

The complaint

Ms L and Mr M are unhappy about National House-Building Council's claim handling and settlement amounts under their 10 year Buildmark warranty.

I'll generally refer to Ms L throughout the decision as she's been more heavily involved in dealing with the claim.

What happened

The property was built in 2014 and Ms L and Mr M were the second owners when they bought the house in 2018. They discovered there were issues with the houses in their street suffering leaks due to the solar panels and their house was one of those with the problem and Ms L claimed.

After further leaks Ms L made a new claim. NHBC didn't accept it. NHBC said there had been a cash settlement made for the solar panel related leak and so that part of the claim was closed. But Ms L also claimed for a breakdown of the dry ridge system only to be told by NHBC this part of her claim was also declined as even though it was a defect it wasn't causing major damage. NHBC pointed out that this was a requirement under the wording of the warranty.

Further claims followed later and this time the issues included leaking solar panels, failing gaskets, and broken ridge tiles. Due to the previous claim problems and the amount of water entering the property Ms L arranged for basic emergency repairs herself to avoid further damage. The roofer she used pointed out there was a lack of membrane and a metre long missing gasket.

Last year the original house builder worked on fixing window leaks at the property. This issue had been a problem for Ms L dating back to her original claim. The builder was informed about the lack of membrane and did some work to waterproof it.

Ms L was unhappy that NHBC has denied any further claims regarding leaks involving the solar panels saying this had already been paid for. But Ms L knew that other homes of the same build locally had made second and further claims for the same issue which NHBC had accepted and dealt with. Ms L involved a surveyor to review the problems too. She asked NHBC to resolve all the issues that she felt were still outstanding.

NHBC accepted there had been some problems:

window leak

NHBC said the problem was with the detail on the window heads. Repairs had been carried out to stop the leak and NHBC said its expert could check the repairs to ensure the work done was sufficient. It confirmed that at this stage there was still internal repair work to be done.

roof leak

NHBC accepted that this time (unlike in the previous leak claims) the ensuite bathroom was unaffected. It agreed to review the damage as a valid claim as it now accepted it wasn't linked to previous claims. It said it was willing to consider this along with the internal damage (bedroom, stairs, and landing) subject to photos and confirmation of repairs. It asked for a report from the roofer Ms L used so it could check the details and decide on costs to reimburse. It said the original home builder had now fitted a membrane, but it said this didn't have to be of the breathable variety.

Compensation

NHBC offered £400 compensation as a goodwill gesture for the distress and inconvenience caused due to the issues, errors and delays incurred. After checking with the original builder, it said the membrane now fitted was adequate even though it wasn't breathable.

Ms L remained unhappy, didn't accept the compensation offer, and brought her complaint to this service.

Our investigator upheld the complaint. She confirmed she could only look at the points covered up to the point when NHBC issued its final response to the original complaint. Our investigator said NHBC should consider Ms L's invoices for work already done, continue to deal with the claim in a timely manner and increase the compensation award by a further £150.

NHBC accepted this but Ms L didn't and asked for her complaint to be passed to an ombudsman for a decision.

In my recent provisional decision, I said:

"As pointed out by our investigator this service is only able to deal with complaints that were included within the original complaint to the business that it had a chance to deal with and respond to. My findings will be mainly referring to the issues included within the NHBC's final response letter. But this does seem to involve issues that were brought to NHBC's attention at different times by Ms L."

It's clear that Ms L has been battling with the issues of the roof and the windows over a number of years. And I think NHBC now accepts that these matters should have been addressed much more quickly than they have across the various claims.

window leak

Setting aside the issues with the time taken it appears that the window leaks have been resolved now. The works done by Ms L's contractor and the original builder seem to have resolved the problems. NHBC have suggested it could send the inspector to review the work and make sure it is sufficient. I think that's fair. It's up to Ms L to decide if she would like to take up that option. I don't think any further outcome is required at this point regarding the windows.

roof leak

I think Ms L was clear from the start that she was making a new and entirely separate leak claim. It's not obvious to me how or why NHBC got that wrong for such a long time. Ms L in the end had her own repairs done when there was a particular problem with the water entering her property. Ms L has confirmed that there haven't been any further leaks since the last repair.

There's still some debate about whether or not the now fitted membrane should be breathable as far as Ms L is concerned. Ms L said that NHBC aren't meeting their own standards and requirements here. But NHBC has confirmed due to "cross ventilation" the non breathable membrane is adequate. I've no reason to doubt this information about the membrane.

