

complaint

Mr D complains about National House-Building Council's ("NHBC") handling of his building warranty claim for damage to his flat.

background

In or around September 2014 NHBC accepted Mr D's claim under his building warranty for certain defects at his property. I understand other flats in the block also suffered defects. Sometime after, Mr D moved out into alternative accommodation so that the works to rectify the defects could be carried out.

After being on site for approximately 18 months NHBC told Mr D that he could move back in to his flat. Mr D suffers from a particularly acute respiratory condition for which he has been frequently hospitalised for treatment. He told NHBC he couldn't move back into the flat because it wasn't clean and because he had no access to the balcony. Mr D said he needed to have access to the balcony – and ventilation in general – before he was able to move back in. Mr D complained to NHBC about the length of time it was taking to complete the repairs.

In April 2016, Mr D brought his complaint to this service. He told our adjudicator about the numerous issues he had with NHBC's conduct of the repairs. He said that NHBC had been rude and uncaring in the way it had handled his claim. He said the flat wasn't fit to live in despite what NHBC said. He provided medical evidence to show that his condition was at risk of exacerbation if he didn't inhabit a clean environment and have access to fresh air.

Our adjudicator contacted NHBC. It said Mr D had only ever complained to it about the ceiling repairs at his flat and that this was the first it had heard about any issue with the balcony. It agreed to look into the issue immediately and in the meanwhile to pay the council tax for the alternative accommodation that was in arrears along with the tax for June. It also said it would pay Mr D's alternative accommodation rent until the work at the flat was completed. NHBC said it expected to have Mr D back in the property very soon. Finally, it offered to pay Mr D compensation of £400 for the trouble and upset it had caused him.

Mr D declined NHBC's offer of compensation. He thought it didn't fairly reflect the trouble he'd been caused. He also mentioned he had ongoing difficulty in getting NHBC to agree to replace the flooring in the hallway and was worried that the works to the balcony wouldn't be completed by the end of July. Mr D also contacted NHBC in mid-July about his boiler which had stopped working. His plumber believed this could be down to non-use and dust getting into it.

NHBC anticipated getting Mr D back into his flat by the end of July. It said it wasn't responsible for the hallway flooring because it had never done any works in the hallway. It said that it thought Mr D could move back as soon as the balcony works were completed. Regarding the boiler, it said it had been advised that dust had nothing to do with it ceasing to work. It said it understood the fuse had blown.

At the end of July 2016 NHBC told our adjudicator that the flat would be ready to move back into the following week. Mr D didn't think it would be possible for the balcony to be completed by then. He also said he wanted the walls painted a particular colour. And he was still unhappy about the hall flooring. NHBC said there was no evidence it had damaged the

boiler that it'd never agreed to re-lay the hallway flooring or to paint the walls a different colour.

At the start of August Mr D inspected the property. He thought the painting had been done poorly but the balcony had been repaired well. Mr D sent our adjudicator a report from his plumber which said the boiler needed to be replaced as it'd failed owing to lack of use and possible damage whilst the flat was being repaired. He also sent in copies of emails between him and NHBC's contractors about the redecoration and flooring. This evidence was forwarded to NHBC.

Mr D told our adjudicator that NHBC had put a step in between the lounge and the balcony. He said he sometimes had to use a wheelchair so, when he did, he'd be unable to get out to the balcony. NHBC explained that in order to rectify the defects with the balcony, up-stands had to be installed. They had been included on the schedule of works that had been fully approved by the block's management company before works started.

Our adjudicator provided his opinion on the complaint to both parties. He didn't think NHBC was responsible for replacing the hallway flooring or painting the walls a different colour. He said he'd seen current photographs of the property and was satisfied it'd been cleaned to a good standard and was dust free. He explained that the step to the balcony was unavoidable as it was the only way to rectify the defect and prevent water getting in; he didn't think he could hold NHBC responsible for this.

As to the boiler, he said that there wasn't enough evidence to show that NHBC was responsible for it breaking down. So he didn't recommend that NHBC take any steps in relation to the boiler. He noted that Mr D had said he couldn't move back in without an operational boiler which in turn led to him extending – and paying for – a further month's alternative accommodation along with council tax on both properties. But he didn't recommend NHBC should pay these costs.

Finally he recommended NHBC pay Mr D a further £800 in compensation (bringing the total to £1200) for the trouble and upset caused to him throughout the long repair.

NHBC agreed with our adjudicator's findings. Mr D said he didn't accept our adjudicator's view. And he couldn't move back in without a working boiler. He asked for his complaint to be referred for an ombudsman's decision.

my findings

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

I can see that this has been a stressful and upsetting process for Mr D to endure. This has been compounded by his unfortunate, and serious, health issues with which I greatly sympathise.

I would like to say that I have noted Mr D's comments that our adjudicator's opinion didn't contain a detailed enough account of what has happened during his claim. I've also seen that he was concerned that any lack of detail would prejudice his complaint when it came before an ombudsman.

