DRN-3122051

The complaint

Mrs C complains that National House-Building Council ('NHBC') hasn't paid her the amount she's owed under the terms of her access agreement, after it completed repairs on her apartment block under her building warranty policy.

Mrs C is represented by her neighbour, Mr M.

What happened

NHBC agreed access agreements with the leaseholders in the block, to facilitate the works. Mr M says he negotiated access agreement terms for his (and Mrs M's) apartment, and for Mrs C's apartment. However, he says the terms Mrs C received were different to what he agreed.

Both access agreements included a relocation/alternative accommodation payment. Mrs C's payment covered seven months, which was the expected duration of the scaffolding. Whilst Mr and Mrs M's payment covered eleven months, with their payment also covering the four months before the agreement, the different payment period start-dates aren't in dispute. Both of the payment periods, for the two apartments, ended in September 2018.

Mr M says the agreed monthly amounts were slightly different due to the two apartments being different sizes. Mrs C's £9,100 payment works out to be £1,300 per month, when divided by her seven-month period. Mr and Mrs M's £16,500 payment works out to be £1,500 per month, when divided by their eleven-month period.

Mr and Mrs M's agreement also allowed for further payments on a pro-rata basis (£1,500 per month) if the work ran beyond September 2018. However, Mrs C's agreement didn't include that further payment term. Mr M says the term was meant to be included in both agreements, with Mrs C receiving £1,300 per month if the works overran.

In December 2018, Mrs C contacted NHBC. She noted Mr M had received a further payment covering October to December 2018, and she requested a further payment for the same period based on her pro-rata amount. In January 2019, she noted the impact the living conditions were having on her, and she requested £10,000 as a final payment. NHBC declined her requests.

In June 2019, Mrs C asked for a payment of £7,800, based on her pro-rata amount, because the scaffolding had been erected for a total of six months beyond 28 September 2018. NHBC again declined.

Mr M went on to represent Mrs C in her complaint. He noted the works weren't completed at her apartment until May 2019 (eight months after 28 September 2018). So, he said she was owed a further £10,400 based on her pro-rata amount.

NHBC says its records don't reflect that Mrs C was to receive the same agreement terms as Mr and Mrs M. NHBC has also explained that its responsibility under the building warranty policy terms, was to pay the cost of putting right damage caused by the builder's failure to construct the property in accordance with the relevant standards. NHBC noted the policy excludes loss of enjoyment, inconvenience, distress or any other consequential losses.

NHBC also said the access agreement was clear the scope of works was subject to change once the building had been opened up; and this might mean additional time is required, and Mrs C would be unable to use her balcony for the duration of the works.

NHBC noted the policy covers alternative accommodation costs if the occupier has to move out during works, and it highlighted that Mrs C had received £9,100 to cover seven months alternative accommodation. NHBC explained that if Mrs C provides evidence of additional costs for alternative accommodation, above the £9,100, it will consider them.

Mr M has made the point that the £9,100 payment was so Mrs C could escape the noise and inconvenience by days out and trips to see her daughter as she wishes. He notes that Mrs C was told she didn't need to keep receipts to evidence her claim. Mr M maintains that Mrs C was to receive a pro-rata payment if the works extended beyond 28 September 2018.

One of our investigators has considered Mrs C's complaint, but he didn't think NHBC needed to pay her anything further. Mr M disagreed, so the complaint has been passed to me to decide.

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.

Where evidence is inconclusive, incomplete or contradictory, I've reached my decision on the balance of probabilities. This means I've determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances**.**

I've reviewed the emails that have been provided, from October 2017 to February 2018. The exchanges are between Mr M and NHBC (or its appointed third-party), leading up to the access terms being agreed.

In November 2017, Mr M said they (Mr and Mrs M) had arranged alternative accommodation to provide relief from the living conditions, and they intended to hold NHBC responsible for their costs and disruption. In January 2018, NHBC noted the majority of apartments had agreed their costs and expenses verbally, but there were a few yet to be finalised.

On 21 February 2018, NHBC sent Mr and Mrs M an email to confirm their earlier discussion. The email confirmed the works hoped to be completed within seven months, but should that change, there would be a further payment on a pro-rata basis to reflect the extended period. In response, Mr M confirmed they would be happy to sign on the basis their agreed costs of £20,000 are paid up front, covering the period through to September 2018.

I've seen the access agreements for both apartments. Both include an appendix which sets out the agreed costs and period, and both of those pages are signed on 6 March 2018 by the NHBC employee who made the agreements. I'll refer to this individual as Mr K.

Mr and Mrs M's agreement confirmed that, following discussions with Mr K, a payment of £20,000 had been agreed. This was £16,500 for alternative accommodation or relocation costs, and £3,500 for redecorations. The £16,500 covered an eleven-month period from October 2017, and a pro-rata payment would follow should the works be extended.

