

Appendix 2

Taken from the Housing Ombudsman's website

REPORT

COMPLAINT 202110505

Arun District Council

26 January 2023

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 handling of:
 - a. Repairs to the garden.
 - b. The resident's concerns about subsidence.
 - c. The formal complaint.

Background and summary of events

2. The resident is a secure tenant of the landlord and has lived in the property since November 2014. The property is a one bedroom bungalow with a rear garden.
3. The resident is a wheelchair user and has a degenerative brain disease.
4. On 21 September 2020, the landlord requested an inspection of the garden as the soil was dropping away, pushing the boundary fence to the adjoining property. The garden was also uneven.

5. A contractor, instructed by the landlord, inspected the garden on 1 October 2020. On 10 December 2020, it met the resident and landlord at the property. During this, it was agreed that the contractor would do the following work:
 - a. Remove the turf and imbedded slabs from the undulating lawn at the rear of the property and dispose of this.
 - b. Grind stumps six inches below ground level.
 - c. Supply and lay approximately seven tonnes of topsoil, fill any hollows and build up the levels of garden to lessen the slope. This was to alleviate the rainfall wash through onto the gardens of the rear adjoining properties.
 - d. Supply and rake in premium amenity lawn seed.
 - e. Remove all generated waste and ensure that the site is left clean and tidy.
6. On 15 March 2021, the contractor left the resident a voicemail, informing that it planned to attend to the property on 29 March 2021 to start work. It planned to first complete works required to the front pathway before starting on the garden.
7. Before the start of the work, the landlord received a letter of complaint from the resident on 18 March 2021. The resident emailed a copy of the complaint to the landlord on 22 March 2021. They complained that they had been unable to use their garden for two years as a result of it sinking. They advised that no works had started and they had not heard from the landlord but, had previously been advised that works to the garden would start around March 2021. In addition to this, the resident complained that repairs were required to the kitchen and bathroom.
8. The contractor met the resident on 30 March 2021 to confirm again, the works as agreed in December 2020. The resident objected to the proposed work and wanted the slope in the garden to be raised near level. As a result, the works were revised and it was agreed that the landlord would:
 - a. Remove and dismantle the existing fencing.
 - b. Supply and build a retaining wall using concrete slotted posts and concrete gravel boards.
 - c. Fill behind a void, which was two foot deep one end, with 10 mm screened soil.
 - d. Compact the soil to try and alleviate any inevitable settlement and movement over time.
 - e. Supply and lay approximately four tonnes of premium topsoil to finish and seed.
9. On 1 April 2022, the landlord asked a senior member of the contractor's staff to visit the site to review the remaining work with the resident and ensure that the resident was aware of how the remainder of work would be completed.

10. The contractor informed the landlord that it had completed the work to the fencing, retaining wall, raised the garden and had laid 20 tonnes of topsoil. It provided images of the works completed up to that date. The contractor advised that while the works carried out were in line with that agreed, the resident had expressed a dissatisfaction with the work that had been carried out so far.
11. Later that day (1 April 2021), a further 10 tonnes of topsoil was delivered via a grab lorry into the garden. The contractor planned to attend the following day to lay the soil but when it attended, the resident asked it to leave. Following this, the resident left a review about the contractor on a third party website, explaining their dissatisfaction with the service they received from it and claimed that the contractor had stolen their fence.
12. On 6 April 2021, the resident called the contractor and informed that they were not willing to allow the contractor back to the property, as they did not believe it was completing the works as agreed. The contractor notified the landlord of what the resident had said. The contractor also informed the landlord that the resident has stated that they would not allow access to the property unless it agreed to turf the garden instead of installing seed.
13. The landlord and contractor agreed to do a joint visit to the property, on 8 April 2021, in order to review the issues raised and agree a way forward to complete the outstanding work. The visit did not go ahead because the resident called the landlord prior to the visit, to inform that they did not want it to attend the property.
14. On 9 April 2021, the resident emailed the landlord and said that their dog had been injured from debris they believed was within the soil laid in the garden. They advised that they arranged for an independent gardener to attend and remove the debris and sent an image of what they claimed had been collected from the soil. The resident sent a further email about the soil, stating that they did not believe that this was soil, but builders waste that had been fly tipped into their garden which they considered a health and safety concern.
15. On receipt of the email, the landlord asked the contractor if it had images of the soil that was delivered. The contractor provided invoices for the soil that was delivered and images of the works it carried out. In addition, it confirmed that the most recent delivery of soil (on 1 April 2021) was delivered by a grab lorry over the fence into the garden.
16. The landlord called the resident on 12 April 2021, in order to agree a date to visit the property to discuss the issues raised. They were unable to reach the resident and left a voicemail. It attended on 20 April 2021 but was refused access by the resident.
17. On 22 April 2022, the landlord called the resident and left a voicemail. The resident emailed it on the same day and acknowledged receipt of the voicemail. The resident said that they wanted all communication to be in writing. They indicated that they wanted to claim for the costs of the gardener, the fence they believed had been stolen by the contractor and vet fees for their dog who they reported was injured by the soil. The resident said they had been told the original fence was to be restored but it was not and was replaced with a shorter

