

The complaint

Mr W complains about National House-Building Council's (NHBC) handling of a claim made under his Buildmark policy.

What happened

The subject of this complaint is an estate comprised of multiple blocks and apartments. Mr W is the leaseholder of one of the apartments, and the holder of a Buildmark Warranty covering his apartment and his share of any common parts.

The claim dates back to May 2018 and is for movement and cracking in apartment blocks, retaining walls and roads, defective cladding and defective drainage. The claim involves what is defined under Mr W's lease as common parts, and this means that other leaseholders, in addition to Mr W, will likely have been affected. But this complaint has been brought solely by Mr W, and so I'm only considering what he is entitled to under his individual warranty.

The Financial Ombudsman Service has already considered a previous complaint from Mr W. That complaint was about NHBC's refusal to cover the claim for block paved areas. A final decision was issued that was accepted by Mr W.

This complaint is about further unreasonable delays in NHBC's assessment of the claim under the warranty, up until NHBC's final response on 25 January 2023.

Mr W has raised the following points:

- Poor service and delays impacting on policyholders, who've had to live with health and safety concerns.
- A dispute over the extent of damage and repairs needed. NHBC has omitted some areas of damage, and the whole roadway needs to be lifted, as opposed to the proportion NHBC has proposed.
- There is structural damage to a number of blocks across the estate, showing varying levels of cracking. NHBC has not accepted the claim for all blocks.
- Mr W would like the claims handler acting for NHBC to be removed on account of their aggressive approach and behaviour.

Our investigator considered the complaint and thought it shouldn't be upheld. She only considered matters up to 25 January 2023 and considered it was fair for NHBC to have arranged an independent professional opinion given the disagreement about the remedial works needed. She also felt that NHBC had progressed the claim fairly and provided timely responses on the claim between the conclusion of the previous complaint and 25 January 2023.

Mr W didn't accept our investigator's findings. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision to give the parties the chance to respond, before I reached my final decision. Here's what I said:

“What I've provisionally decided – and why

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

Having done so, I'm minded to reach a slightly different outcome to our investigator and to award some compensation, I'll explain why.

Our remit

Under this complaint, I've explained that our remit covers matters until 25 January 2023. So, I won't be reviewing what's happened since that date.

Our investigator has made the above clear on two occasions, and explained that Mr W, or his representative, will need to raise a new complaint with NHBC for matters since that date.

I also won't be reviewing matters addressed under the previous final decision.

I have issued a separate jurisdiction decision setting out which matters are within my power to consider under this complaint, and which are not. In that decision, I explained why I won't be reviewing matters addressed in NHBC's final response of 15 November 2021.

I can review matters addressed in NHBC's final response of 25 January 2023, where NHBC said the following:

- *It upheld the complaint about delays and poor service – it accepted matters had not progressed as quickly as it would have liked since it answered the previous complaint (15 November 2021).*
- *There were delays caused by the builder in confirming its intentions on further investigations and works.*
- *It didn't agree to remove the claims handler.*
- *On the extent of works required to the block paved areas, it agreed to arrange a further visit on site with all parties to consider areas where damage was present.*
- *On blocks where cover was not agreed, NHBC agreed to have the existing reports and evidence reviewed by a further structural engineer, to ensure NHBC had made the correct decisions under the claim.*
- *NHBC agreed to reimburse the reasonable costs incurred in carrying out any emergency repairs needed.*
- *NHBC agreed to review compensation on the basis that each policyholder demonstrates the specific impact on them.*

Block paved areas

Given the dispute over the extent of damage and the repairs needed, I think NHBC acted fairly in agreeing to meet on site to consider the areas where damage was present.

I do agree that NHBC's reference to 80% of the road being damaged was not properly substantiated. But, in the circumstances, I think NHBC's agreement to review the original structural engineer's report and attend on site to assess the areas it was alleged to have missed, was fair and reasonable.

Structural damage to blocks

The report from the original structural engineer also disputed the decisions reached by NHBC on the structural damage to the blocks within the estate.

Given this dispute, I think NHBC's decision to arrange a review by an independent structural engineer, was fair and reasonable.

Removing claims handler

I can see from the evidence there have been disagreements, including over terminology used in describing the original structural engineer's report, so I can appreciate Mr W's dissatisfaction with the claims handler.

