

## The complaint

Mr A has complained about the way National House-Building Council ('NHBC') has handled a claim he made for damage caused to his apartment by an ingress of water from a defective roof.

## What happened

Mr A purchased a new build, top floor apartment with roof terrace in January 2014. His apartment suffered an ingress of water in 2020, which was repaired by the developer. That repair failed and Mr A's apartment was damaged again by a further ingress of water in 2022, and again in 2023. Mr A has explained that the issue which caused the leaks to his apartment was linked to similar issues affecting other top floor apartments dating back to 2014.

NHBC was notified of the wider issue in October 2019, however it remained with the developer to be rectified until August 2023, when NHBC took over the claim. Mr A believes that NHBC didn't take any steps to resolve the issues or progress the claim from that time to the point that he referred his complaint to this Service. He has explained that that his apartment was affected by water permeating down through the outside wall which then dripped onto the window ledge of the living room. Also, after heavy rainfall, water would come through the bathroom light fitting. And later, Mr A advised that the bedroom and living room ceilings had been damaged by leaks leading to water staining marks. Mr A considers that NHBC should pay compensation to him, to cover his financial losses (estimated at £40,000) which are due to the delay of over three years in remedying the problem.

In September 2024, NHBC sent Mr A its response to his complaint. It accepted that the claim had been on-going for significantly longer than was initially anticipated and apologised for that. NHBC admitted that it had been informed by the managing agent that the developer's attempts to repair had failed in October 2022, and two years later, while the repairs ought reasonably to have been completed, little actual progress had been made. NHBC said it was regrettable that the repairs weren't due to start until March 2025, which would give a likely completion date of early 2026. NHBC offered Mr A £2,600 compensation for the impact of the delays and its poor handling of the claim on him and his family.

Mr A wasn't happy with how NHBC had offered to resolve his complaint, so he referred it to this Service. He explained at that time that the leaks in the roof were now causing additional damage to both of the bedrooms. He also said that the additional losses he will incur due to the delays in the claim being settled, set out below, (anticipated to be approximately £40,000), aren't covered by NHBC's offer of compensation:

- if he has to purchase a house while still owning the apartment, he will have to pay increased stamp duty;
- if he cannot let the apartment, he won't receive rent payments while the issues remain unresolved;
- he will have to cover the council tax on the apartment;

- he will need to pay higher than anticipated mortgage repayments as the equity needed to purchase the house will remain tied up in his apartment while he is unable to sell it; and
- he will have to pay capital gains tax on the sale of the apartment when the time comes as it will no longer be his main residence.

One of our investigators looked into what had happened and issued a first view on the complaint in January 2025. She explained that while there were various issues that NHBC had to address (such as the placement of scaffolding on a neighbouring property), which delayed the settling of the claim, NHBC had accepted that there were some avoidable delays, and there were other ways it could have sought to move things forward with the claim.

Our investigator considered the delays that had up to the date of NHBC's final response in September 2024 and explained why she considered NHBC's offer of £2,600 compensation was fair in the circumstances. With regard to the other losses Mr A was claiming, our investigator explained that she could only consider losses that had actually occurred, and were directly caused by NHBC's actions, not speculative losses. On that basis, she concluded that NHBC didn't need to pay Mr A any additional compensation to resolve his complaint.

Mr A provided detailed comments in response to the investigator's first view. He clarified that there was water repeatedly leaking into his apartment from when it first became apparent in 2021. He referred to the negative impact of being trapped in a home where he feared bad weather because of the damage it would cause to the property and contents. He said that the mental load was made considerably worse by NHBC's poor communication about the claim. Mr A also explained that he had seen no evidence of any urgency on NHBC's part to resolve the issue. And lastly, he considered that if he was to sell the apartment with the current issues, at best, he would have to take at least a 10-20% reduction in the value. If NHBC had taken over the claim sooner, Mr A considers that the subsequent leaks wouldn't have happened, and he would have been able to sell his apartment months ago.

