

The complaint

Mr and Mrs H complain about National House-Building Council (NHBC)'s handling of a claim under their building warranty.

What happened

Below is intended to be a summary of what happened and does not therefore include a full timeline or list every point that has been made.

My provisional decision focuses on issues reported by Mr and Mrs H relating to roof windows in their property. NHBC took over responsibility for these in 2016. So, our service can consider events from then, up until their final response in January 2020. However, I may refer to events both before and after these dates, for contextual purposes, or in any event where there has been a continuation of issues related to the windows following the final response.

Mr and Mrs H have raised other issues with NHBC, one of which relates to a 'knocking noise' in their plumbing. I have already provided my decision on this under a separate reference. Any mention of this, or other issues not related to the windows, are purely for contextual purposes only.

Mr and Mrs H have experienced continued issues with the windows in their property leaking and suffering water ingress - in particular during wet and windy conditions. The property's builder had previously carried out repairs and replaced the windows, but the ingress continued.

In 2016, NHBC took over responsibility for the claim relating to the windows. The windows were both replaced with ones from a different manufacturer. In September 2019 Mr and Mrs H said one of the windows failed again under heavy rain. They said NHBC told them they couldn't help, so they contacted the manufacturer for guidance. They provided several photos of the window and its surrounding area, both internally and externally. The manufacturer responded highlighting issues regarding the flashings and the installation.

Mr and Mrs H said they put this information, including the photos, to NHBC. Mr and Mrs H say they were told by NHBC the performance of the window only had to conform to their technical requirements – not to the manufacturer's specific standard.

NHBC agreed to repair internal damage caused by the leaking and reimbursed Mr and Mrs H for the cost of temporary repairs they had carried out by using a separate contractor to resolve the immediate issue of leaking. But Mr and Mrs H said NHBC didn't address the root cause of the ingress, so it continued to occur.

Mr and Mrs H reported further cracking to the paint and plaster work around the bathroom window around December 2019. From reviewing photos sent by Mr and Mrs H, NHBC said the cracking had been caused by shrinkage, and as this was a general maintenance issue, they would not be responsible for this.

Mr and Mrs H raised a complaint with NHBC. In their final response, NHBC said Mr and Mrs H had raised issues with the redecoration work around the window – but didn't comment on the ingress issues. NHBC acknowledged that when they reviewed the photos from Mr and Mrs H, they incorrectly believed work to have been last carried out in 2016, which is why they said shrinkage was responsible. NHBC offered Mr and Mrs H £250 compensation for the inconvenienced caused.

Mr and Mrs H were unhappy with NHBC's response. So they brought their complaint to our service.

Our investigator recommended Mr and Mrs H's complaint be upheld. She said from the information available she was persuaded there was an issue with the window. To put things right she recommended NHBC re-investigate the issues with the window and pay Mr and Mrs H £400 compensation for the inconvenience they'd experienced through all of their claims.

In response to our investigator, NHBC said they were aware of the reoccurrence of the leaking window related to several areas where the flashing has not been installed correctly. Mr and Mrs H remained unhappy with how NHBC had handled their claim. They said NHBC had failed to sufficiently deal with structural issues relating to the window, so the problems would continue.

Further developments

Mr and Mrs H also reported further concerns about leaking, including to the other window, with NHBC in February 2020.

They said repair proposals had been requested from one of their contractors so the matter could be concluded. A contractor came to inspect Mr and Mrs H's property in July 2020, they said the scope of work was not adequate for work required.

The scope was amended, and work was carried out at Mr and Mrs H's property around September 2020. But Mr and Mrs H have said the issues have not been resolved and reported further ingress to NHBC in October 2020 – and NHBC reattended the property. Mr and Mrs H say since works have been completed, they have observed condensation in their roof which they believe is attributed to ventilation issues caused by the works completed by NHBC.

NHBC didn't agree this was the case, they said work had been completed in a different section of the roof and areas of ventilation were not touched during the repairs.

The complaint then passed to me.

My provisional findings

I issued a provisional decision on 17 March 2021. In my provisional findings, 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've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Having done so, I'm upholding Mr and Mrs H's complaint. I'll explain why.

The issue of ingress through the windows was first reported several years before NHBC took over the claim. I can see from a report produced in 2012, NHBC note the ingress was occurring during heavy windblown rain – and appeared to be weather related.

