

The complaint

Mr W complains about National House-Building Council's (NHBC) handling of a claim made under his Buildmark policy.

What happened

The subject of this complaint is an estate comprised of multiple blocks and apartments. Mr W 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.

The claim dates back to May 2018 and is for movement and cracking in apartment blocks, retaining walls and roads, defective cladding, and defective drainage. The claim involves what is defined under Mr W's lease as common parts, and this means that other leaseholders, in addition to Mr W, will likely have been affected. But this complaint has been brought solely by Mr W, 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 W. The first complaint was about NHBC's refusal to cover the claim for block paved areas. The second complaint was about further poor service and delays since the conclusion of the earlier complaint, and about NHBC's proposals for moving the claim forward. Final decisions were issued on both complaints, meaning the issues covered within those complaints will not be considered again.

The issues originally brought by Mr W, via his representative, as part of this complaint are as follows:

- Ongoing delays to the progress of the claim caused by NHBC since January 2023.
- NHBC's refusal to accept various quotes for the remedial works.
- NHBC's refusal to cover investigation works to establish if the below ground drains are out of alignment.
- NHBC's insistence that Mr W's new representative obtains fresh authority to act from Mr W and the rest of the leaseholders before it would communicate with them.
- A wish for all leaseholders to be joined together in the complaint so reasonable compensation can be paid to them for the impact of the delays, including to those who have lost out on selling their properties due to the ongoing issues.

Since the complaint was first referred to the Financial Ombudsman Service, NHBC issued a further response explaining that due to the ongoing disputes around the quotes for repairs, it would be exercising its rights under the policy to carry out the repairs directly, rather than paying a cash settlement. Mr W is unhappy with this because he says:

- NHBC didn't provide reasonable guidance to help them understand what their quotes needed to include.
- NHBC seeking to carry out the works was an attempt to hide its previous poor conduct and to place blame for the delays unfairly on the residents.
- NHBC is seeking to use the same consultant to manage repairs that has been involved in disputing the residents' own quotes from the outset – which is a clear conflict of interest.
- They requested a stay of progress of the remedial works until their concerns were addressed.

In response to Mr W, and his representative's, concerns about its proposed way forward, NHBC's solicitor wrote to Mr W's representative's solicitor to address the concerns and to submit a proposal for a way forward. In summary, this explained:

- NHBC denies the allegations made against it.
- NHBC has been clear throughout about why it wanted earlier quotes to be broken down into the stages of the investigations – and this wasn't provided.
- NHBC's consultant carried out its role in a proper manner throughout.
- The conflict-of-interest policy referred to by Mr W's representative does not apply in the circumstances of a claim. NHBC is seeking to appoint the most suitable company to carry out the works in the best interest of all the policyholders. NHBC sought legal advice on the matter and are confident no conflict is present.
- NHBC maintains its consultant is qualified and suitable to scope and oversee the remedial works.
- It would be unfair to all the policyholders if NHBC were to cause further delays by seeking to identify and appoint a new consultant at this stage.
- In an attempt to bring the matter to an amicable conclusion, NHBC is prepared to amend its offer to the following:
 - NHBC will appoint a third-party engineer to peer review its consultant's work.
 - NHBC maintains its consultant is suitable, but as Mr W and his representative continue to hinder their appointment and/or works, NHBC will propose three engineers for them to choose from to carry out the peer review process.
 - NHBC will appoint said engineer and pay their costs. The engineer will be instructed to provide regular updates on the peer review work.

Mr W and his representative aren't happy to accept NHBC's proposal. This is because:

- They maintain there is a clear conflict of interest in appointing the consultant.
- They want to appoint their own trusted expert to ensure works are undertaken properly.

- They propose that NHBC pay for their expert to review NHBC's consultant's schedule using the £10,000 NHBC previously offered toward their expert's costs, but NHBC has dismissed this.

Given the complicated history of Mr W's claim, and the fact there have been two separate final decisions on aspects of it already, the complaint was passed straight to me, an ombudsman, for consideration.

I issued a provisional decision setting out my thoughts, and giving the parties the opportunity to respond, before I reached a final decision. Here's what I said in my provisional decision:

“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.