A second view was then issued on the complaint on 21 March 2025, in which the investigator explained that her view hadn't changed after considering the parties' further submissions. She observed that the developer had managed to carry out repairs during the first years of the claim, which ultimately didn't last. But it was reasonable for NHBC to step back from the claim at times when it appeared the issues had been resolved.

Mr A also didn't accept the investigator's second view, so the complaint has been passed to me for a decision to be made.

### **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.

Having done so, I've arrived at the same conclusion as our investigator, for largely the same reasons. I will explain why.

I would first like to address Mr A's concerns about why NHBC didn't step in sooner and take over the claim from the developer. I understand Mr A's frustration with how long it has taken for the claim to be settled under the warranty terms. However, the first two years of the warranty term provide the developer with the first opportunity to repair the damage that has appeared, which the warranty will respond to.

Where the developer engages with the claim as was the case here, NHBC's actions, in providing the developer with a fair opportunity to resolve the issues is in-line with the warranty terms and is fair in the circumstances. Also, while not ultimately successful, the attempts made by the developer to fix the defect and repair the damage will have informed NHBC's experts and contractors as to the next steps to be taken. Unfortunately, it is sometimes the case that it is only after implementing a repair, it will become apparent whether those actions were sufficient to fix the issues that are causing damage. And if the first repair isn't successful, a new plan for remediation will need to be implemented. That doesn't necessarily mean the developer or the insurer have done something wrong. Where complex issues are affecting a building, it can take more than one attempt to deliver a lasting and effective repair.

At the point that the insurer steps in and takes over the claim, they will usually need to carry out their own assessments and investigations to decide what the appropriate next steps will be, which can lead to a period of delay in settling the claim. Therefore, if a developer is engaging with the claim and attempting to resolve the issues, we consider it reasonable to allow a fair opportunity for the developer to do that, because in many cases, it will be successful, and the policyholders will be spared unnecessary delays in the claim being settled.

Having considered the timeline of events, taking account of the time that passed between repairs being completed, and subsequently failing, I haven't identified any significant periods of time in which the claim wasn't being reasonably progressed up to the time that NHBC took over the claim.

I've next considered NHBC's actions once it had taken responsibility for resolving the issues that were included in the claim. NHBC has accepted that its communication could have been better at times, and alternative ways of moving things forward could have been explored sooner. NHBC has also said that it is regrettable that Mr A won't have his apartment repaired until early in 2026. To compensate Mr A for the inconvenience and upset he's suffered as a result of the way NHBC has handled the claim, it has paid him £2,600.

Mr A doesn't agree that the compensation offered is sufficient to make up for the impact of NHBC's actions, on him, including the losses he has highlighted. So, I've next considered the delays that occurred from when NHBC took over the claim, and the impact of those delays on him.

Mr A has said that NHBC's initial refusal to carry out the repair works and its insistence on cash-settling the claim caused avoidable delays in progressing the claim. The warranty terms provide that NHBC will pay the cost of putting right any damage to the home caused by a defect, which is covered by the warranty terms. Alternatively, the warranty provides that NHBC may, at its option, arrange to get the necessary work done at its expense. As the warranty provides for two ways in which NHBC may settle a claim, either approach is provided for by the terms and conditions. So, I have next considered whether NHBC acted fairly and reasonably by initially choosing to cash settle the claim. I understand that part of the reason for offering a cash settlement was that not all of the building was covered by a warranty. That meant a cash contribution to the works would need to be paid by owners who didn't benefit from an NHBC warranty. This would appear, in many circumstances, to give a reasonable basis for offering a cash settlement.

