

The complaint

Mr S has complained about the way the National House-Building Council (NHBC) have dealt with a claim he made in relation to damage caused by an ingress of water to his flat. He says NHBC have unfairly refused to accept the total claim, and for the part of the claim they have accepted, the settlement figure is significantly lower than the cost of the repairs.

What happened

I issued my provisional decision on 5 February 2021, setting out why I was intending to uphold this complaint. I invited both parties to let me have any final comments by 19 February, following which time I would proceed to issue my final decision. Both parties have now responded to the provisional decision.

In my provisional decision I set out the following:

What happened

Mr S owns a flat which is built into the pitched roof at the top of the block of flats. His flat includes a roof terrace / balcony which is also within the roof space. I will refer to this part of the property as the 'roof terrace'.

In late 2018, an ingress of water caused damage to Mr S's flat and the flat below. In the course of having the doors to the roof terrace replaced, in late 2018 / early 2019, it became apparent to Mr S that the frame was unsupported from the bottom at one end and the lateral ties to the sides of the frame were only fitted with one screw at each end. In Mr S's opinion, this prevented the doors from being closed properly. He also said the roof terrace floor was incorrectly sloped. This meant that rather than directing rainwater away from the doors and wall, towards the drainpipe, the rainwater was being directed to the faulty joints. He believed that this, together with the omission of the waterproof membrane between the foot of the doors and windows, resulted in the ingress of water to his property, and to the property below.

In January 2019, Mr S made a claim under section 3 of his NHBC warranty for rectification of poor workmanship of the original build which he considered should include the repair of the waterproof membrane, together with the correction of the slope of the roof terrace floor.

Initially, NHBC declined the claim on the basis that, among other reasons, the third party who'd carried out works to that area may have adversely affected the waterproof membrane. Mr S persuaded NHBC that that wasn't the case, so they arranged for a claims investigator to inspect the property on 4 March 2019. Following the inspection, a report was issued which concluded the cause of the ingress of water and subsequent water damage was due to the omission of the waterproof membrane. The claims investigator believed that this had allowed water to enter the home below the threshold up stand and leak through the floor structure into the flat below. His report was silent on this issue of the slope of the roof terrace floor. When later questioned about this omission, he said he couldn't recall that being discussed.

The scope of work prepared by the claims' investigator provided for works to be completed, totalling £2,257.65. Mr S provided an initial quote for the work, from the property management company's preferred contractor (in September 2018), for £9,703.20. He explained that this quote didn't include any costs for works to correct the slope of the roof terrace floor.

In March 2019, Mr S arranged for a temporary repair to be carried out to the property, which NHBC subsequently reimbursed him for. With regard to the scope of works, Mr S told NHBC that he thought the scope of works was very light on costs, and he'd have to allow NHBC's contractors to do the work, because he couldn't get the works done for that cost. However, in April 2019, NHBC offered Mr S a cash settlement as they didn't think their contractors could do the works, given Mr S had his own contractors on site, replacing the door and windows to the roof terrace. NHBC also declined to cover the cost of removing and refitting the windows and doors on the roof terrace because they were of the view that Mr S had plans to do that anyway.

Mr S complained to NHBC about their decision to decline part of his claim in relation to the slope of the roof terrace floor. On 5 April 2019, NHBC sent Mr S their final response letter in which they said:

- *the claim had been accepted on the following basis:*

As the damage was caused by inadequate waterproofing (i.e. a non-compliance with our Technical Requirements) in the external wall (one of the listed items on page 13 of the policy) and would cost more than £1,630 (£1,000 Indexed, as set out in the policy) to repair, we confirmed this is valid under Section 3 of the policy;

- *it had been established that the water damage had been caused by the defective waterproofing below the balcony doors, and not as a result of the 'fall' of the roof terrace floor;*
- *as the 'fall' of the roof terrace floor wasn't causing damage to the property, it didn't constitute a valid claim under section 3 of the policy.*

