

The complaint

Mr F complains that National House-Building Council (NHBC) has unreasonably delayed making a decision on a claim he made under his Buildmark policy.

What happened

The subject of this complaint is a building comprised of multiple apartments. Mr F is the leaseholder of one of the apartments, and the holder of a Buildmark Warranty covering his apartment and his share of any common parts.

Mr F's claim is for remedial work to the common parts of the building, relating to fire safety issues. This means that other leaseholders, in addition to Mr F, will likely have been affected. But this complaint has been brought solely by Mr F, and so I'm only considering what he is entitled to under his individual warranty.

The Financial Ombudsman Service has already considered two previous complaints from Mr F. The first complaint was about NHBC's refusal to deal with the claim under section 2 of the warranty and its unreasonable delays in assessing the claim under section 4 of the warranty up until January 2023. The second complaint was about unreasonable delays in assessing the claim under section 4 of the warranty between January 2023 to August 2023.

This complaint is about further unreasonable delays in NHBC's assessment of the claim under section 4 of the warranty, between 25 August 2023 and 8 December 2023 (when NHBC answered Mr F's latest complaint).

Mr F is unhappy with the level of compensation awarded in his previous complaint as he says he's experienced delays of over a year. He wants compensation for the entire period of delays he's experienced since the claim was made. He's also unhappy that NHBC says it will communicate its claim decision to the property management company, rather than to him directly. He says he's the policyholder and so should be able to be involved in the claim communications.

Our investigator considered the complaint and thought it should be upheld. He agreed that there had been further unreasonable delays in the progression of the claim since the final decision was issued on the previous complaint. He recommended that NHBC should pay a further £200 compensation for these delays.

In terms of Mr F's concerns with NHBC's intention to communicate with the property management company, our investigator explained that the claim related to common parts of the building, and so impacted all of the leaseholders, not solely Mr F. Based on this, he didn't think it was unfair or unreasonable for NHBC to communicate the claim decision to the property management company, who is representing the leaseholders. And he noted that NHBC was also committing to keep Mr F updated on his individual claim, which he thought was fair.

Mr F didn't accept our investigator's findings. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a slightly different outcome to our investigator. So, I issued a provisional decision to give the parties the opportunity to respond, before I reached my final decision. Here's what I said:

"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 minded to reach a slightly different outcome to our investigator and to award a higher level of compensation. I'll explain why.

The position of Mr F's claim, at the point of my earlier final decision for Mr F's previous complaint, was that NHBC was obtaining a further expert report. This was to determine whether the issues with the cladding at Mr F's development resulted in a present or imminent danger to the health and safety of the occupants, which is a key requirement for cover under section 4 to engage.

In my previous final decision, I said it was reasonable for NHBC to obtain this expert opinion, but that it had unreasonably delayed the process of obtaining it and so should pay Mr F compensation for the impact of these delays. Since my earlier decision, NHBC has received the report from this expert. But it has then caused further avoidable and unreasonable delays in assessing this information, which has caused Mr F to make a further complaint.

Having carefully thought about everything that's happened, I think NHBC is responsible for a further three months of avoidable and unreasonable delays. I say this because NHBC had received the expert report by early October 2023. And while I think it's reasonable that it would take some time for NHBC to review and analyse the findings, before reaching claim decision, I don't think this should reasonably have taken longer than a month in these circumstances.

I say this because of the potential safety issues involved in the claim, and the understandable worry they would cause Mr F (and the other policyholders), and because there have been previous, accepted, unreasonable delays in progressing the claim, which have already unfairly impacted the policyholders. But at the point of Mr F bringing this complaint, NHBC had already taken over a month and it subsequently explained, in its complaint response, that it would take at least a further month from that point before a claim decision would be communicated. I don't think this is fair or reasonable.

Mr F has reiterated that he has suffered from prolonged distress and inconvenience, for well over a year, due to NHBC's handling of his claim and complaints. But I'm not able to review or award compensation for the full duration of Mr F's claim as part of this complaint. This is because the time NHBC has taken, at various stages of the claim, has already been addressed in earlier complaints decided by the Financial Ombudsman Service.

The ombudsman who decided Mr F's first complaint explained why he couldn't consider elements of Mr F's complaint – including how it was handled initially – and he explained that he didn't consider NHBC had caused unreasonable delays between November 2022 and January 2023. And for Mr F's second complaint, I decided NHBC was responsible for three months' worth of unreasonable delays and awarded £200 compensation for the impact of these delays.

I understand Mr F may remain unhappy with the outcome of the earlier final decisions, but that doesn't change the fact that they are final. The Financial Ombudsman Service's powers to consider a complaint come to an end once a final decision is issued. Nobody at our service, regardless of their seniority, has the power to review or overturn a final decision once it's been issued. So, given the earlier final decisions considered the full claim journey, including any delays up to August 2023, I'm not able to reconsider delays during that time period as part of this decision. Instead, this complaint is only considering the events which have taken place since August 2023.

Strictly speaking, this complaint only includes the delays between August 2023 and December 2023 – when NHBC provided its final response letter. But I've spoken with NHBC, and it has consented to me considering the time taken from August 2023 to the point of issuing its claim decision as part of this complaint. This means the period I'm considering is between 25 August 2023 and 27 February 2024. And during this time, I think NHBC is responsible for around three months of additional, avoidable and unreasonable delays.

In considering a fair amount of compensation for these further delays, I've considered the impact they've had on Mr F. In my view, these further delays on NHBC's part have compounded the impact of its previous errors and so have added to the worry frustration and inconvenience Mr F has previously experienced and continues to experience. So, although the period of unreasonable delay here is broadly comparable to those in the previous complaint, I think the impact this further period of delay has had on Mr F is greater. Based on everything I've seen, I'm intending to direct NHBC to pay Mr F £350 compensation for the impact these further, unreasonable delays have had on him.

