DRN-3328389

The complaint

Miss L and Mr W complain about NHBC's handling of a claim under their building warranty policy and about NHBC's decision to decline that claim.

What happened

The background to this case is well known to both NHBC and Miss L and Mr W. I'll summarise the key events below, but there's no intention to provide a detailed history.

Miss L and Mr W bought their current home in late 2017. It's covered by an NHBC buildings warranty policy (*Buildmark*), which began in 2012 when the construction of the house was completed.

The warranty covers damage to the home (or danger to its inhabitants) caused by defects in the original build. In brief, defects are failures to build in line with the relevant regulations and/or guidance.

Miss L and Mr W made a claim under the warranty in September 2019. They listed 23 issues with the house that they thought were defects, as defined in the policy terms.

NHBC carried out an inspection at the property in November 2019. This considered five of the 23 listed issues. And it said the claim should be rejected on all five of those issues.

In short, the report said some of the issues related to damage which wasn't caused by any defect in the build and some of the issues needed repairs which were below the policy's minimum claim value. It also appeared to say some defects hadn't led to any damage.

Miss L and Mr W weren't happy with that outcome and made a complaint to NHBC. Suffice to say there was then a prolonged correspondence between NHBC and Miss L and Mr W relating to the claim and whether certain items should or should not be covered under the warranty.

When NHBC didn't uphold their complaint, Miss L and Mr W brought it to us. Our investigator looked into it and thought NHBC were entitled to decline the claim under the terms of the policy. But she thought there had been unnecessary delays in the handling of the claim and NHBC should pay £500 in compensation to Miss L and Mr W for the trouble and upset they'd experienced.

Miss L and Mr W disagreed and asked for a final decision from an ombudsman.

Because I disagreed with the view taken by our investigator, I issued a provisional decision. This allowed both NHBC and Miss L and Mr W an opportunity to provide further information or evidence and/or comment on my thinking before I make my final decision, which is this service's last word on the matter.

My provisional decision

In my provisional decision, I said:

> "I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> There are a number of issues in this complaint and I'll try to deal with them all below. First though, it's important to set out what the NHBC *Buildmark* warranty covers.
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> Essentially, there are five sections to the policy. The first two deal with problems which might arise during the build itself and issues which might become apparent in the first two years after completion (when the policyholder is required to ask the developer to deal with any defects in the build). Section 5 specifically covers contamination issues (there's no issue relating to contamination in this case).
>
> It's Sections 3 and 4 which are relevant in this case. Section 3 covers years 3-10 of the warranty. In brief, during that period, NHBC undertake to carry out or pay for repairs to damage to the home caused by defects in the building of certain parts of the home.
>
> Section 4 applies only where NHBC took responsibility for building control whilst the property was being built – which they did in this case. Again, in brief, NHBC will carry out or pay for repairs where any failure to meet the relevant building regulations in the original build means that:
>
> > *"… there is a present or imminent danger to the physical health and safety of the occupants of your Home…"*
>
> To be absolutely clear, both Sections 3 and 4 apply in this case, because NHBC were responsible for building control at the property which Miss L and Mr W subsequently bought.
>
> *NHBC's handling of the claim*
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> When NHBC received the claim in September 2019, they arranged an inspection, which took place in a reasonably timely fashion at the start of November 2019.
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> For reasons which aren't immediately clear to me, the inspection looked at only around five or six of the 23 issues outlined in the claim made by Miss L and Mr W. NHBC appear to have told Miss L and Mr W that these were the issues NHBC might be able to help with under Section 3 of the warranty.
>
> NHBC appear not to have considered that Section 4 might apply in relation to some of the issues raised by Miss L and Mr W. I'll come to the outstanding claim issues, at least as I see them, later in this decision (below). But suffice to say, some of the issues which NHBC failed to consider in the response to Miss L and Mr W and/or in the inspection would appear potentially to be covered under Section 4 due to a present or imminent danger to the occupants of the home.
>
> NHBC appear not to have provided any explanation to Miss L and Mr W – at least not at this point – as to why the other issues in their claim weren't considered or covered by the warranty.
>
> Mr W responded to NHBC to say he wasn't happy that the remaining issues weren't covered and to offer some comments on the issues which were considered at the inspection. NHBC then engaged in a debate about the limited issues covered by the

inspection but appear to have ignored Mr W's dissatisfaction about the remaining 17 or 18 issues. They later insisted that Miss L and Mr W hadn't made a complaint at this time. And made them re-state the complaint on at least one further occasion.