Mr S wasn't happy with the response NHBC had provided to his complaint and raised some further points of clarification. In June 2019, they wrote to him again and added:

- *balconies aren't listed in the policy as one of the areas covered by Buildmark in years three to ten, which is why they were unable to assist with any works that may be considered necessary to alter the fall;*
- *they couldn't offer additional cover for a further 10 years against any future leaks, but the remedial works should be covered for a statutory period of six years from their completion by the contractor who carried out the repairs;*
- *under the policy terms and conditions, the cash settlement sum will be the cost NHBC would have had to pay if they had arranged for the works to be done;*
- *the cash settlement sum offered did include the cost of the works required to remove and re-instate the balcony door / windows, but wouldn't include the cost of the windows and doors as they are not covered by the policy;*

- *an assessment of the costs Mr S had provided show the main items of price difference related to the scaffolding, asphalt and decorations. They also said that while their calculations were based on measured quantities, Mr S's quotation only provided a price, without the quantities, so NHBC didn't feel it was possible to directly compare the figures quoted; and*
- *their costs are based on those published by Hutchins, a pricing guide widely used throughout the building industry, together with an uplift to comply with any private contractual agreement they have with their appointed contractors. On that basis, they're satisfied the works can be completed in line with their costs by any independent contractor offering a fair price for the works.*

NHBC concluded by saying they remain satisfied the amount they'd offered is adequate to meet their full liability to Mr S under the policy and suggested that as the works required affected a common part of the building, Mr S may wish to seek further advice from his managing agents about whether they could get the works completed at a similar price to the cost they'd offered.

Mr S remained unhappy with NHBC's response so brought his complaint to our service in July 2019. He informed our investigator that heavy rainfall had caused the temporary repair to fail. In August 2020 Mr S arranged for the repairs to be done, to mitigate any further damage to the property.

In July 2020 our investigator issued her view upholding the complaint. She concluded that NHBC needed to cover the cost of removing and refitting the doors and windows, because that needed to be done to rectify the defect. She also required NHBC to rectify the incorrect slope of the balcony floor. She was of the view that Mr S's explanation wasn't unreasonable – and that if the slope wasn't rectified there was a chance that rainwater would cause further water ingress and the repair wouldn't be lasting and effective. Mr S accepted our investigator's view but NHBC did not. In response they said:

- *their investigations determined the cause of the water ingress was due to inadequate waterproofing in the external wall below the balcony doors. Prior to their investigation Mr S had contacted them stating a roofing specialist had told him the fall was incorrect, but he didn't provide them with a report or any official correspondence in support of that;*
- *their liability to Mr S is limited to the cost of rectifying the defective waterproofing which they're satisfied will stop the water entry and provide a lasting repair. They're also satisfied that it is a fact that the damage was caused by the defective waterproofing because that was established in their investigation report;*
- *the cost of repair (£2,257.65) does include the removal and re-fitting of the windows and doors, which they say is included in the scope of work. Their email to Mr S on 7 July 2019 confirmed that the costs for removal and re-fitting of the doors was taken into account in the main body of the schedule; and*

- *with regard to Mr S's claim for the slope of the balcony floor, they pointed to their final response letter in which they explained that they were advised that the 'fall' of the balcony floor wasn't what had caused the water damage inside the flat. They re-iterated that the damage was a direct result of the defective waterproofing below the balcony doors. They added that although they acknowledged the comments about the fall to the balcony floor, as that wasn't causing damage to the flat, that didn't constitute a valid claim under section 3 of the policy.*

As NHBC didn't accept our investigator's view, the complaint has been passed to me for a decision.