Despite many of the above concerns being raised after NHBC's most recent final response letter, NHBC has consented to me considering them in their entirety. This means I'll be considering everything that happened from January 2023 to Mr W's refusal to accept NHBC's latest proposal in October 2025.

Having done so, while I appreciate it will likely come as a disappointment to Mr W, I'm currently minded to conclude that NHBC has proposed a fair way to move the claim forward and so I'm not intending to uphold his complaint. I'll explain why in more detail below.

But first, I should explain that because this complaint has been passed straight to me, without first being considered by an investigator, I'm issuing this provisional decision in lieu of that first answer. This gives the parties the same opportunity to review and respond to my provisional conclusions before I reach a final decision. This approach is consistent with the rules which govern the Financial Ombudsman Service and is not unique to this particular case.

Second, I should explain that I do not intend to address each individual point of dispute which occurred during the period I'm considering. Instead, I'll focus my findings on the issues I consider to be key in delivering a fair and reasonable outcome in the circumstances. This isn't meant as a discourtesy to the parties, rather it reflects the informal nature of the Financial Ombudsman Service and my role within it. But I'd like to reassure both parties that whilst I might not comment on particular points, I've considered everything that has been provided when reaching my provisional decision.

And third, while I've referred to Mr W and his representative separately throughout the above “What happened” section, for the remainder of my decision I'll refer solely to Mr W, even when referring to evidence or arguments put forward by his representative. This is intended to make my findings easier to read. I'll also address the separate points of Mr W's complaints under their own sub-headings, for the same reason.

Authority to act forms

It's not clear to me whether this particular point of dispute remains outstanding. But as it was specifically answered in NHBC's final response letter of 4 February 2025, I'll address it.

Mr W is unhappy that NHBC insisted on his new representative obtaining newly signed authority to act forms from each of the residents. He views this as a deliberate attempt to delay and obfuscate the progress of the claim.

I can see that NHBC took legal advice on this point, and it was based on that advice that it insisted on new authority to acts being provided. In the circumstances, I don't consider that NHBC acted unfairly or unreasonably here. I think it took appropriate steps to check whether these were needed, and that it was entitled to follow the legal advice it obtained.

Drainage investigations

Again, it's not clear to me whether this point remains in dispute, or whether things have moved on since it was answered in NHBC's final response letter of 26 February 2025. But for completeness I'll address it.

Mr W wants NHBC to fund the cost of investigation works to determine if the below ground drainage has moved out of alignment – which his expert suggests it will have done.

NHBC says Mr W hasn't provided sufficient evidence of damage to the drains caused by a defect – which is a requirement for policy cover to engage. Based on this, NHBC refused to cover the cost of an investigative survey. However, NHBC said it would consider the costs of the survey retrospectively, should the results demonstrate damage to the drainage caused by a defect.

The relevant section of cover for this claim is section three. This section provides cover for damage to the home or common parts (as defined) caused by a defect (as defined) to certain, specified parts of the home or common parts. These specified parts include foundations and below ground drainage that the policyholder is responsible for.

Taking into account the cover provided under the policy, and the evidence currently available, I think NHBC's position here is fair. I haven't seen that Mr W has demonstrated that the drainage has suffered damage as a result of a defect to one (or more) of the specified parts, and so I don't think the policy needs to respond at this stage. That said, should Mr W obtain a survey, at his own cost, which does evidence damage which would be covered under the policy, I would expect NHBC to cover this, and the cost of the survey. This is exactly what NHBC has offered to do, and so I consider its position is fair.

Decision to take over the works

Mr W was initially unhappy with NHBC's decision to take over the works, rather than paying a cash settlement. It seems this complaint point has moved on, and now the dispute is around who should be appointed to peer review NHBC's consultants repair proposals which I'll address in the next subsection. But as with some of the above complaint points, this was specifically addressed in a final response letter and so, for completeness, I'll address it.

In my view, the largest driver of delays between January 2023 and now has been disagreements over what needs to be included in the proposed repairs. NHBC decided that the dispute was unlikely to be resolved and, given the ongoing impact of the open claim on all the residents, including Mr W, it decided the best way forward was to take over the works.

Mr W's policy explains that NHBC is entitled to decide how to settle a claim. It can do this by either paying for the repairs to be done, or by arranging for the work to be carried out at its expense. Terms like this are common in building warranties, and with property insurance policies more generally.