The copy of the November inspection report which NHBC sent to us contains detailed comment on two of the issues the inspector was meant to consider. These related to damage to the porch canopy – which the inspector deemed to be otherwise covered, but below the policy's minimum claim value – and damp in the garage wall at the property – the inspector said there was no defect in the build.

The remaining sections of the report, such as they are, are entirely blank. There's no detailed comment at all on issues relating to the loft insulation or a heat detector in the kitchen. Both of which were issues NHBC had told Miss L and Mr W they might be able to help with under Section 3 of the warranty.

The correspondence between NHBC and Miss L and Mr W is difficult to follow because NHBC appear to give several different – and often contradictory - reasons as to why they feel the issues raised in the claim aren't covered. NHBC insist at several points that Miss L and Mr W haven't raised certain issues with them (or made complaints) when they clearly have. And, as our investigator noted, there are delays and confusion at times which appear entirely avoidable.

It was around two years after the claim was made – and after our intervention - that NHBC finally accepted that the construction of the roof at the property fails to meet the relevant building regulations and guidance. And so constitutes a present or imminent danger to the occupants of the house and is covered under Section 4 of the warranty.

To be frank, that might have been obvious as and when the claim was made, if NHBC had read the claim properly, considered the application of Section 4 and either carried out an inspection and/or taken proper account of the information provided to them by Miss L and Mr W.

In summary, this claim has been handled very poorly almost from start to finish. Miss L and Mr W have had to persevere and persist long beyond what ought to be expected in order to have their claim – and their questions and complaints about the outcome of their claim - properly considered. It's now well over two years since the claim was made and there's still no adequate resolution to some of the issues originally raised by Miss L and Mr W.

The remaining claim issues

It took some time to get there, but the claim has now been narrowed down to four remaining issues. One of these – relating to strapping in the roof, as mentioned above – has been resolved. In essence, NHBC have accepted that the issue is covered and that they are responsible for carrying out or paying for the necessary repairs / corrections. All that remains is for NHBC to agree with Miss L and Mr W how and when the repairs are carried out or what cash settlement might be offered.

Miss L and Mr W have now accepted that many of the 23 issues they raised in their claim aren't covered by the warranty. Mainly because we've explained to them why that's the case. In some cases, the minimum claim value isn't met. In others, there is no defect. And in others there may be defect but there's no subsequent damage to the property.

As I say, I don't think this was explained to Miss L and Mr W in NHBC's response to their claim. But I am grateful to them for confirming in correspondence with us that the remaining issues (in addition to the roof strapping), as far as they are concerned, are limited to: damp and damage to their garage wall; headroom on the stairs between their upper floors (the house has three floors); and fire safety, particularly in terms of the potential speed of spread of any fire in the two upper floors. I'll deal with these in turn below.

The garage wall

The garage at the property is separate from the house. The ground at the front of the house slopes downwards towards one side of the garage, which is made of brick (single skin).

Miss L and Mr W reported that the garage wall closest to the house was persistently very damp below a certain level. This corresponded to the height of a retaining wall, built next to the garage wall - presumably in part to stop the weight of the soil collapsing the garage wall.

The influx of water through the garage wall appears to have been severe during rainfall. And the mortar in the garage wall has been impacted and is now crumbling in places.

Miss L and Mr W were told at first that the garage wasn't covered by the warranty – which isn't correct. They've been told garages shouldn't be expected to be entirely waterproof and that rainfall swept by the wind onto a single skin wall might be expected to permeate.

NHBC have declined the claim and their current position is to maintain that stance. In their view, there is no requirement to take any measures against damp with a single skin garage wall beyond a damp proof course at or just above the level of the ground outside.

NHBC believe the water ingress in the garage is caused by rainwater impacting the outside of the garage wall above the level of the retaining wall. And they point out that the retaining wall appears to have had a damp proof membrane up to the (bottom) level of a path built adjacent to the top of the retaining wall.

I don't think the level of water ingress shown in the photographs provided by Miss L and Mr W can be entirely down to rain falling on the outside of the garage wall above the level of the retaining wall, as NHBC suggest. Those photographs in essence show the inside of the garage wall absolutely sodden and running with water below the level of the retaining wall outside.

It seems likely to me that either the damp proof membrane in the retaining wall was incorrectly installed or it was inadequate to the task. This may have been because the path next to the adjacent wall was at the foot of the remaining slope from the house. It would have essentially acted as a conduit for rainwater during heavy rain.