Although I agree there have been delays and poor service under the claim, I've not seen sufficient evidence to show the claims handler was aggressive or behaved in such a way that it would be reasonable for me to direct NHBC to remove them from the claim. I also think NHBC is likely correct to suggest that doing so would result in further delays to the resolution of the claim.

Poor service and delays

Having reviewed everything that's happened, I think NHBC is responsible for some periods of avoidable delay between 15 November 2021 and 25 January 2023. I've therefore gone on to consider the impact on Mr W, so I can decide on fair compensation for the above.

Mr W has provided evidence of mortgage applications he said were impacted by delays in NHBC's handling of the claim.

The evidence he's provided are for applications that took place and were withdrawn in 2019, so I think he ought to have provided this evidence and raised this allegation of loss under previous complaints. Our service's previous decision covered delays until at least 16 September 2020, but I can't see that Mr W provided this evidence under that complaint.

In any case, the claim itself was first made in May 2018. Given the complexity of the claim, the nature of the damage and the involvement of numerous blocks across the estate, I don't think it's likely that the claim could reasonably have been fully resolved on or before September 2019, when Mr W withdrew the mortgage application, he said he lost out on. For this reason, I don't consider that NHBC can fairly be held responsible for Mr W losing out on the mortgage deal he applied for.

Mr W has also outlined the impact on his mental health and wellbeing. He's said he's experienced abdominal pains and digestion issues for months and was advised by his GP this was stress related. He's said this was due to the possibility of losing the money he invested in his flat.

On this point I've noted that by September 2022, NHBC had accepted the claim for the block paving outside Mr W's block. The ombudsman, under the previous complaint, also directed NHBC to pay Mr W compensation relating to its decision on the block paved areas. Mr W accepted this decision, so it is binding on him and NHBC.

By October 2022, NHBC had also confirmed there was progressive movement to his block, attributed to defects with the foundations of the buildings (the things necessary for there to be valid cover). So, I think Mr W would have known since then, that the damage impacting his specific block was going to be covered. I also can't see that there was evidence to show any risk of imminent collapse of Mr W's block as a result of the superstructure damage identified. But I do fully appreciate that NHBC's delays on the claim, and the poor service, would nonetheless have impacted Mr W, and caused him avoidable distress and inconvenience. Particularly given there was still no certainty as to when the claim would be settled and given that the asset affected is likely one of, if not the, largest investment he has.

I've carefully considered everything that happened between November 2021 and January 2023 and everything Mr W has said about how this has impacted him. I've also taken into account the challenges involved with reviewing and investigating a claim of this nature, where multiple blocks and roads are affected and therefore numerous different parties are involved. But even taking all of that into account, I think NHBC is responsible for some avoidable delays and that Mr W has been impacted by these. I also think he's been particularly inconvenienced as the leaseholder who typically collates and shares information with the others. Taking all of this into account, I think NHBC should pay Mr W £250 compensation for the distress and inconvenience it has caused him.

Matters since 25 January 2023

I understand there has been further progress since 25 January 2023, including the new structural engineer's report, agreement on some areas and disagreement on other areas.

As outlined to Mr W's representative, any complaint about issues since 25 January 2023, will need to be raised as a new complaint with NHBC.

NHBC has also made it clear to our service that if Mr W is unhappy with the review by the new structural engineer (and the resulting conclusions), he can raise a further complaint with NHBC. And should Mr W remain unhappy with NHBC's response to any hypothetical future complaint, he'd be able to refer such complaints to our service, subject to our normal rules and timescales."

I said I was minded to direct NHBC to pay Mr W £250 to compensate him for the distress and inconvenience its delays and poor service had caused him.

I asked both sides to send any further comments or evidence they wanted me to consider within two weeks – after which I would make my final decision.

NHBC responded to confirm it accepted my provisional decision and that it had nothing further it wanted to add.

Mr W didn't respond to provide any further comments or evidence, nor to request an extension to do so. So, as the deadline to do so has now passed, I'm moving ahead my final decision.

What I've decided – and why

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

In the absence of any further evidence or arguments, I've reached the same conclusions as outlined in my provisional decision – and for the same reasons.

My final decision

For the reasons outlined above, I uphold Mr W's complaint in part.

National House-Building Council must pay Mr W £250 compensation for the distress and inconvenience its delays and poor service have caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 June 2024.

Adam Golding
Ombudsman