I've considered whether it was fair and reasonable for NHBC to exercise its entitlement under the policy to take over the works, in the particular circumstances of this case, and I think it was. This is because NHBC owes a duty to all the residents to handle their claim promptly and fairly. And I agree that continuing to try and negotiate a cash settlement when there remained a clear difference of opinion between NHBC's expert and Mr W's would not likely have allowed it to meet those obligations.

Ultimately, I'm satisfied NHBC's motivations in seeking to take over the works, are to ensure that it fulfils its obligations to Mr W, and the other residents, by delivering a timely, lasting and effective repair to the damage which is covered under the Buildmark policy. I consider that NHBC's decision is both in line with its rights under the policy, and that it is fair and reasonable in the circumstances of this claim and complaint.

Peer review proposal

Mr W remains unhappy with NHBC's decision to allow its consultant to design and oversee the remedial works. He says there is a clear conflict of interest because the consultant has been involved in the claim throughout and has represented NHBC in disputing the quotes he has previously provided.

Mr W's solicitor has provided multiple arguments around this point and NHBC's solicitor has in turn refuted these. But I don't intend to repeat or make findings on these. This is because NHBC has proposed a way forward which mitigates any actual or perceived conflict of interest. And so, I'll focus my findings on whether the proposal is a fair way forward or not, rather than on whether there is a conflict.

NHBC has offered to fund a separate firm of independent engineers to peer review its consultant's work, so that Mr W can be confident the works have been designed appropriately and will deliver a suitable, effective, and long-lasting repair. NHBC's offer is to provide the names of three independent engineers for Mr W to choose from.

Mr W doesn't believe this is fair as he wants to use his own expert. He feels NHBC should honour an earlier offer to contribute £10,000 toward the cost of his expert reviewing NHBC's consultants repair proposal.

NHBC's current position is that its updated proposal is the best way forward to avoid further disputes. It says Mr W's counter proposal would be unlikely to move matters forward as efficiently because it would perpetuate the same problems already experienced, i.e., the ongoing disagreement between its expert and Mr W's. NHBC says its proposal of appointing a mutually agreeable independent engineer offers a higher level of impartiality and is most likely to break the current impasse between Mr W's expert and NHBC's.

I've thought very carefully about this proposal and about Mr W's counter arguments. Having done so, I agree that NHBC's proposal is more likely to move the claim forward without further avoidable delay. I say this because the newly appointed engineer will be independent of the issues which have already occurred and so will be most likely to have no inherent bias toward either side's position. That is not to say that I think NHBC's consultant or Mr W's expert would be biased. Just that the appointment of an independent third-party better manages the risk of potential bias, and of further foreseeable disputes arising as a result of the history of the claim to date.

Based on the above, I'm currently minded to decide that NHBC's proposal is a fair and reasonable way of resolving this complaint.

Delays

It's not in dispute that this claim has suffered from avoidable delays since originally being made. But delays from the start of the claim up to January 2023 have already been addressed in previous complaints and final decisions by this service. In this complaint, I've considered whether NHBC are responsible for any avoidable delays between January 2023 and October 2025.

I've been provided with very limited information on the timeline of the claim between January 2023 and October 2023. But I'm aware that the position as of May 2024 was that further investigations had taken place, and more were due to take place to enable NHBC to confirm coverage for various issues. I've seen no evidence of unreasonable delays on NHBC's part during this period.

Between May 2024 and November 2024, I can see that negotiations were ongoing as to the amount NHBC were going to be paying in order to settle the claim. But progress was delayed, at least in part, by further damage being reported to a flat whose policy had lapsed, and by one of the leaseholders in the building not joining in with the claim. Any delays which resulted from these issues would not be something I could reasonably hold NHBC responsible for.

Following this, progress was delayed by the change of Mr W's (and the other leaseholders') professional representative, which I've covered in the "Authority to act forms" subsection above. Again, I don't consider that any delays here were caused by something NHBC did wrong.

