

complaint

Mr L has complained about his building warranty provider National House-Building Council (NHBC). He's had on-going problems with water getting in around a window at his property.

background

Mr L owns a flat which had a 10-year warranty. The warranty began in 2004.

Dating back to 2008 Mr L had problems with a window in his flat. It was changed in 2012 and it became apparent the old blinds couldn't be re-fitted. Further water ingress was also noted. In April 2014 NHBC issued a final response saying it wouldn't change the window just because of the blinds but it would carry out repairs regarding the further water ingress and pay £1,500 compensation for delays. Mr L complained to us and we issued a decision in 2015.

Whilst we'd been considering Mr L's complaint, in around September 2014, NHBC installed some cavity trays above the window, believing this would resolve the ingress issue. Following our decision, NHBC, in December 2015 and early January 2016, contacted Mr L regarding settlement. Mr L didn't then contact NHBC again until 12 June 2017, at which time Mr L said there'd been further water ingress.

Mr L said the flat had, by this point, been let for three years, the tenancy was ending and the tenant pointed out to Mr L that there'd been water getting in around the window. It wasn't clear how long this had been going on.

On 13 June 2017, NHBC, having resolved an initial and brief misunderstanding it had about the current situation, agreed to come and inspect the windows. NHBC's contractors then visited in August, after NHBC had chased it for progress. NHBC then wanted to assess the window itself. This happened in early September 2017. NHBC didn't see the problem as having been caused by a previous failed repair but felt it should have done more when the window was fitted to ensure no further ingress occurred. It said it would fix the issue.

Mr L, living a few hundred miles away from the property, couldn't make the appointments he was offered in September and October. Work was scheduled to start on 8 November. NHBC was aware the work might take three days. Mr L called it on 8 November and said he was disappointed to learn the redecoration work wouldn't be done that day. He said he couldn't travel back and forth again the following day. NHBC agreed to settle in cash and sent Mr L an offer that day.

The following day, 9 November 2017, Mr L said he was unhappy with the way the window surround had been left. He said NHBC's settlement was just regarding painting and he wanted it to pay for a plasterer. NHBC said, that day, that this wasn't possible or necessary. Mr L said he wanted his carpet replacing. NHBC wasn't minded to do that.

Mr L complained and NHBC responded across two final response letters in late November and early December 2017. It said it would pay Mr L; £347.43 for decorating – plastering wasn't necessary as the property was dry-lined, £60.00 for the carpet to be cleaned but not replaced, and £500.00 compensation for upset caused by delays.

Mr L was unhappy about this. He felt the settlement offers were insufficient, that the carpet did need replacing and more importantly that NHBC should compensate him for lost rent. Mr L complained to us and in January told us and NHBC about further water ingress which had occurred. NHBC sent an assessor the day after the matter was reported to it. The window area was assessed and no sign of ingress was found. That was 25 January 2018. Mr L was adamant there was a problem and in early February 2018 sent further photos and video evidence to NHBC of water droplets on the top of the window frame. He told NHBC his tenant had given notice to quit because of the water getting in, he told us the tenancy had only started in January 2018.

NHBC asked its contractors to reattend. They didn't contact Mr L until later March and a visit was arranged for 27 March. They again found no clear reason for water getting in. But they applied more sealant around a vent.

Mr L told our investigator he had no faith in the work that had been done. On 27 April 2017, unaware that NHBC had just issued a final response to Mr L on 9 April, our investigator formed a view about Mr L's complaint, taking into account the recent repair activity. She said NHBC should do more work to ensure its previous repairs would be long-lasting and effective. She also felt it should pay Mr L an amount to cover any rent lost as a result of the ingress and delayed repairs. But she thought NHBC's offer to pay for the carpet cleaning was reasonable.

NHBC objected to the findings and sent us a copy of its recent final response. Both its objections and the final response indicated it felt the water ingress issue had been resolved and assured that the work was guaranteed. NHBC explained though that the warranty had now ended so it wouldn't be liable for fixing any new instances of ingress that weren't related to its previous repairs. The final response accepted that there had been further delays and offered £250 compensation. In objecting to our findings NHBC said whilst it had recently offered to clean the carpet it was now aware that it had paid Mr L to replace the carpet in 2010 and he didn't seem to have done this. So it now wasn't prepared to pay for the cleaning cost. Regarding lost rent it felt our investigator hadn't been clear about what she thought it should pay or even over what period.

