

The complaint

Mr B has complained about the National House-Building Council's (NHBC's) decision to decline his claim for damage to his flat, caused by water ingress.

What happened

On 2 March 2022, I issued my provisional decision explaining why I wasn't intending to uphold this complaint. This is what I said:

What happened

Mr B is an owner of a flat within one of the two buildings that are the subject of this complaint. Mr B is represented in his complaint by a company who I will refer to as 'R'. R is also representing five other owners and policyholders in the buildings, who have separate, but the same, complaints with our service. The buildings form part of a larger development, however, not all of the owners in the development have brought this complaint to our service.

Mr B, and the other five owners, are aware that what I say here in respect of Mr B's complaint will apply to the same complaints brought by the other five owners who are represented by R.

Mr B has made a separate claim for damage to the common parts of the building, which I've addressed in a provisional decision, of today's date.

Mr B, like the other five owners, has separate cover under the Buildmark policy for damage to his flat caused by a defect. This complaint concerns NHBC's decision to decline Mr B's claim for damage to his flat, made under section 3 of the policy. Mr B has said his flat, (as is the case with the other five flats) has been affected by water seeping into the flat causing damage to walls and windowsills.

The background to this complaint is well known to the parties and has been set out in the provisional decision I've issued to Mr B, on today's date, regarding NHBC's decision to decline a claim for damage to the common parts. So, I won't repeat the background here.

Mr B complained to NHBC about their decision to decline his claim, and, unhappy with their response to that complaint, brought it to our service. Our investigator looked into what had happened and issued her view, partially upholding the complaint, in December 2021. In summary she said:

- *Any damage caused by the incorrect installation of the windows and lack of maintenance of the sealant around the windows wasn't covered by the Buildmark policy;*
- *There is a possibility that some of the internal damage to the flat has been caused by defective render, which she believed NHBC was liable to cover;*

and

- *As there's not a clearly identified sole cause of the water ingress, the fairest way to settle the claim would be for NHBC to cover 50% of the cost of repairs to the internal damage in the flat, subject to the claim meeting the applicable minimum claim value.*

Mr B didn't accept our investigator's view, so the complaint has been passed to me to decide.

What I've provisionally 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. Having done so, I'm not intending to uphold this complaint. I will explain why.

It's not in dispute that the internal parts of Mr B's flat, which are the subject of his claim, could potentially be covered by the Buildmark policy. However, the evidence would need to show that the damage to his flat was caused by a defect in a part of the building that's covered.

There have been a number of reports carried out by or on behalf of NHBC and the owners between 2014 and 2020. The reports identify a number of possible causes of, or contributors to, the damage. These include: defective seals letting water into the building; incorrect construction of the cladding system resulting in a failure to provide protection from adverse weather conditions; poor repairs; and lack of maintenance, among other things. As explained in my common parts provisional decision, apart from the render, none of those parts of the building or issues are covered by the policy.

In respect of the render, while on of the list of covered parts, its failure still needs to be caused by a defect. A 'Defect' is defined as "A breach of any mandatory NHBC Requirement by the Builder or anyone employed by him or acting for him." And, as I've explained in my provisional decision on the common parts claim made by Mr B, I'm not persuaded that NHBC's requirements were breached in respect of the render.

I concluded that I hadn't been persuaded the damage was caused by a defect in a part of the building that's covered. So, NHBC's decision to decline Mr B's claim for damage to his flat was made in accordance with the Buildmark policy terms and conditions and was fair and reasonable in the circumstances.

I invited both parties to let me have any final comments or evidence they'd like me to consider before issuing my final decision on the complaint. Mr B provided further submissions in relation to his complaint about damage to the common parts of the building, which I've addressed in a final decision issued on that complaint, issued on today's date. However, no other arguments or evidence have been provided by either party.

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.

As neither party have provided any further evidence or arguments for me to consider in relation to this complaint, I see no reason to depart from the conclusions set out in my provisional decision. So, for the reasons included in my provisional decision, and this final

decision, I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 April 2022.

Carolyn Harwood
Ombudsman