What I've provisionally decided – and why

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

It is agreed that Mr S has made a valid claim under section three of the Buildmark Policy. What remains for me to decide is whether, NHBC's proposed cash settlement of £2,257.65 is sufficient to satisfy their liability to settle the claim. In reaching my provisional decision on this complaint, I've considered the following questions:

- *Should the costs of correcting the slope or fall of the roof terrace floor be included in the cash settlement amount?*
- *Have the costs of the removal and reinstatement of the doors and windows leading to the roof terrace been adequately provided for in NHBC's scope of works?*
- *Is the cash settlement offer from NHBC sufficient to meet their liability to settle the claim?*
- *Is Mr S due any other compensation for the delays, distress and inconvenience he's suffered as a result of the way the claim has been handled?*

Correction of the slope / fall of the roof terrace fall

An email was included in NHBC's business file from their claims investigator in which he said that he couldn't recall the floor terrace slope being raised as a specific issue during the meeting at the property. He only recalled discussing that some mastic asphalt repairs would be required at the junction between the terrace roof and the external wall, but no further work, than that needed to repair the defect would be covered. He explained that he'd restricted the investigation to the areas covered by the policy, i.e. the cause of water ingress into the property through a defect in the external wall / roof. He quoted the relevant Technical Requirements which included:

Chapter 6.1 - D4 External walls shall be suitable for their exposure and resist the passage of moisture to the inside of the dwelling

Chapter 7.1 - D8 Flat roofs (and balconies functioning as roofs) shall adequately resist the passage of moisture to the inside of the building

The claims investigator concluded that accordingly, as long as the walls and flat roof of the home are performing, as above any other issues of the design are not covered by Section 3 of the policy.

In response to our investigator's view, NHBC said that although they acknowledged the comments about the fall of the balcony floor, as that wasn't causing damage to the flat, that didn't constitute a valid claim under section 3 of the policy.

Our investigator then asked Mr S if he had a report confirming that the fall of the balcony contributed to the damage, and he confirmed that he didn't. He maintained that this was discussed at the meeting at the property with the NHBC claims investigator, but the investigator's report was silent on that point. And NHBC's correspondence after that had focused on not covering the re-sloping of the roof terrace floor on the basis that balconies weren't covered by the policy.

Mr S disputed that the area was a balcony because it formed part of the roof of the flat below. He also observed that at no point had NHBC disputed the balcony has an incorrect fall. In his view, if the fall wasn't corrected, then the water would stand on the surface or flood, which is what he said was happening on the roof terrace and was contributing to the water ingress to the flat below. He believes that although the correct application of the waterproofing would initially stop the water ingress, failing to correct the fall could lead to the early degradation of the waterproof covering.

I have sympathy for the points Mr S has made in relation to the slope of the roof terrace being a likely contributor to the ingress of water into the property. However, I don't have any evidence in the form of an expert report, or investigation report, that concludes the slope of the roof terrace was a cause of the water ingress. NHBC's claims investigator concluded the cause of the water ingress was the omission of the waterproof membrane, which Mr S also agreed with. However, he felt that was only part of the explanation for the water ingress, and he expressed concern that if the slope wasn't corrected, that wouldn't achieve a lasting and effective repair.

NHBC's claims investigator, on the other hand, was confident that repairing the waterproof membrane would provide a lasting and effective repair. Where the evidence is incomplete, or contradictory, as it is here, I have to make my decision based on the balance of probabilities, that is, what I think more likely than not, is the case. And in the absence of any expert evidence to support Mr S' view that repairing the waterproof membrane, in isolation, won't achieve a lasting and effective repair, I'm not currently persuaded that this is most likely the case. Based on the available expert evidence, I find it more likely that the cause of water ingress was the omission of the waterproof membrane, as opposed to the slope of the roof terrace floor. It follows that I'm currently of the opinion that NHBC's proposed repair would likely have been lasting and effective.

Also, under section 3 of the policy terms and conditions NHBC is only required to put right any issues, with the home or common parts, which amount to a breach of NHBC's technical requirements. In the event of a breach of those requirements, NHBC will pay for:

"The full Cost, if it is more than £1000 Indexed, of putting right any actual physical Damage caused by a Defect in any of the following parts of the house, bungalow, maisonette or flat and its garage or other permanent outbuilding, or its Common Parts:..."

