

# REPORT

*COMPLAINT 202009397*

*Arun District Council*

*12 November 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. The complaint is about the landlord's response to:
  - a. [The resident's report in relation to her upstairs toilet.](#)
  - b. [The resident's request for compensation for reported damage to her rugs.](#)
  - c. The resident's report of a damp kitchen floor.

## **Background and summary of events**

2. The resident occupied her home under a secure tenancy. She lived in a 3-bedroom mid-terrace house. The landlord had no vulnerabilities recorded for the resident. However, during the course of events covered by this investigation, the resident reported to the landlord that she suffered from depression and anxiety.

### *Legal and policy framework*

3. Under section 11 of the Landlord and Tenant Act 1985, the landlord has a legal obligation to keep in repair the installations for sanitation, including the toilet. This was explicitly reflected in its repair policy and tenancy agreement.
4. The tenancy agreement stated that the landlord would be responsible for the safety of all electrical equipment it provided. The tenancy was also subject to the statutory 'Right to Repair' scheme. The response time under the scheme was three days for loss of electric power and one day for a blocked toilet or three days for a non-flushing toilet (if there was only one toilet in the property).
5. The repairs policy stated that an emergency repair included where there was a blocked toilet (if there was only one in the resident's home), a serious water leak or no power. The repairs policy also provided home maintenance advice, including for blocked toilets.
6. The landlord did not have a "live" complaints policy or any compensation policy at the time of this investigation. According to the landlord's website, the landlord's complaints procedure was a 2-stage process. Its complaints policy required the landlord to respond to a complaint within 10 working days at stage one and 25 working days at stage two.

### *Chronology*

7. On 27 July 2019, the resident reported that her upstairs toilet had flooded. The contractor recommended there be a new cistern installed. It was not replaced given, according to the landlord, it was not the cause of the flooding. The resident reported a further blockage on 29 November 2019 and a contractor was instructed to deal with it.
8. On 24 February 2020 and 16 March 2020, the resident reported that she was unable to flush the toilet upstairs and it was blocked. She reported it was a persistent problem. She would use the downstairs toilet. A contractor attended to clear the blockage the same or following day. On 16 March 2020, it was asked to investigate if it was a persistent problem.
9. On 6 April 2020, according to the landlord's repair records, the resident reported that the toilet was blocked again despite a contractor having attended "the previous week". Work was completed the same day. On 17 June 2020, the landlord instructed the contractor to attend and provide any recommendations.
10. The evidence is not conclusive whether it was as a result of a further report, or as a result of a contractor's recommendation, but on 27 June 2020 the landlord instructed the contractor to overhaul the cistern which it did on 13 July 2020.

11. The resident made a further report of a blockage on 11 August 2020. Both parties noted that this was three times in as many months. According to the repair records and contractor's email of the same day, it was unblocked on the same day. The contractor recommended a descale. The toilet would have to be removed in order to undertake a descale.
12. The landlord arranged for a CCTV inspection on 8 October 2020 to inspect for blockages.
13. On 14 November 2020, following a report of a leak, the contractor checked the electrics. It attended again on 16 November 2020 to ensure the electrics were working. The resident described the leak as a "flood".
14. On 16 November, the contractor advised the toilet required replacing as it was deemed to be irreparable. The contractor attended on 19 November 2020 to fit it but was unable to due to the police attending the property at the time. The landlord took photographs in order to consider the resident's request for compensation for damage to her belongings. According to the landlord, the resident was of the view that the toilet should have been repaired sooner and she suffered damage to her possessions, due to the landlord's neglect.
15. On 25 November 2020, the contractor was due to fit a new toilet but was held up on an emergency. In addition, the landlord agreed to replace the kitchen floor, redecorate the ceiling below and repair the floor in the hall. It would not replace the bathroom floor unless it caused a trip hazard.
16. The following day the landlord told the resident she should claim for the damage on own household insurance for her damaged items. A new toilet was fitted on 27 November 2020.
17. As a result of the resident contacting this service, this service wrote to the landlord on 3 December 2020 asking the landlord to address her complaint which was as follows: The landlord to complete the repairs and to issue compensation for any damage to her possessions.
18. On 5 December 2020, an inspection of damp issues and flooring was due to take place. On 8 December 2020, the resident reported damp in the property.
19. The resident reported a further blockage had occurred on 16 December 2020. A further CCTV inspection was arranged for 22 December 2020.
20. On 18 January 2021, the landlord wrote its first stage response as follows:
  - a. The complaint was notified to the landlord on 3 December 2020 by this service.
  - b. It summarised the complaint as follows:
    - i. Delay in resolving the leaking upstairs toilet