During the above period, I can see that NHBC issued a response to the representative setting out that it had been awaiting confirmation on the repair costs before it could progress the claim. NHBC set out that nothing had been received since the claim was validated in March 2024. NHBC received fee proposals in October 2024 but responded in November 2024 to explain why it wouldn't accept that proposal. To broadly summarise, this was because the fees had been separated per head of claim, rather than as a single fee proposal for all claims on site, because there were too many unknowns included in the fee capping, and because it felt there was a discrepancy between the scope and what had actually been accepted as part of the claims.

Mr W has argued that the proposal was separated into separate head of claims because NHBC initially requested it that way. I haven't seen any evidence to support this request was made by NHBC. And in a response NHBC sent to Mr W's representative, I can see NHBC commented that an individual from the representative firm had accepted this was done in error.

Had NHBC made such a request, and later changed its position, I accept this would have caused some avoidable delays. But I'd also need to consider whether, but for those hypothetical delays, the claim would be in a fundamentally different position now. And based on everything I've seen, I'm not persuaded that it would. I say this because, as explained above, there were other concerns with that fee proposal besides the separation, and because I think it's likely that following this, NHBC would always have sought to take over the repairs, which would mean the current dispute around that decision would always have occurred. So, even if NHBC did cause delays here, which I'm not sure it has, I don't think those delays would have made a significant difference to the position the parties are currently in.

I do fully appreciate that progress on the claim has been slow, including during the period of time I can consider as part of this complaint. But from what I've seen, this was largely as a natural consequence of the complexity of the issue, and of factors outside NHBC's control.

The main issue which has potentially caused, and potentially continues to cause, avoidable delays is the ongoing dispute over the works required to settle the claim. But because it remains to be seen whether NHBC's or Mr W's experts are right in terms of what works are required to fairly settle the claim, I don't think I can fairly conclude – at this stage – that the time taken up by this dispute amounts to unreasonable delays caused by something NHBC did wrong. Therefore, I'm not intending to award any compensation for any delays caused as a result of this dispute, as part of this complaint.

If, once the peer review exercise is concluded, Mr W feels there is evidence that NHBC's position on the claim has been unfair and that this has resulted in avoidable or unreasonable delays, he should raise this matter with NHBC for consideration. And should he remain unhappy with NHBC's position at that stage, he'll be able to refer those concerns to the Financial Ombudsman Service as a new complaint, subject to our normal rules and timescales."

I asked the parties to provide any further comments or evidence they wanted me to consider before I reached my final decision.

NHBC didn't provide a response.

Mr W responded setting out the reasons he didn't agree with my provisional findings. In summary, he said:

- NHBC asked for the quotation to be broken down into separate heads of claim, and he'd like my decision to reflect this.
- He'd like me to amend one part of my provisional findings and to allow the residents to use someone of their choice (not the engineer NHBC objects to) to peer review NHBC's consultants work, rather than one of the three independent firms suggested by NHBC.

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 carefully considered the responses to my provisional decision. Having done so, my conclusions remain unchanged from those previously set out. I'll explain why, following the same sub-headings I used in my provisional decision.

That said, neither side has provided any further comments or evidence in relation to the first three subsections of my provisional decision (Authority to act forms, Drainage investigations and Decision to take over the works). So, in the absence of additional comments or evidence on the complaint points addressed within those subsections, my conclusions on those points remain unchanged.

Peer review proposal

Mr W's main concern in response to my provisional decision is in relation to NHBC's proposal. He would like to be able to select, with the other residents, an engineer to peer review NHBC's consultants work – rather than selecting from three engineers chosen by NHBC. Mr W has explained how he, and the residents, have lost faith in NHBC and its agents due to the handling of their claim over the past several years. He feels it's fair and reasonable for them to be able to have some say or control over the parties appointed to peer review the repairs to their properties, so they can feel confident they will ultimately be repaired adequately.

I've thought carefully about Mr W's response to this issue. But these were effectively all arguments that had been made prior to my provisional decision, and so I had already considered all of this when provisionally deciding that NHBC's proposed way forward was fair.