NHBC's claims investigator accepted that damage caused to an external wall and a balcony functioning as roof could be covered under section 3. However, in the absence of evidence to show that an incorrectly sloping floor would breach a technical requirement, and in the absence of evidence to show the slope of the floor caused damage to the property, I'm currently of the view that it isn't unreasonable for NHBC to reject Mr S' claim in relation to the correction of the slope of the roof terrace floor.

However, I don't think NHBC treated Mr S fairly in the way they addressed this element of his claim. Mr S has repeated his concerns about the slope of the floor of the roof terrace on several occasions, so I find it unlikely that this wasn't discussed at the meeting with NHBC's claims investigator. I've also not been provided with any evidence to show that Mr S was given the claims investigator's explanation about why the slope of the floor of the roof terrace wasn't covered. If the technical requirements had been highlighted and the explanation given to him, that as long as the walls and flat roof of the home are performing, in accordance with the technical requirements, any other issues of the design are not covered by Section 3 of the policy, Mr S would at least have felt that NHBC had considered his claim in this regard. Rather, NHBC's responses to Mr S's submissions on this point comprised repeating the statement that balconies weren't covered by the policy, which was irrelevant, as the claims investigator had clearly stated that external walls and flat roofs were covered.

I'm currently of the view that NHBC's failure to clearly and fairly address this significant concern of Mr S' in relation to whether their proposed resolution would providing a lasting and effective repair, throughout the period of the claim (now in excess of two years) has caused him distress and inconvenience that he should be compensated for. So, although I'm not intending to require NHBC to take any further action in relation to the slope of the roof terrace floor, I am intending to award Mr S compensation for the distress and inconvenience caused to him by the way they've handled this aspect of his claim. I will set out the compensation amount later in this decision when considering the overall distress and inconvenience that Mr S has suffered as a result of the way the NHBC have handled his claim.

Removal and reinstatement of the doors and windows leading to the roof terrace

Our investigator concluded that the removal and reinstatement of the doors and windows leading to the roof terrace had to be done in order for the repair works to be completed – and I agree. What isn't clear is whether NHBC have included costs related to that, in their scope of works. Initially, NHBC said that as Mr S was removing the doors and windows anyway, the item didn't need to be included, but they later said it had been included in the scope of works. Mr S couldn't leave his property without doors and windows installed, pending the settlement of his claim, so the doors and windows had to be reinstated at that time. As the repair works couldn't be scheduled to coincide with that work, due to the settlement of the claim being in dispute, then I'm satisfied that the cost of removing and reinstating the doors and windows does need to be covered by NHBC's cash settlement offer.

Having carefully reviewed NHBC's scope of works, I accept that in the 'purpose' section on page 1 of the scope of works, reference is made to temporarily removing the PVCu door window unit and reinstalling the door / window unit. But it isn't clear to me that costs have been included to cover the works to remove and reinstate the door / window unit. At the end of the itemised section of the schedule of works, a comment has been added to the effect that the removal and reinstatement is currently work in progress by the policyholder. So, I'm currently of the view that the

actual costs of removing and reinstalling the door / window unit haven't been provided for in NHBC's scope of works.

Is the cash settlement offer sufficient to meet NHBC's liability to settle the claim?

NHBC have accepted liability to settle the claim. So, what remains for me to decide is whether their cash settlement offer is sufficient to discharge that liability. However, before I consider the quantum of the claim, I've first addressed the issue of who requested the cash settlement, in lieu of the repair works being completed by NHBC's contractors. I'm considering this first because it has a material impact on whether the cash settlement offered will be considered sufficient to settle the claim. If a business doesn't offer to carry out the repairs, and instead offers a cash settlement, the settlement amount needs to meet the costs to the consumer, of completing the repairs.

In an email exchange between Mr S and NHBC on 13 March 2019, NHBC said they'd look to offer a cash settlement for this type of claim as it is usually quicker to instruct a local tradesman who has availability to attend immediately. They said there can often be a slight delay, depending on availability, when NHBC approved contractors attend.