- ii. Ongoing issue with woodlice
  - iii. Compensation for damaged wooden hallway flooring.
- c. It noted the first report was in July 2019 when the issue was remedied. While the contractor recommended a new cistern, it was not replaced because it was not the cause of the toilet being blocked in the pan.
  - d. It noted seven reports between November 2019 and August 2020. The CCTV survey in October 2020 showed no blockage to the pipes.
  - e. The flood during the weekend of 14/15 November 2020 damaged the resident's possessions and her flooring.
  - f. An order was raised to replace the upstairs toilet and it was replaced on the 27 November 2020.
  - g. An inspection took place on 15 December 2020 but did not identify signs of damp issues in the property or woodlice infestation.
  - h. The kitchen, toilet, and bathroom flooring had been replaced and the re-decoration completed on 22 December 2020. A particular flooring was laid in the toilet and bathroom to replace the current flooring which was not safety flooring.
  - i. The redecorating was completed on 22 December 2020.
  - j. The kitchen floor covering was completed on 28 December 2020.
  - k. The landlord noted that the parquet flooring in the hallway was installed by the resident. It explained it would not normally be its responsibility to repair it. However, as a goodwill gesture, it agreed to replace the area that has lifted.
  - l. The resident reported a further blockage and the landlord's contractor attended on 16 December 2020. The blockage was cleared and a CCTV survey took place on 22 December which identified some minor works which were being set in motion. The CCTV survey did not demonstrate that the minor fault identified would have resulted in a back surge, blockage or leak in the toilet.
  - m. The resident had reported at the beginning of January 2021, that the kitchen flooring has not been fitted to a satisfactory standard and had torn in the area in front of the fridge. The landlord had requested photographic evidence as it was unable to attend residents' homes except for essential works during the national lockdown. The remaining works would be carried out after the end of lockdown.
  - n. In relation to compensation for the damage personal possessions, it was not the policy of the landlord to pay compensation for damaged possessions.

- o. It noted that despite renewing the toilet, a blockage occurred within four weeks of the installation.
  - p. On 19 January 2020, the landlord instructed a contractor to undertake a further CCTV survey.
  - q. In the circumstances, it did not uphold the complaint.
- 21. A further survey was carried out and minor repairs were carried out, which were completed on 2 February 2021.
- 22. The landlord wrote on 3 February 2021 updating the resident on the works as follows:-
  - a. The landlord offered to replace the kitchen flooring but the resident had declined the offer.
  - b. While contractors had measured up and was seeking a match for the parquet flooring, they had declined to carry out the works due to the resident's reported conduct towards them.
  - c. On 28 January 2021, she informed the landlord she did not want the landlord's contractors in her property.
  - d. In the circumstances, it said that in accordance with her request, it would not be taking any further action. The contents of its letter of 18 January 2021 stood as they were..
- 23. On 4 March 2021, the resident wrote to the landlord reporting she had suffered illness as a result of her damp flooring. She wanted to escalate her complaint.
- 24. The landlord replied on 5 March 2021 asking the reasons for the request of escalation.
- 25. On 10 March 2021, according to the landlord's records, the resident had stated she did not want any further work carried out at her property. Nevertheless, it would offer to carry out the works to the kitchen and the hallway flooring.
- 26. This service wrote to the landlord on 12 March 2021 on the resident's behalf requesting it escalate the resident's complaint for the following reasons:-
  - a. The landlord to rectify the reported repairs to the resident's flooring.
  - b. The landlord to provide compensation for the damaged flooring, the length of time the repairs had been outstanding, and for the distress caused.
- 27. It wrote to the resident on 19 March 2021 as follows:
  - a. The flooring in the hallway would be removed and replaced.

- b. She was given the choice of receiving a contribution towards the cost of new flooring or a contractor to carry out the work. She had opted for the latter on 4 March 2021.
  - c. She preferred to seek alternative advice and would not agree to give access.
  - d. If she did not contact the landlord by 29 March 2021, the works to the hallway would be cancelled.
  - e. All other works, except to the kitchen, flooring had been completed.
28. The resident wrote to the landlord on 20 March 2021 stating she wanted to escalate her complaint due to the stress and ill-health the delay caused. She explained she became anxious due to her depression when there were people in her house.
29. The landlord agreed to escalate her complaint on 8 April 2021. As she had not confirmed the works to the kitchen or hallway flooring, it had cancelled the works, but she could contact the contractor to rearrange.
30. On 14 May 2021, the landlord wrote summarising the complaint and in a subsequent email gave a response date for 4 June 2021.
31. On 4 June 2021, the landlord provided its second stage response as follows:
- a. It set out a chronology of events and concluded that the landlord had responded to every report by the resident.
  - b. It appreciated it might be questioned why there were so many calls for repairs as a result of a blockage. However, it attended to each report, it rectified the blockage and carried out CCTV investigations.
  - c. It accepted that she was told in July 2019 that the cistern needed replacing but this did not happen. However, this was not the cause of the flooding.
  - d. It would recommend that contractors record-keeping was improved.
  - e. It accepted that the old flooring in the kitchen was not removed before new flooring had been laid. It had offered to replace the flooring, but it had not been possible to lay it due to the resident's conduct and due to her declining the works. However, it accepted that there was fault in not removing the original flooring before providing a new kitchen floor at the outset and that by not doing so may have resulted in damp.
  - f. It repeated its offer that either a contractor completed the replacement of the

kitchen floor or the replacement costs would be met by the landlord.

