

The complaint

Mr W is unhappy with National House-Building Council's (NHBC) handling of a claim he made under his Buildmark policy for defects with his building.

What happened

In 2023 Mr W raised various issues with his property to the developer. In January 2024, NHBC – the provider of his new home building warranty – took over responsibility for several issues, as the developer hadn't resolved them in line with its requirements.

The issues reported to the developer and NHBC were:

1. Insufficient protection around windows
2. No insulation/water barrier between floor and door/windows
3. All units let in draughts, have no insulation and are cold bridging internally

In addition to the above, during the claims investigations it was discovered that the windows were missing cavity barriers which is a fire safety risk. NHBC committed to investigating these issues, but due to further delays this didn't happen for several months.

Mr W has brought several, separate complaints to the Financial Ombudsman Service at different times, which cover different elements of his concerns with NHBC's handling of his claim. The first complaint covers NHBC's claim decision and proposed repairs for the issues covered in the resolution report – excluding the cavity barrier issue – and delays between January 2024 and September 2024. The second complaint related to further delays to the progression of the cavity barrier issue between September 2024 and February 2025.

Following NHBC's responses to the previous two complaints, it was agreed that NHBC were appointing a fire engineer to carry out detailed investigations into the presence and/or compliance of cavity barriers within the building. But since then, NHBC says the original developer, who is also the freeholder of the building, has refused to allow it access to complete the investigations or works. This was because the developer wanted to investigate and remedy the issues directly.

NHBC explained to Mr W that given the access issues, the urgency of the required repairs and the developer's commitment to resolving the issues, that the best course of action is to allow the developer to complete the works. NHBC confirmed it would remain involved and send fortnightly updates to both parties to help facilitate a timely resolution.

Mr W isn't happy with NHBC's proposed approach. He says NHBC is required to deal with the claim under the terms of the warranty so it's unfair for it to reverse its previous position and to avoid its responsibility to remedy the issues when they are covered under his warranty. Mr W also raised concerns about ongoing delays, and with NHBC's proposed cash settlement for some of the other issues.

An investigator here considered the complaint but didn't think it should be upheld. She acknowledged that NHBC was responsible for ensuring the fire safety issues resulting from the cavity barrier defects were remedied. But she felt the best way it could meet these responsibilities was to let the freeholder carry out the works, as it was willing to, rather than taking legal action against the freeholder to force access – which would only serve to further delay the repairs.

The investigator didn't agree the cash settlement offer was inappropriate or that there had been any unreasonable delays during the period of the claim being considered under this complaint.

Mr W didn't accept the investigator's findings. So, as no agreement has been reached, the complaint has been passed to me to decide.

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, while I understand it will likely be disappointing for Mr W, I've reached the same overall findings as the investigator. I'll explain why.

The cavity barrier issue

The relevant section of cover to Mr W's claim is Section 2. This section of Mr W's warranty covers defects which arise during the first two years after completion of the property.

Under Section 2, responsibility for remedying defects which are discovered rests with the developer, rather than NHBC. However, NHBC contracts to take over the developer's responsibilities under the NHBC Guarantee, once certain events take place. That is, once an NHBC claims investigator, who has been appointed under the resolution service, issues a report directing the developer to take action, and the developer either refuses or fails to take the action directed by the deadlines set out in the report.

It's not in dispute that the cavity barrier issue was included in the resolution report, nor that NHBC took over responsibility for ensuring the issues are remedied. What remains in dispute is how NHBC is currently proposing to deliver on those responsibilities.

Because the cavity barrier issue is likely impacting the entire building, rather than solely Mr W's property in isolation, it is what is referred to as a common parts issue. And, because responsibility for the maintenance of the common parts of the building rests with the freeholder – who in this case is also the developer – NHBC would need the consent of the freeholder to carry out inspections or works to remedy the issues.