I think NHBC agreeing to review all of Ms L's costs getting repairs done subject to roofer reports, photos and confirmation of repairs is the fair and reasonable thing to do. I understand NHBC's point about needing to investigate claims before action. But in the circumstances Ms L found herself in I think it was understandable that she acted.

As Ms L has pointed out, NHBC had already explained to neighbours they were suffering delays arranging the inspections of damage and in getting work done. So, Ms L thinks she was quite lucky to be able to get someone in capable of doing a repair for her. Otherwise the claim would have run on much longer, and the damage would have got worse. The NHBC review will include the water damage to the bedroom, stairs, and landing. I would expect NHBC to take a pragmatic approach to finding a suitable reasonable settlement amount here. If the parties are not able to reach a suitable agreement, then I could make a decision if the amounts involved are provided to me by both sides within the timescale to issue a final decision. There's a suggestion that NHBC has chosen not to pay any of this which if true appears to me to be unreasonable.

surveyor report

Although I can understand why Ms L arranged for her own survey report I'm not convinced the report has had much bearing on the points considered in relation to this specific claim. I don't think NHBC need to pay towards the costs Ms L incurred here. But the costs may need further consideration due to the other points Ms L wants NHBC to consider further.

compensation

There's no doubt Ms L has faced unreasonable delays and slow service. The communication from NHBC hasn't been good enough and it recognised that when it offered £400 in compensation. The claim should have been handled more effectively and Ms L did clearly suffer due to the constant difficulties she faced in trying to move the issues along and get her home fixed to a suitable standard. Based on the delays and the issues Ms L faced I think increasing the compensation payment for distress and inconvenience by a further £150 is a fair and reasonable outcome in the circumstances of this case.

outstanding issues

Ms L said there are further issues with the window claims that still need NHBC to deal with the problem. Ms L said there's a problem due to the lack of a cavity tray and the absence of water drainage. She said her surveyor found rusty water behind the cladding sealing. She said with no drainage or evaporation this is a house design issue and NHBC haven't addressed it yet. If this point doesn't get resolved directly with NHBC I can confirm Ms L would be able to bring a further, separate complaint about this point.

Similarly, Ms L said the membrane 150mm overlay rule hadn't been followed either. She said it was clear that at the front of the property at least this rule wasn't being met. This again is a point for further consideration between the parties. Linked to that if any issues arise with the membrane not being breathable in the future, I think Ms L could raise that again in a further complaint.

Ms L also mentioned outstanding points about the missing gasket and the original builders not wanting to pay for the whole “dry ridge system kit”. These points need to be discussed directly between NHBC and Ms L.

There’s an outstanding issue too around the cladding. Apparently, the original builder was going to “deal with this” according to Ms L but I’m unclear what that means or entails. I’m not sure if this is something, I can make a decision on or whether NHBC and Ms L need to unravel this issue first. I can review this further if I’m provided details within the response timescale.

Ms L also mentioned the roof rafters needing cleaning. But I don’t think that’s likely to be relevant to the claim. An issue such as cleaning wouldn’t normally be something, I’d expect to be picked up by NHBC. Ms L will need to provide details of why the cleaning is linked to the claim.

Our investigator also referred to NHBC arranging a “proper fix” which refers to Ms L’s point about the roofer had only done a temporary repair and this needs to be worked on again by NHBC to complete a full and lasting roof repair. I agree, it seems to be accepted that a temporary repair was done so NHBC need to confirm what long term action is being taken to resolve the issue. I’ll review any details provided as part of my final decision.”

Responses to my provisional decision

NHBC acknowledged receipt of the provisional decision but didn’t comment any further.

Ms L gave detailed responses. She provided a roofing receipt for £1,894.65 from January 2021, some emails, and some PowerPoint slides in which she said the losses were two separate leaks. I won’t refer to every point she raised just the main ones:

The leak wasn’t on the ensuite side of the property and Ms L needs compensating for the whole flashing.

The Christmas leaks should be covered under the 10 year policy and weren’t part of the solar panel claim. The builders didn’t initially offer to repair the internal wall damage from the Christmas leak it was a year later before they did and recognised this was covered and not paid for in the previous solar settlement.

When the NHBC inspector visited he wouldn’t be able to see the missing membrane unless he unscrewed the ridge tiles, but he didn’t he just put a camera on a long pole to look.

Ms L said again that a gasket is missing from half of her house. She also said water can be pushed by strong wind to flow upwards and get into the house, and there’s no membrane under the roof to stop the water. As there was no membrane over the ridge for more than 6 years the joints aren’t well sealed, and both these issues are causing leaks.

