

## **complaint**

Mr T has complained about National House-Building Council's ("NHBC") handling of his claim in 2013.

## **background**

The background to this complaint is lengthy and spans almost a decade. As it is well-known to both parties, I won't repeat it at length here and will instead focus on the reasons for reaching my findings.

In short, Mr T purchased a new-build property in 2011 which was covered by NHBC's Buildmark policy. Mr T began to notice issues with the property soon after he purchased it and was corresponding with the builder of the property in regard to these. Mr T also contacted NHBC about the issues he was having with his property.

As Mr T contacted NHBC within the first two years of the Buildmark policy, the claims were considered under section 2 (years 0-2) of the policy. Section 2 of the policy sets out the builder's obligations if there's a defect with the property. In order to assist with this, NHBC can issue a resolution report which will outline the repairs required under the policy – and provide a deadline for that.

NHBC issued resolution reports for Mr T's property in October 2012, January 2013 and March 2013. But ultimately the builder didn't rectify all the issues highlighted in the reports so NHBC stepped in to take over the works around March 2013. I have addressed the issues Mr T raised about the issues before NHBC took over the works separately so won't be considering them as part of this complaint.

Mr T complains that NHBC didn't provide him with alternative accommodation during the works it carried out in 2013. He says that alternative accommodation was provided in 2016 when further works were completed and that the works in 2013 had been more extensive than those. So he believes alternative accommodation should have been provided in 2013. Mr T is also concerned that NHBC exposed both him and his parents – who were staying with him to assist in overseeing the building works - to health and safety issues during the works, including harmful dust and fumes from the oil-based paint the builders were using.

NHBC has said that it doesn't believe alternative accommodation was required for the issues it took over in 2013 and that it isn't responsible for the actions of the builder before it took over the works from them.

I issued a provisional decision on 30 June 2020 letting both parties know that I intended to uphold the complaint in part. In it, I said:

### *"financial losses*

*Mr T has calculated the compensation for alternative accommodation he believes he was entitled to, based on the figures he was given in relation to his claim in 2016. But the costs NHBC paid in 2016 were in order for Mr T to obtain his own alternative accommodation – so they were an actual cost that Mr T was going to incur.*

*In 2013, Mr T wasn't provided with alternative accommodation and his belongings weren't placed in storage. Mr T also hasn't made any suggestion that he stayed anywhere other than*

*his own property so there are no actual costs or financial losses for NHBC to reimburse. And I don't think it would be fair to ask NHBC to reimburse costs that Mr T never incurred in the way that he has suggested.*

*However, I have considered the actual issue Mr T has raised about whether NHBC should have placed Mr T into alternative accommodation. And if I think it should have done, then whether it should compensate Mr T for any distress and inconvenience caused by its failure to do this.*

*alternative accommodation and storage costs*

*As with all insurance policies, the Buildmark policy provided by NHBC isn't intended to cover every eventuality. So I have considered the wording of the policy, which states:*

*"We will pay you any reasonable costs that you incur by prior agreement with us for removal, storage and appropriate alternative accommodation if it is necessary for anyone normally living in your Home to move out so that work can be done."*

*I have reviewed a significant amount of correspondence and I haven't found any evidence that Mr T let NHBC know that he required alternative accommodation or storage for his possessions when it took on liability for this claim. Mr T has raised the point that this may have been something he agreed in person or over the telephone – and that may be the case. But where I don't have evidence either way, I must decide on the balance of probabilities what I think is most likely.*

*Having considered Mr T's comments, I don't think it's likely that he raised the issue of alternative accommodation with NHBC when it took on the works to this property. I say this because if he had, and NHBC hadn't responded to the issue, then I would have expected Mr T to chase this in writing. So, on balance, I'm not satisfied that Mr T raised this with NHBC in order to obtain its "prior agreement".*

*I have also considered whether, if he had, I think it's likely NHBC would have thought it necessary to place him into alternative accommodation.*

*There were initially a significant number of issues in need of remedial works when NHBC carried out its first resolution report – and I can see that given the scope of those works, there may have been a significant amount of disruption. But I am only considering the period from when NHBC took on the work in 2013.*

*When NHBC took on the work, there were only eight issues outstanding. And two further issues were added shortly after. Works of this kind will always be disruptive and cause inconvenience and we wouldn't usually ask NHBC to consider alternative accommodation costs for that reason alone. We would generally consider that alternative accommodation would be necessary where there is no functioning kitchen or bathroom.*

