

The complaint

X and Mr S complain about National House-Building Council's handling of a claim made under their buildings warranty policy.

What happened

X And Mr S have a warranty with NHBC which provides cover for damage to their house.

They've have had on-going problems with the render on the outside of their house. NHBC first carried out repairs in 2012. They also agreed, in 2013, to pay for replacement of incorrectly installed windows at the house.

In 2016, X and Mr S reported rainwater leaking into some of the rooms in the house. They say it took NHBC four months to agree that they should replace the render to the front and left side of the building.

In short, X and Mr S say those repairs have not been carried out effectively. Work is still ongoing. There have been a number of attempts to replace the render which have been unsuccessful. And, in carrying out the work, the contractors appointed by NHBC caused further damage to the property.

In response to complaints from X and Mr S over this period of time, NHBC have offered a total of £1,100 in compensation for X and Mr S's trouble and upset.

X and Mr S weren't happy with this outcome and so brought their complaint to us. Our investigator looked into it and didn't think NHBC had done anything wrong. He thought the compensation they offered X and Mr S was fair and reasonable.

X and Mr S disagreed and asked for a final decision from an ombudsman.

I agreed with our investigator that the complaint shouldn't be upheld. But because I came to that conclusion for slightly different and more detailed reasons, I decided to issue a provisional decision before I make my final decision.

This allowed both parties an opportunity to comment on my thinking and/or provide further information or evidence before I make my final decision, which is the Financial Ombudsman Service's last word on the matter.

My provisional decision

In my provisional decision, I said:

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

I needn’t go into any great detail about the issues with X and Mr S’s house over the past few years. There’s no dispute here that NHBC should repair the damage to the house. NHBC have accepted the claim and they are attempting to get the required works carried out successfully. NHBC also accept they need to put right the damage caused to the property by their previous contractors.

I do think I need to recognise though the fact that what might have been a relatively simple repair to the render at the property has taken more than four years – since the recurring problems were brought to NHBC’s attention in 2016 – and was still not completed at the time of X and Mr S’s complaint.

I’ve also seen photographs of the damage caused to X and Mr S’s house by previous contractors attempting to replace the render. To be blunt, the house was very far from being left in an acceptable state after the work had been carried out.

So, I can fully understand X and Mr S’s frustration and anger about the way their claim has been handled. There are long delays in getting the work completed. And the service provided by NHBC’s contractors has been unsatisfactory, to say the least.

My decision here isn’t about whether NHBC should cover the repairs – or put right the damage caused by their contractors. They should – and there’s no dispute about that. It’s simply about the size of the compensation which should be awarded to X and Mr S for their trouble and upset.

First of all, I ought to be clear about the period of time I can consider in this decision. I’m aware X and Mr S first experienced issues with the render – and their windows – in 2012- 2013. These issues appeared to be resolved to everyone’s satisfaction until X and Mr S discovered the water ingress in 2016.

According to the Financial Conduct Authority’s (FCA’s) Dispute Resolution (DISP) rules, which govern the way we look into complaints, we can only consider complaints brought to us within six years of the relevant events – or, if it’s later, within three years of the complainant becoming aware of their cause for complaint (or reasonably being expected to have been aware of it).

So, I can’t consider here the original claim in 2012 or any issues X and Mr S may have with that. What I’m looking at is the way NHBC handled the claim made in 2016 – after the water ingress was discovered and the render was again found to be defective.

I also have a limit on what I can consider at the other end of the relevant period. Again, the DISP rules only allow us to look into things the relevant business has had a chance to consider and respond to.

So, anything that’s happened *after* NHBC sent their response to X and Mr S’s complaint to them, in September 2019, is outside the scope of this decision. If X and Mr S feel they have further cause for complaint after that point – and I know their

discussions with NHBC, and indeed the work at the house, are still on-going – they can make a new complaint to NHBC.

So, to be clear, I'm considering whether the £1,100 in total offered by NHBC is sufficient and reasonable compensation for the trouble and upset suffered by X and Mr S between April 2016 – when their claim was made to NHBC – and September 2019 – when NHBC finalised their response to the complaint X and Mr S made to them.

The delays, errors, shoddy work and additional damage to the house during that three and a half year period have undoubtedly caused X and Mr S a great degree of inconvenience, upset and stress. I can entirely understand that X and Mr S feel they've had to constantly report issues to NHBC and/or their contractors and justify their requests for effective and timely repairs to be carried out.

However, I don't think £1,100 in total is unreasonable or unfair compensation for the degree of trouble and upset X and Mr S have suffered during that time.

We regard compensation awards between £500 and £2,000 as substantial – and appropriate in cases where, for example, a complainant has been caused considerable distress and inconvenience. Awards above £2,000 are fair and reasonable in severe cases, where the complainant may have experienced, for example, a reduction in their living standards or long-term distress as a result of the mistakes made by the business.

As I say, I have no doubt that X and Mr S suffered considerable inconvenience and upset during the relevant period. But I don't think I have any evidence to suggest their long-term standard of living was affected or that they've yet suffered long-term distress.

I also take into account here that the house appears not to be the address at which X and Mr S were permanently living for at least some of the relevant period of time. They had NHBC send correspondence to a separate address a considerable distance from the house in question. So, they appear not to have had to cope with the disruption caused by living in a house with on-going building work over a prolonged period.

X and Mr S say they intended to sell the house when the repairs were complete. They say that at one point, NHBC told them this would be no later than June 2018. They say an estate agent suggested they market the house at that time at £650,000. A later estate agent's valuation – in August 2019 – put the value of the house at £500,000. They want NHBC to compensate them for the fall in value.

