

The complaint

Mr S complains National House-Building Council (“NHBC”) has unfairly declined a claim he’s made on a Buildmark building warranty.

What happened

The background to this complaint is well known to the parties so I have only provided a summary here:

- Mr S lives in a property the freehold of which is owned by a Housing Association, which I’ll refer to as C.
- He says he’s experienced a number of leaks in the property over the years.
- The leaks have been reported to C and it dealt with the external causes as part of its property maintenance responsibilities.
- It arranged for the damage to the inside of Mr S’s property to be repaired under a separate buildings insurance policy through an insurer I’ll refer to as Z.
- Mr S was responsible for paying the excess under this policy and says over the years he’s had to do this five times.
- He wasn’t happy with this and made a complaint to NHBC, as the provider of the building warranty, saying he thought the property hadn’t been finished properly and so it was ultimately responsible for the leaks and the expense he’d incurred.
- He also said NHBC’s communication had been poor.
- NHBC said C was the Buildmark policyholder and it had to obtain C’s permission to communicate with Mr S directly and this had caused some delays.
- It said C had chosen to pursue the leaks through the building insurance policy rather than through NHBC. And it couldn’t consider retrospective claims where damage had already been repaired several times by that insurer.
- Mr S brought his complaint to this Service and our investigator didn’t uphold it, concluding it was reasonable for NHBC to seek permission from C to look at the claim as it was the policyholder, not Mr S.
- She also thought as the repairs had already been completed through the buildings insurance – and one time in 2014 by the original builder - NHBC hadn’t been given the opportunity to assess any defects it might be liable for. She therefore didn’t think NHBC were responsible for reimbursing Mr S his excess fees
- Mr S asked an ombudsman to make a 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.

- As C was the Buildmark policyholder I’m satisfied it was reasonable NHBC sought its permission to consider Mr S’s claim and complaint.
- Because it had to do this, there was a delay while it waited for C to respond but NHBC also accepts it could have acted more quickly and communicated better when

dealing with the matter. It's apologised for this and I'm satisfied this is reasonable in the circumstances.

- C is also the buildings insurance policyholder, and it was responsible for the decision about which policy it claimed on. It chose to claim on the buildings insurance through Z rather than on the Buildmark policy. So, I see no reason to hold NHBC responsible for C's decision.
- Z undertook repairs on several occasions, resulting in Mr S being charged multiple excess fees, but his property continued to experience leaks.
- I understand why Mr S approached NHBC when he did as the Buildmark cover was due to end shortly. But by this time, repairs had already been undertaken a number of times and NHBC was deprived of the opportunity to assess any defects or physical damage it might have been liable for under the policy.
- I don't think it would be fair or reasonable to expect NHBC to reimburse Mr S the excess fees he's paid on the buildings insurance policy when there's no evidence it would have been liable for any repairs under the Buildmark warranty.
- For the reasons I've explained, I won't be asking NHBC to do anymore.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 November 2021.

Paul Phillips
Ombudsman