

The complaint

Miss M has complained about the way NHBC have dealt with a claim she made for damage to her property, caused by an ingress of water.

What happened

In September 2018, Miss M's flat was damaged by water coming into her property from the roof. The property had previously suffered damage from water ingress in 2015. That damage was repaired under a different claim reference and addressed in an earlier complaint brought to this service. The parties agree that the September 2018 claim is a new claim. This decision will therefore only address matters which have arisen in relation to the September 2018 claim, from the date of that claim.

The managing agent for the development in which Miss M's flat is located, contacted NHBC on 27 September 2018, to report that her flat had been damaged by further water ingress. They also informed NHBC that the hallway outside the flat and the lobby had also been damaged by water.

Extensive water testing was carried out inside Miss M's flat in February 2019 to identify where the water was coming from. In order for the tests and investigations to be completed, a large hole was cut in her ceiling by NHBC's contractor which exposed the electrical cables. At that time the contractor concluded the water ingress was caused by a badly maintained flashing detail and told Miss M it had been temporarily repaired as a courtesy.

NHBC issued their investigation report in relation to the claim on 18 June 2019 (claim 18/45752). The report explained that the water damage to the lobby was investigated on 23 November 2018 to determine the extent of the damage and access, with scaffolding erected. Further visits were made to the property on 27 February 2019 and 6 March 2019. The report went on to say that the water ingress into the common area and Miss M's flat was caused by a defect in the roof covering of the pitched roof above flat 99. It explained that the damage was consistent with a defect in the Redland Cambrian slate roof which allowed rainwater to enter the roof structure. To rectify the issue, the roof covering needed to be re-laid over the slope above flat 99.

The report concluded that while the damage was caused by a failure to comply with NHBC's mandatory requirements, as the cost of the repairs wouldn't exceed the common parts' minimum claim value, the claim wasn't covered by the policy. In the 'next steps' section of the policy, it said that NHBC wouldn't take any further action in respect of the holes in the lobby ceiling made for investigations purposes as any repair would be further damaged by water ingress.

With regard to the damage to Miss M's flat, and the hole in her ceiling, NHBC said they were willing to cash settle the claim because any remedial works undertaken would need to be repeated unless the managing agent first resolved the issue with the roof. It was at this point that the progress of the claim stalled. The managing agent believed that the claim for the common parts ought to be covered by the warranty, and NHBC believed the responsibility for repairing the common parts rested with the managing agent.

Miss M complained to NHBC about the lack of progress on her claim and on 23 May 2019, NHBC issued a final response letter to her, upholding the complaint in relation to the delay and offering a goodwill payment of £500. However, Miss M told us that she hadn't accepted the compensation because she was concerned it might have a negative impact on the resolution of her complaint. Miss M made a further complaint in January 2020, which NHBC didn't uphold, so in March 2020 she referred her complaint to our service.

After carrying out a review of the complaint, our investigator issued his view upholding the complaint on 23 September 2021. He said he was satisfied that the claim Miss M had made wasn't linked to a previous claim of a similar nature. Rather, it was a new claim for internal damage to her flat, caused by a leak from the roof due to the way the Redland Cambrian slate roof covering had been installed in the vicinity of Miss M's flat.

He noted NHBC had accepted that the damage caused to Miss M's flat was covered by the policy and should be repaired. However, NHBC considered that the managing agent need to repair the leaking roof before NHBC repaired Miss M's flat.

Our investigator explained that in some circumstances, otherwise uninsured damage may have to be put right to ensure that the property repairs required to settle the claim are lasting and effective. In his view, this was the case with Miss M's claim. He concluded that in order for NHBC to settle Miss M's claim for damage to her flat in a way that would ensure a repair that was lasting and effective, they'd need to repair the part of the roof that was allowing a leak into Miss M's flat, in addition to repairing the damage in her flat.

