

# REPORT

*COMPLAINT 202010488*

*Arun District Council*

*28 June 2021*

## **Our approach**

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice, or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

## **The complaint**

1. This complaint is about the landlord's response to the resident's concerns about the repair of a bedroom ceiling that contained asbestos.

## **Background and summary of events**

2. The resident has a secure tenancy with the landlord.
3. The resident has referred to a previously complaint to this Service in 2019 about the landlord's handling of an asbestos-related repair to a bedroom ceiling. This present complaint is about a different bedroom.

## *Policies, procedures, and agreements*

Tenancy agreement:

4. This sets out the landlord's general responsibility for repairing the structure and exterior of the property and maintaining the installations in the property for the supply of water, gas, and electricity and for sanitation.

Tenants Handbook:

5. This sets out the different repair categories and timeframes for response:
  - a. Emergency repairs – to be carried out within 4 hours or made safe and full repairs carried out at a later date.
  - b. Next Day – within 24 hours. Including repairs to make your home safe.
  - c. Urgent repairs – within 5 working days.
  - d. Routine repairs – within 20 days.
6. An 'Emergency Repair' is 'where there is a risk of personal injury or severe damage to property'.

Asbestos Safety Policy April 2020:

7. This states that, where the landlord identifies asbestos containing materials that pose a significant risk to health because they are seriously damaged, it will either remove or, where appropriate, encapsulate the material.
8. It also states that it will manage asbestos containing materials remaining in-situ so that the risk to health of employees, contractors, residents, and others is reduced to its lowest reasonably practicable level.

*Summary of events*

9. The resident has said that sometime in early August 2020 his wife moved some boxes from on top of a wardrobe and noticed that the artex coating on the ceiling was damaged. He knew from a previous asbestos survey done in 2018 on one of the other bedrooms, that there was asbestos present in the artex coating. As the landlord was due to carry out an inspection on 3 August 2020 the resident said he did not report the ceiling damage to the landlord when he discovered it. Instead he waited until the inspection so that he could report this repair 'face to face' due to his previous problems with the landlord.
10. On 3 August 2020 the landlord carried out an inspection of the property to check the completion of previous unrelated repairs (e.g. the balcony, shed and bathroom leak) and during this inspection the resident said that he highlighted the damaged artex on the ceiling, which he said was 'crumbling'.
11. The landlord's records show that after this inspection the Repairs Manager requested that its repairs system be updated to show *'2 minor defects in artex ceiling referred to xxxx for repair'*. A follow-up email on the same day stated: *'see attached pictures of 2 minor damaged areas in the ceiling of*

*the 2nd bedroom [the resident] has asked for these to be encapsulated or patch repaired but would prefer to avoid for a whole ceiling replacement as he doesn't want the disruption. Can I leave this with you to progress?'*

12. The resident contacted the landlord again on 7 September 2020 as he had not heard anything further from the landlord about the ceiling repair. He raised a formal complaint at this time about the lack of action taken by the landlord in response to his report about the crumbling artex on the ceiling.
13. The landlord acknowledged the complaint the same day and said it would respond by 23 September 2020. Its records show that an 'urgent repair request' was logged on its repairs system to 'remove the artex ceiling in bedroom 2 (assume asbestos) and replaster ceiling and emulsion'. The records also show that the landlord liaised with the contractor the same day to ensure that the repair was progressed.
14. The resident has said that the contractor contacted him on 7 September 2020 and told him that the repair could be booked in for the next day. The resident agreed to this and arranged for someone to be at the property that day.
15. The resident has said that on 8 September 2020 the landlord's contractor told him that it could not continue with the repair unless and until the resident had signed a disclaimer against damage to his belongings as the contractor needed to clear the room of the belongings. The resident was unwilling to sign the disclaimer.
16. The landlord's internal correspondence with the contractor shows that the contractor attended on 8 September 2020 as agreed. The contractor said that the bedroom was full of items, and the resident did not want to move them and would not sign a disclaimer for them to be removed. It was left with the resident that the landlord had been informed and that another date needed to be booked in for the ceiling repair. The landlord has said that the resident then decided he would clear the room himself, so the disclaimer was no longer needed.
17. The landlord and resident have said that the ceiling repair took place over 14 September to 16 September 2020.
18. With regards to the complaint, on 23 September 2020 the landlord notified the resident that there would be a delay in its investigation of the complaint due to staff absence. It said it would respond by 1 October 2020.
19. The landlord issued its Stage 1 complaint response on 30 September 2020:
  - a. It said that during the inspection on 3 August 2020, its Repairs Manager had identified 'a split/crack in the artex ceiling' in the bedroom. He was of the view that the damage was slight and there was no visible evidence suggesting risk of collapse. As such, he assessed this as a low risk and considered it to be a

routine repair, which was 20 working days. The landlord included the photos of the damage taken at the time of the inspection with its letter.