On 26 March, Mr S queried whose choice it was to settle the claim by a cash settlement rather than having the repair works done. He suggested there could be some benefit to a cash settlement, however, he also expressed concern about NHBC's schedule of works being 'very light on costs' and said that if NHBC's contractors could carry out work of an appropriate standard and liaise with all interested parties for those costs, then he may have to defer to them.

On 1 April 2019, NHBC told Mr S that it was his choice whether to cash settle, saying: 'you also have an option for a cash settlement to have the works carried out by your own contractors.' However, NHBC's case history notes show that on the following day the claims investigator decided that since Mr S was already doing work to the windows, they couldn't get their contractor out to do the works, so it was best that Mr S continue with his contractors, making a cash settlement the best way forward. The NHBC then made Mr S a cash settlement offer, saying: "Please see the attached settlement form for you to review, sign and return to us. We have concluded that the best way forward is to cash settle the claim as you have commenced the works with the window/door replacement, and it will only make sense for your assigned contractors to proceed with the works."

In December 2019, Mr S told us that NHBC were refusing to do the full repair costing and were only offering between £2,000 and £3,000 and he couldn't find anyone to do the repairs for that sum. He also said the NHBC was refusing to do the repairs themselves.

In February 2020, Mr S told us that following the recent storms they were having extreme issues with the water ingress. In April 2020, he said that the property management company was proceeding to get the works done because, the three storms in late January and February 2020 had overwhelmed the temporary repair, and they needed to progress with the repairs to the building to avoid further damage and risk to the residents. He observed that did mean the evidence would disappear.

In August 2020, Mr S confirmed the works would be going ahead and again told us that the NHBC had been invited to organise the work using their own contractors but they had declined.

As mentioned previously, where the evidence is inconsistent or contradictory, as it is here, I make my decision on the basis of the balance of probabilities, that is, what I think, more likely than not, is the case.

Having weighed up all of the available evidence, I think it more likely than not, that the NHBC chose to offer a cash settlement to Mr S, rather than carry out the works. A number of reasons were offered for why they thought it was the best way forward. However, Mr S didn't sign the settlement form when received, and expressed concern throughout, at the level of costs included in the NHBC scope of works, saying that he couldn't get the works done for that total sum, so the NHBC's contractor would need to carry out the works. Eventually, to mitigate further damage to the property, Mr S arranged for the repair works to be done.

As I've provisionally concluded that the decision to offer a cash settlement for the claim was made by the NHBC, it follows the cash settlement offer needs to be sufficient to enable Mr S to have the works done.

So, the next issue I've provisionally decided is whether the offer of £2,257.65 made by the NHBC to Mr S is sufficient to satisfy their liability under the policy to pay the claim and is fair and reasonable in the circumstances.

Mr S told us that the works were completed in August 2020 for a total of £7,476.50. The invoice from the contractor said the time taken to complete the works was ten days, with four operatives. The labour was billed at £4,000 and the materials at £3,476.50 for the following works: "To lay a suprema high performance felt overlay to the terrace as per the quote dated 14 February 2020". The works more particularly detailed in the 14 February 2021 quotation included removing tiles and the old mastic asphalt, skirtings, expanded metal lathing, sand and concrete screed; apply bond primer and vapour control layer; supply BSF isolating control layer; lay mastic asphalt parma screed, supply isolating membrane; fix mastic asphalt, and brushing two coats of white solar reflective coating to the exposed vertical upstand, and fit natural paving slabs on support pads.

The contractor also added that on removing the windows and doors they found there was a large section of screed that was missing under the double-glazed units and the damp proof membrane was missing. The screed was cut back, and a new damp proof membrane was installed and concreted to the correct falls. The tiles were removed and a new felt system installed with paviours installed on top.

