

## The complaint

Mr M complains about how National House-Building Council (“NHBC”) handled his claim on his building warranty following an escape of water at his home.

## What happened

Mr M had a property that had a ten-year building warranty provided by NHBC. In 2018 there was an escape of water at the property which led to a flood in the basement. Mr M made a claim for the damage on his home insurance (with another insurer) and claimed on his warranty with NHBC for defects in the waterproofing.

Over the months and years that followed various investigations were carried out into the cause of the problem and whether NHBC or Mr M’s home insurer were responsible for covering the damage.

It was initially identified that water ingress had occurred through an inadequately built brick plinth on the external wall of the house. NHBC declined this claim as it said Mr M had instructed his own builder to re-build the plinth in around 2011 following an unsuccessful claim on his warranty. And therefore the water ingress was due to the work of a third party and wouldn’t be covered under the warranty.

However NHBC agreed that the damp proofing at the property was insufficient and agreed to settle 50% of the claim for the damage to the basement. It also agreed that a new cavity tray would need to be fitted and that this would also be covered under the warranty.

Throughout the claims Mr M made a number of different complaints, to which NHBC provided responses. Across the complaints NHBC offered £1,500 compensation to apologise for delays and poor service.

In 2019 Mr M made a complaint to this service. When our investigator contacted him he said most of the issues had been resolved and confirmed that the only two issues left outstanding were the work he had done to the plinth, which he felt NHBC should pay for, and the distress and inconvenience NHBC had caused him. He said because NHBC had taken so long to settle the claims he’d been without kitchen facilities for a long time and it had impacted his health and wellbeing.

NHBC said we could investigate all its complaint responses, however it said its final response about the claim for the plinth was issued in 2018 and had been brought out of the required timescales, so didn’t agree to us including this in our review.

Our investigator considered everything and thought we could look into the claim for the plinth, as Mr M had provided new information since NHBC’s final response that should be considered. However he thought NHBC had acted fairly by declining the claim so didn’t recommend it covered the costs related to that. But he did think NHBC provided unclear information about why the claim for the plinth had been declined and thought it should pay an additional £300 compensation to make up for the impact of the wrong information.

Mr M didn’t agree. He said he thought NHBC should pay all his costs in relation to removing

and restoring the plinth as it was necessary for investigations into the cause of the leak. NHBC didn't agree that more compensation was due.

In January 2022 I used a provisional decision which said:

*'While Mr M has made a number of complaints to NHBC, he has confirmed that the only issues that remain outstanding are costs relating the plinth and the compensation for the distress and inconvenience NHBC has caused. I've addressed these in turn below.*

### **Plinth**

*What we can look at*

*I need to start by addressing the issue of what we can and can't consider as part of Mr M's complaint in relation to the plinth.*

*We aren't able to consider every complaint that's brought to this service. The rules for the complaints we can and can't look at are laid out in the Financial Conduct Authority (FCA) Dispute Resolution (DISP) Rules. Within these are certain time limits that complaints have to be brought to this service within. Our investigator correctly identified that the complaint about the plinth was addressed in NHBC's final response letter of 2018, which was brought to us more than six months after it was issued. So we wouldn't usually have the power to look at this complaint.*

*However since the complaint has come to me, NHBC has given its consent for us to look into the issue with the plinth that it dealt with in its final response in 2018. So I am now able to consider this as part of my decision.*

*However the DISP rules also restrict what we can look at, based on the date the event the consumer is complaining about happened. DISP rule 2.8.2R says:*

*"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(2) More than:*

*(a) Six years after the event complained of' or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;"*

*Our investigator considered the original declinature of the claim for the plinth in 2011. This happened more than six years ago, and wasn't re-visited in NHBC's 2018 final response. So I think the first part of the rule applies here. Further if Mr M had disagreed with the declinature, he would have been aware he had a cause for complaint on receipt of the letter of declinature in 2011. So I think this is when the 'three year' part of the rule started. Which means Mr M had until 2014 to bring a complaint to this service. As it wasn't brought until 2019, I therefore don't consider NHBC's declinature of the claim for the plinth to be within our jurisdiction to consider. For this reason I haven't commented on this aspect of the claim, nor have I considered the impact of any confusion around the declinature as part of my considerations about compensation.*