If water did flow onto the path and essentially collect there or run down the inside edge of the path, it would be in contact with the higher levels of the retaining wall (including the coping stones). At that height, all parts of the retaining wall are effectively porous (the membrane ends just below the paving slabs used in the path) – and they are adjacent to the garage wall.

That may explain how such an amount of water was impacting – and coming through – Miss L and Mr W's garage wall. Leaving aside whether that explanation is correct, it remains the case that whatever the builders did outside the garage wall to protect it from excessive water ingress failed. That much is evident from the photographs provided by Mr W.

NHBC have kindly provided a copy of what they believe to be the relevant guidance for us. This says:

> *"A damp-proof course should be provided at a level at least 150mm above the level of adjacent ground.*
>
> *This dpc will protect the wall from rising ground moisture.*
>
> *Garage walls constructed from a single leaf of masonry, such as brickwork or blockwork approximately 100mm thick, will not be impervious to wind driven rain and consequently could become damp.*
>
> *In areas of severe exposure, single leaf walls may require a high standard of workmanship and possibly surface treatment to prevent an unacceptable level of rain penetration.*
>
> *Where a garage is integral or attached, the design should ensure that dampness cannot enter the dwelling.*
>
> *Where a wall is below ground level, precautions should be taken to prevent the entry of ground water by:*
>
> - *tanking*
> - *use of dpcs and dpms*
> - *drainage of ground behind the wall."*

That guidance appears to me to suggest that, in order to meet the broader NHBC requirements – that elements of a building meet their intended purpose and are lasting – garage walls in areas of severe exposure (I'm assuming NHBC believe this garage to be severely exposed given their explanation of how the water was getting into the garage) will require a "*high standard of workmanship and possibly surface treatment*".

The guidance also suggests that whilst there may be some water penetration, there is an "*unacceptable level of rain penetration*". I'd say the levels of water ingress in the garage evidenced in Mr W's photographs would be regarded by most observers as "*unacceptable*". If not, one would have to be standing in several inches of water before the penetration became "*unacceptable*".

In summary, it's my view that any normal language reading of the standards and guidance quoted by NHBC themselves would conclude that there's a requirement on the builder to take steps to prevent excessive ingress of water (whether rainwater or ground water) into a garage, even where it's single skin construction (where some degree of damp might be experienced from time to time).

The evidence suggests that in this particular case, the builders did not take the appropriate steps to prevent an unacceptable degree of water penetration into the garage – whether that was rainwater, ground water, or both.

When NHBC declined the claim relating to the garage wall – and maintained that position when Miss L and Mr W later questioned it – Miss L and Mr W had works carried out to remedy the situation. Essentially, they moved the retaining wall holding back the ground outside the garage closer to the house and away from the garage wall. It appears that the works have solved the problem – which suggests to me that the water penetration in the garage was due to the nature of the previous construction outside the garage wall.

That means NHBC can't now carry out any further inspections of the hard landscaping outside the garage as originally built. Nor can they carry out any remedial works themselves, using their own suppliers at a favourable cost to NHBC. However, it's entirely understandable that Miss L and Mr W had that work carried out, in light of NHBC's continued refusal to accept the claim – essentially I don't think they'd had much effective choice but to get the work done themselves.

Headroom on the stairs

Mr W has provided us with a set of measurements (NHBC didn't take measurements during their inspection) to show that there's a bulkhead on the ceiling of the flight of stairs between the first and second floors with 1.9 metres head clearance. Mr W says building regulations require a clearance of 2 metres – for good reason – and that taller inhabitants of the home are in danger of banging their head when using the stairs. He says NHBC should accept responsibility for repairs / corrections to provide the required clearance under Section 4 of his policy.

NHBC have questioned whether the measurements are accurate. I have no reason at all to doubt Mr W's measurements. I've also seen photographs of Mr W standing on the stairs at that point, which appear to show that there certainly isn't 2 metres of clearance.

At first, NHBC told Miss L and Mr W that the regulations weren't prescriptive, as long as the basic requirement was met in another acceptable way. I take that to be true. They said there was guidance which allowed a smaller clearance. It appears they were quoting guidance relating to attic conversions or developments within existing buildings. Miss L and Mr W's home was newly built in 2012. More recently NHBC have again suggested to us that 1.9 metres clearance is acceptable because that's allowed in loft conversions.