*I can see from the list of items that needed to be corrected, that there would have been disruption to Mr T's home and that he would have had to move his belongings within the home. But Mr T was the sole permanent occupant of a 4-bedroom home so I don't think it would have been immediately obvious to NHBC that Mr T would have required alternative accommodation or storage for his belongings for most of the works. And based on the estimates of how long the works that NHBC were responsible would take, it seems that these were estimated to only take a matter of days.*

*But I can see that some works took place in the bathroom and kitchen so I have considered whether NHBC should have taken further action in relation to those. The works to Mr T's bathroom that NHBC took over responsibility for appear to have been very minor with the March 2013 resolution reports (which outlines the issues NHBC was going to take on) stating that it would "entail draining down and providing a new sealing compound to the radiator valves." Given the apparently minor nature of the works outstanding at this stage, I wouldn't have expected NHBC to provide alternative accommodation for this.*

*I have also considered the works due to be carried out in the kitchen area. The resolution report suggests that the only work that was required was for the joint between the worktop and splashback to be resealed. The photographs in the report show this area to be fairly small and unlikely to cause Mr T to need to remove any items from his kitchen or be unable to use the facilities. So I don't think this item would have caused NHBC to think it needed to provide alternative accommodation for Mr T.*

*While on the face of it, the schedule of works doesn't seem extensive or that it would require alternative accommodation, Mr T has told us that he has health concerns that meant the dust and fumes in the property while the works were being carried out were particularly unpleasant for him and caused irritation to his breathing – and I have no reason to doubt Mr T's comments in relation to this. So given his health concerns, had Mr T raised the issue of alternative accommodation, I would have expected NHBC to consider either alternative accommodation or any other means it considered would assist Mr T in the circumstances. I haven't seen any evidence that Mr T raised this with NHBC in 2013 so I don't think NHBC was given the opportunity to consider this or address it at the time. And I don't think it would be fair and reasonable to hold NHBC responsible retrospectively for something it wasn't made aware of at the time of the 2013 claim.*

*The terms of the policy are clear that it will pay any reasonable costs that have been incurred by prior agreement. In this complaint, I don't think there were any costs incurred or any prior agreement so I can't reasonably say that NHBC should reimburse any sums for this. And I haven't seen any evidence that the works for these ten items were extensive enough to require Mr T to be offered alternative accommodation under usual circumstances. So, as I can't see that Mr T raised his health concerns with NHBC at the time, I don't think NHBC made a mistake in not offering him alternative accommodation. But I would invite Mr T to provide any further evidence he has of conversations or emails that took place at the time of the claim if he did raise this issue with NHBC.*

#### *health and safety concerns*

*Mr T has said that NHBC breached health and safety regulations by not providing alternative accommodation – and that this is a criminal offence. But it isn't my role to judge whether NHBC has committed a criminal offence or breached health and safety regulations. My role is to consider what I believe to be fair and reasonable in the circumstances of this complaint. As explained above, I have considered Mr T's concerns for his health as a result of him remaining in the property for the duration of the works. But if Mr T wants to pursue NHBC or its contractors for breaches of health and safety regulations then I would suggest he takes legal advice on this matter as this service wouldn't be able to confirm whether NHBC has breached any health and safety regulations. However, I have considered whether there is any evidence that the works carried out in Mr T's home made it unsafe or caused risk to his health.*

*Mr T has commented on the oil paints used during the renovations. I am not a medical expert and my role isn't to consider what, in theory, could have caused any particular illness. I haven't been provided with any independent evidence showing that any of the paints used in the property were harmful or that these were applied in a way not compatible with the manufacturer's instructions.*

*So while I can understand Mr T's concerns about the potential impact these paints could have, I simply do not have any evidence that NHBC's contractors have caused Mr T or his family any harm or any independent evidence from a medical practitioner that the health issues suffered by Mr T's family could be linked to the paints used by NHBC's contractors. I appreciate that Mr T has concerns about keeping his family's medical reports confidential and he says that no doctor would be able to provide conclusive evidence of this. But without any evidence, I'm unable to conclude that NHBC or its contractors have made a mistake or done anything wrong in relation to this point.*

