

The complaint

Mr K complains National House-Building Council (NHBC) hasn't treated him fairly following a claim on his building warranty policy.

What happened

Mr K owns a new-build apartment that's covered by a ten-year building warranty policy. The policy started in 2005. In 2013, the managing agent raised various issues with NHBC, relating to the windows throughout the development.

During the final eight years of cover (*i.e.* years 3-10), section 3 covers any physical damage to the property if caused by a 'defect' in certain parts of the building. A 'defect' is defined as a breach of any mandatory NHBC requirement during construction.

NHBC undertook investigations and works to some of the apartments. By 2019, it had been determined that not all the apartments were affected by defects, and those that were, had differing levels of damage. NHBC says some windows simply needed adjusting as part of routine household maintenance, whilst others required alterations or had to be replaced.

NHBC asked the managing agent for a list of the remaining apartments that had reported a concern, so it could complete its inspections and produce a scheme of works. Mr K wasn't included on the managing agent's list.

Following NHBC's inspections of the remaining apartments, and after its scheme of works had commenced, Mr K advised the managing agent he had raised concerns in the past about his windows and he still had issues. His concerns were passed to NHBC, but it explained it wouldn't now consider his apartment as he had previously failed to come forward.

NHBC later agreed with the managing agent that the managing agent's own maintenance contractor could carry out an inspection for Mr K. The findings could then be passed to NHBC for consideration. Mr K remained unhappy, so he complained.

NHBC explained its remedial works on site were reaching a completion, so it didn't have any capacity to organise its own inspection. However, the managing agent's own maintenance contractor has a background in windows and doors, and where claims have been rejected due to there not being a defect, the managing agent's contractor is undertaking the necessary work.

Mr K brought his complaint to our service, but one of our investigators didn't think it should be upheld. Mr K disagreed, so his complaint has been passed to me for a final decision.

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 accept Mr K had raised concerns about his windows and patio door with the original builder and various managing agents over the years. As such, I can understand his upset that his apartment was missed from NHBC's inspections and scheme of works.

However, I don't find it unreasonable that NHBC asked the latest managing agent to collate and present the list of apartments with reported issues, so it could carry out the remaining inspections. That managing agent has confirmed it didn't receive a response from Mr K, when it wrote to all the leaseholders asking for details of the issues. Mr K doesn't recall receiving the correspondence from the managing agent, but that's not something I can reasonably hold NHBC responsible for.

In my view, NHBC has offered a fair way forward. NHBC has confirmed it will now consider a claim relating to Mr K's apartment once the managing agent's contractor has reported back with its findings. NHBC isn't required to inspect itself. What's important is that it gives fair consideration to any reports it receives.

Therefore, Mr K needs to allow the managing agent's contractor to inspect, so matters can be moved forward. If Mr K is unhappy with NHBC's claim decision following the inspection, he can raise a new complaint about that.

Mr K says NHBC treated him rudely and with disdain. I accept NHBC could have been more open to finding a pragmatic solution from the outset, rather than telling Mr K the opportunity to consider his apartment had now passed. However, I haven't seen NHBC was unprofessional or discourteous to Mr K.

My final decision

I'm sorry to disappoint Mr K, but for the reasons I've set out above, I don't uphold this complaint.

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

Vince Martin
Ombudsman