fence. The resident also said that until the garden works had been completed, they were not prepared for any other work in the property to start.

18. The landlord responded and said that the reason it called the resident was to apologise for attending on 20 April 2021, without an agreed appointment. It advised that due to an administration error on its part, a letter informing of the appointment was not sent to the resident. It advised that it also wanted to arrange appointments with the resident so that it could discuss the issues they had raised with the garden, including their dissatisfaction with the members of staff who had been involved with the work previously. It advised that the technical officer who had been leading the works, would no longer be involved in matters. It also reassured that no internal works would start until the garden work was completed, as requested by the resident.
19. The resident responded on 23 April 2021 and said that a meeting about the garden work had already taken place and the works carried out were not the works which had been agreed. They advised the landlord that they incurred out of pocket expenses from the fence being 'stolen' and the gardeners fee and asked the landlord who they should make a claim to. In addition, they claimed that the former member of staff leading the work had made inappropriate comments about them. They repeated that they were not prepared to have the contractor back at the property.
20. The landlord agreed to investigate the issues raised within the resident's emails on 22 and 23 April 2021, as part of the formal complaint. It asked the resident again, if it could arrange a meeting to agree the outstanding garden work so that they could be completed.
21. On 13 May 2021, the resident emailed the landlord and reported that they believed that their property may be subsiding.
22. Later the same day, the landlord provided its response to the formal complaint. It confirmed that the works were stopped, after the resident informed it in April 2021, that they did not want anyone at the property. It said that since then, the resident had refused its offers to meet to agree a way forward for the outstanding work. The landlord explained that had the contractors been allowed to access the site, the soil that was delivered on 1 April 2021, would have been spread, topped with premium soil and turfed thus, completing the works.
23. In relation to the concerns the resident raised about works completed, the landlord advised that it believed the works were in line with what was agreed. It also found that the contractor kept in regular contact with the resident as works progressed. It said in response to the claim that the resident's dog was injured, that it was sorry to hear this and advised the resident to make a claim against their own insurance. It also noted that the resident had no discussion or agreement with it about arranging a gardener therefore, it would not reimburse the resident for this expense.
24. Regarding the resident's claim that the soil had been fly tipped and contained debris, it confirmed that it consulted with the contractor who confirmed the soil used thus far, was fit for purpose.