Ms L got a surveyor’s report because originally NHBC said all cladding for the front of the house needed to be removed. It also said it would check the water-proof membrane behind and re-fit. But a further NHBC check said it would only change 3 timbers for each window, this is about 9/10 timbers in total compared to the original plan to replace about 100.

The surveyor report did show these issues needed to be resolved and so it should be paid for by NHBC. Ms L said as she didn’t understand she needed professional support. She said this showed the cause of the leak and the cost of the leak.

She said she made it clear to NHBC that she needed to see the result from the surveyor before settling the claim as NHBC didn't have a clear conclusion on the cause of leak. NHBC agreed and asked to see the report and to understand the cause of leak.

Ms L has wanted to settle since the original builders did a previous fix badly. Ms L said NHBC only offered £3000. The surveyor report found water trapping behind the cladding which hasn't been resolved. And the surveyor mentioned a possibility that water leak might be from the rooftop and he wanted to undertake further investigation which requires removing more areas of the cladding. Ms M said she asked the builders to agree to do this at their cost, but there was no progress, and the surveyor could not do a further investigation. The surveyor said £3000 is not enough, it may cost £20,000- 30,000.

Ms L said the surveyor report showed at least 2 building regulation breaches - ridge waterproof membrane and insulation.

Ms L said insulation is also covered under building regulation too. Her builders found there was missing insulation in the ceiling.

Ms L said my provisional decision didn't show how NHBC had refused on multiple occasions to inspect the property and damage.

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.

window leak

I don't think anything in response referred specifically to this issue covered in my provisional decision. So, I think what I said on this point remains the same.

roof leak

I don't think there's anything specific in response to this point either. If there is, I've not been able to identify it. I mentioned in the provisional decision there was a suggestion NHBC wasn't going to pay for any of this claim. That is unconfirmed by NHBC but if true that is unreasonable. I expect NHBC to take a "*pragmatic approach to finding a suitable reasonable settlement amount here*" in relation to the bedroom, stairs and landing costs caused by the roof leak. The roofing receipt sent after my provisional decision doesn't refer to these other costs so I'm unable to set an exact figure for this. I said if both parties provided amounts, I would have. So, my provisional decision remains the same NHBC should make a reasonable offer regarding the roof repairs receipt and towards repairs of the water damage to the bedroom, stairs, and landing.

surveyors report

Ms L has made more points about this, but they appear to be more related to all the outstanding issues that I've said aren't part of this complaint. Ms L's points don't seem to cover the specifics I'm dealing with here. I did accept previously that the report costs may need further consideration in relation to the outstanding issues and that still remains. But regarding this complaint I don't see any reason to change my provisional decision.

compensation

This remains the same as my provisional decision.

outstanding issues

I've no more to go on about the cleaning point from my provisional decision.

I've no more to go on regarding the "proper fix" either. So, my provisional decision stating NHBC will need to confirm what long term action is being taken to resolve this issue means it still has to do that. Only now it needs to do that directly with Ms L. It isn't something I can now specify in this decision as I've had no further information provided to me. If it is accepted that the previous arrangements were temporary, then further action is still needed. This is what this service refers to as a lasting and effective repair. NHBC and Ms L need to agree on what that should be with expert guidance provided by NHBC.

I've considered what Ms L added about the cladding, but I still don't think I can resolve the issue in this complaint.

I accept Ms L's point that on many occasions NHBC didn't inspect the property when she asked it to.

Ms L has made important further points which I have noted above. But to me they mainly seem to link with the outstanding problems rather than the points being dealt with specifically under this complaint. I think there's still some way to go for there to be complete clarity between Ms L and NHBC regarding all the problems that remain. But I hope by me noting these areas here the parties can either resolve the key points or arrange for a further separate complaint to follow to this service.

Putting things right

- Make a reasonable offer regarding the roof repairs and towards repairs of the water damage to the bedroom, stairs, and landing.
- Update Ms L directly about how it will carry out a lasting and effective roof repair.
- Increase the amount of compensation paid by a further £150.

My final decision

I uphold this complaint.

I require National House-Building Council to:

- Make a reasonable offer regarding the roof repairs and towards repairs of the water damage to the bedroom, stairs, and landing.
- Update Ms L directly about how it will carry out a lasting and effective roof repair.
- Increase the amount of compensation paid by a further £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr M to accept or reject my decision before 17 August 2022.

John Quinlan
Ombudsman