The complaint was passed to me for a decision to be made. Whilst I was reviewing it Mr L told our investigator about a further leak. I asked our investigator to get further information from both parties, but also to let Mr L know that we couldn't look at the new leak as part of this complaint.

I issued a provisional decision as I felt NHBC didn't need to do more work at this time but I did think it should pay Mr L for lost rent and decorating. I felt NHBC's offer of compensation was fair and reasonable, so said it should pay this. My findings were:

"my provisional findings

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

repair

From what I've seen the repair in 2017 stemmed directly from the work NHBC carried out to re-fit the window in 2012. Essentially the window was fitted behind the external edge of the render and wasn't sealed properly. There were issues with accessing the outside of the property so, in 2017, internal damp proofing was fitted.

This means that all the activity which occurred in 2017 was avoidable. It wouldn't have been necessary if the window had been fitted properly in 2012, or if this additional cause of water ingress had been picked up in 2014.

That being said, based on the evidence of the investigations carried out in early 2018, I'm satisfied NHBC has likely resolved the problems resulting from its 2012 repair. I note the assessment in January was carried out following a major storm but all nooks and crannies of the window were found to be dry. And when the ceiling was opened in March, the boarding wasn't stained. I think NHBC's investigation was thorough at this stage and, based on what it found at that time, I wouldn't reasonably expect it to have done anything more.

But also based on what it found at that time, I'm not persuaded that episode of ingress was related to previous repairs that NHCB had carried out. The focus seems to have been on sealing a vent. I've not seen anything to indicate that NHBC installed a vent previously. And the area water was getting in and the way it was appearing in the property was very different to that which had occurred before – water droplets on the frame, as opposed to water staining around the window reveals. So I don't think this was caused by a failure of NHBC.

lost rent

Mr L has shown that he couldn't let the property whilst water was getting in. He didn't have a tenant arranged to take over the flat in June 2017, but the fact of the water ingress meant he couldn't re-market it at that time.

NHBC's contractors did cause delays into August. There were then further delays when NHCB wanted to view the property. I know it was difficult for Mr L to travel to allow access for repairs. He was asked to provide a key but I can understand why he'd want to be there when work was done. Given the history I think NHBC could have done more to move this on more quickly. NHBC could also have warned Mr L that the November repairs might take more than a day.

However, I think that following the water ingress being stopped on 8 November, Mr L could have taken action straight away to have the property re-marketed. The outstanding decoration, particularly as it related to a small area, shouldn't have prevented that. And as re-marketing was always needed in June 2017 anyway, Mr L was now back to the same position regarding renting the property as he was when the further damage was found. I make that five months.

Mr L has provided a valuation from 2014 showing the flat would usually rent for £1,100. I'm satisfied that NHBC should, therefore, pay Mr L £5,500, plus interest, to make up for the rental income he was unable to attain due to NHBC's error. I can't be sure when each monthly amount would have been accrued. On balance I think if the property had been placed back on the market in June 2017, Mr L would reasonably have begun receiving rent on 1 July 2017 (based on the flat's location and price). Therefore, I'm going to suggest that NHBC adds interest on each monthly amount, from the date it should have been received, starting with the first amount on 1 July 2017, and on all monthly amounts thereafter, until settlement is made.

There were clearly further delays in 2018 when Mr L reported the further loss. But the investigation the day after his report was thorough. I can understand why, following that, NHBC felt there was no further problem for it to resolve. I see that when Mr L sent it further evidence on 31 January NHBC looked to review that and it was then only a week (two weeks since notification) before Mr L said his tenant had given notice to quit.

Whilst NHBC delayed after this point, I'm not sure the situation with the tenant would have changed if it had handled things better. And I don't think NHBC had handled things badly, in relation to this incident, up to the point Mr L said the tenant was quitting. So I'm not persuaded that NHBC's delay in dealing with this reported ingress caused Mr L to lose rent. Further, I'm also satisfied, as I explained above, that this episode wasn't related to NHBC's previous repairs. Therefore, I'm not going to suggest that NHBC recompenses Mr L for any rent lost at this time.

decorating

Mr L asked for cash to finish off NHBC's work. NHBC said only painting was required. It explained the decorator would rub the area down as part of his work. The area, it said, didn't need plastering as the flat wasn't plastered originally. I'm persuaded, given the photos I've seen, by what NHBC has said.

