

## complaint

Ms D has complained about her building warranty provider National House-Building Council (NHBC). She's had problems with her home since moving in in 2014 and it hasn't resolved them.

## background

Ms D has had problems most notably with the pointing and ventilation in her home. There's also been an issue regarding external painting and, following some remedial work in that respect, window seals. NHBC has been dealing with the issues for several years, although for at least some of that time it was only acting as a mediator between Ms D and the developer.

In July 2017, following receipt of three final responses from NHBC, Ms D complained to this service. Whilst we were gathering evidence and considering Ms D's complaint NHBC issued a further three final responses. I then issued a provisional jurisdiction decision because I needed to explain, due to NHBC only having been a mediator at times, what exactly I felt I could consider. Following the parties acceptance of my provisional findings a final jurisdiction decision was issued. My conclusion was:

*"So in respect of the;*

- Pointing, I can assess and take into account what happened and what distress and inconvenience was caused from 9 October 2015 and until the final response on 13 March 2018.*
- External painting, I can assess and take into account what happened and what distress and inconvenience was caused from 17 February 2017 and until the final response on 13 March 2018.*
- Ventilation and insulation, I can assess and take into account what happened and what distress and inconvenience was caused from 2 September 2016 and until the final response on 13 March 2018."*

I also said that I'd look at any financial losses Ms D had suffered during these periods as a result of NHBC's failures.

At the point of NHBC's sixth final response issued in March 2018, it had offered and paid Ms D a total of £1,800 in recognition of the distress and inconvenience it had caused her. In the March 2018 final response, and because NHBC fully expected further work to commence in the summer of 2018, it offered to pay a further £1,000 in recognition of the further upset that would cause. Ms D didn't accept this offer and the sum wasn't paid.

Ms D provided detail of evidence of financial losses. She said she'd had to attend four meetings which had involved her taking a half day's unpaid leave each time. She said her partner, who had mostly handled matters, had attended dozens of meetings and made various visits to allow work to be done. She explained he'd travelled to and from his home each time, a distance of a few hundred miles. She provided her payslips and asked that her partner's travel costs be paid.

NHBC considered Ms D's requests. It said in respect of the four meetings she had attended; two were the initial mediation meetings and two were to allow it to review work done by the developer. In its view none of these meetings had occurred due to its failures

so it didn't need to consider reimbursing Ms D for any losses she may have had. And it said it wouldn't take Ms D's partner's losses into account because he wasn't named on the warranty.

I then issued a provisional decision to consider the merits of Ms D's complaint based on what I'd set out in my jurisdiction decision in October 2018. My provisional findings were.

*"Ms D's partner*

*Ms D's partner isn't named on the warranty. He isn't a customer of NHBC. That means he isn't an eligible complainant under the rules that govern this service. Because he isn't an eligible complainant I can't make any finding about how NHBC has treated him or how NHBC's actions have affected him. I can't make any award in respect of him or his reported losses. My consideration has to remain strictly with how NHBC's actions affected Ms D.*

*Ms D's financial losses*

*I don't agree with NHBC that all four meetings that Ms D attended weren't related to its failures. However, nor am I currently minded to make it pay anything in this respect.*

*The first two meetings Ms D detailed do fall outside of my consideration. These occurred in July and November 2016 as part of NHBC's mediation activity. The July meeting was in respect of the ventilation issue and, as set out above, my consideration regarding this issue can only start from 2 September 2016. The November meeting was regarding the painting issue and, as set out above, my consideration regarding this issue can only start from 17 February 2017.*

*The second two meetings though took place in late February and early August 2017. Both were within the periods I'm able to consider. NHBC says it isn't responsible because the meetings were to do with poor work carried out by the developer. I'm satisfied that as the developer was carrying out work during the period of NHBC's regulated activity, NHBC is responsible for what went on. Therefore, the meetings were only necessary as a result of NHBC's failure to resolve the issues by continued use of the developer. The meetings wouldn't have been necessary if work had been done to standard. So Ms D was caused inconvenience by having to take time off to participate in the meetings. And I've taken this into account when I've considered compensation for distress and inconvenience below.*

*However, I'm not minded to make NHBC pay Ms D for reported lost wages. I note from the contract detail Ms D sent us that her employer allowed her five weeks paid holiday per year. And Ms D has said she took a half day's leave for each meeting. Ms D hasn't been able to show me that this leave was taken on an unpaid basis. I'm not convinced then that two half days over the course of a year, where the annual leave entitlement is five weeks, would have necessitated unpaid leave being taken.*

*compensation for distress and inconvenience*

*I'm satisfied that NHBC should have taken a more direct role in each of the claim issues much earlier than it did do. Its regulated activity in respect of each began at the dates I've set out above but mostly it left Ms D to deal with the developer and allowed the developer to set the pace of work as well as determine repairs. I think she's suffered as a result of that and the delays and poor work occasioned by the developer during these periods are*

*seen to be those of NHBC because in carrying out its regulated activity it was utilising the developer.*

*The issue regarding the pointing has caused Ms D the most upset. It is also the issue in respect of which NHBC has been carrying out a regulated activity for the longest time. As I said above NHBC's regulated activity regarding this issue began in October 2015. But the issue, to the point of the March 2018 response, has never been resolved. Work was often delayed, done in a piecemeal fashion and to a poor standard. This meant that during the summers of 2016 and 2017 Ms D had to put up with scaffolding surrounding her home, lots of dust and mess. Work and re-work has had to be done. Ms D's garden was affected and relations with her neighbour have, at times, suffered too.*