NHBC replaced the windows in 2016 with a set from a different manufacturer. Although I can see this is confirmed in emails I've seen from both NHBC and Mr and Mrs H from around this time, I haven't seen any detail showing the investigation that took place at the time. So although the windows were replaced, I can't see what investigations NHBC carried out to identify the cause of the ingress at the time.

The issue of ingress reoccurred in September 2019 – with what appears to be similar circumstances, during windblown rain and adverse weather. Given the nature of this type of weather, it's reasonable the issues could have taken some time to present themselves. So I do think it appears to be a continuation of the same issues Mr and Mrs H were experiencing previously.

Mr and Mrs H provided a report from the manufacturer they obtained around September 2019. Mr and Mrs H provided several photos in and around the window in the en suite bathroom, as well as outside on the roof and surrounding area. The manufacturer said they could see from the photos parts of the flashing hadn't been installed correctly – and this could be allowing water underneath, which could then be finding its way into the property.

Mr and Mrs H provided this information to NHBC. NHBC does appear to have technical requirements relating to flashing and prevention of moisture entering a property but haven't provided me with any detail that persuades me they considered this in detail. I can see the failed repair report completed in October 2019 mentions the manufacturers' opinion as parts of it are copied into the report. But apart from this, and the photos provided by Mr and Mrs H, it doesn't offer much additional detail or suggested action except a comment that says, "The flashings and underlay together with tile installation to be inspected and re-formed as required".

Following this I can see NHBC carried out some work inside Mr and Mrs H's property – which mainly appears to be redecoration work. And I can see they reimbursed Mr and Mrs H for work completed by their own contractor to stop the immediate leaking.

But I can't see any further investigation was carried out at the time to identify the root cause of the ingress or to confirm if there was an issue with the flashings. I think given the information they'd been provided, there was an opportunity for them investigate further, and if necessary, to put things right and ensure any repairs were lasting and effective. As a result, Mr and Mrs H have continued to experience continued issues with the window leaking. They were then incorrectly told by the NHBC that further issues around the window were due to shrinkage.

Based on the information available to me, I think the installation of the flashings has been incorrect for some time and should've been considered when NHBC investigated the issues with the windows in 2016. NHBC had a chance to address this in 2019 when the window leaked again, but I can't see they did this until they instructed another contractor to attend – which didn't happen until July 2020. NHBC seem to have addressed the resulted issues presented by the ingress – for example damage to the plaster on the wall around the window, but they don't seem to have addressed the root cause of the ingress itself when they had the opportunity to.

Mr and Mrs H have had to continuously contact NHBC to resolve issues and as the issue has continued reoccur, there has been no resolution between both parties. So I can fully appreciate Mr and Mrs H's frustration.

Putting things right

The window that appears to be causing the main concern is the one in Mr and Mrs H's en suite bathroom – but it's more likely than not the issues reported could present themselves in the other window. NHBC needs to make sure a full and lasting repair is completed to both windows. I can see there have been several attempts to address the issues around the windows – and both parties are not in agreement over a number of issues during the claim.

So I think in the circumstances, it reasonable for NHBC to provide Mr and Mrs H a choice of three different independent surveyors to choose from, and commission them to carry out investigations around the installation of the windows, produce a report to determine all potential causes of the ingress, and recommend next steps for a full, lasting and effective repair. NHBC would then need to implement these recommendations – and include any necessary redecoration work.

Mr and Mrs H have said repair work previously carried, in relation to the windows has contributed to further damage to their property. Although I have managed both parties' expectations about matters relating to condensation reported by Mr and Mrs H being a separate issue. In order to bring all matters relating to the windows to a conclusion I also think it's reasonable the independent surveyor comments on the related repairs that have been carried out by NHBC and the separate contractor– and whether these are attributable to the damage and issues reported. If this is found to be the case, NHBC should put right the damage.

Taking everything I've set out above into consideration, I think compensation is due. In their final response NHBC offered Mr and Mrs H £250 compensation. I think NHBC should increase this by £1,000 totalling £1,250 as I think this fairly represents the inconvenience they've been caused over a prolonged period.”