As our adjudicator explained, he and Mr D had agreed that his opinion didn't need to include a detailed account of all the facts. The priority, given Mr D's personal circumstances, was to bring the complaint to a final resolution. I would like to reassure Mr D that any lack of factual detail doesn't mean our adjudicator failed to investigate, or assess, his complaint properly. On the contrary, I can see that he has done both fully. Nor has it prejudiced the complaint now it has come before me. I've assessed the evidence afresh (including listening to the phone calls between Mr D and our adjudicator) and am completely satisfied that the issues – and both parties' position on them - are clear.

For ease of reference I will use the same sub-headings as our adjudicator used in his opinion.

flooring

I understand the original flooring was of engineered wood. I've seen evidence that the offer to replace that flooring was made as a gesture of goodwill by the on-site contractors. The offer was, in fact, to replace the entire floor (hallway included) with laminate flooring. As Mr D knows, this is usually cheaper, and of inferior quality, to engineered wood. I understand that the offer was made to give Mr D an alternative should he not wish to accept the replacement lounge (engineered wood) flooring which was of a slightly different colour.

Mr D said he'd prefer to have engineered wood laid in the lounge so the goodwill gesture no longer applied. I also understand that Mr D asked the contractor that was due to replace the lounge floor to quote to replace the hallway floor. He accepted the quote at the time it was made, although he later said he didn't want the work done until an issue with the ceiling had been resolved. NHBC's contractors were unable to delay fitting the replacement lounge floor whilst the ceiling issue was investigated. The lounge re-fit went ahead.

I can't, in all reasonableness agree that NHBC should replace the undamaged hallway floor with engineered wood. This floor is undamaged and the offer to replace it – with laminate – is no longer available. And I don't think NHBC's position in relation to the hallway flooring is unreasonable in the circumstances.

walls

Mr D said he wanted the walls painted a different colour. I can't see any evidence that this is what was agreed. The email exchanges state the walls will be painted the original colour. So I don't think it's unreasonable of NHBC to have declined to paint them a different colour.

Boiler

Mr D says NHBC is responsible for his boiler breaking because its contractors turned it off for a long time. I can see that Mr D had the boiler repaired in November 2015 and that NHBC has, not unreasonably, asked to see reports/evidence from Mr D about what the problem was and what was done.

Mr D has provided NHBC with two other more recent reports – the first stating that the boiler was in a poor condition and the second that it failed due to lack of use or a possible dust issue with the air intake which caused the fan to seize and the fuse to blow.

NHBC aren't satisfied that these reports indicate the boiler isn't working because of something it's done. Although I appreciate it will come as a disappointment to Mr D, I agree.

I don't think that there's enough evidence to show the boiler's condition is a result of something NHBC has done. In particular I note that Mr D's plumber says the fan *may* have seized due to an intake of dust. If Mr D has further evidence that shows NHBC is responsible for the boiler failing then I would expect it to consider it.

Unless he does however, then the repair or replacement of the boiler is his responsibility. I can understand why Mr D remains in alternative accommodation if he has no heating or hot water. But I don't think there's evidence that the reason he does so is because of NHBC's actions. So I can't, in all reasonableness, require it to continue to pay for his alternative accommodation costs and council tax. NHBC has completed the repairs it's required to do to Mr D's home.

balcony

The new step to the balcony is higher than the original. This is because the original was a defect that had to be rectified. The works required to do so were agreed with the management company and were unavoidable – they were the only way to put the defect right and prevent water getting into the property.

I appreciate that access to the balcony is of major importance to Mr D. But I don't think NHBC has done anything wrong here. It had to rectify the defect as per the warranty terms. If it didn't, water would gain access. Whilst it is, of course, regrettable that Mr D can't access the balcony when in his wheelchair, I can't say that NHBC should be responsible for adapting the access in order that he can. I sincerely hope that Mr D can arrange to have the access adapted, but I can't in all fairness, say NHBC should be made to do it.

moving back in

My understanding is that, but for the boiler, the property is habitable. I've explained above what I think about the issue of the boiler and the ongoing alternative accommodation costs, so have nothing further to add here.

compensation

Both parties accepted our adjudicator's recommendations that NHBC pay Mr D a further £800 in compensation (taking the total to £1200) for the trouble and upset caused to him during the handling of his claim. Because they have, I don't intend to go into any detail here about the problems Mr D has encountered throughout the duration of his claim except to say I've noted them and agree that compensation of £1200 is warranted in these circumstances.

my final decision

My final decision is that I uphold this complaint in part. I require National House-Building Council to pay Mr D total compensation of £1200 for the trouble and upset caused to him during the handling of his claim.

National House-Building Council must pay the total compensation within 28 days of the date on which we tell them Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision until the date of payment at 8% per year simple.

If National House-Building Council considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 November 2016.

Claire Woollerson
ombudsman