However, the property management company explained to NHBC that it did not have the experience or expertise to arrange for the repair works to be done, and it wanted NHBC to carry out the repair works. The property management company complained to NHBC and approximately six months later it agreed to carry out the repair works. In the circumstances of this claim, where previous attempts to repair the defect and damage had failed, I think it

was reasonable for NHBC to retain control of the works. And I think that this decision could have been made sooner. I've taken account of the impact of this short delay on Mr A, when deciding whether the £2,600 paid by NHBC fairly compensates him for the overall impact of its actions.

Once NHBC had taken over the claim, before it could erect scaffolding to enable the works to proceed, an application had to be made for the removal of trees that were in the way of where the scaffolding needed to be placed. I have seen from the evidence provided that NHBC proactively chased the council for the necessary permissions needed to remove the trees, which was expedited following its engagement with the council.

Permission to place scaffolding in an adjoining car park also needed to be obtained from commercial neighbours. As the timing of the repairs coincided with a busy period for the commercial customer, they didn't agree to the dates first requested. The erecting of the scaffolding therefore had to be delayed, to avoid negatively impacting on their trading activity. I can see from the evidence provided, that NHBC made regular contact with the relevant parties, but, as it conceded, in the final response letter, once it was aware of likely delays, it could have considered whether there were any alternatives available that would move matters forward more efficiently.

Mr A has also said that he wasn't regularly communicated with by NHBC. And having reviewed his submissions, and his perception that very little was happening to progress the claim, I agree that NHBC could have provided more clarity about how things were progressing which may have eased some of Mr A's frustration. I note that NHBC was communicating with the property management company. But it isn't clear how much of that information was passed on to the individual affected owners. I think, being aware of Mr A's family circumstances and individual concerns, NHBC could have communicated more proactively with him.

However, throughout this part of the claim period, having considered all that was going on to move things forward, I haven't seen any notable gaps where NHBC allowed the progress of the claim to unnecessarily falter. However, NHBC could have considered some alternative options where third parties were causing delays, and it could have communicated more clearly and proactively with Mr A. Taking everything into account, I think that its payment of £2,600 is sufficient to compensate Mr A for the impact of its actions, in the circumstances.

I've also considered Mr A's claim for the other losses he has highlighted. In doing so I have had regard to the warranty terms and the Dispute Resolution Rules ('DISP') which give me the power to decide this complaint.

Page 5 of the warranty sets out the general exclusions and limitations that apply to the claim. Paragraph i) sets out that NHBC will not be liable for:

*'Any loss of enjoyment, loss of use, loss of income or business opportunity, inconvenience or distress, or any loss arising or cost incurred (or both) only indirectly, as a result of the events or circumstances that led to your claim or complaint.'*

NHBC has said that as Mr A's other notified losses are hypothetical, they are excluded by the warranty.

So, I agree that under this exclusion, the losses Mr A has highlighted, would not be payable under the warranty terms.

However, I also need to consider whether that is fair and reasonable in the circumstances of Mr A's complaint. In doing so, I have had regard to DISP 3.7.2R which provides that I can

make a money award, in such amount as I consider to be fair compensation for financial loss, which can include consequential or prospective loss. However, in Mr A's case, I don't currently consider the losses he has claimed for amount to consequential losses, because they have not yet occurred, so it isn't possible to establish whether the sums claimed for would be solely due to NHBC's actions, or whether there would be other factors to consider.

With regard to a prospective loss, while that is essentially a future loss that hasn't happened yet, it refers to a loss that is certain to be suffered. In Mr A's case, we don't know for sure that he will suffer the losses he has highlighted, because, for example, he may choose to remain living in the apartment until the repairs have been completed, for reasons unrelated to the claim, for example he may not find a property that he wishes to move into, within a reasonable period of time.

In the circumstances, I don't consider it to be appropriate to make a money award for the potential losses Mr A has highlighted. I am therefore not upholding this element of his complaint.

Taking everything into account, for the reasons I've given in this decision, I am not upholding this complaint. I therefore won't be requiring National House Building Council to take any further steps to resolve Mr A's complaint.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 December 2025.

Carolyn Harwood  
**Ombudsman**