- b. The landlord said that had this repair been raised the following day (4 August 2020), it would have been completed by 1 September. However it was not raised until 7 September, following a chase up email from the resident. Due to the delay in actioning the repair, the landlord progressed the repair on an urgent basis, and the repair was completed a week later.
- c. It apologised for the delay in allocating the repair to a contractor. It accepted that this was 'clearly outside of our usual service standards' and said that this was partly due to dealing with the backlog that was created during lockdown.
- d. In conclusion, it upheld the complaint about the delay in ordering the repair and it apologised for this. It said that it acknowledged the resident's request for compensation for putting his family at risk. However, whilst it accepted there had been a service failure, it did not consider that the resident's family had been put at any risk by the delay in the repair being passed to a contractor. It was satisfied with the confirmation from the Repairs Manager and the contractor that there was no risk from asbestos.

20. The resident was unhappy with this response and asked for his complaint to be escalated on 1 October 2020:

- a. The resident referred back to his previous complaint with this Service in 2019 and said that the landlord had not learnt from its previous errors.
- b. He was of the view that the delay had left his family with 'prolonged exposure' to asbestos and he disputed the landlord's opinion that this repair was routine.
- c. He said that the artex had been disturbed and was releasing asbestos fibres into a child's bedroom and despite the landlord being aware of asbestos in the property (from an earlier survey) it did not deem this to be a high priority.
- d. The resident reiterated his request for compensation for the landlord's failures and for his family being exposed to a 'serious health risk'.

21. The resident also sent the landlord more photos of the ceiling and said that he felt the risk should have been classified as 'High Risk'.

22. The landlord acknowledged the escalation request on 5 October 2020.

23. The landlord issued its Stage 2 complaint response on 10 November 2020:

- a. It explained the background of events from the 3 August 2020 inspection, and it reiterated its error in not raising a works order until the chaser email from the resident on 7 September 2020.
- b. It relied upon the previous report in September 2018 which found asbestos in bedroom 4 and it dealt with this present repair on the basis that there was asbestos in bedroom 2 as well. It said it dealt with the repairs on an urgent basis once its error had been noted on 7 September 2020.
- c. It explained that it had acted upon the Ombudsman's orders in the previous 2019 complaint and its Asbestos Safety Policy and Asbestos Safety Management Plan were adopted on 9 March 2020. It maintained that after the error had been noted, it dealt with the repair in accordance with its policies.
- d. It explained its position regarding the disclaimer and why it was necessary and it acknowledged that the disclaimer was no longer needed as the resident had decided to clear the room himself.
- e. It dealt with the repair on the basis that the artex contained asbestos and it took all required precautions and instructed a licensed asbestos contractor. It was of the opinion that the fibres were not being released, and the damaged area was not crumbling, and had a split in it. It said that if the Repairs Manager had felt there was any risk of fibre release, he would have taken action that day and arranged for an emergency repair.
- f. In conclusion, it accepted that there was an initial delay in dealing with the repair, which it apologised for. It said that the disrepair was first raised on 3 August 2020 by the Repairs Manager but due to an 'oversight' it was not raised with the contractor until 7 September 2020. It did not obtain an asbestos survey as one had been carried out on another bedroom in 2018, and it proceeded on the basis that the artex in all the bedrooms contained asbestos and it dealt with the repair accordingly.
- g. The landlord accepted that the delay had caused some inconvenience to the resident, for which it had apologised, but there was no health and safety risk to the resident or his family.

24. On 11 November 2020 the resident escalated the complaint to the landlord's Designated Person for a final review.

25. On 1 December 2020 the landlord's Designated Person issued a final complaint response. It reiterated the landlord's position that the resident's family was not at any risk and that the landlord had not breached any policies in its handling of the ceiling repair. It also reiterated its apology for the failure to log the repair and it accepts that this delayed the repair by about four weeks. It confirmed that this was the end of its complaints process.