### **Final response 2018**

*NHBC's 2018 final response concluded that as there was work done to the plinth by a third party contractor then any damage to the plinth wouldn't be covered by the warranty. However as stated above it didn't comment on the original decline of the plinth claim in 2011.*

*So I've considered whether NHBC acted fairly by declining the claim in 2018.*

*The warranty document states, under general exclusions, as follows:*

*'NHBC will not be liable for...*

*...Anything affecting or caused by alterations or extensions to the Home carried out after the date of the Insurance Certificate.'*

*There is no dispute that Mr M instructed contractors to carry out work on the plinth after his claim was declined by NHBC in 2011.*

*However Mr M has said that the work was only minor and not a 'complete rebuild' of the plinth as NHBC had suggested. And he says it uncovered a problem with the damp proofing that NHBC has accepted liability for, so thinks NHBC should pay for the work he had done to remove the plinth.*

*I've considered this but I don't think NHBC has acted unfairly here. I'll explain why.*

*The photo of the plinth from 2010, before Mr M had the work carried out, shows that when Mr M's claim was originally declined by NHBC there was significant damage to the plinth. It was cracked and leaning away from the main building. NHBC has said that this shows it required significant work and I agree the photo supports this view. Further Mr M has said that he spent around £2,000 on this work, which again suggests this would be more than just re-pointing, particularly as it is such a small structure.*

*However Mr M instructed a report by his own expert in June 2019 and this commented as follows:*

*'Whilst there are undoubtedly several issues affecting the flank wall construction generally it is clear that weaknesses in construction detailing affecting the main flank wall are allowing water ingress and are unconnected with the plinth construction or its associated dpc detailing.'*

*The report went on to conclude:*

*'We do not consider that the plinth detail as constructed is contributing to the incidence of water ingress reported above.'*

*NHBC has agreed that a tanking issue within the walls has been identified that has nothing to do with the plinth and it has agreed to cash settle for the work required to correct this. So while the two reports differ in their opinions about the cause of the damage, I don't think either show that NHBC has acted unfairly by declining to pay the costs for the reinstatement of the plinth. As one report says it hasn't contributed to the ingress and the other says it has but is due to previous repairs. So either way the plinth wouldn't reasonably be covered. Therefore based on all the evidence, I'm satisfied NHBC has acted fairly in not paying for the reinstatement of the plinth.*

*I've also considered whether the work Mr M had carried out on the plinth and surrounding area, led to the discovery of defects that NHBC has accepted liability for. As in this circumstance I would say it's reasonable for NHBC to cover those costs.*

*The damage NHBC has accepted liability for is internal tanking, which was first identified in a report from Mr M's home insurance's expert in 2018 and later confirmed by NHBC. Mr M's quote for the repairs to the plinth is dated July 2019, so I'm satisfied this was after the necessary investigations had taken place. And I've not seen that it uncovered anything new or different that would reasonably change NHBC's position on the claim. I therefore don't*

*think it would be fair to ask NHBC to cover these costs.*

### **Compensation**

*From reading all the information Mr M has provided about the claim and the disruption it has caused him, I can see it has had a significant impact on many areas of his life. And I really do sympathise with his position. However as part of this decision I can only consider the impact of the actions of NHBC rather than the impact of the flood itself.*

*I've considered everything I've seen and I agree there were times when NHBC caused delays to the progress of the claim. However it has paid a total of £1,500 compensation to recognise the delays and poor service it has provided and I think that is enough in the circumstances.*

*Mr M has explained that the impact of delays on the claim have meant that he has been without a functioning kitchen for some time. And I agree this has caused significant distress and inconvenience. And some of this is attributable to NHBC. However Mr M was paid a settlement by his home insurer some time ago to begin the work to repair the basement, and it appears this wasn't started until a significant amount of time after it was received. Further in November 2019 NHBC agreed to cash settle for the further repairs necessary and asked for a quote to be provided. But this wasn't sent until August 2020. This settlement included provision for temporary kitchen facilities.*

*So while I agree NHBC has caused some delays that could have been avoided, I don't think that all delays were caused by it. And therefore it isn't responsible for Mr M being without a kitchen for the full length of time he was. I think the £1,500 it has already offered in compensation is enough to make up for the distress and inconvenience it caused and is in line with our approach to similar cases. So I don't intend to ask it to pay anything further.'*

### **Response to my provisional decision**

NHBC responded to my provisional decision to say it had nothing further to add.

