

The complaint

Mrs S complains about the way National House-Building Council (“NHBC”) has handled her claim on her buildings warranty.

What happened

Mrs S purchased a new flat in 2006, which came with a ten-year buildings warranty provided by NHBC. Soon after moving in she discovered problems with damp and mould at the property which were first dealt with by the developer. When they went into liquidation in 2009, NHBC took over. In the years that followed NHBC carried out investigations and attempted repairs. However the problems remained unresolved.

In this time Mrs S made a number of complaints to NHBC and this service. She was unhappy with how NHBC had handled the claim and didn’t agree with the action it had taken to fix the problems.

In 2020 the flat was still experiencing problems with damp and Mrs S raised a further complaint. In this, she accused NHBC of professional negligence and said she thought it had falsified information and tried to cover up the real cause of the problems. Due to the nature of the allegations, NHBC responded with a legal letter to deny the allegations.

Unhappy with this, Mrs S brought her complaint to this service to be investigated. On receipt of the complaint, NHBC confirmed to our investigator that its position was as outlined in its legal letter and therefore was taking no further action to address the points raised.

Based on this, our investigator looked into whether NHBC had done enough to resolve the issues. He concluded that as part of this complaint we wouldn’t be able to review everything that had happened throughout the claim, due to time limits and previous complaints that were brought to the service. However from what he’d seen he didn’t think NHBC had done enough to resolve matters for Mrs S. He therefore upheld the complaint and recommended NHBC Pay Mrs S:

- £1,500 compensation to apologise for the distress and inconvenience it caused.
- £1,500 as a goodwill payment to make up for the additional heating costs.
- An additional £200 compensation for the distress caused by it sharing her private information.
- £3,971.84 to resolve her claim for the ventilation of the flat.

However he didn’t agree that loss of rental income should be paid, as this wasn’t something provided for under the warranty.

Mrs S didn’t agree with our investigator’s view. She thought she should also be paid for loss of rental income, as due to the condition of her property, she wasn’t able to rent it out during the period of the claim. She said our investigator had incorrectly interpreted her request as she felt NHBC should pay loss of rent as compensation for her financial loss and not as part of the warranty cover.

Our investigator considered this and agreed we could consider loss of rent as part of the complaint. However he didn't think it was fair ask NHBC to pay it in this case. He said that in order to say a payment was due he'd need to see evidence of a specific loss and not just a potential loss. And NHBC had paid for alternative accommodation for this time, so it wouldn't be fair to ask it to also pay for loss of rent.

Mrs S didn't agree and said she still felt a loss of rent payment was due. She asked for the complaint to be reviewed by an ombudsman.

Since the complaint came to me, NHBC has agreed to our investigator's recommendations.

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.

Mrs S hasn't disputed our investigator's findings in relation to the compensation, heating costs and the ventilation costs awarded. And NHBC has now agreed to these recommendations.

Having considered everything I think these awards are fair. So I see no reason to depart from our investigator's recommendations and will require NHBC to make payment in line with these recommendations.

The issue left in dispute here is whether loss of rent is also due in addition. So I've focussed my review on considering this point.

Mrs S has said that had NHBC dealt with her claim promptly, she would have been able to rent out the property for a number of years. And has therefore suffered a direct loss from not receiving the rental income she would have, which is due to the condition of the property and delays caused by NHBC.

When considering whether a business should pay compensation for a financial loss, including loss of rent, I must consider two things. Firstly, I need to be satisfied that the consumer is out of pocket due to either having not received money or having spent money they otherwise wouldn't have done. And then I need to be satisfied that had it not been for the business' error or poor service, the consumer would not be out of pocket.

Usually where this service finds that a loss of rent payment is due, a property will already be tenanted or tenants will be lined up to move in. In these cases we can say that rent would have been received if the property had been habitable, as an agreement has been made between the owner and the tenants about how much will be paid each month. So it can be evidenced that the consumer was out of pocket by that amount. Here, Mrs S' daughter was living at the property. And while I understand Mrs S had a buy to let mortgage, so she likely had the intention to rent the flat out, I can't say that she would have been out of pocket by a certain amount each month. I say this as there had never been a rental agreement in place or any potential tenants. And there would no doubt be costs associated with her daughter living elsewhere.

I've also considered that while the property hasn't been habitable, NHBC has paid for Mrs S' daughter to live in alternative accommodation. This meant that while the flat may not have been able to be marketed to tenants, Mrs S' daughter was provided with somewhere else to stay at no cost to Mrs S. So I don't think it would be fair to ask NHBC to also pay for loss of rent during this time. I note Mrs S' comments that this was part of NHBC paying for a valid

claim and didn't make up part of her compensation claim against NHBC. However I don't consider this relevant. It is my role to consider whether NHBC has acted fairly in resolving Mrs S' complaint and to do this I need to consider what it has done as part of her claim. And the fact it has already paid for alternative accommodation is a consideration when reaching my decision about loss of rent.

And finally, while Mrs S has provided a valuation from an estate agent that shows how much rent the flat would likely attract, as it was never marketed and had no confirmed tenants it's not possible to say with any certainty how long the property would have taken to rent out or what rent it would have gone for. So I'm not satisfied that a direct financial loss has been evidenced.

So for these reasons, I'm not satisfied that Mrs S has suffered a direct financial loss of rental income due to NHBC's handling of her claim. And I therefore won't ask NHBC to cover this.

My final decision

For the reasons I've given I uphold Mrs S's complaint. And require National House-Building Council to pay her:

- £1,500 compensation to apologise for the distress and inconvenience it caused.
- £1,500 as a goodwill payment to make up for the additional heating costs.
- An additional £200 compensation for the distress caused by it sharing her private information.
- £3,971.84 to resolve her claim for the ventilation of the flat.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 24 February 2022.

Sophie Goodyear
Ombudsman