26. On 15 December 2020 the resident contacted this Service to pursue his complaint. He said that he wanted it on record that the landlord had failed

again in following its asbestos policy and risk assessment and had put his family at serious risk again. He also requested compensation for this and also for the adverse effects and stress and worry this had caused his family again.

## **Assessment and findings**

### *The landlord's handling of the ceiling repair*

27. The Ombudsman's role is to consider whether the landlord's handling of the ceiling repair was in accordance with its policies, procedures, and any agreements it had with the resident, and whether it acted reasonably, taking into account what is fair in all the circumstances of the case.
28. The key aspect of this complaint is the resident's concerns about what he believes to be the landlord's mis-management of the asbestos risk at his property. He feels that the landlord's delayed response has meant that he and his family had been left exposed to a serious health risk. The outcome the resident is seeking is compensation to reflect the seriousness of the landlord's failure to follow its policies and the resulting distress caused to him and his family.
29. The resident's concerns and anxiety about the finding of asbestos materials within his home are duly noted. However, the Ombudsman's role is not to investigate the level of asbestos in the home or the risks involved, but rather, it is to provide an independent review of the landlord's actions in its response to the resident's concerns. It can be seen from the resident's correspondence that he believes that the presence of asbestos in the property poses a significant health risk, which, in his view, the landlord has failed to adequately address.
30. The Ombudsman understands that the presence of asbestos containing materials in a home does not, in itself, automatically constitute disrepair or place any repair obligation on the landlord. However, if the material is damaged and there is the risk of asbestos particles/fibres being released, then the landlord should act to repair the damage in line with its asbestos management policy.
31. Looking at the landlord's handling of this matter, it accepts that it was aware on the 3 August 2020 that the artex in the bedroom ceiling had split/cracked and that a specialist asbestos repair was necessary. It was aware from a previous asbestos survey carried out in September 2018, that the aertex coating on the bedroom ceilings contained asbestos. The subsequent report at that time confirmed that the artex had a risk score as 'very low' and it was recommended that it only be removed if refurbishment works were ever carried out.
32. In light of the previous asbestos survey from September 2018, the landlord concluded that it was not necessary to carry out another survey in this bedroom as the artex was the same as in the other bedroom. It rightly

proceeded on the basis that the artex in this ceiling also had asbestos, but it was satisfied that it was a low risk repair.

33. At this point what should have happened is that the repair should have been logged on its repair system and allocated to a contractor. However, the landlord accepts that this did not happen. An email was sent by the Repairs Manager to log the repair but this appears not to have been actioned. The records show that it was not until the resident's email of 7 September 2020 that the repair was then allocated to a contractor – almost five weeks after the repair had been noted.
34. The landlord has said that if the matter had proceeded correctly, the repair ought to have been completed by the latest, within 20 working days (as it was deemed to be a routine repair) which would have been by the end of August 2020. Instead the repair was not completed until 16 September 2020, some six weeks after it had been raised. The landlord has rightly acknowledged that this is a service failure and it has apologised for this. The available evidence suggests that this was a human error and an oversight in updating its repair system.
35. The resident believes that he and his family were left at risk of exposure to asbestos during these six weeks. The resident's concerns are duly noted, but there is no evidence to show that there was such a risk. As mentioned above, the presence of asbestos containing materials in the home does not automatically mean exposure to asbestos or any risk to health. It is only if the material has been significantly disturbed, such that would allow asbestos particles to be released, that gives rise to any potential health risk. It is noted that the resident has said that the damage was significant and he believes there was a risk of particle release, but the evidence available to the Ombudsman does not substantiate this. The evidence provided by the landlord in terms of the photos of the ceiling damage and the Repair Manager's expert opinion does not suggest there was any serious risk.
36. In any event, once the error had been noted following the resident's email of 7 September 2020, the landlord acted swiftly and appropriately by arranging the repair. It then proceeded with the repair on an urgent basis. It is noted that an asbestos survey was not carried out on this bedroom ceiling, but this was reasonable given that the landlord was aware that the ceiling in another bedroom had been previously surveyed and it proceeded on the basis that this bedroom had the same artex coating and so should be treated as having asbestos. This was appropriate because a previous survey had already confirmed the presence of asbestos in another bedroom, and the risk was deemed to be similar. The landlord's actions at this point were reasonable and ensured that the repair was not unnecessarily delayed any further. There is nothing to suggest that the actual repair was unsatisfactory in any way.
37. The resident has raised concerns that the landlord has not learnt lessons from his previous complaint and has not taken steps to improve its service. The Ombudsman's Dispute Resolution Principles set out our general

expectations, which are be fair, put things right, and learn from outcomes. Given the previous similar complaint about the handling of asbestos repairs and the involvement of the Ombudsman, we would expect the landlord to learn from this so as to avoid future similar complaints. In this instance, the Ombudsman is satisfied that the landlord has acted appropriately by taking on board the Ombudsman's earlier findings about its policies and processes and it has taken steps to review and reassess its policies and procedures and make improvements to its service.

