

The complaint

Mr F complains National House-Building Council (NHBC) hasn't handled his building warranty claim fairly.

What happened

Mr F bought a new-build apartment that's covered by a ten-year building warranty policy. The policy started in November 2018. Two sections of the policy are relevant to Mr F's complaint. Those are section 2 and section 4.

Mr F's claim is for remedial work to the common parts of the apartment block, relating to fire safety issues. For claims relating to the common parts:

- The section 2 cover period runs for three years from the first completion date of an apartment in the block.
- The cover period for sections 3, 4, and 5 starts after the section 2 cover period has ended, and it runs until ten years has passed from the first completion date of an apartment in the block.

For Mr F's apartment block, for common parts claims, the section 2 period ended in November 2021.

The original builder is responsible for putting right a failure to meet the NHBC requirements during construction, where that failure is reported to the builder during the section 2 period. However, if there's a dispute between the homeowner and the builder about issues raised during the section 2 period, NHBC offers a resolution service. If NHBC issues a resolution report requiring the builder to act, but the builder fails to comply, NHBC becomes responsible for those required actions.

Section 4 covers the builder's non-compliance with certain building regulations that applied at the time of construction, providing the issue is causing an immediate danger and it's reported during the section 4 cover period.

Mr F contacted NHBC in October 2020, after the managing agent put the leaseholders on notice that remedial work may be required subject to the results of an external wall survey. NHBC advised him to ask the managing agent to put the original builder on notice, and he was given a claim reference. Mr F says he asked the managing agent to act accordingly.

Surveys were undertaken in 2022, and Mr F returned to NHBC in November 2022. NHBC concluded that, based on the date of the surveys, there wasn't evidence the defects had been identified and reported to the builder before November 2021. So, NHBC explained section 2 wouldn't apply, and the claim would need to be considered under section 4.

Mr F complained about NHBC's position. He considers section 2 offers more protection than section 4, as there's no requirement for immediate damager – and he considers the builder was put on notice before November 2021 due to the relationship between the builder and the managing agent. Mr F also doesn't consider NHBC gave reasonable guidance about how to make a section 2 claim, when he first made contact in October 2020.

NHBC issued a final response to Mr F's complaint on 31 January 2023. NHBC reiterated that for section 2 to apply, it needed evidence the defects were reported to the builder within the section 2 period. NHBC said the claim was currently being assessed under section 4, but it was still making enquiries with the managing agent to check whether the defects had been reported to the builder within the section 2 period.

Mr F contacted our service in February 2023. In March 2023, NHBC confirmed to Mr F it had completed its enquiries with the managing agent and its position remained the same, *i.e.*, there was no evidence the defects had been reported to the builder within the section 2 period.

One of our investigators has reviewed Mr F's complaint. He didn't think we could consider NHBC's decision not to offer its resolution service under section 2. He also didn't think NHBC had unreasonably delayed its consideration of the claim under section 4.

Because Mr F was unhappy with our investigator's outcome, his complaint has been passed to me to decide.

I've already issued a jurisdiction decision setting out what points we can, and can't, consider. In my decision, I explained:

- We *can't* consider NHBC's decision not to offer its resolution service under section 2, or the guidance it gave in October 2020.
- We *can* consider NHBC's handling of the claim under section 4, up to the date of its latest final response (31 January 2023).

I'll now set out my findings about the points we can consider.

What I've decided – and why

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

Mr F contacted NHBC in November 2022 with the surveys. NHBC then proceeded to make enquiries about the surveys, and about when the builder was first notified of the defects in relation to a potential section 2 claim. I've not seen anything that leads me to conclude NHBC unreasonably delayed its consideration of the claim under section 4, between November 2022 and 31 January 2023. But rather, NHBC was gathering necessary information during this period.

NHBC confirmed in its final response it was currently assessing the claim under section 4. If Mr F is unhappy with the progress of the section 4 claim since 31 January 2023, or if he's unhappy with NHBC's eventual claim decision under section 4, he needs to make a new complaint to NHBC about those matters.

My final decision

I'm sorry to disappoint Mr F, but for the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 August 2023.

Vince Martin
Ombudsman