I'm aware that Mr F has said he wants me to direct NHBC to accept and deal with his claim under this complaint. He says this is in line with how the Financial Ombudsman Service has dealt with other complaints. But we deal with each complaint on its own individual facts. And whilst I fully appreciate the poor service Mr F has experienced up to this point, I haven't been provided with sufficient evidence which would lead me to direct NHBC to accept the claim at this stage.

That said, I've been made aware that NHBC has since reached a decision on the validity of Mr F's claim, and that this claim decision was communicated to Mr F just over one week ago. Should Mr F be unhappy with the decision on his claim, he'll need to deal with this directly with NHBC in the first instance. And should his concerns be unable to be resolved, he'll be able to raise a new complaint with our service about this, subject to our normal rules and timescales.

In terms of Mr F's complaint about NHBC's decision to communicate the claim outcome to the property management company, I agree with our investigator. The claim involves the common parts of multiple separate blocks of flats, and so impacts all the leaseholders at the development, not solely Mr F. So, I think it's reasonable and practical for NHBC to communicate with the property management company about the common parts claim, as the property management company is representing the interests of all the leaseholders. That said, NHBC has committed to communicating directly with Mr F about his specific claim, under his policy, and I think is fair and reasonable in the circumstances."

I asked both sides to send me any further comments or evidence they wanted me to consider before I reached my final decision.

NHBC didn't wish to provide any further comments or evidence.

Mr F responded to confirm he disagreed with my provisional findings. To summarise, he said:

- His claim isn't for the common parts of the building, it relates to the combustible insulation and cavity tray issues present within his flat.
- NHBC received their second expert's report in September 2023, not October 2023 as I'd stated.
- He hasn't received any compensation from NHBC.
- He feels the compensation I've awarded is inadequate and that an award of up to £5,000 would be fairer.
- As the building materials used are not in line with building regulations, that should be sufficient evidence for me to conclude the claim should be covered.
- He is raising a new complaint with NHBC about the claim 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've also thought carefully about the responses to my provisional decision. But having done so, my conclusions remain the same. I'll explain why.

Mr F argues that his claim isn't for the common parts of his building, only for issues with his flat. However, the issues being claimed for relate to fire safety concerns with insulation and cavity trays in the external walls. Mr F's policy provides separate definitions for his flat and the wider block, and it's the latter which includes the building his flat is in. So, I remain of the view that Mr F's claim is for the common (or shared) parts of his building.

Mr F says NHBC received the second expert report in September 2023 rather than October 2023 as I suggested. I based the date I stated in my provisional decision on information from NHBC's final response to Mr F's complaint which stated:

"I can see that you were told on the 12 October 2023 that the report from the external fire consultant had been received, and that this had been passed to the Technical Claims Surveying Manager for review and comment."

I appreciate the above doesn't confirm that the report was received by NHBC in October 2023, but that was how I interpreted it on first reading. I'm happy to accept Mr F's contention that NHBC actually received it on 19 September 2023. But overall, this doesn't change my view on what NHBC needs to do to put things right.

I say this because the overall period of additional, unreasonable delays caused by NHBC when receiving, reviewing and deciding on this expert report remains broadly similar, and I think the compensation I provisionally awarded – £350 – remains sufficient to fairly compensate Mr F for the impact the additional delays had on him.

I appreciate Mr F feels strongly that he's suffered prolonged distress and inconvenience as a result of the claim, and so an award of £5,000 would be fairer. But I've already explained why I'm only able to consider and award compensation for a specific period of time as part of this complaint. I've nothing further to add to those explanations.

Mr F says he's yet to receive any compensation from NHBC. It's not clear whether he's referring solely to the compensation awarded in my provisional decision on this current complaint, or whether he's including the £200 I awarded in my final decision on his previous complaint.

Either way, NHBC is only bound to pay compensation awarded by the Financial Ombudsman Service following its policyholder's acceptance of an ombudsman's final decision, or if it agreed to pay compensation at an earlier stage in the proceedings (such as following an investigator's assessment). So, if NHBC hasn't paid Mr F the £200 I awarded in his earlier complaint, it could be because he didn't confirm that he accepted that decision.

Should Mr F wish to accept this final decision, NHBC will be legally bound to pay Mr F the compensation I'm awarding as part of this complaint – £350. Should Mr F also now wish to accept my earlier final decision, I can liaise with NHBC to see whether it would be willing to pay the £200 awarded in that decision, despite Mr F's late acceptance (assuming, as I have above, that this amount currently remains unpaid).

Mr F has also reiterated a point he made in an earlier complaint, that because the building materials he's complaining about are not in line with the requirements of Building Regulations, I should conclude from that they also present an imminent danger to the health and safety of the occupants and so should be covered under section 4 of his policy.

I should reiterate here that this complaint is not considering NHBC's claim decision, and Mr F's point above is in relation to NHBC's decision on his claim. The claim decision hadn't been made at the point this complaint was answered by NHBC, or when it was referred to the Financial Ombudsman Service. So, it wouldn't be appropriate for me to include consideration of the claim decision as part of this decision. Mr F has confirmed he has now raised a new complaint about NHBC's claim decision. So, the point above will form part of that new, and separate, complaint.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr F's complaint in part.

National House-Building Council must pay Mr F £350 compensation for the distress and inconvenience its further delays have caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 April 2024.

Adam Golding
Ombudsman