

complaint

Mr W complains about the way that National House-Building Council (NHBC) has dealt with his claim under his building warranty in respect of internal damage to his flat and his liability for a common part, namely the roof.

background

Mr W purchased his flat in 2008, which he lets out. It is in a block with 15 other flats. The building is a conversion, and NHBC has provided building warranties in respect of each flat. Mr W reported water coming into his flat from when he first bought it. He reported the problem to the builders who carried out generally ineffective repairs. NHBC first got involved in 2011 when it required the builders to carry out repairs to the windows. Those repairs failed and further remedial repairs had to be carried out, Mr W (and other flat owners) still reported water coming in. Although NHBC identified various maintenance issues it decided by 2016 that it would have to carry out full repairs to the roof. This consisted effectively of replacing the entire roof to the block. I understand that NHBC has put the job out to tender, and received tenders back. It will then arrange to commence work. It will also carry out internal repairs/re-decoration.

On referral to this service our adjudicator assessed the matter initially in August 2017. At that stage the full repair scheme hadn't yet been put in place and a temporary repair to stop the windows leaking over the winter was proposed. He thought that the compensation paid up until then, of £2,500 was adequate. Some temporary repairs were done but didn't succeed in stopping the leaking during bad weather. Mr W remained unhappy with the overall proposal for repairs; he thought it didn't address the problem with the windows. Then NHBC agreed to pay him a further £500 for the further delays and £500 for his tenant having to put up with the leaks over Christmas.

Mr W remained unhappy and as matters had moved on a further complaint investigation took place. A new adjudicator reviewed the matter in April 2018 and determined that no further action need be taken by NHBC as a full repair scheme for the roof is now to take place.

Mr W asked for an ombudsman to consider his concerns, that ranged over both complaints. The matter was passed to me and I've assessed both complaints. For ease of reference though I'll deal with both here, in this one decision.

I understand that Mr W believes NHBC may be trying to cut the costs of the repairs. NHBC's plan is to make repairs to the roof, and it believes this will fix the issue with water leaking around the window area. Mr W doesn't think fixing the roof alone will fix the issues, so he doesn't see why both the window and roof repairs can't be done at the same time.

Mr W doesn't feel NHBC have identified the source of the water leak problems. And believes an expert should investigate to find this source so the eventual repair will be correct.

He's concerned for the welfare of his tenant who while the repairs are considered is still reporting water ingress and is particularly vulnerable. In particular he doesn't think the compensation paid is sufficient. He has also brought up new issues like the loss of value of his property and loss of rent.

The matter has been referred to me for consideration.

my findings

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

Mr W's complaint concerns both his individual issues, with compensation and repairs to his flat, and issues concerning his liability for a common part ie the roof. To be clear, I'm not considering in this decision any issues concerning the other flat owners. However, and I make this point particularly as I know Mr W represents the other flat owners too, I will set out my view on the common part repair which won't change even if other flat owners request an ombudsman's decision.

roof repair

Our adjudicator initially proposed temporary repairs to the windows, bearing in mind that the full repairs wouldn't take place until this summer. I think things have moved on now. I understand that temporary repairs were attempted in December but it appears they didn't hold. I agree that this was unfortunate, on top of the previous failed repairs. But I don't see the point now of attempting any more temporary repairs. NHBC has scoped a full repair for the whole roof and it's currently considering tenders.

I can understand Mr W's concern, given the history of the matter, that repairs to the roof may not resolve the problem of leaking windows. But NHBC has properly reviewed the matter and has had the problem expertly assessed. Since it will cost a considerable amount to replace the roof it isn't in NHBC's interests to carry out a repair that it knows won't be fully effective. The residents association and previous management company has had surveyor's reports done on the roof. I understand that NHBC has now essentially accepted those reports. And I haven't seen any more recent expert evidence to suggest that NHBC's approach is wrong. I think NHBC should proceed with the roof repairs. I don't propose to require it to do any repairs to the windows. It will carry out those recognised to be a consequence of the leaks coming from the roof.

Similarly I think that NHBC has identified the source of the leaks, especially as they seem to affect a limited number of flats. As its contractors have identified that this comes from the roof and have set out an extensive replacement scheme I hope this will address the problem. I don't see the need for further expert evidence.

As NHBC must carry out an effective and lasting repair, if further leaks happen NHBC would be expected to investigate these and deal with them, even after the expiration of the warranties. I would observe that in the past there have been issues with blocked gutters. Mr W says the residents have a complete maintenance system in place to deal with the cleaning and maintenance of the gutters and downpipes so that shouldn't be an issue in future.

As for Mr W's tenant, while the internal works are carried out of course NHBC will have to consider whether she would be able to stay there while those are being done. I won't make any direction about this as that would be part of the contract works.

So, in respect of the roof repair, as NHBC has a full proposed repair ready to start (hopefully in the near future) I won't make any further directions about it.

progression of the claims (roof and flat) and compensation

Mr W has so far been paid a total of £3,500 compensation – this includes payments made for things that have happened since our adjudicator issued his view in August 2017. Three payments were made, initially of £2,500 in November 2016 then in January 2018 two further payments – of £500 for the continuing delay and £500 in respect of his tenant suffering a further water leak after a temporary repair.

The history of this matter is long and complex. The problems were first reported to the builders back in 2008. But I can only look at NHBC's involvement in the matter. That started in September 2011 when NHBC issued a report requiring the builders to carry out certain work by 21 October. The work wasn't completed by then so from that point NHBC became liable to pay for the repairs. Several different repairs were carried out over the years, to the roof and to the windows of the flats, including Mr W's.

Repairs were carried out in 2012 but were deemed by NHBC to be unacceptable. Further major repairs to the windows of all the flats were carried out in 2013. But those repairs didn't stop the water ingress which continued to be reported by Mr W and some other residents. NHBC carried out inspections of Mr W's windows and said that the repairs hadn't failed, the latest being in December 2015 when it identified a maintenance issue of a failure in the mastic surround.

Initially problems with the roof were said to be due to lack of maintenance. The management company were required to deal with maintenance issues and I think it's fair to say that they didn't do as expected. That company is no longer involved in management of the block. NHBC issued a works order to carry out repairs to the roof which took place after some delay in mid-2015. But again those repairs didn't resolve the problem. In around June 2016 a major schedule of works was issued and it has taken up until now to refine that schedule and put it out to tender.

As I've said those representing the owners have had survey reports dating back to 2012 which identified major problems in the roof. I do think there were substantial delays in dealing with the roof repairs and Mr W (and his tenant) has had to put up with repairs failing several times. And whilst I appreciate that the repairs scheduled are detailed and complex, effectively Mr W and his tenant have had to suffer two more winters of water coming into their properties. I note that last December temporary repairs failed, again causing more anxiety.

As for the amounts paid I bear in mind that Mr W doesn't live at the property and I can't award compensation directly to his tenant. But I appreciate that the situation with his tenant would have caused Mr W great anxiety. The amounts paid, totalling £3,000 comes within the "severe" range of awards we make. I think this is fair and reasonable compensation.

Mr W has in responses to this service suggested that he has lost out by not being able to sell his property and in terms of loss of rent. This has never been put to NHBC so if he wants it to consider these points he should put them to it. As I've said, if his tenant has to move out while any works are being done, NHBC will have to consider its liability to pay any loss of rent, or for any alternative accommodation.

my final decision

I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 August 2018.

Ray Lawley
ombudsman