I accept from the full history of the claim – most of which is outside the scope of this complaint having already been decided in previous complaints – that there have been several failings on NHBC's part. And I fully appreciate Mr W's faith in NHBC will have been impacted by these failings. But I'm mindful that the position on the claim now is fundamentally different from when NHBC initially sought to decline certain elements of the claim, or from when it caused unreasonable delays in investigating and validating the claim. All parties are now in agreement that the claim issues are covered. The claim has been accepted and all that remains is for a schedule of work to be drawn up which will deliver a lasting and effective repair. This means that all parties interests are now aligned, aside from Mr W's concerns with NHBC's proposed consultant.

To alleviate Mr W's concern here, NHBC has offered to meet the cost of appointing a completely independent firm of engineers to peer review its consultants work, so that Mr W and the residents can feel confident the repair proposals will deliver a comprehensive and long-lasting repair to the issues. In my view this evidences NHBC's commitment to fulfilling its obligations under the policy.

I appreciate Mr W would like some say in the engineer appointed to carry out the peer review exercise. But I likewise don't think it's unfair that NHBC also wants some say, given it will be the party appointing and funding the engineer. I think NHBC's proposal strikes a fair and reasonable balance, as it allows both parties to have a reasonable input on the appointment of the engineer. It might also be helpful to explain that the Financial Ombudsman Service sometimes recommends a similar approach be taken where there is a technical deadlock between experts. So NHBC's proposal isn't unusual here, or something I'd consider to be inherently unfair or unreasonable.

I think it's also worth highlighting that the vast majority of engineers are members of recognised professional bodies whose codes of conduct require them to act impartially, objectively and honestly. So, given that Mr W (and the residents) will have the opportunity to select their preference from three suitably qualified, independent, engineers, I'm satisfied they will have a fair and reasonable input into the appointment of the engineer – whose work they will be able to rely on to be independent of NHBC's earlier failings.

I explained in my provisional decision why I thought NHBC's proposed way forward was most likely to manage the risk of any potential bias and/or further avoidable disputes arising. Mr W's response to my provisional decision hasn't changed my view on this. So, taking all of the above into account, I maintain the view that NHBC's proposal is the best and fairest (to all parties) way to move the claim forward.

Delays

In his response to my provisional decision, Mr W has explained that he made enquiries with the various professionals who attended the site visit in May 2024 and had confirmed that the request for the quotes to be separated into separate claims came from NHBC. Mr W provided a site meeting overview document written by his professional representative to support this.

I've considered whether this evidence has any material impact on my overall findings, but I'm afraid it doesn't. I say this because I already explained in my provisional decision that even if I were persuaded NHBC had directed the quotes to be split initially, I didn't think that would likely have altered the position we are currently in. I said:

“Had NHBC made such a request, and later changed its position, I accept this would have caused some avoidable delays. But I'd also need to consider whether, but for those hypothetical delays, the claim would be in a fundamentally different position now. And based on everything I've seen, I'm not persuaded that it would. I say this because, as explained above, there were other concerns with that fee proposal besides the separation, and because I think it's likely that following this, NHBC would always have sought to take over the repairs, which would mean the current dispute around that decision would always have occurred. So, even if NHBC did cause delays here, which I'm not sure it has, I don't think those delays would have made a significant difference to the position the parties are currently in.”

So, while I'm now persuaded Mr W has demonstrated, on balance, that NHBC most likely requested the quotes be split initially, this doesn't change my provisional finding that the main cause of continued delays has been NHBC's decision to take over the works and the subsequent dispute over the design of the remedial scheme – i.e., who should design the scheme, the works required to resolve the issues and how much they should cost.

I think it remains to be seen whether NHBC's or Mr W's experts are right in terms of what works are required to fairly settle the claim, including their cost, and so I don't think I can fairly conclude, at this stage, that this dispute would amount to unreasonable delays caused by something NHBC did wrong. So, I'm not awarding any compensation for any delays caused as a result of this dispute, as part of this complaint.

But, as explained in my provisional decision, Mr W will be free to make a new complaint about claim delays to NHBC once the peer review exercise is completed, should he feel this provides persuasive evidence that NHBC's prior position on the claim caused unreasonable and avoidable delays. Mr W will also be free to refer that hypothetical future complaint to the Financial Ombudsman Service, should he remain unhappy with NHBC's hypothetical final response to that complaint, at that stage.

My final decision

For the reasons I've explained above, and in my provisional decision, 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 12 December 2025.

Adam Golding
Ombudsman