In response to our questions, NHBC again said the regulations weren't prescriptive. And they told us that guidance underpinning the regulations suggests that the height of staircases can be measured in two different ways. In essence, perpendicular head clearance at 2 metres or more meets the requirement, but so does 1.5 metres of clearance when a measurement is taken at right angles to the pitch line of the stairs. NHBC assume that in this case, there is 1.5 metres clearance on the measurement from pitch line to ceiling.

NHBC helpfully provided us with copies of the guidance. The broad requirement is that stairs should be safe for people moving between floors. Mr W says he isn't safe when using the stairs and he's around average height.

More importantly perhaps, the guidance NHBC quoted to us says the following:

> *"…. headroom over stairs and landings should not be less than 2000 mm, and there should be a clearance of at least 1500 mm…"*

It's clear that the guidance takes "headroom" to be the perpendicular measurement from stair to ceiling and, when it refers to "clearance" it means the diagonal measurement from the stair pitch line to the ceiling. As far as I'm concerned, the operative word in the guidance quoted above is "and" – headroom should not be less than 2000 mm ***and*** clearance should be at least 1500 mm. That's not an "or", it's an "and".

So, I'm satisfied that the headroom on Miss L and Mr W's stairs doesn't meet the building regulations and doesn't meet the guidance about how compliance with the regulations can be achieved. And it's impossible to see how the 1.9 metres headroom can be said to be commensurate with any other way of meeting the broad requirement set out in the regulations that stairs should allow safe passage between floors.

This is a defect then, as far as I'm concerned. It's difficult to say that it's caused any damage as yet, so it won't be covered under Section 3. But I'm satisfied that under Section 4, there is a present or imminent danger to health and safety.

I should say, I'm not too sure "imminent" is the right word. But it appears to me that the low bulkhead certainly constitutes a "present" danger to health and safety. The building regulations and guidance are set out in terms of safe passage between floors. If they're not met, it seems to me there's a very strong case for saying things aren't safe – and there is a present danger.

Fire safety

In their claim, Miss L and Mr W said that their home wasn't built in such a way as to meet the broad requirements of the fire safety regulations – which say that occupants must have a 30-minute window to evacuate a property after a fire breaks out. In particular, they believe the materials used to separate the floors of the house aren't sufficiently fire retardant to allow that 30-minute period for escape.

Miss L and Mr W have provided a report from a fire safety expert which suggests that the construction of their house doesn't meet the relevant requirements.

NHBC have pointed out that the expert report may not reflect the fact that the current regulations may differ from those in force at the time the house was built. However, they do acknowledge that the broad requirement remains to allow 30-minutes for escape.

Their main point is that the expert report doesn't say how the floors and ceilings in the house are constructed. NHBC have looked at the original plans for the build. These say the ceilings will be made up of 15 mm plasterboard attached to the underside of the floor joists. And the floors above the joists will be made up by 22mm thickness of chipboard. NHBC say that this specification meets the requirements of the version (published in 2006) of the guidance which applied in 2012.

NHBC have provided us with copies of the relevant guidance. And it appears their interpretation is correct. They've also sent us copies of the technical specifications of 15 mm thick plasterboard – which confirms that it has the required fire resistance.

That leaves us with two issues. Mr W tells us that the plasterboard used for his ceilings is 12.5 mm thick. So, there's a difference of opinion there about what thickness of plasterboard is in place in Miss L and Mr W's house. It's my assumption the truth of the matter can be easily ascertained by a swift and easy inspection.

Perhaps more importantly, Mr W tells us that the eaves in his house – which are directly above rooms in the floor below and adjacent to the bedroom in the top floor had no flooring on top of the joists (22 mm chipboard or otherwise) when he bought the house. He says he's put down boards on the joists, in some of the areas of the eaves (but not all), since then simply to allow access and inspection of the area.

I have no reason to doubt Mr W's word on this – although again the facts can be easily established by a quick inspection. And assuming what he says is true, then a fire on the lower of the two floors could spread through to the eaves more quickly than the regulations would permit. And from there, the fire could spread relatively quickly - through the floor space if not by other means – to the occupied upper floor bedroom.

As things stand then, it appears to me that there is a defect in the build, in that not all of the floors of the house (at least not in all places) are as fire resistant as the regulations and guidance require. And in that case, there is a present and imminent danger to the health and safety of the occupants of the house.

Summary of outcome

Taking all of the above into account, I'm minded at present to uphold Miss L and Mr W's complaint.

