

The complaint

Mr A complains that National House-Building Council (“NHBC”) declined his claim on his Buildmark building warranty, for fire safety concerns.

What happened

Mr A bought a new flat that came with a ten-year building warranty provided by NHBC.

In June 2020 the managing agent of the building instructed a report to ensure it met the requirements laid out in new building regulations in relation to fire safety. The report concluded that the timber decking on balconies and spandrel panes on the external walls would need to be replaced as they didn’t meet the updated regulations.

Following the report, the managing agent arranged for the work to be completed to bring these areas up to standard. Mr A was invoiced for the work on his balcony and a contribution to the spandrels. He subsequently made a claim on the warranty for these costs.

NHBC considered the claim under section 4 of the warranty. However it declined the claim. It said as the work had been completed, there wasn’t an imminent danger to safety, as is required for a successful claim under section 4. And it said the balconies and spandrels met the building regulations in place at the time of construction, so it didn’t agree there was a defect as defined in the warranty.

Mr A wasn’t happy with this and raised a complaint. NHBC accepted it had taken too long to deal with Mr A’s claim and offered £150 to make up for this. However it maintained its decision to decline the claim. Unhappy with this, Mr A brought his complaint to this service.

Our investigator considered the issues but didn’t recommend the complaint be upheld. He said he was satisfied NHBC had made a fair claim decision as it had shown that the parts of the building in question met applicable building regulations at the time of construction. And he thought the £150 offered was enough to apologise for the delays in dealing with his claim.

Mr A didn’t agree with our investigator and asked for the complaint to be reviewed by an ombudsman.

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.

Mr A’s warranty states that a claim under Section 4 will be successful if:

“Repairs needed where there is a present or imminent danger to the physical health and safety of the occupants of the Home because the Home does not comply with the requirements of the Building Regulations that applied to the work at the time of construction”

NHBC has provided two reasons why they declined the claim – as the building regulations were met at the time of construction and because the work has been carried out already, so there isn't an imminent safety risk. I only need to be satisfied that it had acted fairly by applying one of these, in order to say it acted fairly when declining the claim.

I've started by considering whether it fairly declined the claim based on the building regulations at the time.

When considering this, it isn't for me to determine whether the building met the required regulations. This requires technical expertise and structural consideration that falls outside of the remit of this service. Instead I need to consider if NHBC has made a fair decision based on the available evidence.

While the warranty began in 2010, NHBC has confirmed that the date of construction of the building was 2006. The building regulations in place at this time were 'Building Regulations 2000' and 'Approved Document B 2000, with 2002 amendments'.

I've considered these documents alongside NHBC's comments.

Spandrels

- Building regulations 2000 require external walls to '*resist the spread of fire over the walls and from one building to another...*' NHBC has shown that the spandrels were positioned a long distance apart so I'm persuaded there would be no reason to consider them a risk of fire spread.
- Approved Document B 2000 states that '*insulation material used in ventilated cavities in the external wall construction should be of limited combustibility*'. NHBC has shown that the insulation core of the spandrel (the part that needed to be made fire safe) was not in a ventilated cavity, so I'm persuaded this requirement wouldn't apply.

Balcony

- Neither the Building Regulations 2000 or Approved Document B 2000 place any requirements on balconies in relation to fire safety, except for those that are used as an escape route.
- This is confirmed in the report instructed by the managing agent in 2020, which stated '*At the time of construction, Approved Document B did not provide detail as to what fire rating of balconies beyond those that form as an escape route.*'
- I've seen nothing to suggest that Mr A's balcony was used as an escape route, so I'm persuaded there were no requirements for Mr A's balcony at the time of construction.

Mr A has said that building regulations require the building to be fire safe and, due to these defects, it wasn't. While I appreciate his frustration, the warranty only covers defects where the building didn't meet the required regulations at the time of construction. And while the regulations have been updated since, and so the building may no longer be considered fire safe, from the evidence I've seen, the areas did meet the requirements in place when they were constructed.

Mr A hasn't provided any evidence to show that the building regulations at the time of construction were not met. On the other hand, I'm satisfied NHBC has done enough to show that the regulations were met and that the claim hasn't met the requirements under section 4 of the warranty. I therefore think it's acted fairly by declining the claim.

As I'm satisfied NHBC has acted fairly by declining the claim based on building regulations not being breached at the time of construction, I've not considered the points it's raised around the work already having been completed.

Delays

NHBC has agreed it took longer than it should to deal with Mr A's claim. It's offered £150 to make up for this delay. I agree it could have dealt with the claim more promptly, so I've considered the impact this delay has had. As the work required to make the building fire safe had already been carried out, I can't see that the delay in dealing with Mr A's claim had an impact on the problem being resolved. However I agree it would have been inconvenient for Mr A to have to chase NHBC for an answer for longer than he should. I think the £150 offered is enough to make up for this inconvenience and in line with our approach in other cases. So I won't ask NHBC to do anything further.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 June 2022.

Sophie Goodyear
Ombudsman