With regard to the cause of the damage to Miss M's flat, our investigator noted the cause of the ingress was known and the parties agreed it needed to be repaired by the re-laying of the Redland Cambrian slate roof covering in the vicinity of the point of ingress. As Miss M's internal damage to her flat is covered by the policy, and the only way to insure the repair to her flat is lasting and effective, is to repair the roof, our investigator was satisfied it should be repaired as part of settling Miss M's claim. However, as the minimum claim value wasn't met for the common parts claim, our investigator concluded that NHBC wasn't responsible for repairing the damage to the landing area outside Miss M's flat.

Miss M also told us about the distress and inconvenience she'd sufferance as a result of the way the claim had been handled. Our investigator concluded that NHBC should pay Miss M £500 compensation for the impact on her of the delays in getting the damage fixed in her flat, and the stress shed suffered of having to live with a leak into the flat.

NHBC accepted our investigator's view but Miss M did not. She felt that compensation in the region of £3,000 was merited. Our investigator issued a second view in which he increased the compensation to £750, but Miss M still felt that didn't go far enough to address the stress and difficulties she'd been through, over a five-year period, from when she first started experiencing problems with water ingress into her flat. NHBC accepted the increased level of compensation, but as Miss M did not, the complaint has been passed to me for 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.

Claim for damage to Miss M's flat caused by the ingress of water from the roof

For the avoidance of doubt, I agree that dealing with the claim on the basis set out in the investigator's view and summarised in the "*What happened*" section of this decision, above, is a fair and reasonable way to settle Miss M's claim for damage to her flat. And it's pleasing

to see that NHBC have agreed to settle Miss M's claim in this way.

What remains for me to decide in this decision, is whether the sum of £750 awarded by our investigator is sufficient to compensate Miss M for the distress and inconvenience she's suffered as a result of the way NHBC have handled her claim.

In explaining the impact NHBC's actions have had on her, Miss M has mentioned a hospital stay she had in June 2018 and a five-year period during which her claim has been ongoing. However, I would first clarify that as I'm only looking at the circumstances of the complaint from September 2018, it is a three-year, two-month period I'm considering which starts after the hospital stay. I also note that the first claim (for damaged caused in 2015) was settled and £1,000 compensation was paid by NHBC to Miss M for inconvenience she'd suffered in relation to the way that first claim had been settled.

However, three years is not an insignificant period of time to live in a flat with a large hole in the ceiling (albeit covered by plastic) and water damage. Miss M also told us that her roof was stripped off during the two biggest storms in February 2020, which she says was the most stressful experience she'd had. She also explained that she'd suffered from increased chronic stress and anxiety as a result of the way her claim had been handled. Miss M added that the hole in her ceiling made it very difficult to keep her flat warm during the winter months, and the leak had caused her problems with her electricity.

Compensation awarded by this service is meant to make up for the distress and inconvenience caused by unfair and unreasonable actions of an insurer. To determine an award amount, we look at what happened and take into account our guidance on compensation (published on our website) as well as what awards we've made on other complaints in similar circumstances.

NHBC have confirmed that in addition to accepting our investigator's recommendation that they pay £750 compensation to Miss M, the offer of £500 compensation made in 2019 is also still open for Miss M to accept. I think that shows NHBC genuinely accepts that it failed Miss M and that it has intended to do what it can to put that right. And taking everything into account, I think that £500 offered in 2019, together with the £750 recommended by our investigator is fairly and reasonably due to Miss M for the distress and inconvenience she's suffered during this time due to NHBC's failures. I therefore conclude that it's fair and reasonable for NHBC to pay an award of compensation, totalling £1250 to Miss M, for the considerable upset, worry and disruption she has suffered over a sustained period.

Putting things right

I require the National House-Building Council to:

- settle Miss M's claim, in accordance with the policy terms and conditions so as to achieve an effective and lasting repair to the damage within Miss M's flat; and
- pay Miss M £1,250 compensation for her distress and inconvenience.

I make no other award against the National House-Building Council.

My final decision

My final decision is that I uphold this complaint and make the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 December 2021.

Carolyn Harwood
Ombudsman