I'm minded to require NHBC to carry out or pay for all necessary work to bring the roof into compliance with the relevant regulations and guidance. I know they've already agreed to this, but that was *after* the complaint was brought to our service and so forms part of my reasons for upholding the complaint.

I'm minded to require NHBC to pay for the work Miss L and Mr W have had done to their garden to address the issues with the garage wall. That assumes NHBC are provided with the relevant invoices or other proof of payment.

I should stress that NHBC should pay for any works which were structurally necessary to protect the garage wall and put the garden back in the same good order it was in before the works commenced. I'm not going to require them to pay for any betterment to the garden which may have been affected whilst those necessary works were being carried out.

I should also say that Miss L and Mr W carried out some attempts to address the problem with the water ingress before they decided on the fairly major earthworks outside. I think NHBC should also pay for these other works – which unfortunately ultimately proved unsuccessful. Again, subject to provision of invoices, receipts or other proof pf payment.

I'm minded to require NHBC to carry out or pay for work to rectify the issues with the bulkhead on the stairs to the second floor. Again, any such works must bring the stairs into compliance with the relevant regulations and guidance. And NHBC must return the stairs and any affected area around them into the same satisfactory structural and decorative order they were in beforehand.

I'm also minded to require NHBC to carry out or pay for works to ensure the appropriate and necessary fire resistance between the floors of the house. To be clear, that means all plasterboard forming part of a barrier between floors should be of at least the required thickness. And it also means the eaves must be fitted with

> appropriate flooring or boarding on top of the joists to comply with the requirements of the regulations and guidance.
>
> Finally, I'm minded to require NHBC to pay Miss L and Mr W £1,500 in compensation for the trouble and upset they've experienced as a result of NHBC's errors and delays in dealing properly with this claim, as detailed above."

The responses to my provisional decision

Miss L and Mr W have responded to my provisional decision in some detail, in several emails and phone calls to our investigator. And they've provided further photographs and documents.

I'm not going to repeat here the points they've made in the same detail. I'm sure they'll forgive me if my summary of their main points is exactly that.

They've told me the work they've carried out so far around the garage wall is only in fact a temporary repair. In essence, they've removed the retaining wall which abutted the garage wall and they've put in place a temporary barrier – further from the garage wall – to prevent the garden's soil from leaning on the garage wall. This is partly supported by steel and timber fixings between the garage wall and the temporary barrier.

Miss L and Mr W are keen that my final decision reflects this and requires NHBC to pay for both the temporary repairs and the more lasting repairs that are still necessary to protect the garage wall and restore the path and garden to an acceptable state.

They also dispute the version of events reflected in my provisional decision which suggests that there was a damp proof membrane in the retaining wall. Mr W says he found a woven membrane, similar to garden weed suppressor, in the retaining wall when he took it down. But this was tattered and wasn't as high or as long as NHBC had suggested. In fact, he says it was around two metres long, compared to the six-metre length of the garage wall it was supposed to protect.

Mr W also told us he may struggle to produce invoices for all of this temporary work. He says he did much of it himself and paid any builders / labourers in cash. He's also said his estimated costs include the power tools needed for the job, although it's not clear whether he's saying he hired those tools or bought them outright.

Miss L and Mr W also believe the level of compensation I suggested for their trouble and upset is inadequate. They've provided an impact statement from Miss L. And Mr W has told us that he's spent around 250 hours dealing with NHBC over the claim and the complaints he made to them and in pursuing the matter with our service and other bodies.

Miss L and Mr W have also asked why I haven't added 8% interest to any payments I may require NHBC to make to them. And they've asked me to provide a detailed statement of how the suggested compensation has been calculated.

Mr W told us he's obtaining quotes for the necessary work to the roof and the bulkhead on the stairs and to meet fire safety standards. He says he's happy for NHBC to carry out the repairs if they won't accept those quotes. But he's also said that he and Miss L would prefer NHBC to offer a single lump sum cash payment to cover all of the necessary repairs to their house.

Finally, Miss L and Mr W have said that if NHBC do need to carry out further inspections at the property, they would very much prefer that they aren't carried out by the same surveyors

who attended previously. They believe that so much was missed in the previous inspections and reports – and so much inaccurate information provided - that they've lost trust with the individuals involved.

NHBC also responded to my provisional decision. They've reiterated that they accept the work needed on the roof is covered and they'll contact Miss L and Mr W to make further arrangements to get that done as soon as this case is closed.