38. However, on this occasion, there was still a service failure in not logging the works order correctly. The landlord has not provided any specific evidence to explain why the repair was not logged correctly on 3 August 2020, and nor has it adequately explained why the repair was not followed up until a further email was received from the resident more than four weeks later. The landlord's failure in this regard is not disputed and the landlord has rightly apologised for its failure.
39. Whilst the landlord has apologised for the delay with the repair, it has not evidenced that it considered whether compensation was warranted for this service failure. The landlord has not provided this Service with its compensation policy. The repairs policy it has provided makes no provision for compensation for delays in completing a repair. However, the Ombudsman has discretion to determine the most appropriate remedy given the circumstances of the complaint. The Ombudsman has considered the landlord's failure to log the repair and respond to it in line with its timeframes quoted in its repairs policy. It considers that the delay, of almost five weeks, was avoidable, and the landlord's apology for this delay, in itself, is not reasonable redress for this failure.
40. In assessing an appropriate level of compensation, the Ombudsman takes account of a range of factors including any distress and inconvenience caused by the issues, the amount of time and effort expended on pursuing the matter with the landlord, and the level of detriment caused by the landlord's actions. It also considers whether any redress is proportionate to the severity of the service failure by the landlord and the impact on the resident. In this case there was a failure to act appropriately and in line with the repairs policy, especially given the similar previous complaint raised by the resident.
41. The resident has questioned the conclusion reached by the inspecting Repairs Manager that the damage to the artex was 'slight' and that, in his opinion, there was no risk of it worsening and as such, the repair was not deemed to be urgent and could be dealt with as a routine repair. The resident has said that, in his opinion, the damage was more than slight and there was no justification for not dealing with the repair on an urgent basis, and the delay in carrying out the repair left his family unnecessarily exposed to health risks.
42. The resident's dissatisfaction with the landlord's findings was appropriately acknowledged during the complaint investigation. The Ombudsman duly notes the resident's feelings on the matter, but looking at the facts and the

available evidence, there is nothing to suggest that the landlord's position was unreasonable in the circumstances. Whilst the resident has raised concerns about the potential risks of asbestos within the property, the Ombudsman has seen no evidence to show that the resident and his family were left exposed to a higher level of health risk due to the landlord's failure to log the repair.

43. It should also be noted here that the Ombudsman cannot make any formal determination on the possible health consequences of being exposed to asbestos containing materials. If the resident believes that he and his family's health has been adversely affected by the asbestos he would need to seek his own legal advice in this regard in relation to any possible negligence and/or personal injury claim against the landlord.

### **Determination (decision)**

44. In accordance with paragraph 54 of the Housing Ombudsman Scheme there was service failure by the landlord in respect of its response to the resident's concerns about asbestos at his property and the subsequent handling of the repairs.

### **Reasons**

45. The landlord is not obligated or required to completely eradicate all the asbestos containing materials within the resident's home. The presence of asbestos in itself does not automatically constitute disrepair. However, if the material is damaged or deteriorating, and there is the risk of asbestos fibres being released, then the landlord should act to prevent a disrepair arising. In this case the evidence shows that there was service failure in the landlord's initial handling of the repair in that it failed to appoint a contractor within a reasonable time. It has accepted responsibility for this failure and has apologised for this. Thereafter, its handling of the repair was reasonable and in line with its policies and procedures. However, its acknowledgement of its error and accompanying apologies is insufficient redress and it failed to consider appropriate compensation for its initial service failure.

### **Orders and recommendations**

46. The landlord should, within four weeks of the date of this report:
- a. Pay the resident £100 compensation for any distress and inconvenience caused by the initial service failure identified in its handling of the ceiling repair.
47. Evidence of the payment of compensation to be provided to this Service within four weeks.