

complaint

Mr and Mrs W complain about National House-Building Council's ("NHBC") handling of their claim following an agreement that was made between the parties.

background

The background to this complaint is well-known to both parties, so I won't repeat it at length here and will instead focus on the reasons for reaching my findings.

Mr and Mrs W have had ongoing issues with the doors leading out onto the balcony of their property. They referred a complaint to our service in 2018 and it was informally recommended that NHBC should either repair the door stays or replace the doors entirely if it was unable to do repair them. Both parties accepted our investigator's informal findings. Mr and Mrs W now complain that NHBC have delayed getting this issue resolved and have caused significant delays. They say that NHBC has been unable to source suitable door stays in order to fix the issue so it should now replace the doors in line with the previous findings.

NHBC has now proposed door stays which it believes to be suitable and says these are a suitable resolution to the claim. But it has acknowledged that there was a significant delay and offered Mr and Mrs W £400 compensation for the distress and inconvenience those delays caused.

I issued a provisional decision on 30 June 2020 letting both parties know that I didn't intend to uphold the complaint. In it, I said:

"An investigator has already considered the events leading up to 2018 and an informal agreement was reached between the parties about the next steps. I won't be considering that issue any further as it has already been investigated and agreed on – so it wouldn't be appropriate to comment on it further here.

I also haven't considered the issues Mr and Mrs W raised about other flats within the building. Each leaseholder will need to raise their own complaint if they have concerns about their property. This decision refers only to Mr and Mrs W.

delays

Mr and Mrs W initially complained about the delays that occurred after a settlement had been agreed between them and NHBC. As I understand it, NHBC researched and proposed some different door stays that could be used during this period but none of these were acceptable. While I understand this took NHBC some time, it seems that it took over six months for NHBC to find a suitable alternative.

As I understand it, NHBC has offered Mr and Mrs W £400 compensation for this issue. Like the investigator, I think this amount fairly reflects the distress and inconvenience caused by NHBC's delay in finding an alternative means of repair. And as Mr and Mrs W previously accepted our investigator's findings, including her findings on this issue, it seems that this element of the complaint is resolved so I won't go into any further detail.

door stays

Since Mr and Mrs W's initial complaint to this service about the delays, they have raised a

further concern. NHBC has proposed to install a new door stay to the existing doors in the property. Mr and Mrs W don't think this will be suitable because, while the door stay is of high-grade stainless steel, it is being attached to an aluminium door frame. Mr W believes this is likely to make the door frame susceptible to distortion.

NHBC has provided us with some of the research it has done into these door stays and whether they would be fit for purpose. NHBC has sought the advice of a chartered surveyor in order establish that these door stays would be suitable for the extreme conditions in the location of the property. The surveyor has confirmed that he would need to visit the site and check the suitability but appears to believe that they are suitable based on the information he has seen – and has been given enough information to provide an estimate for these works.

A resolution report was issued in 2009 which explained that the door stays needed to be suitably durable and appropriate for the location. It also set out that the doors needed to meet NHBC's technical requirements, which is that the doors should be "designed and specified to ensure adequate performance in service". And having considered the evidence I've been given, I think NHBC's suggestions appears to meet that criteria so I'm satisfied that replacing the door stays is a reasonable next step in progressing this claim.

I realise that Mr and Mrs W have concerns about this and whether the repair would be effective and long-lasting. But they are not experts and the evidence I have from a chartered surveyor, who is an expert suggests that this repair could resolve the issue. So, while I can understand their concerns given the background of the claim, I think NHBC's proposal to replace the door stays in the first instance is reasonable. NHBC has also confirmed that if the repair is carried out, NHBC has liability for any failure.

I note that Mr and Mrs W have raised concerns about the aesthetics of the door stays. But NHBC isn't required to find a door stay that looks similar to the original one. And it is entitled to pursue the most cost-effective option available to it where that is a reasonable course of action, as I believe it is here.

In conclusion I believe NHBC has proposed a seemingly suitable solution at this stage and should be given the opportunity to implement it. Should this fail then I think it should consider its previous agreement with Mr and Mrs W and settle the claim in line with it."

NHBC replied to say it accepted my provisional decision and would like to include an agreement that if this repair fails then the next step would be replacement doors. Mr and Mrs W replied to say they disagreed with my provisional decision. So the complaint has been passed back to me to decide.

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 responded to my provisional decision with several points, which I have considered. However, the comments Mr W has made appear to be based mainly on his own opinion and interpretation of previous reports. I agree that previous surveyors have commented that they didn't believe there was a suitable door stay on the market and of course there is the possibility that these could fail. But NHBC has provided an expert opinion stating that he believes the current proposed door stays to be suitable. And NHBC is entitled to find the most cost-effective solution, rather than Mr and Mrs W's preferred solution – so I think Mr W

needs to allow NHBC to investigate whether these door stays would be suitable in the first instance by allowing it to carry out a site visit.

Mr W has raised concerns about health and safety, but a site visit will need to be conducted before NHBC decides whether these door stays are suitable, and I would expect its expert to take these issues into account when making the decision as to whether to proceed with these door stays. I would also expect it to consider whether there will be local planning issues that would prevent the door stays from being fitted.

Mr W has commented on what NHBC's glazing contractor said previously. However, NHBC had serious concerns about that contractor and is no longer using it so there is a question over the validity of that report, which I have to take into consideration.

Ultimately it isn't for me to say whether the repairs will work – that is a matter for NHBC's experts to ascertain. In order for it to do that, it would initially need to carry out a site visit to check whether the proposed solution would work and there is, of course, still a possibility that they won't be suitable. Given the length of time this has gone on for and the previous proposed resolutions, I have spoken to NHBC about possible next steps if that were to be the case.

NHBC has agreed that should this door stay not be suitable in the opinion of NHBC's expert, not meet local planning regulations (if required) or be installed and ultimately fail then the next step would be to install sliding doors or settle the claim in cash on that basis. And I think that would be a reasonable next step in the circumstances – given how long this issue has now gone on.

In addition to this, NHBC has agreed to pay Mr and Mrs W £400 compensation for the delays it caused and as I previously stated, I believe this offer is fair. Neither party has commented on that aspect so I see no reason to award any additional compensation and NHBC should pay Mr and Mrs W the compensation it has offered if it hasn't already done so.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 22 October 2020.

Sara Falzon
ombudsman