

## **The complaint**

Mr F complains that National House-Building Council (NHBC) has unreasonably delayed making a decision on a claim he made under his Buildmark policy.

## **What happened**

The subject of this complaint is a building comprised of multiple apartments. Mr F 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.

Mr F's claim is for remedial work to the common parts of the building, relating to fire safety issues. This means that other leaseholders, in addition to Mr F, will likely have been affected. But this complaint has been brought solely by Mr F, and so I'm only considering what he is entitled to under his individual warranty.

Our service has already considered a previous complaint from Mr F about NHBC's refusal to deal with the claim under section 2 of the warranty, and about unreasonable delays up until January 2023.

This complaint is about unreasonable delays in NHBC's assessment of the claim under section 4 of the warranty, between 31 January 2023 and 25 August 2023 (when NHBC answered Mr F's complaint). It doesn't cover NHBC's claim decision because, at the point of Mr F's complaint, no claim decision had been made. In its response to Mr F, NHBC accepted the claim hadn't progressed as quickly as it ought to have and offered Mr F £200 compensation. Mr F didn't accept this offer and so brought his complaint to our service.

Our investigator considered the complaint but didn't think it should be upheld. He agreed that there had been unreasonable delays in the progression of the claim. But he felt NHBC's acknowledgement of this, and its offer of compensation, were sufficient to fairly put things right. So, he didn't recommend NHBC do anything further to resolve this complaint.

Mr F didn't accept our investigator's findings. So, as no agreement has been reached, the complaint has been passed to me to decide.

## **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.

Having done so, and while I appreciate it will come as a disappointment to Mr F, I agree with the outcome reached by our investigator. I'll explain why.

The relevant section of the policy applicable to Mr F's claim is section 4. This section provides cover in circumstances where NHBC carried out the building control function during construction, and where there has been a breach of relevant building regulations which results in a present or imminent danger to the health and safety of the occupants.

NHBC says the claim has taken time to consider due to the complex nature of the issues involved. It says expert opinion has been required, but that suitable experts in this field are rare. However, it has accepted that there were some unreasonable delays and so has offered £200 compensation.

From January to March 2023, the claim was referred to a fire consultant to review whether there had been a breach of regulations – a key component required for cover to engage. This doesn't seem an unreasonable action for NHBC to take, or an unreasonable length of time for these investigations to have taken in the circumstances.

NHBC's claim team then spent some time reviewing the conclusions of the consultant between April and July 2023. Like our investigator, I don't find it surprising that NHBC wanted to assess the information internally before arriving at a decision on the claim, but I agree that three months is an unreasonable length of time for this to have taken.

Mr F is also unhappy that NHBC has refused to share the fire consultant's report with him. But NHBC says this is because the outcome of that review was that further expert opinion was needed before a claim decision could be made. In its final response to Mr F's complaint, NHBC committed to sharing the relevant information relied on to reach its decision on the claim, once a decision is reached. And in the circumstances, I don't think that approach is unfair or unreasonable.

NHBC said the reason a further expert opinion was needed was to determine whether there was a present or imminent danger to the health or safety of the occupants – which is the second key component for cover to engage. And while I accept that it was reasonable for NHBC to want to obtain this opinion, I do agree that it should have been obvious that this would have been needed much sooner, and so it was unreasonable for NHBC to hold off asking for it until the point it did.

I know Mr F feels strongly that our service should conclude that because there has been a breach of building regulations, that it follows there is a present and imminent danger. He says this is in line with a decision reached by one of my ombudsman colleagues in a different complaint. I've thought carefully about this, but we consider each case on its own merits. And in this case, I am not considering or reviewing a claim decision which has been made, only the time taken between two points within the claim. So, the circumstances here are different to those in my ombudsman colleague's decision.

Ultimately, it's not for our service to take over NHBC's claim handling or make claim decisions for it. We'd typically only consider the fairness of a claim decision once it had been reached. And considering the particular circumstances here, I don't think it was unreasonable of NHBC to obtain the second consultant's opinion before reaching a claim decision, I just think it took too long to review the initial consultant's opinion and to request the second – and that Mr F has been unfairly impacted by this unreasonable delay.

Mr F has suggested that he has suffered from prolonged distress and inconvenience for over a year, due to NHBC's handling of his claim and complaints. However, as already explained, this complaint is only considering the roughly eight-month period between January and August 2023. In that time, I consider that NHBC is responsible for around three months' worth of unreasonable delays. And taking everything Mr F has said about the impact of these delays into account, I think NHBC's apologies and offer of compensation are sufficient to fairly put things right.

Should Mr F remain unhappy with delays after August 2023 and/or NHBC's claim decision (once he has it) he'll need to raise these issues as a new complaint, and with NHBC in the first instance. Should he remain unhappy with NHBC's position at that stage, he'll be able to refer the new hypothetical complaint to our service, subject to our normal rules and timescales.

### **My final decision**

National House-Building Council has already made an offer to pay £200 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that National House-Building Council should pay Mr F £200 – if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 January 2024.

Adam Golding  
**Ombudsman**