They've also accepted that my final decision will be that the garage wall is also covered. But they've asked that I make it clear that they have a right to assess any invoices provided by Miss L and Mr W to check that no betterment was involved.

NHBC say they will attend the property to assess the work necessary to resolve the issue with the stair bulkhead. They say this will necessarily involve taking measurements – which they have never done so far – to check the headroom and they want me to ensure that my decision reflects the fact that this will be acceptable.

NHBC's most detailed comments relate to the fire safety issues. They've said there may be circumstances in which a 12.5mm plasterboard may meet the relevant requirements – for example, when the ceiling is also then skimmed with wet plaster at 2.5mm thickness or if the joist centres are below a certain width apart.

They've also said that the arrangement in the eaves – where there is no boarding – may still comply with the relevant regulations if other requirements are met.

In short, NHBC suggest that they will need to arrange an inspection by a fire engineer, to ascertain what is currently in place in the property and exactly what work needs to be done to make the property compliant with fire safety requirements.

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.

It might be useful if I make a general observation first, before I turn specifically to the comments we've received from NHBC and from Miss L and Mr W.

The complaint I have to consider is, essentially, that NHBC wrongly declined a number of aspects of the original claim made by Miss L and Mr W back in September 2019 – and that there have been delays and confusion in the handling of that claim.

Miss L and Mr W have accepted that many of the 23 elements of their claim weren't covered. The remaining issues were around the garage wall, the stair bulkhead, the roof and fire safety. I said in my provisional decision that NHBC were wrong to decline all of those remaining aspects of the claim based on the information they had at the time. And I said NHBC had handled the claim very poorly and caused unnecessary delay and frustration for Miss L and Mr W.

NHBC accepted that the roof was covered before the case came to me for a decision. They've now accepted they'll be liable for the repairs to the garage wall and the stair bulkhead (assuming their measurements match Mr W's – and there's no reason to suspect they won't). And they've agreed to look again at the fire safety issues and appoint a fire engineer to make an assessment.

I'm pleased that we've reached that position. I am grateful to Miss L and Mr W for bearing

with us whilst we conducted our investigation and for clarifying their position in such an eloquent and comprehensive manner – especially when they may have felt they were being asked to repeat themselves.

And I'm grateful to NHBC for engaging with us very positively and constructively in the later stages of our investigation - and for their considered response to my provisional decision.

I have to be clear that, having got to the point where we have a decision on all four of those aspects of the claim, it's not for me to direct in detail what happens from here on in to conclude NHBC's handling of the claim. Our service isn't a substitute claims handler or loss assessor and we will inevitably have to leave Miss L and Mr W and NHBC to work together to bring the matter to a mutually satisfactory conclusion.

I say that because it does mean that Miss L and Mr W will have to allow NHBC to carry out further inspections and assessments now. And I – quite rightly - can't dictate exactly how those inspections will be carried out or what those assessments will conclude.

I think it's reasonable for Miss L and Mr W to say they don't want the same surveyors or inspectors back again – and I would ask NHBC to comply with that request. But beyond that, I'm not in any position to pre-emptively settle any further debates or disagreements that *might* arise in the further handling of the claim.

If Miss L and Mr W are unhappy with what NHBC do from now on, they will need to make a further complaint – to NHBC at first - and then to us if they're dissatisfied with the outcome.

Turning to the detailed responses to my provisional decision, I'm very grateful for Mr W's clear description of the work he's done so far to protect his garage wall. I apologise that I'd misunderstood what we'd been told previously. I'm also grateful for the further information and evidence he provided to demonstrate that the wall wasn't built in compliance with the requirements, although that simply confirms the position I took in my provisional decision.

It's now clear that NHBC won't be faced with invoices for work already done to rectify the issue permanently and to restore the path and garden to an acceptable state. Rather, they'll need to pay the reasonable costs Mr W has incurred so far (I'll come to this in more detail below) to affect temporary repairs. And they will need to agree with Miss L and Mr W what work remains to be done – and whether NHBC will carry that out themselves or pay for Miss L and Mr W to get it done.

I expect that NHBC will now consider the costs Mr W says he incurred for the temporary repairs. Where those can be evidenced, NHBC should cover those costs because Miss L and Mr W were left with no choice but to go ahead and have that work done once NHBC had rejected their original claim.

It's not for me to say what evidence NHBC will accept. Mr W says he may not be able to produce invoices for all of the costs. But there may be other ways in which he can demonstrate that the costs were incurred.

