

## **The complaint**

Mr and Mrs E complain National Housing-Building Council (NHBC) unfairly declined a claim they made on their building warranty for water ingress around a bay window.

## **What happened**

In 2021 Mr and Mrs E bought a property. The property benefitted from a ten-year NHBC warranty which had started in 2016 and transferred to Mr and Mrs E on purchase of the property.

In 2022 Mr and Mrs E contacted NHBC as they were concerned about water ingress around the roof of a bay window. NHBC assessed the claim and declined it. It said the previous owner of the property had claimed for the same problem in 2020. NHBC said it had declined the 2020 claim as the repairs didn't meet the minimum claim value (as required in the policy for a valid claim), but it had set out what the owner (at that time) needed to do to put matters right – which was works relating to a cavity drain on the roof of the bay window.

Mr and Mrs E complained about NHBC's 2022 claim decision and referred that complaint to the Financial Ombudsman Service. On 22 March 2023 an Ombudsman colleague issued a final decision on that complaint. He considered NHBC had acted fairly in saying the damage was materially the same in 2022 as it had been in 2020. He said as the warranty excluded anything already claimed for, he didn't uphold the complaint or require NHBC to take any further action.

Mr and Mrs E say they carried out repairs to the bay window – based on the recommendations in the 2020 report – in January 2023. But in 2024, there were still issues with water ingress in the same area. They made a further claim to NHBC. In April 2024 NHBC declined the claim. It said the repairs needed were to some plastic rivet fixings. It said those needed replacing and sealing to prevent further water ingress. It estimated this would cost around £670, and as such, wouldn't meet the minimum claim value of £1,850, and so there was no cover.

Mr and Mrs E complained about NHBC's claim decision. NHBC issued a complaint FRL on 30 April 2024. NHBC said it didn't think the claim had been assessed fairly. It said only a desk top review had been undertaken and so it said a senior claims investigator would be in touch to arrange a visit to the property to assess the damage.

As an apology, it offered £100 compensation for the trouble and upset caused in not arranging this sooner.

Unhappy with NHBC's response, Mr and Mrs E raised a complaint to the Financial Ombudsman Service.

By the time an Investigator reviewed the complaint, NHBC said that visit had been done, and a report had been finalised on 8 July 2024. It said this report found the current issues with water ingress were due to the repairs organised by Mr and Mrs E. NHBC said the cavity trays they'd arranged to have installed were of poor quality. As a result, it said the claim was declined due to failed repairs carried out by a policyholder. It said whilst a complaint about that further decline hadn't been received, it would give this Service consent for us to consider it under this complaint.

An Investigator at this Service reviewed the complaint including the further July 2024 decline. She didn't recommend that the complaint be upheld. She said she wouldn't review matters already decided on in the previous final decision issued by this Service in March 2023. She thought, based on NHBC's report, it was more likely that the repairs now needed were as a result of the work of Mr and Mrs E's contractor. She thought £100 compensation was fair for NHBC's initial lack of investigation into the claim.

Mr and Mrs E asked for an Ombudsman to consider the complaint. They made the following points:

- NHBC had been deliberately misleading in its reports.
- The July 2024 report was inaccurate as it incorrectly said the previous owner had installed the cavity tray.
- NHBC did carry out some works to the bay window roof in July 2024, by drilling some holes in it, which has caused further damage.
- It took six weeks for NHBC to attend the property following the April 2024 FRL, during which time they were concerned to leave the property when it was raining.
- NHBC admits it should have attended the property in 2022.
- In line with the Consumer Duty, we should consider that NHBC has failed to take responsibility for installing cavity trays.

### **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.

As this is an informal Service, I'm not going to respond to every point made or piece of evidence referred to by both parties. But I'd like to reassure Mr and Mrs E and NHBC that I've read and considered everything provided.

As our Investigator set out, I can't review any matters that we've already issued a final decision on. Which includes reviewing NHBC's decision on the 2020 claim and Mr and Mrs E's complaint that NHBC failed in its responsibility under the consumer duty to install cavity trays.

Our role is to decide if a business – so in this case NHBC – responded reasonably to a complaint made. So I've started by reviewing its response given in its FRL of 30 April 2024. I'll then assess what's happened since that point.

#### Was NHBC's response in its 30 April 2024 FRL a reasonable one?

Having reviewed matters, I'm satisfied that it was. I agree with NHBC that declining the claim and deciding the issue was due to leaking rivet seals, without even seeing the rivets or assessing the seals, was unreasonable. The report (dated 17 April 2024) used library photos of rivets (which were out of place) in support of its position. There didn't seem to be any evidence this is what had happened to Mr and Mrs E's property. So I find it was reasonable for NHBC to say it would instruct a claims investigator to assess the roof of the bay window through a site visit.