NHBC has evidenced that the freeholder will not allow it the access to carry out the works directly. This is because the freeholder has separately been in contact with the Government about its responsibilities to investigate and remedy any fire safety issues with the building under The Regulatory Reform (Fire Safety) Order 2005 (FSO). The freeholder has accepted it is responsible for identifying and remedying any fire safety issues and has signed a Developer Remediation Contract (DRC) with the Government, committing to doing just that. The freeholder has also written to all the residents of Mr W's building to highlight its commitment to remedy the issues and setting out that a waking watch fire warden will be in place until a better alarm system can be installed – to mitigate the current risks posed by the issues identified within the building.

Mr W is unhappy as he says NHBC is avoiding its responsibilities and allowing the developer to carry out the work when it was the developer who built the property without effective cavity barriers in the first place. He feels NHBC should be exercising any powers it has to force the developer to give it access, so that it can deliver the cover owed to him and the other residents by fixing the fire safety issues.

I can fully appreciate Mr W's strength of feeling in this complaint. NHBC had committed to carrying out investigations into the issues directly and has subsequently changed its position. However, as explained, NHBC cannot carry out works to property owned by the developer without its consent – and this hasn't been given for the reasons set out above. While there are likely some avenues NHBC could pursue in order to force the developer to give access, I think doing so would only serve to delay the investigation and repairs being completed. And so, I don't think this approach would be appropriate in the specific circumstances of this complaint, i.e., where there are ongoing fire safety issues posing a risk to all the residents of the building, including Mr W.

I say this because the developer is clearly already working to resolve the issues. Allowing the developer to do this, while maintaining oversight of the claim progress, is likely to be the best and most efficient way for NHBC to meet its obligations under the policy. To be clear, the policy does not require NHBC to carry out remedial works directly. It simply means that responsibility for ensuring the issues covered in the resolution report are remedied shifts from the developer to NHBC. It's not uncommon for NHBC, or other warranty providers, to utilise the original builder or developer in order to meet those responsibilities.

NHBC has confirmed it will contact the freeholder and Mr W periodically to ensure the claim is progressing. I think this position is fair. That said, should the freeholder cause further unreasonable delays to the progress of the repairs, I think it would be reasonable for NHBC to consider taking a different approach to meeting its obligations to Mr W.

Cash settlement

Mr W has complained about the cash settlement offer made by NHBC for the remainder of the issues covered in the resolution report. The investigator commented on the suitability of the offer, but I'm not going to. This is because the offer was made to Mr W after the final response letter for this complaint was issued to him. This means any concerns Mr W has with the cash settlement offer is outside the scope of this current complaint.

That said, one of Mr W's previous complaints includes a concern about the adequacy of one of NHBC's repair proposals – the use of compriband insulation tape – on which part of the cash settlement has been based. So, this particular part of Mr W's concern with the cash settlement will be addressed in that other complaint.

The investigator also advised Mr W that if he felt NHBC's cash offer wasn't sufficient for him to complete the works NHBC accepts are required, he should obtain his own quotes for that same work and present it to NHBC for consideration. I agree that this is the best way of moving this concern forward.

Delays

I know that Mr W's claim has been going on for several years, and that it has been avoidably delayed at times by NHBC or its agents. I also know that Mr W doesn't agree that he has been adequately compensated for the impact of these delays.

However, Mr W has raised several, separate complaints at various stages and each of those complaints has included consideration of any avoidable delays which took place during the period(s) of time covered under each separate complaint. So, Mr W has already been (or will be when final decisions are issued on those linked complaints) fairly compensated for the delays he experienced prior to the period covered under this complaint.

The period covered under this complaint is between 28 February 2025 and 9 April 2025. So, under this complaint I'm only considering whether there have been further unreasonable delays caused by NHBC during that period – rather than reconsidering the entire claim journey.

I've reviewed the timeline of events relevant to this complaint, and I can see NHBC has been proactively moving things forward throughout. I appreciate its direct investigations were delayed, and ultimately abandoned, during this period. But this was due to the freeholder refusing access, and so isn't something I can reasonably hold NHBC responsible for.

NHBC maintained regular contact with the parties during the period I'm considering and took reasonable action at each point to keep things moving forward. It therefore follows that I don't think NHBC is responsible for any unreasonable delays during the period covered under this complaint.

My final decision

For the reasons I've explained above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 October 2025.

Adam Golding
Ombudsman