

complaint

Mr and Mrs S are unhappy with the way that National House-Building Council (NHBC) dealt with their claim under section 2 (years 1 and 2) of their building warranty in respect of inadequate heating/insulation.

background

Mr and Mrs S bought their property in 2010. From then until late 2016 they had been negotiating unsuccessfully with the builders over the fact that the property was too cold and couldn't be kept warm to an adequate temperature. The builders had carried out a number of investigations and thermal surveys but hadn't remedied the problem. As they felt they couldn't live in the property as it was, and Mrs S was suffering ill health they decided to purchase another property which they moved into in December 2015. On the builders' advice Mr and Mrs S approached NHBC in September 2016. NHBC agreed to operate its resolution service.

After a site meeting in November 2016 NHBC instructed the builders to obtain an independent thermal survey report. The builders declined to do so and asked NHBC to take the matter over. NHBC duly did so and after receipt of the report, in March 2017 recommended that the areas of the property where the survey had noted were too cold be investigated for the presence of insulation. It instructed the builders to carry out the work identified as needed. Again, they failed to do so and asked NHBC to take the matter over. NHBC again agreed to do so. In the meantime, Mr S had written to NHBC to advise it he wasn't satisfied with the proposed investigative works. He further advised it that he had discovered that the ducting around the kitchen extractor fan hadn't been fitted correctly. NHBC reinvestigated that and instructed that the ducting be refitted and sealed following a meeting at the property in April 2018. It was also proposed that further work take place to remedy this.

Some work was carried out by NHBC's contractor in June 2018. Mr S had identified that the cavity wall insulation was defective. It was agreed that this would be looked at together with the works already carried out.

NHBC issued a final response letter on 24 August 2018. It agreed that the matter could have progressed in a more timely manner and that Mr S had had to do a lot of chasing. It said it would continue to carry out investigations into the cavity wall insulation, but in the meantime said it would pay £550 compensation.

On referral to this service our investigator pointed out that NHBC only became responsible for the work after it has started operating its resolution service. She said that NHBC should increase its compensation to £1,000, explaining that she was only considering matters up until the final response letter of August 2018.

NHBC advised us that it had carried out further investigations and in September 2018 recommended that the builder undertake further work. The builder confirmed to NHBC that the work had been completed. Mr S disputed that and advised NHBC that he was withdrawing from the resolution service and would be pursuing the builder by alternative methods. Mr S has confirmed that to us. I understand that he still wants a decision concerning issues up until August 2018. He doesn't think the compensation recommended is sufficient. Additionally, he wants to claim further expenses in respect of the home being uninhabitable.

The matter has been referred to me for consideration.

my findings

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

In initially considering Mr and Mrs S's claims against the builder NHBC was operating its resolution scheme. I should explain that whilst it is operating that scheme, it is not undertaking a regulated activity over which this service has jurisdiction. So, in agreeing to consider the matter and going out to the property and resolving that the builders take action, it was not carrying out a regulated activity. I understand that following the November 2016 site meeting NHBC required the builders to take action, that was to carry out a thermal survey report, by 20 January 2017. Although some time before that date, in December 2016, the builders had declined to take that action and asked NHBC to take the matter over.

NHBC issued further resolution reports throughout 2017 and 2018. Whilst it continued, in some cases to require the builders to take action and on later dates agreed to take over the repairs/investigations, I think it fair to say that NHBC became responsible for dealing with the matter after 19 December 2016. I think it was clear from that date that the builders didn't want to carry out any further work/repairs, and had specifically requested that NHBC take the matter over. So I have to consider whether the £1,000 total proposed as compensation up until 24 August is fair and reasonable.

There were delays in the thermal survey report becoming available after NHBC took over carrying out the necessary survey. After the site meeting in November 2016, the resolution report was sent to the builders, who made it clear that they wanted NHBC to take over. After exchanges of emails I think it was agreed that NHBC would do this by 19 December. It didn't however instruct its contractor to carry out the thermal survey report for over a month, and that report wasn't available until early March 2017.

Work was required to expose the insulation in various parts and to establish what needed to be done. NHBC persisted in instructing the original builders despite their making it clear they weren't willing to do the work. This was due to a breakdown in the relationship between them and Mr and Mrs S. This led to delays in instructing alternative contractors.

Essentially after several site meetings and reports throughout 2017, the work required to fit new insulation was carried out in January 2018. Mr S wasn't satisfied that that had resolved the problem and identified further issues with the ducting in the kitchen. NHBC reported in March and April 2018 and the further work was carried out in June 2018.

In the meantime Mr S identified problems with the cavity wall insulation. That issue had to be referred back to the contractors who carried out the thermal survey. It was agreed in June 2018 that further work was required on the cavity wall insulation, but NHBC reverted to the original builders, causing more delay. This issue was essentially then dealt with after August 2018 so I won't be looking at it any further.

Mr and Mrs S had suffered problems with the coldness of the home for over six years before NHBC got involved. I think NHBC progressed the matter too slowly, causing delays by instructing the builders after they had refused to be involved and in persisting in further instructing them. Also delays were caused because the full extent of the insulation problem

wasn't identified. Determining what has caused a house to be cold is difficult to do but nevertheless I think that NHBC did cause delay in this respect.

NHBC offered £550 compensation. Our investigator proposed that this be increased to £1,000 which NHBC agreed to. I think, for the time that NHBC had responsibility for the matter, up until 24 August 2018 that that is a reasonable award of compensation and is in line with awards we have made in similar cases. I note that Mr and Mrs S weren't living at the property but it would have caused a lot of inconvenience and anxiety.

I turn now to Mr and Mrs S's claim for financial losses. These include the extra heating costs, a figure for monthly rent, and their monthly mortgage payment on their new property. Mr and Mrs S had bought and moved into the new property some time before NHBC took the matter over. It was their choice to do so, not influenced by anything NHBC did or didn't do.

That said I don't think that the bulk of Mr and Mrs S's claim amounts to actual losses. They shouldn't have incurred extra heating costs because they weren't living there. I haven't seen evidence that they put the house up for rent or had taken any steps to do so. I appreciate that they may have wanted to sort out the heating problem before selling or renting, but those costs are speculative and we don't make awards for that. And the incurring of mortgage payments or any other cost on their new property is something they chose to do and isn't a loss as such. So I won't make any award for those costs.

Mr S also makes a claim for actual costs incurred on the property in question, and his costs for travelling to and from it. I think those costs were essentially incurred because of their choice, before NHBC's involvement, to buy a new property. So I won't make an award for those. And I think the compensation award adequately covers the inconvenience of this, bearing in mind that further issues arose after August 2018.

Overall, I think Mr and Mrs S should be paid £1,000 for distress and inconvenience, but I don't intend to make any award for financial losses.

my final decision

I uphold the complaint and require National House-Building Council to pay to Mr and Mrs S £1,000 a total of compensation, including the £550 already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 19 March 2020.

Ray Lawley
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