As I say, I can't act as a surrogate claim handler here – it's not my role to do so. Mr W can provide NHBC with whatever information / documentation he has about the costs incurred. NHBC must then consider that reasonably and fairly and decide what costs they will meet. If Mr W has an issue with the outcome, he would be entitled to make another complaint.

Just for the sake of clarity, I doubt NHBC would agree to pay for power tools Mr W has bought to carry out the repairs – and then kept. And I certainly wouldn't expect or require them to do so. If he hired those tools, then he will be able to produce evidence of the costs

incurred.

I should also be clear about one other thing. I do expect NHBC to meet all costs that are shown to relate to the temporary repairs. That includes the costs relating to Mr W's first (failed) attempt to stop the ingress of water by applying an internal slurry to the garage wall.

Mr W has provided a quote for the work he thinks is necessary to permanently rectify the issues with the garage wall. He's pointed out this is now a few years old and would need to be increased to meet the cost today. He says he's happy for NHBC to accept that quote (with an inflationary uplift) or do the work themselves.

I think that's perfectly reasonable, but it is for NHBC to decide which route they wish to take. My decision is that they are responsible for those repairs – how they choose to meet that responsibility is for them to decide, taking into account any proposals Miss L and Mr W wish to make.

NHBC have said they will carry out or pay for repairs to the roof. They'll also carry out or pay for any work necessary to raise the stair bulkhead to provide the required clearance.

Of course, they can't do that without access to the property to assess what work needs to be done. I don't think it's unreasonable for NHBC to measure the headroom / clearance as part of that – they'd need to do so to determine the extent to which the bulkhead needs to be raised (or the stairs dropped, if that's the best solution). I'll assume Miss L and Mr W have no objection to that, given that it will simply highlight the facts of the matter.

Having carefully considered NHBC's comments, I don't think it's unreasonable either for them to ask for a fire engineer to inspect the property to determine what needs to be done to address the fire safety issues relating to the lack of boarding in the eaves and the width of the plasterboard.

I would only say that the fire engineer should be independent. If NHBC and Miss L and Mr W can't agree on how the engineer is selected, I'd suggest NHBC provide details of at least three independent engineers to Miss L and Mr W – and allow them to select one from that list. It goes without saying that NHBC should meet the cost of engaging the agreed fire engineer.

I'd also say that the engineer must be asked not only to describe the situation as it stands but also to specify what work needs to be done now to bring the property into compliance with the fire safety guidance and requirements. I'm wary of any further delays in the settlement of this claim and/or in the necessary work getting done.

I note Miss L and Mr W's wish for NHBC to offer them a single cash settlement for all of the work required for their home. I'm not going to *require* NHBC to make an offer of cash settlement. They are entitled to decide how to settle the claim. But I'd expect NHBC to reasonably *consider* that option – amongst others – when they decide on the course to take to bring this matter to a satisfactory conclusion.

Finally, I'll turn to the comments Miss L and Mr W have made about the amount of compensation I was minded to require NHBC to award them in this case.

First, when our service requires a business to make a financial award to a complainant, we will add 8% simple interest per annum in cases where the complainant has effectively been deprived of money for a period of time because of the business's errors. The interest reflects the fact that that money might have been used for other things if it had been available to the complainant.

In this case, Miss L and Mr W have been inconvenienced by NHBC's poor handling of the claim. They've experienced a degree of frustration, stress and annoyance – for a relatively long period of time. And the compensation I suggested for their trouble and upset was intended to reflect that.

However, I can't see that they've been without money they would otherwise have had. If NHBC had settled the claim as soon as possible in 2019, the money would have gone into the repairs (either directly from NHBC or in a cash settlement Miss L and Mr W would have used to pay their own contractor).

Miss L and Mr W have suffered the inconvenience of experiencing a length of time in their house without the repairs having been completed – and I've accounted for that in the compensation I'm suggesting – but any worsening of the financial situation (because the cost of the repairs has increased) will rightly be absorbed by NHBC. They'll be paying the price for the repairs in 2022 – they won't be paying 2019 prices.

Mr W has also told us he thinks £5,000 compensation would be more acceptable for the trouble and upset he and Miss L have suffered. And he wants me to provide an itemised account of how exactly I arrived at £1,500.

Any judgement about compensation for trouble and upset will, to an extent, be subjective. Our service is a quick and informal alternative to the courts – at no cost to the complainant. We don't try to itemise compensation awards or account for every penny of compensation by use of a mathematical formula.

