

The complaint

Mrs W complains that National House-Building Council (NHBC) still hasn't resolved an issue at her property, after a claim was first made on her building warranty policy in 2009.

What happened

In 2009, Mrs W made a claim on her ten-year building warranty policy due to rainwater ingress at her apartment. NHBC undertook repairs across the block of apartments.

In 2014, Mrs W informed NHBC the initial works hadn't resolved the issue at her property, and it undertook further repairs. In 2016, Mrs W informed NHBC its further repairs hadn't resolved the issue either.

In 2017, NHBC accepted the previous repairs hadn't gone far enough, and it gave Mrs W £500 to apologise for the delays in her claim. NHBC appointed a contractor to carry out further repairs.

In January 2019, Mrs W reported further water ingress at her property, consistent with the previous issue. NHBC attended the property, and it concluded its previous repairs hadn't failed. In July 2020, NHBC also explained that it was unable to deal with a new issue as Mrs W's cover had ended before 2019, and it said this new issue wouldn't have been covered by the policy anyway.

Mrs W brought a complaint to this service. She says the matter isn't a new issue or a new claim, but rather, NHBC's previous investigations hadn't identified the true source of the water ingress. Mrs W says the issue only occurs in storm conditions and the cause was never confirmed. She says water is still entering in the same way and place.

One of our investigators considered the complaint, but she didn't think it should be upheld. Because Mrs W disagreed, her complaint was passed to me to decide.

Following a discussion with NHBC, I've already put the following to Mrs W:

- When NHBC provided its file to our service, it accepted its conclusions in July 2020 were premature and further investigation is necessary. NHBC says it did contact Mrs W after she had brought her complaint to us, to confirm it would investigate further.
- NHBC says it also contacted the managing agent to confirm it needed access to the building, to carry out water testing. NHBC says it also requested a copy of the lease, so if it's found that the issue is 'new' and a 'common parts' issue, it could *consider* assessing this under the cover for common parts. NHBC says no response was received from the managing agent, and it didn't pursue the matter after our investigator didn't uphold Mrs W's complaint.

- I explained I was satisfied Mrs W's complaint should be upheld on the basis NHBC's conclusions were premature, *i.e.* whilst NHBC's repairs hadn't failed, it hasn't been established what the cause of the current water ingress is, and whether the issue should have been addressed as part of the previous claim or during the previous investigations. Given the water ingress is in the same location, I considered it reasonable for NHBC to determine these matters.
- I explained, to put matters right, NHBC needs to determine the cause of the current water ingress and decide whether it should have previously addressed the issue within the ten-year warranty period.
- I explained that if, after further investigation, NHBC remains of the opinion the water ingress is a new issue that's been raised outside of the ten-year cover period, or it concludes the issue is simply not covered by the policy, and Mrs W's remains unhappy, she can make a further complaint about that matter.
- I acknowledged there had now been a further two-year delay in terms of reaching this point, from when the further water ingress was brought to NHBC's attention in 2019. Based on the submissions so far, I was persuaded that NHBC should pay Mrs W £1,000 compensation in total, to acknowledge her overall experience since 2009. £500 has already been paid, leaving a further £500 to be paid.
- I explained NHBC had agreed with my conclusions.

In response, Mrs W said greater clarity was required about the following:

- Mrs W says the building surveyor found that a latent defect in the balcony above, had the potential to cause water ingress. She says NHBC was under a legal obligation to pursue this lead, and to carry out a water test to prove conclusively whether this was the cause of the water ingress.
- Mrs W says if the defect in the balcony isn't the source of the water ingress, NHBC must continue its investigations under the existing claim, and in a timely manner. Mrs W is of the view her claim can only be closed once she is fully satisfied.
- Mrs W accepts a further £500 compensation for the delay and inconvenience. However, she says the nuisance and neglect she suffered is another matter.

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.

Having already set out my thoughts to both parties, I've focused on Mrs W's further comments.

To be clear, I'm satisfied NHBC needs to take steps to determine the cause of the current water ingress. It then needs to decide whether the issue should have been addressed as part of the original claim, or if a separate issue, whether it should have been addressed under a new claim before the cover had ended (bearing in mind the issues that were reported during the period of cover).

Should Mrs W be unhappy with NHBC's further investigation and findings, she can make a new complaint about that. If a further complaint is referred to our service, we'll consider the submissions of both parties to decide if NHBC's further investigation has gone far enough and whether its conclusions are fair. At this time, I'm satisfied I don't need to make any further directions, as to do so would be pre-empting the outcome of NHBC's further investigation.

Given the delays since January 2019, it follows that NHBC should endeavour to conduct its further investigation, and provide its findings to Mrs W, in a timely manner. However, as previously highlighted to Mrs W, NHBC requires the cooperation of the managing agent. Ultimately, if Mrs W accepts this final decision and further delays follow, she can make another complaint in respect of those delays if she wishes to do so.

Mrs W says she will accept the further £500 compensation for the delay and inconvenience she's suffered, but she would also like compensation for nuisance and neglect. However, Mrs W hasn't provided any further information. So, it remains my view that £1,000 fairly acknowledges her overall experience so far.

My final decision

For the reasons set out above, I uphold this complaint.

My final decision is National House-Building Council should:

- complete further investigations to determine the cause of the current water ingress, and decide whether the associated repairs should be covered as part of the claim that was made within the ten-year warranty period, or under a new claim that it should have logged before the cover expired; and
- compensate Mrs W a further £500 (in addition to the £500 paid in February 2017), to acknowledge her overall experience since the claim was first made in 2009

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 23 April 2021.

Vince Martin
Ombudsman