I think its cost for decorating the area, even if that was to extend to the whole room, was generous. The area and room aren't large so wouldn't take long to prepare and paint, and the cost of materials would be relatively limited as well.

I understand that, to date, NHBC hasn't paid the previously offered sum of £347.43. As I'm satisfied it's a reasonable settlement, I'll add this to my award below. When NHBC made the offer, it said acceptance of it would be on a full and final basis. Reasonably it should have allowed Mr L to accept it whilst still having the chance to complain. As it didn't I'm going to require NHBC to add interest to this amount from the 8 November 2017, the date it was offered on a restricted basis, until settlement is made.*

carpet

NHBC did accept it should have cleaned the carpet after the 2017 repairs. It was for this reason it offered £60.00 so Mr L could carry that out. But it has shown me that it has already paid, a few years ago, for the carpet to be replaced. And from the evidence it has provided it doesn't seem as though Mr L did that. Unless Mr L can show me that he replaced the carpet in the bedroom, following NHBC making settlement for that in 2010, or that he used that money for other things which NHBC should have paid for, I'm not going to ask it to pay anything now.

When a cash settlement is made that ends the parties' liability to each other. If Mr L didn't use that money to replace the carpet then that was up to him. If he was asking for replacement or cleaning because of damage still existing from that time, that would be another matter. But NHBC accepts it should have cleaned the carpet following its work at the property but didn't. So whether that work was done with a new carpet in place, or the old one that should have been replaced, is irrelevant, the cleaning would still be required.

But if Mr L hasn't replaced the carpet, and still has the money from before, then it wouldn't be fair for me to make NHBC pay for cleaning an old carpet for which Mr L is still at liberty to replace because of previous funds paid. Unless Mr L can convince me that it would be fair to do so, I won't make NHBC pay for the carpet to be cleaned.

I know Mr L thinks that cleaning the carpet won't be successful, that it needs replacing. Even if Mr L shows me that he replaced the carpet following the settlement in 2010, I'm not persuaded NHBC should reasonably have to replace it again now. It's clear that the water ingress notified to NHBC in 2017 had been going on for an unknown but extended period prior to Mr L being made aware of it. I think the mould damage and stiffness reported in the carpet, are likely due to on-going exposure, and because NHBC wasn't advised of the on-going issue until 2017, I can't reasonably blame it for the carpet having become damaged beyond repair (if it is). I think its liability here reasonably only extends as far as cleaning the carpet to resolve any mess caused by its repairs.

compensation

NHBC has offered a total of £750 for distress and inconvenience caused to Mr L during the investigations and repairs in 2017 and 2018.

The further ingress in 2017 was clearly frustrating for Mr L and caused him a lot of inconvenience. As I said above, all of that could have been avoided. I don't think the upset Mr L was caused in 2018 could have been completely avoided because the issue wasn't, I'm satisfied, related to NHBC's previous repairs. But NHBC did then caused delays and Mr L had to chase it to organise the March visit and repair. Overall, I think £750 makes up for the frustration and inconvenience Mr L was caused."

NHBC said it accepted my findings. Mr L said he wasn't concerned any longer about the carpet, his only concern is what will happen in the future, if his window leaks again. He said he wants assurance that NHBC will act regarding any further ingress (including that which occurred recently) and resolve the source and cause.

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 appreciate that Mr L doesn't know, when he sees water coming in, where it has come from or what the cause is. Given the history of the parties I can understand why he links any such incident to NHBC's repair work. But when I assessed the evidence about the source of the leak found in 2018, I was satisfied that it hadn't been caused due to any failure of NHBC, and because the warranty term had expired there was no cause to make it consider the damage as a new claim.

I can't give assurance to Mr L about what NHBC will have to do in the future. Given there is an outstanding claim that isn't part of this complaint it would be remiss of me to make any comment at this stage; I might prejudice one or both the parties' positions.

As Mr L and NHBC were satisfied by my provisional findings, I've no reason to change them. They now form part of this final decision.

my final decision

I uphold this complaint. I require National House-Building Council to pay Mr L:

- £5,500 in respect of lost rent, plus interest* on each monthly sum and from the dates as directed above, until settlement is made.
- £347.43 for decorating, plus interest* from 8 November 2017 until settlement is made.
- £750 compensation for distress and inconvenience, less any part of this amount already paid, if any has been.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 November 2019.

Fiona Robinson
ombudsman

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If National House- Building Council considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr L, it should tell him how much it's taken off. It should also give Mr L a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.