I also think it made a reasonable offer of £100 for the distress and inconvenience caused in not fully investigating the issue. That is in line with the awards made by this Service in similar circumstances.

#### Events post 30 April 2024 FRL

A claims investigator did attend Mr and Mrs E's property twice following the FRL, in June and July 2024 in order to assess the damage. Having reviewed the report (dated July 2024)

and its findings, I don't think it's unreasonable that NHBC relied on the report to decline the claim. The report found that the cause of water ingress was due to how the cavity tray – which Mr and Mrs E had arranged and paid for themselves in 2023 – had been fitted.

I find the key section of the report is:

*“I viewed the bay window externally and did have concerns over the fitting of the new cavity...The cover flashing was lifted, and it confirmed that the upstand had not been fixed and sealed to the wall. I was able to view the cavity tray, and this has been fitted onto the existing mortar bed and a large open gap has been left. Again, this would not be standard practice.”*

Given what is set out above, I don't think it's unreasonable that NHBC maintained its decline of the claim, but for different reasons. I consider the report shows the most likely cause of the water ingress in 2024 is a failed repair by Mr and Mrs E's contractor, rather than a new defect which should be covered under section 3 of the warranty.

I can, though, understand Mr and Mrs E's frustration with all of this. The July 2024 report doesn't mention the rivets which NHBC had earlier relied on to decline the claim. But I don't think that means the July report shouldn't be relied upon. I think the July report is further evidence that NHBC's April 2024 decline of the claim was unfair – which NHBC has already accepted, and paid compensation for.

Mr and Mrs E say the July report also says a previous owner replaced the cavity trays, but it was them who did that work, which shows the report is inaccurate. I accept that it does say this, but this inaccuracy doesn't persuade me that the report's findings on the cause of water ingress should be disregarded. This property was owned by someone previously who had been told by NHBC to carry out works to the cavity tray. I think this is an innocent misunderstanding as to who then did the works, rather than evidence of NHBC being misleading.

I consider the July 2024 report, given it's based on actual visits to the property and that the photos and commentary demonstrate how water is still getting in, is a reliable report. Whilst I understand Mr and Mrs E think the report is misleading, they haven't provided any evidence – for example from their own expert – which persuades me that NHBC has diagnosed the issue incorrectly. Or that NHBC, in carrying out some temporary repairs to assist Mr and Mrs E – which was sealing the upstand and drilling some holes in the underside of the roof to allow for drainage – has caused more damage to the property.

Mr and Mrs E say NHBC has admitted it should have gone out to the property in 2022, when they made their initial claim. And had it done so, matters would be different. I can see Mrs E's provided an internal NHBC email. This seems to be from around the time the April 2024 FRL was issued. This says as NHBC didn't attend last time (in 2022) it should go out and assess the property now. But as Mr and Mrs E know, an Ombudsman colleague at this Service has already decided NHBC's decline of the 2022 claim was reasonable. I can't revisit those findings here as part of this complaint.

I accept Mr and Mrs E's point that the report NHBC provided them (which was the one provided to the previous owner in 2020 setting out the works needed) didn't specify which type of cavity tray to use. However, NHBC's report is for its own use, to determine if there is a defect as defined by the policy. I consider it sent it on to Mr and Mrs E to assist them with the repairs needed, given it thought the previous owner hadn't acted on these. But ultimately, the report is written for NHBC's own use, not a policyholder. And, if the claim had been met, I consider NHBC's contractors would have used their own professional judgement to ensure the correct cavity tray was used and installed as it should be. But I can't hold NHBC responsible for any error possibly made by Mr and Mrs E's own contractor when carrying out the installation.

Delays in the claim

It did take NHBC six weeks to arrange for someone to attend Mr and Mrs E's property after the April 2024 FRL was issued. I think this is longer than should have been reasonably expected by Mr and Mrs E, especially given the issues they'd faced up to that point. And I note they were worried about rain causing further damage to their home during this period. But ultimately, as I find NHBC is reasonable to decline the claim based on the July 2024 report, I'm not going to ask it to pay further compensation for this delay.

I understand this has all been very stressful for Mr and Mrs E. But for the reasons set out above, I don't think NHBC needs to do anything to resolve the complaint. If it hasn't done so already, NHBC should pay £100 compensation it previously offered to Mr and Mrs E.

### **My final decision**

My final decision is that National Housing-Building Council has already made a fair offer of £100 to settle the complaint. If it hasn't done so already, it will need to pay this amount to Mr and Mrs E.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 25 December 2024.

Michelle Henderson  
**Ombudsman**