#### *cleaning costs*

*Mr T has said that he isn't happy that his property wasn't cleaned after the works were carried out in 2013. NHBC says it would have expected the contractors to clean up after themselves. Mr T would like £200 towards the costs of cleaning his property for each set of works that was carried out.*

*While NHBC has said that it would have expected its contractors to clean up after themselves, I do find Mr T's comments to be plausible – that the works caused dust that would have spread throughout the house. As with the terms above, I would generally have expected Mr T to raise this issue with NHBC prior to having the house cleaned. But I also appreciate that Mr T wouldn't have wanted to live in an unclean home following the building works and may have taken steps to ensure that his home was liveable before being able to speak to NHBC about this, which isn't unreasonable. And as NHBC's contractors should have cleaned after they left, I think it would be reasonable for NHBC to consider these costs – but only for the works carried out after they had taken over responsibility for the repairs.*

*But Mr T hasn't provided any evidence of the cleaning costs he incurred. So if Mr T can provide us with evidence that he incurred costs as a result of having to clean his home – for example an invoice or receipt, an extract from his bank statement showing when he paid a cleaner or anything else that shows that he incurred these costs, then I will consider these before issuing my final decision.*

#### *delays and loss of income*

*Mr T has explained that he lost several days of annual leave due to the way this claim was handled and that he repeatedly had to have his parents travel to the property to oversee the building works while he was at work – he says this was a 400-mile round-trip for them. While it is apparent that this issue did cause Mr T to use a lot of his annual leave, I also have to consider that NHBC didn't build the property itself and is only responsible for putting the issues right. And with any insurance claim, we would expect there to be some disruption to the policyholder due to the nature of there being an insured event which led to the claim. So we wouldn't generally ask a business to pay for the time Mr T spent having the issues fixed. But I have considered whether any of the actions Mr T had to take were as the direct result of a mistake made by NHBC.*

*Having considered that the works were only estimated to take days, I think NHBC's*

*contractors should have been able to complete the works fairly quickly. But it seems they weren't completed until June 2013. This appears to have been as a result of the contractor being unavailable. And it seems that some of the issues that NHBC corrected needed to be redone as there were issues with the quality of the repairs. And I can see that this meant that Mr T would have needed to take additional time off work or arrange for someone to be at the property. While some of this was necessary in order for the repairs to take place, I do think that the repairs took longer than they should have and that it is likely that Mr T would have needed to take additional time off work to oversee this.*

*As a service, we wouldn't generally consider reimbursing the cost to Mr T of taking annual leave or the costs of him arranging to have his parents travel to his home to oversee the building works. But I have considered the distress and inconvenience this would have caused Mr T and, like the investigator, I think NHBC should pay Mr T £300 compensation for those delays.*

*Mr T arranged for his parents to be at the property to oversee the building works – and I can understand why he did this given that there were tradesmen in his home. But there is no evidence that these works required a project manager or someone to oversee them while they were actually taking place – so I can't see that it was necessary for Mr T's parents to have been at the property for the time the works were carried out. So I think this is a decision that Mr T made to satisfy himself that his property was secure, and the works were proceeding as he expected. But that isn't a cost I would expect NHBC to reimburse.”*

NHBC replied to say it accepted my provisional decision, but Mr T didn't comment on the content of my provisional 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.

As neither party has provided any new comments or evidence for me to consider, I see no reason to depart from my provisional findings.

Having considered Mr T's complaint, I can understand why he is unhappy with the works that have been carried out at his property. And it is clear to me that these works have caused a great deal of disruption to his life and are not what he expected, having bought a new property. But I can only consider the parts that NHBC were directly responsible for.

I said I would consider the cleaning costs incurred by Mr T if he was able to produce evidence of these, but he hasn't done this. Should Mr T provide an invoice for this that meets NHBC's requirements then I would expect it to consider those costs – but only if he is able to provide this evidence within a reasonable timeframe as I wouldn't expect NHBC to keep this claim open indefinitely. But as I've seen no evidence of those costs, I can't ask NHBC to make a payment in respect of those at this time.

So I think NHBC should put things right by paying Mr T £300 compensation for the distress and inconvenience caused to him by the delays to the completion of the works in 2013.

**my final decision**

My final decision is that I uphold this complaint in part. National House-Building Council should pay Mr T a total of £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 September 2020.

Sara Falzon  
**ombudsman**