*The stress of trying to manage all of the work has had its toll too. And the other claim issues, in respect of the dates that apply as I've said above, have also been on-going through at least part of that time as well. Ms D's partner has managed the work but that won't have shielded Ms D from the upset and inconvenience of having her house in disarray. And because repairs have been going on throughout such an extended period I don't doubt this has had an effect on Ms D's everyday life, not to mention planning and taking holidays.*

*Having taken everything into account, and whilst I accept that NHBC has tried to compensate Ms D at times, I don't think the total it has paid so far fairly and reasonably makes up for what she's been through. In my view fair compensation for Ms D, for upset caused by failures of NHBC during the periods set out above, totals £3,500.*

*So far NHBC has paid £1,800. I've discounted from my considerations the further £1,000 offered in March 2018 as this was offered against expected future upset. What happened after March 2018, including any claim outcomes that have been reached, will have to be considered as part of a separate complaint. The payments NHBC have made to date do equate in my view to compensation. NHBC in its final responses has explained that compensation isn't payable under the warranty. Ms D has argued, therefore, that the payments it has made aren't compensation. However, whatever term is applied to the payments made they were paid with a view to apologising for upset caused. So I'm satisfied they can fairly be said to be compensation. I'm, therefore, minded to say NHBC should now pay Ms D a further £1,700 compensation (£3,500 minus the £1,800 already paid)."*

### **responses to my provisional decision**

NHBC said the meetings in February and August 2017 were necessary. It said the £1,000 it offered in March wasn't for future inconvenience, it feels the wording of its letter may have created some misunderstanding. NHBC said that not all of the delay in this claim was avoidable, some occurred because the work was weather dependant.

Ms D provided a report in respect of the structural integrity of her property. She said this showed NHBC had been wrong about the strength of the mortar all along. Ms D asked that this report is considered now as a part of this complaint and a decision made on what needs to be done to repair her home. She believes this also shows that NHBC has knowingly hidden parts of its expert's report for years which has meant they've been left living in an unsafe home.

Ms D said she feels stuck in a loop – repairs are still outstanding, if they complain NHBC considers that and makes a goodwill payment, meanwhile the repairs remain outstanding and the cycle begins again. She feels stuck with no good options and no way out. This is now affecting her health. She just wants something resolving.

### **my findings**

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

The meetings were necessary – NHBC had to check the work the developer had done. However, and regardless of Ms D's willingness to keep using the developer, the meetings arguably wouldn't have been necessary if NHBC had properly taken over the claim earlier. But, in any event, I said I wasn't minded to make NHBC reimburse Ms D's lost wages.

Regardless of what NHBC's intent was behind the £1,000 compensation offer – it was only ever an offer. It wasn't paid. Therefore, even if I accept it offered a further £1,000 for the period up to March 2018 (which I don't) it wouldn't change the outcome of what I think NHBC now has to pay – because that sum was never paid.

The nature of the pointing work means it can't be done in the winter months. That *in no way* answers for the number of years over which this claim has been on-going up to the point of NHBC's March 2018 response. That is down to NHBC's poor management of the situation and the developer – effectively working as NHBC's agent during the regulated activity period – failing to complete satisfactory works. That has caused Ms D significant distress and inconvenience.

Part of that upset has come from not knowing what is needed to repair the home and not feeling able to trust NHBC's expert view as to the stability of the property. We now have further expert evidence that needs considering in this respect but that won't change what Ms D has already been through and suffered. I don't make punitive awards. So whether an insurer fails a policyholder due to an understandable oversight or complete outright negligence doesn't change the award I make. Rather my awards are based on what the complainant went through as a result of the failure howsoever caused.

I do understand that Ms D wants this sorting once and for all but I'm satisfied that it isn't possible to do that within this complaint. My decisions in respect of what I could look at, issued in September and October 2018, explained that I'd be considering the distress and inconvenience Ms D had been caused, along with any financial loss she'd had. That was at least in part because at the point of NHBC's last response in March 2018 it was clear that further repair investigations were going to be undertaken. The situation had moved on by the time of the two decisions I've mentioned here. But I explained in those that I could only look at what had happened up until March 2018.

I appreciate that in that March 2018 response NHBC did state it was confident that based on its expert's report, that Ms D's house was stable. And I know Ms D says the recent report belies that. But that was issued in January 2019. And a lot of activity has occurred in between. Even at the time of my September 2018 decision, Ms D's response was that the structural integrity of her home was still under review. So at that point, when I made my decision in October 2018 about what it was I was going to consider about Ms D's complaint, it was inappropriate for me to bring the repairs and what I felt fairly and reasonably needed doing as a result into that. I can't fairly change the goalposts on that now.

What I can do, and what I have already ensured has been put into action, is for another complaint to be raised for Ms D which looks at what has gone on since March 2018 and, now that the situation regarding repairs has progressed, will look at what NHBC fairly and reasonably needs to do to reinstate Ms D's home. I've spoken to our investigator and I can assure Ms D that we are prioritising her complaint and we'll do everything we can to move that along as quickly as possible.

**my final decision**

I uphold this complaint in part. I don't make any award regarding financial losses, or what needs doing to repair Ms D's home, but I do require National House-Building Council to pay Ms D a further £1,700 compensation for the upset it has caused her (making total compensation paid by it for the period subject to this decision, £3,500).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 1 March 2019.

Fiona Robinson  
**ombudsman**