

## **The complaint**

Mr K complains about National House-Building Council's decision to decline a claim made under his new homes buildings warranty policy.

## **What happened**

Mr K has a buildings warranty policy with NHBC which covers his home. The warranty was originally taken out by the builder or developer of the property, then passed on to the first owner of the home and subsequently to Mr K when he bought the house.

In June 2021, Mr K made a claim, notifying NHBC that there was water ingress in and around a dormer window in the roof, which had caused damage inside the home.

NHBC declined the claim. They said the same issue had been reported to them in early 2019 by the previous owner of the property. At the time, they'd inspected the property and accepted that there was damage caused by a defect in the original build but declined the claim because the minimum claim value (£1,600 at the time) hadn't been met.

Mr K wasn't happy with this and made a complaint to NHBC. He said the original schedule of works drawn up by NHBC after their inspection was under-costed. And if NHBC had properly accounted for all costs the minimum claim value would have been met.

NHBC didn't uphold Mr K's complaint and maintained their position that the original claim was beneath the minimum claim value. So, Mr K brought his complaint to us.

Our investigator looked into it. She thought some of the costings on the original schedule of works appeared low considering the nature of the work to be carried out. She proposed that NHBC should appoint an independent expert to cost the work set out in the schedule of works. And if they said the costs were higher – and above the minimum claim value at the time - NHBC should pay Mr K the cost of the original repairs.

Mr K had some reservations about this. He thinks the works will now cost more than they would have in 2019 – and doesn't want NHBC to pay him 2019 prices. And he thinks the damage to his home may now be much worse – and he wants NHBC to pay the full cost for his house to be repaired.

NHBC disagreed with the proposed outcome and asked for a final decision from an ombudsman. They say their original costings were complete - and fair. And the policy terms explicitly say that they won't cover damage caused by a failure to maintain the property – which is what the original owner did, either by not having the repairs carried out after the claim was declined or by carrying them out badly.

## **My provisional decision**

In my provisional decision, I said:

“I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I'm minded not to uphold Mr K's complaint, unless further information, evidence or comment from Mr K or NHBC changes my mind. I'll explain why.

Mr K isn't responsible for what the previous owner of the property chose to do – or not to do – after NHBC declined the claim in 2019. And I have a great deal of sympathy with Mr K because it appears he's inherited a problem, which has grown worse over time, through no real fault of his own.

However, NHBC are entitled to see the warranty as, exactly, one warranty. When the house is sold to a new owner, that doesn't wipe clean, as it were, the history of the warranty and claims made under it.

I don't think Mr K is disputing this anyway, but for the sake of absolute clarity it's perfectly fair and reasonable, in principle, for NHBC to decline a claim from the current property owner if the previous owner had made the same claim and not taken the necessary actions afterwards to maintain the property.

That might appear unfair to the current owner, who as I say isn't responsible for the previous owner's actions. But the safeguard here is that when houses are bought and sold, surveys are carried out on behalf of the purchaser, which should highlight any issues with the property.

I'm not entirely sure when Mr K bought the house, although the NHBC records show the warranty certificate being re-issued (presumably to Mr K) in June 2021, immediately before Mr K made his claim.

If the repairs required in February 2019 hadn't been carried out, or were carried out badly, I'd expect that the damage around the dormer window would have been readily apparent to Mr K and/or his surveyor before Mr K purchased the house.

If Mr K chose to go ahead with the purchase anyway (without asking for a reduction in the sale price), on the basis that the house had a warranty, then that was his choice. And if the previous owner declined to mention the previous claim, that's not something for which NHBC can be held responsible.

So, NHBC are entitled to take into account what happened with the 2019 claim when they consider Mr K's more recent claim. And if no (or insufficient) action was taken by the previous owner to maintain the property, NHBC – according to the terms of the policy (which again aren't in dispute here) - are entitled to decline the recent claim if they handled the previous claim correctly. And that is the case whether or not the damage is now more extensive and the repairs required now would cost more than the minimum claim value.

So, the key question for me is whether the previous owner's claim in February 2019 was fairly and reasonably declined by NHBC.

Mr K argued - and our investigator accepted – that some of the items in the schedule of works prepared for the previous claim were costed at a seemingly unreasonably low price. And if they had been costed correctly, the repair cost would have met the minimum claim value.

The works were costed at less than £200 shy of the minimum claim value in any case, so a marginal shift in costs for one or two items of work would have brought the

claim value above the £1,600 minimum.

NHBC have assured us they followed their usual process in costing the repair work after their inspection in March 2019. So, in essence, the work was scoped by an expert surveyor. That scope of work was then costed using industry standard costings and prices.

NHBC are entitled to rely on their expert's opinion of work needed to be done to effectively carry out the repairs. At least unless and until they see another expert opinion which differs – in which case, we'd expect them to take that second opinion into account and review their position. They're also entitled to rely on industry standard costings for particular items of building work.