Mrs C's agreement confirmed a payment of £13,100. This was £9,100 for relocation during the seven months the scaffolding was scheduled; £500 for removals; and £3,500 for redecorations, carpets and curtains. I've also seen Mrs C signed an offer letter on 21 March 2018, which confirmed those costs.

Based on the information I've seen, there were separate and individual agreements for each apartment within the block. Mr and Mrs M may have been able to negotiate more preferable terms, either because of how their apartment was impacted by the work, or simply because NHBC needed to secure their agreement to move the project forward. Either way, I haven't seen anything that suggests Mr and Mrs M's terms were to apply to other leaseholders.

Mr M says his negotiations were also on the behalf of Mrs C, and she was meant to receive the same pro-rata terms. However, none of the email exchanges I've seen from that time refer to Mrs C. I also note Mrs C wasn't copied into any of Mr M's emails.

Furthermore, Mr M contacted NHBC during the following periods to chase further payments, and in the emails that I've seen, there's again no mention of Mrs C:

- Between September and October 2018 (and a pro-rata payment was agreed up to the end of December 2018).

- Between March and July 2019 (and a final pro-rata payment was agreed up to the end of February 2019).

Given Mr M says he had negotiated the same pro-rata terms for both apartments, and whilst he says he was no longer acting for Mrs C in October 2018, I find it unusual there's no mention of her in his correspondence.

I accept that Mrs C was pursuing her own further payment from December 2018 onwards. However, if Mr M had agreed the further pro-rata payment term for both apartments, *on balance*, I consider it likely he would have mentioned Mrs C in his emails at the time of negotiating his agreement, and when he first chased his further payment.

Mr M says Mr K would have been able to confirm that Mr and Mrs M's terms were to apply to Mrs C, but he's no longer employed by NHBC. However, as noted, both agreements are signed by Mr K on the page outlining the agreed costs. So, I don't consider it likely he understood the same terms were to apply to both apartments.

Therefore, in conclusion, I'm not persuaded the pro-rata terms were agreed for Mrs C's apartment.

I'll turn now to the costs that Mrs C's access agreement did cover. The documents included with, and referenced in the access agreement Mrs C signed, show the following:

- Prior to the terms being agreed, Mrs C had expressed a desire to relocate once the scaffolding is erected. She was asked to put this in writing.

- Mrs C's follow up letter, dated 10 November 2017, confirmed she was concerned about her living conditions once the scaffolding is erected; blocking the light and preventing the windows being opened. Mrs C said she had no option but to find alternative and comparable accommodation, which she thought would cost her £1,800 per month.

- Agreed costs included: *"Relocation – duration of scaffold scheduled for 7 months at total sum of £9,100.00"* and *"Relocation fee £500 (removals)".*

The subsequent offer letter, also signed by Mrs C, confirms: *"Relocation costs (period of 7 months)"* and *"Removal and storage costs £500".*

In my view, it's clear that Mrs C's alternative accommodation costs were to be covered whilst the scaffolding was up, which was expected to be for seven months. So, if Mrs C had been paying for alternative accommodation for more than seven months, due to scaffolding still being in place, there would be a reasonable argument her additional costs above £9,100 should be covered.

However, as I understand it, despite Mrs C making a claim on the basis she would need to move out, and despite her receiving funds to move out, she chose not to move out for any extended periods. The emails I've seen suggest she stayed living at the property until March 2019, when internal partitions were installed for internal work. NHBC says her apartment was habitable again by 20 March 2019, once the partitions were removed.

I accept Mrs C was told by NHBC she could continue living in her home and use the funds differently if she preferred. However, I'm not persuaded that Mrs C can reasonably claim a further payment for the ongoing disruption, when the funds she received to relocate away from the disruption, hadn't been used for this purpose.

In Mrs C's November 2017 letter, she asked for £1,800 per month. I acknowledge the £9,100 for seven months only equates to £1,300 per month. However, if £1,300 per month wasn't enough for her to find a comparable apartment, and it was still her wish to relocate, she ought reasonably to have raised this with NHBC at the time.

I understand Mrs C is in her eighties, and the works have been a significant disruption to her. However, the policy concerned doesn't cover such inconvenience. It does cover alternative accommodation, but she hasn't said she incurred alternative accommodation or relocation costs above the £9,100 that NHBC paid. In my view, £9,100 is fair compensation for the impact the works had, particularly given inconvenience isn't covered by the policy.

I accept there's a question of fairness here, in respect of Mr and Mrs M's access agreement including extension terms on a pro-rata basis, and others not. However, it was for each leaseholder to agree the terms that were acceptable to them based on their own circumstances.

Having considered the correspondence and documentation from the time; the policy terms; the costs Mrs C incurred; and the payment that she received, I'm not persuaded I can reasonably uphold this complaint.

My final decision

I'm sorry to disappoint Mrs C, and Mr M, but for the reasons I've set out above, I don't uphold this complaint.

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

Vince Martin
Ombudsman