The schedule of works provided by the NHBC quoted £2,257.65 for "temporarily removing the PVCu door window unit and remove the timber upstand to the width of the opening and replace complete with associated mastic asphalt waterproofing and re-install door/window unit, replace water damaged skirting and window boards and make good internal decorations to window reveals and adjacent wall areas". Six hours of labour was separately included in the scope of works. When asked about why there was such a big difference between Mr S' costs for repair and the NHBC's, the claims investigator initially said that the main items of price difference relate to the scaffolding, asphalt and decorations. He said that NHBC's calculations are based on measured quantities, whereas Mr S' quotation only provided a price without the quantities, so the figures quoted couldn't directly compared.

Having considered the two scopes of work, I asked NHBC for some further clarification. Although the claims investigator has now retired, NHBC were able to obtain some comment from another claims investigator and provided some further explanation in relation to the differences in the two costs of repair.

I queried why labour costings were only included for the roofer's works, and the NHBC said that the rates shown for the joinery and decoration included material and labour costs. They agreed that there were no costings included for the removal and replacement of the doors and windows, which should have been included. They also agreed there was no allowance made for the removal and replacement of tiles and paving slabs, which there should be, in the area immediately in front of the doors. They also agreed there was no reference to the provision of a lead tray, and said it wasn't clear where the tray should be. They agreed that there was no provision for the replacement of the missing section of screed and confirmed the claims investigator did say in his report that the threshold needed reconstructing. With regard to the difference in the calculation of labour costs, four men for 10 days compared with four hours plus a schedule price for roofing/asphalt repairs, NHBC said it seems they have replaced the complete flat roof covering, whereas the NHBC was only allowing for repair.

In relation to their contractor rates, the NHBC confirmed there was no discount applied and in fact they include an uplift dependent on where the contractor is based in the country. They also confirmed the rates used to confirm a cost of repair are built from the Hutchins Schedule of rates, a well-known construction pricing regime used in the construction industry.

It's not straight forward for me to assess how much of Mr S' scope of works should be provided for in the NHBC's cash settlement offer. A report from an independent expert isn't available, because the works have now been completed due to the ongoing ingress of water following stormy weather conditions. NHBC have agreed that a number of significant elements of the costs of repair were omitted from the schedule of works, and the claims investigator who completed the schedule of works is no longer employed by the NHBC. Mr S also gave NHBC a number of opportunities to arrange for their own contractor to do the works.

In reaching my provisional decision on this issue, I've considered which evidence is more persuasive, as to the accurate cost of works required to deliver a lasting and effective repair. Given the number of items and costs that NHBC incorrectly omitted from its scope of works, I find the invoice Mr S has provided for completion of the works, together with the scope of works included in the February 2021 quotation, to be more persuasive than the scope and costs put forward by NHBC. I also note that NHBC haven't provided me with any persuasive evidence to suggest there were elements included in the works that weren't necessary to give a lasting and effective repair. So, taking everything into account, I'm currently minded to require NHBC to reimburse the full cost of repair of £7,476.50, in settling Mr S' claim.

Mr S has told us that the property management company, T, paid the contractor's invoice and recovered the costs from the owners through the service charge. He's requested that the cost of repair be reimbursed to T, so they can return it to the owners of the flats in the development in their appropriate shares. So, should Mr S accept the final decision on his complaint, I'm intending to require the NHBC to pay the sum of £7,476.50 plus interest, into T's bank account (as provided by Mr S to them).

Is any other compensation due to Mr S?

I've next considered whether NHBC's handling of Mr S' claim has caused him distress and inconvenience that he should be compensated for.

I've already explained why I think compensation is due for the way in which NHBC addressed Mr S' claim regarding the slope of the roof terrace floor. In addition, I think the delays Mr S suffered in having his claim settled also added to the distress and inconvenience caused by NHBC's overall handling of the claim. He made the claim in January 2019. In April 2019, he had to arrange for temporary repairs to be carried out to the flat, which failed the following February. Given the ongoing damage that was being caused to the flat, and the failure of the temporary repair, Mr S then had to arrange for the works to be completed in August 2020 in the knowledge that NHBC were only offering to reimburse a small part of the cost, in their settlement offer. NHBC didn't engage meaningfully with the costings provided by Mr S, but appeared to be set on cash settling the claim. So, what should have been a fairly straight forward repair, became a protracted and drawn out matter.