Responses to my provisional decision

Mr and Mrs H responded to say they were pleased with my provisional findings but offered further points for my consideration. They said the issues in high driven rain had not reoccurred so far and, due to personal circumstances, an independent survey wouldn't currently be necessary or helpful at this point. Mr and Mrs H said they would like the option to revisit this later.

They highlighted concerns that their current personal circumstances might prevent them from being awarded compensation due to NHBC's terms and conditions.

NHBC didn't agree with my provisional findings. They reiterated some of their points and provided further points for me to consider, including:

- NHBC said it is clear they considered the comments by Velux with the actions for their contractor to reform the flashing as required
- They said following replacing the windows in 2016 there has been no further issues with the other window, and only the en suite window has leaked - so they don't agree further repairs are required to the unaffected window

- They also said at the time of issuing their final response on 15 January 2020, no further leaking had been reported so they were unable to consider it at the time
- Mr H and Mrs H raised concerns about damage to their property they believe was caused by NHBC. NHBC said they responded to this point in a separate final response and disagree damage to the property is subject to this complaint
- NHBC disagree with my recommendation for compensation and feel it is excessive when compared to similar cases. They said no issues were noted with the window until September 2019. So there was no inconvenience in this time. They said when the leaking was reported to them, they responded swiftly shortly after and covered the cost of emergency repairs – which they weren't obligated to do.

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 considered the additional points provided by both parties but having done so, it doesn't change my decision – or my reasoning.

When a decision is made by an ombudsman, it isn't subject to a financial business's terms and conditions. But there are conditions for the decision to become binding on both parties. More detail explaining this is given in a separate letter to this complaint.

Following this, if Mr and Mrs H accept my decision, it will be for them to work with NHBC to allow them to carry out the directions I've set out in my decision. It's not unreasonable Mr and Mrs H might need some time before an independent inspection can take place - and NHBC should approach this with Mr and Mrs H reasonably. But Mr and Mrs H will also need to manage their own expectations that this cannot be something they retain a right to do indefinitely.

I've already explained to NHBC why I believe this is a complaint that we can consider – and provided my reasons for doing so. Mr and Mrs H wrote to NHBC in January 2020 before a final response was issued. They raised the installation and water ingress issues with the window being considered under this reference. I can also see NHBC responded shortly after to say Mr and Mrs H's comments would be taken into consideration as part of their review. So I think NHBC have had time to consider this complaint in full and it's one I can look at.

As I've set out in my provisional findings, a 'failed repair report' was prepared but it wasn't particularly detailed. The report says:

*"The flashings and underlay together with tile installation to be **inspected** (my emphasis) and re-formed as required".*

So while I think it does acknowledge there was a defect, I have very little in the way of further detail explaining when the flashings were inspected or corrected near the time – or whether efforts were made to do so. All I can see is redecoration was completed in November 2019 – and Mr H and Mrs H raised concerns only redecoration work had been carried out following this. So while NHBC might have acknowledged the manufacturer's comments about the flashings, I'm not persuaded based on the evidence available to me, NHBC acted swiftly to put things right

Both of the windows were replaced at the same time, it's acknowledged that there is an issue with the flashings on the en suite window – so I think it's reasonable to consider that if the issue exists on one of the windows, it potentially does on the other. And Mr and Mrs H shouldn't be disadvantaged by this. So if the same issue with the flashings is reported on the other window, it's reasonable NHBC should put this right.

I have managed both parties' expectations about the matters relating to condensation. Mr and Mrs H believe this is attributable to issues and repairs related to this complaint, NHBC don't agree.

So in order to bring all matters relating to the windows to a conclusion I think it's reasonable the independent surveyor comments on the related repairs that have been carried out by NHBC and the separate contractor– and whether these are attributable to the damage and issues now reported. If this is found to be the case, NHBC should put right the damage.

I understand NHBC don't agree with the compensation set out in my provisional decision – and I've considered their comments on this. But we aren't bound by our previous decisions and we consider each case on its own individual facts, taking into account what we think is fair and reasonable in the circumstances. So, my direction for compensation remains the same as set out in my provisional decision – and for the same reasons.

My final decision

My final decision is that I uphold Mr and Mrs H's complaint.

I direct National House-Building Council to put things right as I have set out above in my provisional findings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 29 April 2021.

Michael Baronti
Ombudsman