I'd ask Miss L and Mr W to understand that our service's aim is not to punish financial businesses for their mistakes. Mr W has said to our investigator that he doesn't think we've been harsh enough with NHBC. But we look primarily at the complainant and the effect any mistakes have had on them. And we try to put that right – to put the complainant back in the position they would have been in had the mistake not happened.

Miss L and Mr W are now going to have their claim properly considered and settled fairly. It's not part of our role to then try to punish or sanction NHBC beyond requiring them to put things right for their customer.

I'd also refer Miss L and Mr W to our website, which includes some advice and guidance on the kinds of compensation awards we make. This says that awards of over £750 and up to £1,500 will be appropriate in cases where the complainant has suffered substantial distress, upset and worry, and/or serious disruption to daily life over a sustained period (many months and sometimes more than a year).

Awards in the next higher bracket (£1,500 - £5,000) will be appropriate in cases of sustained distress, potentially affecting someone's health, or severe disruption to daily life typically lasting more than a year. And at the higher end of that scale, the effects of the business's mistake(s) could be irreversible or have a lasting impact on someone's health or have resulted in personal injury.

Miss L and Mr W have experienced considerable stress and inconvenience as a result of NHBC's errors. I don't want to minimise that or say anything that would suggest I've not taken very seriously the problems they've told us about.

However, it's my judgement that their experience falls around about on the boundary between the two levels of award I've just described (£750-£1,500 and £1,500-£5,000).

Miss L and Mr W have not had to leave their house for any period of time. They've not had to

live without adequate facilities for any period of time. They haven't suffered personal injury. And I've seen nothing to suggest a lasting or permanent effect on their health.

In essence, there is a difference between worrying about something that might happen – and again, I don't want to minimise the effect this kind of worry and stress can have – and that thing actually happening.

Miss L and Mr W were worried that their roof was unsafe and that their garage might collapse. I understand that they were genuinely and justifiably worried – and they should be compensated for that. But I hope they'll understand that they won't be compensated to the same level as someone whose roof and/or garage had in fact collapsed.

I also have to take into account not the length of time from the claim first being made to now, but from the time the claim might reasonably have been settled to now. In other words, NHBC's errors have delayed the settling of the claim, but it would never have been settled in September 2019, for example, when it was first made.

A complicated claim of this nature, resulting in serious and complex building works, might have reasonably been expected to take up to a year or more to resolve completely – especially bearing in mind the COVID lockdown in March 2020.

So, NHBC's errors have caused some considerable delays here, but NHBC aren't responsible for all the stress and worry Miss L and Mr W have experienced since September 2019 or for all of the inconvenience they've suffered in that time.

In summary, the disruption to Miss L and Mr W's lives has been serious and the distress substantial (over a prolonged period). But I don't think I could justify awarding compensation beyond the bottom end of the £1,500-£5,000 scale, bearing in mind the descriptions published on our website.

Putting things right

I come back to the point that my provisional decision essentially said NHBC were wrong at the time to decline the aspects of Miss L and Mr W's claim relating to the roof strapping, the garage wall (and the ground around it), the headroom on the stairs and the fire safety issues.

I'm now going to require NHBC to carry out or pay for the work to repair the roof and the garage wall.

I'm going to require NHBC to carry out or pay for any work necessary to bring the headroom and clearance on the stairs into compliance with the relevant building standards. NHBC will of course be entitled to assess what work needs to be done in this respect.

I'm also going to require NHBC to carry out or pay for any necessary work (to be determined by an inspection carried out by an independent fire engineer) to bring the property into compliance with fire safety standards and guidance.

And I'm going to require NHBC to pay Miss L and Mr W £1,500 in compensation for the trouble and upset they've suffered due to NHBC's errors and delays in handling their claim.

My final decision

For the reasons set out above, I uphold Miss L and Mr W's complaint.

National House-Building Council must:

- carry out and pay for repairs to the roof;
- pay for the work already carried out to temporarily protect the garage wall;
- carry out or pay for the work necessary to permanently protect the garage wall and return the path and garden to an acceptable state;
- carry out or pay for any necessary work to provide sufficient headroom and clearance on the stairs between the first and second floors;
- arrange and pay for an inspection by an independent fire safety expert;
- carry out or pay for any and all necessary work identified by that expert to provide fire resistance between floors in compliance with the relevant regulations and guidance; and
- pay Miss L and Mr W £1,500 in compensation for their trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L and Mr W to accept or reject my decision before 23 March 2022.

Neil Marshall
Ombudsman