They also say they intended to invest the proceeds of the sale in an overseas investment with a guaranteed return at 4% per annum. Changes in the value of the pound against the overseas currency mean that they've effectively lost 22% of the value of their investment were they to make it now. And they want NHBC to compensate them for those projected losses.

There are two main reasons for my provisional decision *not* to award compensation for those alleged losses to X and Mr S. I'm issuing a provisional (rather than final) decision now at least in part because I'm interested in any further comments or evidence from NHBC or X and Mr S on these reasons.

First, the logic X and Mr S use to calculate the projected losses they say were caused by the delays in the repairs seems to me to be somewhat speculative.

I have no firm evidence as yet to convince me that the house could have been sold in 2018 for £650,000. An estate agent's suggested marketing price isn't cash in hand. Nor has the house yet been sold – or any offer made – at the new asking price X and Mr S say the estate agent has suggested.

Nor do I have any firm evidence to demonstrate that X and Mr S had clear and settled plans for how to invest the money from the sale of the house. It would be fairly easy – with hindsight – to convince oneself that one would have invested in a particular way.

There may have been any number of options X and Mr S were considering at the time and unless they have firm evidence to show their clear intention to invest in the way they now say they would have done, I don't think it would be fair to take that entirely at face value.

In other words, I would need more evidence to allow me to conclude that X and Mr S would definitely have sold the house in 2018 - and for £650,000. And that they would have invested the proceeds in the way they now suggest. I'd also need evidence that such an option – a guaranteed 4% per annum return, with no risk attached – existed at the time and was available to X and Mr S.

In order to conclude that it was fair and reasonable for NHBC to cover those losses, I think I'd also need some evidence that X and Mr S told NHBC – in good time – what was at stake if the repairs weren't completed in a timely fashion. If they had, for example, told NHBC what their intentions were – and what amounts were involved – then NHBC would have had fair warning about what was riding on their meeting the agreed timetable for the repairs.

I'm not suggesting that NHBC should have felt themselves entitled to fail to meet promised deadlines etc. if they thought there was nothing at stake except X and Mr S's comfort and enjoyment of their property. But it would in my view be unfair to ask NHBC to make good any losses they had no idea were being incurred as a result of the delays. And, of course, it would be unfair to ask NHBC to take responsibility for fluctuations in the housing market and/or foreign exchange rates.

My second reason for provisionally deciding not to ask NHBC to compensate X and Mr S for the losses they claim resulted from the delays to the repairs sits in the policy documents provided to us by NHBC.

Section 3 of the warranty says, in essence, that NHBC will pay for major damage to the property caused by a defect in the build. As I say there's no dispute here that there was major damage, caused by a defect, and that NHBC are obliged to pay for the repairs.

In the special conditions which relate to this section of the warranty, it says:

“... NHBC will not be liable...for... any cost or expense greater than that necessary to effect workmanlike repair of the relevant... defect...or damage.”

And in the section entitled General Exclusions, it says:

“...NHBC will have no liability in respect of... loss of enjoyment, inconvenience, distress or any other consequential loss.”

So, the terms of the warranty seem to me to explicitly and clearly exclude NHBC's liability for any losses suffered by the policyholder which are a consequence of the damage and/or defect – and, by implication at least, the work carried out by NHBC to rectify that damage and/or defect.

I don't see that there's anything inherently unfair or unreasonable in those terms and conditions. It's for NHBC to decide what they wish to cover and then to offer the warranties for sale – at a given price - on that basis. The relevant terms aren't unclear or ambiguous and they're not hidden in the small print.

For the two reasons set out above, I'm minded to agree that the compensation so far offered by NHBC for X and Mr S's trouble and upset is fair and reasonable. And that they shouldn't be asked to compensate X and Mr S for the alleged financial losses consequent on NHBC's failure to meet their timetable for the repairs.

I should be clear that either reason alone is sufficient to justify that outcome. For me to change my provisional decision, I would need to have further information or evidence which undermines *both* of those reasons.

I also want to clarify one other thing. In their response to our investigator's view on the case, X and Mr S said that, amongst other things, they want us to: ensure that NHBC rectify the damage; ensure NHBC supervise their contractors effectively; set a deadline for the work to be finished; and state what compensation will be due to them if NHBC don't meet that timetable – and if there are any other delays to the work.

I can understand why X and Mr S just want this problem sorted. And I can see why they're appealing to us to ensure NHBC deliver the required result. However, we are bound by the FCA rules which govern our service and set out our purpose.

We aren't empowered to effectively audit or quality assure NHBC's contractors' work – and/or the way NHBC handle their contractors. And we're not empowered to set deadlines for future action or to specify penalties or compensation for so-far hypothetical failures to deliver customer service in future.

We're here to handle complaints about what's already happened – and to specify how businesses should put things right when they've made mistakes which have impacted their customers.

So, whilst I know this will disappoint X and Mr S – and whilst I can understand why – we can't deliver some of the outcomes they've said they want from this complaint. I hope at least X and Mr S understand my explanation of what we can and can't do.”

And for those reasons, I said I was minded not uphold the complaint.

The responses to my provisional decision

Neither NHBC nor X and Mr S have provided any further comment or information in response to my provisional decision. So, I have to assume neither has any information or evidence that they think would change my provisional decision.

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.

I've also considered again the conclusions I came to in my provisional decision.

Having done so, I haven't changed my mind. I'm still satisfied that the compensation NHBC offered to X and Mr S, before they brought their complaint to us, was fair and reasonable in all the circumstances.

My final decision

For the reasons I gave in my provisional decision, set out above, I don't uphold X and Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr S to accept or reject my decision before 8 December 2020.

Neil Marshall
Ombudsman