25. In response to the claim that the contractor had stolen the fence, the landlord confirmed that in line with the plan of works, the contractor was to dismantle and replace the fence therefore, works were completed as expected. The landlord acknowledged that the residents use of the garden had been limited but explained that given the residents refusal to continue with the work, it could not complete the work. It advised that it had investigated the complaint raised about the member of its staff and fed back that the member of staff had refuted the residents claims that they had made inappropriate comments.
26. The landlord apologised for the time taken to respond and said that this was due to the original complaint had been added to. It confirmed its willingness to complete the remainder of the work to the garden, including the turf the resident requested, and asked the resident to get in touch so that it could arrange a visit to agree a way forward for the outstanding work.
27. On 17 May 2021, the landlord responded to the resident's email, dated 13 May 2021, about the subsidence concern. It said that when it attended to the property in March 2021, its surveyor did not see or report any concerns about the property being unsafe or sinking. It agreed to look into the matter once the works at the property resumed.
28. On 20 May 2021, the resident progressed their formal complaint to stage two. This Service has not been provided a copy of the resident's stage two complaint. On 27 May 2021, the resident followed up with the landlord as they had not received a complaint acknowledgement.
29. The landlord issued its final response to the complaint on 1 July 2021. Prior to the response, it met with the resident and interviewed officers who were previously involved with the garden works. From these interactions it confirmed that it found that:
 - a. There was no dispute that the garden works were outstanding but it was willing to complete the work. It acknowledged that there had been a breakdown in trust from the resident, which resulted in the resident not wanting the work to continue.
 - b. The original work plan agreed on 10 December 2020, was not followed and was hastily revised on 30 March 2021, when the works were due to start. It acknowledged that this would have resulted in tension between the resident and contractor. It could not clarify why the work plan agreed in December 2020, was no longer fit for purpose by March 2021, but recognised that the original plan of works did not fit the resident's expectations.
 - c. There was no evidence that the quality of work was substandard. But it found that there had been a lack of clarity in the work the resident believed would be completed and the work the contractor understood it was tasked to do. It noted this was evident from the revision of the plan of works and the dispute regarding the fence panels being salvaged/replaced.

- d. A lack of effective communication of the work plan and expectations between the parties gave rise to the issues.
- e. Regarding the concern about the quality of the soil, it said that the contractor found that this was from a trusted source. The landlord advised that if the contractor been able to spread the soil delivered on 1 April 2021 and found it was contaminated, this could have been taken up with the supplier.
- f. The concern about the subsidence was raised on 13 May 2021, and was not part of the original complaint. It acknowledged the residents ongoing concern and made a recommendation for it to investigate the suspected subsidence.
- g. In respect of the complaint about the level of service provided by it and its contractor, the landlord acknowledged the resident's dissatisfaction and the impact this had on the resident's cooperation with it. It advised that having considered the accounts from the parties involved, it was difficult to accept that neither it nor the contractor intended to frustrate the resident. It advised that it was evident that efforts had been made to accommodate the resident, keep them informed of the plans and progress of the work, but this had failed.

30. The landlord did not uphold the resident's complaint but made the following recommendations:

- a. That the resident is contacted by a member of staff unrelated to the complaint, to resolve the completion of the garden work.
- b. An urgent visit to the property is arranged for a suitably qualified person to investigate if the property is subsiding.
- c. To avoid uncertainty, when future work is agreed it is to draw a specification and share this with all parties.
- d. That its staff review its internal documents to ensure that principles of good customer care are being followed.

31. The resident referred their complaint to the Ombudsman on 5 September 2021. They complained that they had been left in a subsiding property, had not had use of the garden for three years and was unhappy with how they had been treated by the landlord.

32. Between January and March 2022, the parties agreed to take part in the Ombudsman mediation process. The resident wanted the landlord to complete the remainder of the outstanding garden works and, increase the height of the fence it replaced, to six feet.

33. In response to the outcomes requested, the landlord confirmed that it would not consider increasing the height of the fence to six feet. It explained that as a result of the garden level being raised, the new fence was at the height of, or possibility, higher than the fence it replaced. It noted that if it were to increase the height of the fence, this would severely impact the adjoining property. For these reasons, it would not increase the height of the fence. However, it was willing to complete

the outstanding work to the garden and wanted to arrange a visit with the resident so that it could organise the work.

34. In December 2022, the landlord provided this Service with an update on the status of the garden work. It informed that the garden work remains outstanding as no further work has been carried out. In addition, aside from an inspection it arranged with a structural surveyor in August 2021, no works have been carried in relation to the suspected subsidence.

Assessment and findings

The landlord's handling of the repairs to the garden.