- g. It was not the policy of the landlord to reimburse residents for damage to personal possessions where no fault of the landlord was identified.

32. On 21 October 2021, the resident informed this service that the landlord had different contractors and she would now give access.

### **Assessment and findings**

- 33. The resident's complaint included that having contractors in her house exacerbated her anxiety and depression and the reported damp affected her health for which she wanted compensation.
- 34. The Ombudsman cannot assess the extent to which a landlord's service failure or maladministration has contributed to or exacerbated a complainant's physical and /or mental health. However, where a service failure is found, the Ombudsman may set out a remedy that recognises any overall distress and inconvenience caused to a complainant.
- 35. The Ombudsman recognises the distress and frustration caused to the resident by continued blockages and the need for multiple visits by contractors. However, the Ombudsman's role is to consider the landlord's responses to the resident's reports, whether it complied with its legal obligations, its procedures, best practices and whether its approach and actions were reasonable in the circumstances. If the landlord's responses were reasonable and/or appropriate, the Ombudsman will not find a service failure has occurred and will not order the landlord to pay compensation.

#### *The resident's report in relation to her upstairs toilet.*

- 36. While not always clear on every point, the evidence shows that the landlord responded promptly to each and every report by the resident of a blockage to her upstairs toilet by unblocking it. The timescales were appropriate in that they were in line with the Right to Repair scheme and its own repair policy including its response to the electrics following the flooding 14/15 November 2020
- 37. As the landlord pointed out in its second stage complaint response, the question remains should the landlord have been more proactive in response to multiple reports. There were two reports of blockages in 2019, six months apart. The Ombudsman accepts that replacing the cistern in 2019 was unlikely to have resolved the issue, given it was overhauled without lasting success in June 2020.
- 38. The Ombudsman would not have expected the landlord to replace the toilet on the basis of one blockage or two blockages in 2019, but the

landlord totalled seven reports in just over a year (November 2019 to December 2020).

39. The evidence shows that the landlord requested an investigation on 16 March 2020 but there was no evidence that it followed it up until after three or four further reports were made. The contractor did not inspect the toilet until 17 June 2020 or effect any repairs until 27 June 2020, which repairs did not transpire to be effective or even relevant, according to the landlord's own evidence.
40. However, following a further blockage, the landlord arranged for a CCTV inspection. Following the leak in November 2020, the landlord replaced the toilet altogether, the contractor having declared it "irreparable".
41. While the landlord could have followed up its request to the contractor of 16 March 2020 sooner than mid-June 2020, the evidence showed that it took note that there were repeated blockages. It was proactive by arranging an overhaul of the cistern, undertaking CCTV inspections, and finally by replacing the toilet.
42. It acted reasonably in organising another CCTV survey on 22 December 2020 and 19 January 2021 in response to the resident's report of 16 December 2020 and effect a repair by 2 February 2021.
43. It is noted that the CCTV did not produce any answers and that the toilet leaked even after it was replaced. It is also noted that that leak was not caused by the minor defect that was identified in January 2021 and rectified on 2 February 2021. It does not appear that the cause of the blockage and overflow was easily identified.
44. While it could have been more assiduous in seeking to address the underlying cause of the blockages in the early part of 2020, the landlord responded to each call, it undertook investigations, it undertook repairs and finally replaced the toilet.
45. The landlord acted reasonably in effecting the redecoration and replacing the flooring just over a month after the flooding in mid-November 2020. It was also a reasonable exercise of its discretion that it agreed to repair the resident's parquet floor.

*The resident's request for compensation for reported damage to her rugs.*

46. In relation to whether the landlord should compensate the resident for damage to her belongings, the Ombudsman does on occasions order a landlord to reimburse a complainant who, because of the landlord's fault, has incurred an actual, proven financial loss, where the circumstances of the case are very clear cut. [Guidance on remedies \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk) However, the Ombudsman does not order compensation as a court would do. The Ombudsman is unable to consider whether the landlord is legally liable for the resident's reported losses.

That would be a question for a court. In any event, there is no clear evidence that the landlord was negligent.

47. Given the landlord had not identified it was at fault, the Ombudsman is of the view that the landlord's decision not to compensate the resident for damage to her possessions was not unreasonable. If the resident wished to pursue this aspect, she would have to seek legal advice.