NHBC have also told us that the costings have been checked at least twice to ensure no mistake was made in selecting the appropriate costing for each item of work or in the maths used to arrive at the total cost of the repairs.

On that basis, I have no real reason to suppose that the scope of works is incomplete or inaccurate or that the costings are lower than they should be. I note that the previous owner didn't quibble with the schedule of works or the costings after the original claim was declined.

Mr K has said that he thinks the costings around the removal of parts of the dormer window and the work done whilst those parts were removed is seriously underestimated at just over £100.

NHBC have pointed out that the specified cost (just over £100) is for the removal of the window frame rather than the dormer window itself. The materials and labour needed to then carry out work whilst the frame was removed are costed separately in the schedule of works.

As I say, the schedule of works was set out by an expert – on whom NHBC can feel entitled to rely – and the costings are drawn from a widely-used industry guide. I have no reason at present to assume that there was any fault or error in either the schedule or the costings.

If Mr K wishes to have his own expert review the schedule and costings from the 2019 claim – and that expert comes to different conclusions to NHBC about the cost of the repairs required in 2019 (not the repairs required now after further deterioration) – then I'm sure NHBC will consider that additional evidence and review the claim.

But as things stand, given the information and evidence available to NHBC, I can't sensibly conclude that they've treated Mr K in any way unfairly or unreasonably in the way they've handled his claim or in their decision to decline it."

And on that basis, I said I was minded not to uphold Mr K's complaint.

### **The responses to my provisional decision**

NHBC responded to my provisional decision to say they had nothing more to add.

Mr K also responded. He disagrees with my provisional decision. I'll summarise his reasons for doing so. I trust Mr K will forgive me if I don't repeat what he said verbatim.

Mr K still thinks that some of NHBC's original costings for the required work are clearly too low.

He mentions in particular the skip cost – which he says appears to allow for payment for 25% of a skip. He also thinks the removal of the window looks unfeasibly low at around £100. And he thinks the scaffolding requirement hasn't properly been accounted for.

He says the costings were only “complete and fair” according to NHBC and haven't been independently verified.

He's also concerned that NHBC's original report said the previous homeowner could carry out cheaper repairs by covering over the problem with mastic. He says this would only ever be a temporary solution, which wouldn't address the underlying defect.

And he says the previous homeowner followed this advice, but with the result that the problem wasn't resolved and the damage has now got worse. The implication being that NHBC should cover all of the damage which is now evident in Mr K's home.

### **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 I said in my provisional decision, I have a great deal of sympathy with Mr K for the position he finds himself in. And I've carefully considered all the points he's made in his response to my provisional decision.

However, nothing Mr K has said has changed my mind and I'm not going to uphold his complaint. I'll explain why.

Mr K has previously made the same points about the costings in NHBC's original schedule. And I still have no reason to disbelieve NHBC when they say the costings were in line with the expert report setting out the work to be done and the prices for work taken from the industry guide.

NHBC do not cost 25% of a skip. They cost 25% of the weekly cost of a skip. A skip can't be split into four parts, but a week can.

The cost for removal of the window relates only to the removal of the window frame itself. The work to be done after the frame is lifted out of the aperture is costed separately.

And the scaffolding is costed – at what appears to be the right height and width for the job in hand.

NHBC's inspection report *did* say that the homeowner could affect a cheaper repair by replacing the silicone around the window, making it watertight in effect. But it was absolutely clear about what the underlying defect in the build was and how that could be addressed. And the more fundamental solution was what NHBC costed in their schedule.

As I said in my provisional decision – and for the same reasons - I can't see any mistake on the part of NHBC at present, or any unfairness towards Mr K in the handling of his claim. That being the case, it wouldn't be fair to ask them to pay for an independent audit of their original costings.

If Mr K wants to provide an independent report to show that NHBC's costings were unreasonable at the time, in 2019, I'm sure they would consider that.

Mr K tells us he's an experienced builder himself. And he thinks the costings were unfeasibly low. I wouldn't want to suggest that Mr K's own estimations are unreasonable. But I have to ask him to accept that at the moment, the only evidence I have to suggest NHBC got it wrong is Mr K's own opinion – and he isn't an independent party in this case.

If Mr K were to get an independent expert to audit NHBC's costings and that demonstrated that, at the relevant time, the previous homeowner's claim should not have been rejected on the basis that the cost of the repairs was below the minimum claim value, then we'd expect NHBC to re-consider the claim *and* pay for the independent report.

But as things stand, I can't reasonably conclude that NHBC have acted unfairly or unreasonably in the way they've handled Mr K's claim.

### **My final decision**

For the reasons set out above and in my provisional decision, I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 January 2023.

Neil Marshall  
**Ombudsman**