Mr M said he didn't agree with the decision. In summary, he said:

- NHBC had provided untrue and inaccurate information about the claim. He said he was waiting for confirmation from his home insurance provider about the settlement reached between it and NHBC as he thought this would show NHBC hadn't paid enough towards the structural work required and needed more time to obtain this,
- the plinth was just a decorative feature and the problem has been caused by the failure of the original builder in fitting a watertight seal at the ground level of the basement,
- he doesn't feel his expert report has been considered as part of the complaint,
- he hadn't been offered or received £1,500 compensation from NHBC,

the situation has had a big impact on his mental wellbeing, especially as he has been without a kitchen for a long time, including during the national lockdown which was particularly challenging.

### **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.

I want to start by addressing Mr M's comments about the impact the situation has had on him. I was very sorry to hear about the extreme impact the matter has had on his mental health. I appreciate it will have been a very difficult time for him, especially throughout the national lockdowns when he was living alone without kitchen facilities. I want to assure Mr M that my findings in my decision are in no way intended to diminish the impact the situation has had on him.

However, as I said in my provisional findings, in this decision I can only consider the impact NHBC's actions have had on Mr M. And not the impact of the flooding incident itself.

I've considered Mr M's comments in response to my provisional decision. I want to assure him that the report he provided in response, had already been available to me when I made my provisional decision, so I had taken this into account when reaching this decision. To reiterate, while the report indicates the plinth may have contributed to the water ingress, it concludes that the problem is largely caused by a defect with the tanking in the basement. NHBC has already responded to this and confirmed it has accepted a claim for a new cavity tray in the basement in order to rectify this defect. So I don't think it needs to do anything further.

Mr M also said that he thinks NHBC has provided this service with incorrect information about the payment of the claim. And he was awaiting a response from his home insurance provider to confirm which parts of the original claim were paid by it and which by NHBC and what these payments went towards. He thinks that will show that NHBC haven't provided accurate information.

While, I've seen nothing to suggest the information provided by NHBC has been inaccurate, I also don't consider the breakdown of the original claim to be critical to this complaint. The original claim for the repairs to the damage of the basement was paid to Mr M and split between NHBC and his home insurance provider. The proportion paid by each, is a matter for the two insurers to decide.

Further, Mr M has expressed concern that the settlement offered by his home insurance was only for the contents and not the structural defects. However as NHBC has agreed to pay an additional settlement in relation to the tanking of the basement, I don't consider this relevant either. So I didn't consider it necessary to delay the decision to wait for this information.

Mr M has also disputed that NHBC has offered him £1,500 compensation. So I wanted to provide clarity on this. The following amounts have been offered in NHBC's responses to his complaints:

- NHBC's letter of 26 September 2019 - £500 compensation awarded,
- NHBC's letter of 24 January 2020 - £300 compensation awarded,
- NHBC's letter of 7 April 2020 - £500 awarded,
- NHBC's letter of 18 January 2021 - £200 awarded.

If Mr M hasn't received payment of any of these amounts, or would like copies of the letters, then he should contact NHBC directly.

When this complaint came to our investigator, Mr M confirmed that the only two outstanding issues were the costs relating to the plinth and the compensation. So this is what I have focussed my review on. In my provisional decision I concluded that the costs Mr M had incurred in relation to the plinth were unrelated to the claim accepted by NHBC, so I didn't think it reasonable to require NHBC to pay these costs. I was also satisfied that the £1,500

compensation was enough to apologise for the impact of the delays NHBC had caused over the duration of the claim. Mr M hasn't provided anything to change my mind since my provisional decision so I see no reason to depart from this.

### **My final decision**

For the reasons I've given, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 March 2022.

Sophie Goodyear  
**Ombudsman**