*The resident's report of a damp kitchen floor.*

48. The landlord acted reasonably in response to the resident's report of the condition of the kitchen flooring. It requested photographs and subsequently it offered to replace it. At one stage, the resident reported to this service that she disputed she had denied access but given the correspondence from the landlord and further information from the resident, the Ombudsman accepts that access was denied and its offers not accepted. Given that the resident declined the landlord's offer to replace the kitchen flooring and also refused access to contractors, there was no service failure on the part of the landlord for the delays to the flooring not being rectified. The landlord acted reasonably in persisting with its offers to undertake repairs, in offering to effect the repairs should the resident change her mind, and in offering to pay for the repairs if she chose to undertake the repairs herself. The landlord was right to be accommodating, given the inconvenience the resident had suffered and taking into account her vulnerabilities.

49. Had the landlord not been so accommodating, given its responses could have been more proactive earlier on, the Ombudsman would have considered there had been a service failure. However taking all of the circumstances into account, the Ombudsman does not consider there was service failure.

*The landlord's complaint handling*

50. In relation to the complaint handling, the evidence was not clear whether the resident had submitted a formal complaint prior to its contacting this service on 3 December 2020. While the complaint responses in themselves were reasonable, they were not appropriate in terms of timescales. Furthermore, the landlord has stated it did not have a current "live" complaints policy or compensation policy service, although it referred to a compensation policy in its correspondence with the resident.

51. In the circumstances, the Ombudsman will make a recommendation in relation to the landlord's complaint handling.

**Determination (decision)**

52. In accordance with paragraph 54 of the Housing Ombudsman's Scheme, there was no maladministration in relation to the landlord's response to:
- a. The resident's report in relation to her upstairs toilet.
  - b. The resident's request for compensation for reported damage to her rugs.
53. In accordance with paragraph 55(b) of the Housing Ombudsman's Scheme, there was reasonable redress in relation to the landlord's response to the resident's report of a damp kitchen floor.

## **Reasons**

54. While the landlord could have been more proactive sooner than it was, it responded promptly to every report to unblock the toilet. It undertook repairs, it carried out investigations and replaced the toilet. After it was replaced, the landlord continued to respond to the resident's reports and promptly investigated and effected repairs.
55. The landlord did not identify it was negligent and therefore it did not pay compensation for damage to possessions. The Ombudsman was not able to identify clear evidence in that regard and therefore, in the circumstances, declining to pay compensation was not an unreasonable response by the landlord.
56. The landlord accepted that laying flooring on top of existing flooring was problematic, however it offered to rectify the matter. On receiving the resident's report, the landlord invited further information. It offered to replace the kitchen floor. It persisted in its offers to assist. It offered to pay for the costs if the resident chose to arrange the replacement floor herself. Had the resident accepted the offer, the matter would have been rectified within a short period of the resident's report. This was, in the circumstances, a reasonable response to the resident's report and complaint.

## **Recommendations**

57. If the resident has not contacted the landlord, given the resident will now give access to the landlord's contractors, the landlord should contact the resident to make arrangements for the works to the kitchen flooring, if it has not done so already.
58. The landlord should ensure that repairs staff check the repairs history for a property when logging new reports and that staff are aware of the need to escalate a matter where there is a history of repeat or similar requests.
59. The landlord, having noted that the contractor's records were not the clearest, should, if it has not done so already, work with its contractors to ensure their record-keeping is improved and monitor this through their contract management arrangements.

60. It is noted that a blocked toilet is only deemed to be an emergency if there is only one toilet in the property whereas the Right to Repairs scheme does not so stipulate. The landlord should ensure that its repairs policy is in line with the statutory Right to Repair scheme. It is helpful that the repairs booklet is detailed as to the parties' respective responsibilities and contains home maintenance advice.
61. The landlord should ensure that it keeps a clear track of its complaints process and its staff adhere to the timescales set out in its complaints procedures.
62. While it is noted that the landlord's complaints policy is under review, a response time of 25 working day (five weeks) is unduly lengthy. The landlord should have regard for the Housing Ombudsman's Complaint Handling Guidance. [Complaint Handling Code – Housing Ombudsman \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk) which sets out the response should be provided within 20 working days at stage two.
63. The landlord informed this service that it assessed any claim for compensation on a case-by-case basis. It had, however, reviewed its position and is taking steps to prepare and implement a compensation policy. It is recommended that the landlord does so in order to provide a transparent and consistent scheme. The landlord is referred to the Housing Ombudsman guidance at [Guidance on remedies \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk) and [Guidance on remedies \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk).
64. While in the main, the provision of documents was helpful and complete, there were delays. The landlord should ensure it responds fully and promptly to the request for documents by this service.