

complaint

Mr M complains about the way National House-Building Council (“NHBC”) handled a claim he made under a NHBC Buildmark warranty and insurance cover.

background

There is a detailed history to the problem Mr M has experienced with his property. NHBC didn't build the property rather it provided insurance cover where it will, in certain circumstances, step in and repair certain damage and defects.

In summary, water has been getting into Mr M's apartment and part of the problem lies with the apartment above Mr M's. It is also apparent that water has been coming in around some windows caused by shrinkage in the timber frames.

Repairs have taken place at various points to try and prevent water ingress although NHBC hasn't replaced the warped windows as this was due to shrinking timber frames which aren't covered by the building warranty. It has though carried out work to refit and reseal the frames.

More recently a report suggests that cladding on the building might be causing water ingress. But as cladding isn't a specified covered part under the policy NHBC didn't investigate or repair any further. NHBC also discovered a breach in the window sill trim joint which needed to be resealed which NHBC agreed to do. Recognising the lengthy period involved, poor repairs at times, general service and poor communication, NHBC has offered Mr M around £2,550 compensation.

One of our investigators looked at Mr M's complaint and thought NHBC had not handled the claim very well at times, and Mr M had the inconvenience of poor repairs and poor communication. She also considered Mr M saying he had to take a job closer to home to be around when repairs were required and so took a pay reduction. The investigator recognised that not all the defects (e.g. window frame shrinkage and cladding) were covered by the building warranty. She considered NHBC had fairly reflected the inconvenience with its compensation offer, noting it was Mr M's decision to change jobs and the reality that only a small part of the property was affected.

The investigator gave the parties an opportunity to reply and provide further information. Mr M disagreed with the investigator's view and in summary made several points including;

- NHBC's handling had been negligent, incompetent and unprofessional
- Continual delays in responding
- Poor standard of repairs
- Reduced salary
- NHBC has caused inconvenience and stress over four years, a major disruption in his life
- NHBC should fix the cladding
- He hasn't been paid anything by NHBC in relation to compensation and thinks £2,550 is inadequate to reflect what has happened and the hours he has put into communicating with NHBC and us. Mr M thinks a five-figure sum is more reflective.

As Mr M disagreed, he asked that an ombudsman review his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

NHBC's policy covers the full cost (if more than £1,000 indexed as defined in the policy) of putting right *physical damage* caused by a *defect* in specified parts of the property and common parts. And defect is defined as a breach of any mandatory NHBC requirement by the builder or anyone employed or acting for him.

The specified parts covered by the policy do not cover window frames and limit cover for windows to double or triple glazing panes. And even if a specified part is mentioned as covered, the policy doesn't cover damage caused by several matters including shrinkage.

There are two main areas of outstanding damage – the window frames and outside cladding. Window frames are not specified parts and therefore not covered by the policy. And indeed, the damage related to these was due to timber shrinkage, which compromised the sealant and so left gaps that water could penetrate. So, I'm satisfied that the policy doesn't cover this type of damage and NHBC's re-sealing and offer to do so again is fair in the circumstances.

Equally, the cladding above Mr M's property, which has been identified as a possible cause of the water ingress, isn't covered by the policy. If, as suggested, the cladding is within the property above Mr M's, then he may be able to seek a remedy directly with that property owner. But this is something he may need to take specific advice about from, for example, Citizen's Advice Bureau or a solicitor.

I can appreciate Mr M has been trying to get a satisfactory resolution for a lengthy period, and he's had to do a lot of chasing because of NHBC's failure to communicate effectively. NHBC though has instructed investigations and tried to facilitate repairs, some of them outside of the policy terms and as a gesture of goodwill. However, NHBC has recognised its failings and poor service during the period and has made an offer of £2,550 compensation.

But the reality of the situation is that damage as a result of shrinkage, the window frames and the cladding are not specified parts or causes covered by the NHBC policy. From October 2017 NHBC's compensation offer has increased from £1,350 to its current offer of £2,550 recognising that some work had been poor and its communication less than satisfactory. It identified that a split in the timber cladding above Mr M's property was allowing water ingress, but it wasn't covered by the policy. Having considered the policy I am satisfied that NHBC was entitled to refuse a repair of the cladding. But NHBC recognised that its contractor hadn't resealed a window but said it would arrange completion of this work. NHBC also recognised that it hadn't communicated well with Mr M and increased its compensation offer to £2,550.

Making a claim can be distressing and inconvenient and necessarily involves a policyholder having to invest some time and effort in dealing with the insurer. This also includes the various agents appointed by the insurer to investigate, assess and determine whether a claim is covered and what is required to put things right. Some claims are relatively straightforward and others not so. In this case the challenging factors were that the original causal factor was traced to the property above Mr M's and other related factors were for parts (window frames) and causes (shrinkage) not covered by the policy.

However, NHBC accepts that its communication and service was poor at times and the impact of this was that Mr M had to persistently chase progress. He wasted time he shouldn't have had to above the ordinary vagaries of making a claim. And at times poor workmanship meant return visits to carry out further work, again impacting the time Mr M had to set aside to deal with NHBC's contractors. I am satisfied this warrants compensation and my view is that it has had a substantial to severe impact on Mr M. I say this because of the period the claim has been ongoing and the persistent chasing he's done with NHBC. While Mr M may have lost some enjoyment with his property, the damage was confined to a small area and not so severe that he lost habitable use. Because of the period involved, I am satisfied that NHBC's offer of £2,550 fairly reflects the inconvenience, distress and frustration Mr M has experienced.

Where I disagree with Mr M, as did the investigator, is that I'm not satisfied it was an unavoidable consequence he had to change jobs and relocate closer to home. He was a contractor when the leak was first discovered working away from home for weeks at a time. It appears that he accommodated visits and repairs when he was back at home and communication was facilitated by usual means of telephony and email. Mr M hasn't provided enough evidence to show that he had, in real terms, no other option but to take a lesser paid job closer to home because of NHBC's service. I'm not making an award for financial loss as I'm not satisfied loss from lower pay is directly linked to NHBC's claim service.

Mr M has provided three 'Statement of fitness to work' documents, which show his GP has signed him off work because of stress. Mr M makes the point that it has been a cumulative effect of the poor service from NHBC over the period of his claim. The investigator explained to him there was insufficient information to show the illness diagnosed in September 2019 was a direct consequence of any failures by NHBC. I agree with the investigator and I'm not satisfied it would be fair to increase compensation based on Mr M being signed-off as unfit to work.

my final decision

National House-Building Council has made an offer to pay Mr M £2,550. I conclude that such an offer is fair and reasonable in all the circumstances. My decision is that NHBC should pay Mr M £2,550.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 December 2019.

Sean Hamilton
ombudsman