Mr S has told us that he's found the whole experience very frustrating and stressful and has lost five months of rent and incurred five months of council tax as he had to give notice to his tenants to vacate the property to get the works done. Although the policy doesn't provide cover for loss of rent, I've taken Mr S' comments into account when deciding the amount of compensation which should be paid to him. Taking everything into account, I'm intending to award Mr S £750 for the distress and inconvenience he's suffered as a result of the way NHBC have handled his claim.

I concluded that I was intending to uphold the complaint and require NHBC to pay £7,476.50 to T, the property management company, to settle the claim, and £750 to Mr S for the distress and inconvenience he'd been caused by the way the claim was handled.

I also clarified in an email of the same date, that the £7,476.50 needed to be paid together with VAT on that sum.

NHBC accepted my provisional decision.

Mr S also accepted my provisional decision, but in addition, provided the following comments:

- Mr S has clarified that the decision to change the doors wasn't an arbitrary one. Rather, the new doors and windows were ordered as a result of carrying out investigations into the possible cause of the water ingress. During those investigations it was found that the roof terrace doors had sagged, and the frame had distorted due to incorrect fitting by the builder. Removal of the doors also uncovered the other structural issues that lay beneath them.
- He feels that NHBC's initial refusal to consider his complaint was totally unreasonable, which was borne out by the site visit of NHBC's claims investigator.
- He said that during the site visit with the claims investigator the following factors contributing to the ingress of water were discussed: the fitting of the windows and why they'd failed; the missing part of the structure at the intersection of the roof terrace and the upstand; and the incorrect fall of the roof terrace. But the report produced by the claims investigator left him dumbfounded by its omissions, leading to further communications with NHBC.
- He says it's wrong for the claims investigator to rely on the technical requirement, in isolation and maintains the "fall" of the roof terrace was incorrect and an obvious contributor to the water ingress problem.
- He believes the amount calculated for the cash settlement didn't even cover the

partial solution detailed by NHBC and repeated that he'd asked them to do the works. He felt that in making the cash settlement a time limited offer, NHBC was trying to force his hand.

With regard to the question of what compensation is due, Mr S has added that he's incurred the cost of replacing the windows and doors, which if they'd been fitted properly, should still have been in good working order. He's explained that the owner of the flat below, that suffered damage from the water ingress, had to have the property vacated for the ceilings to be repaired. He's also pointed out that during the period of the repair, four residents lost the use of their parking spaces due to scaffolding etc; all of the leaseholders have faced increased service charges they've had to fund; and the redecoration and ceiling replacement in the flat below has been covered by the building insurance which will lead to increased future premiums.

I've taken these further comments into account in making my final 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 noted the further points made by Mr S, but they haven't led me to a different outcome. I appreciate that the owner of the flat below his, and the other leaseholders have also been impacted by matters arising from this claim, however, I'm only able to award compensation to Mr S, as he has the contractual relationship with NHBC. I'm also satisfied that I've taken the other points Mr S has raised, into account, when making my provisional decision.

So, for the reasons detailed in this decision and my provisional decision, I uphold this complaint and make the awards detailed below.

Putting things right

My final decision is that I uphold this complaint and require the National House-Building Council to

- Pay £7,476.50 plus VAT to T, the property management company, in settlement of the claim, together with interest* from the date T paid the invoice from the building contractor until settlement is made; and
- Pay £750.00 compensation to Mr S for the distress and inconvenience he's suffered as a result of the way the National House-Building Council has handled his claim.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If the National House-Building Council considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr S, it should tell them how much it's taken off. It should also give Mr S a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and require the National House-Building Council to pay the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 March 2021.

Carolyn Harwood
Ombudsman