satisfactory. But as the repair in question here occurred after Mr and Mrs W's complaint was made to this service, any concerns they have should be put to NHBC in the first instance. If they remain unhappy with its response they can make a further complaint.

I do think NHBC could have handled things better at times. Certainly there were delays following it accepting in 2016 that more work was required. And again in 2017 when it refused to offer to assist Mr and Mrs W further. I note NHBC has accepted that. I also note how upset and frustrated Mr and Mrs W feel. I have to bear in mind though that much of their frustration stems from the fact their house passed inspection and they are now left with a costly issue that NHBC refused to resolve. And I've found it isn't liable for resolving. Further, as I've explained, NHCB's inspection activities don't fall under our jurisdiction to consider. Having looked at everything, I'm satisfied that the £700 compensation offered by NHBC is fair and reasonable. If Mr and Mrs W wish to receive this sum, they should contact NHBC.

my final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 3 October 2019.

Fiona Robinson
ombudsman