35. The tenancy agreement explains that the landlord has the responsibility for repairs in accordance with Section 11 of the Landlord and Tenant Act 1985 (The Act). The Act explains that landlords must keep in repair, the structure and exterior of a property. The exterior is considered the outside or external part of a property.
36. The resident has a responsibility to keep the garden tidy and well maintained. The landlord, in accordance with the Act, would be responsible for repairing areas that the resident could not reasonably maintain. In this case, the resident's garden was found to be sinking. As this was a maintenance issue that would have required a specialist's investigation and potentially major works, the responsibility for the repair was for the landlord.
37. The landlord's repairs guidance does not specify timeframes for when it will complete non-emergency repairs. It states that it will carry out repairs at the next available appointment, where there this is no immediate inconvenience or danger to occupants or, the public. It was reasonable for the landlord to consider the garden works as a non-emergency repair. There was no immediate risk of danger to the property or the resident, as a result of the works required.
38. The resident stated in their complaint, raised in March 2021, that they had not been able to use the garden for three years. However, there is no evidence of reports about the garden prior to the report on 21 September 2020. Therefore, this assessment will consider the landlord's handling of the garden repairs from September 2020.
39. The landlord responded promptly to the report about the garden when it was made on 21 September 2020, as it arranged an inspection of the garden within 10 working days. After the inspection on 1 October 2020, it was two months before the landlord attended in December 2020, to confirm the plan of works. Thereafter, there was an additional three months before the works started.
40. This Service accepts that, as a result of the Covid 19 pandemic, lockdown restrictions had been put in place by the Government twice between October 2020 and March 2021. The lockdowns imposed were unprecedented and this Service acknowledges that the landlord and its contractors were required to limit the services delivered, such as visits to properties for non-urgent repairs, as a result of the restrictions in place at that time due to no fault of its own. In addition

to this, the landlord also has no specified timeframe to complete non-emergency repairs.

41. Nevertheless, the five months between when the inspection of the garden took place and start of the works, is a significant period of time. Regardless of fault for this delay in starting the work, the landlord has not recognised or offered any explanation for the delay between when it completed the inspection and when the works commenced.
42. While there were long periods of time where no action was taken by the landlord between October 2020 and March 2021, the evidence provided shows that the landlord and its contractor communicated with the resident about the work it would be doing to the garden. The landlord made efforts in advance of the start of the works, in December 2020 and March 2021, to ensure that it visit the resident to discuss what work it would be carrying out. This was so that the resident was aware of what to expect once the works started. Two weeks prior to starting the work, the contractor contacted the resident to inform of its anticipated start date and the order in which it would complete the work. In addition to this, as the works progressed, the landlord maintained contact with the contractor to query the progress of work. It also ensured that the contractor followed up with the resident as the works progressed, to ensure the resident remained aware about how the work would be carried out.
43. The landlord made reasonable efforts to ensure that the resident was happy with the works being carried out. On the same day the works were due to commence, the plan of works was revised and the landlord agreed to level the garden as the resident wanted it to do so. The landlord acted fairly in the circumstances, as it took what the resident wanted into consideration and accommodated this by revising the original plan of works to include the work at short notice.
44. Whilst the works progressed the resident raised dissatisfaction with the works being carried out. Specifically, they did not believe that the works completed were the same as the works which had been agreed. As a result of the landlord's proactiveness in monitoring the progress of work with its contractor, it was able to quickly intervene when it was made aware by the contractor on 1 April 2021, that the resident was not happy with the works.
45. Within a week of being informed, the landlord arranged a meeting between it, the contractor and the resident so that a way forward could be agreed, and the works could progress. This was the appropriate action to take in the interests of ensuring the works were completed, as it was evident that the relationship between the resident and contractor had broken down. Before the meeting could ahead, the resident notified the landlord that they did not want anyone to attend to the property. As a result, the works were stopped and the contractor did not return to the property.
46. From its investigation into the complaint, the landlord understood that the resident's dissatisfaction with the work carried out was the result of the works not meeting their expectations. It found that as a result of the lack of clarity regarding the work, the parties had a difference in understanding of what works would be carried out and this led to the resident's dissatisfaction and their reluctance to

continue with the work. Its recommendation that in future, it is to draw a specification of works and share this with the parties, was an appropriate resolution to address such issue from recurring. Drawing specifications of works or setting out works in writing, would provide the resident with clear details on what works they can expect.

47. In the response to issues raised with the materials used for the works and concerns about how the soil was delivered, the landlord took appropriate steps to address this. To investigate the concern, it consulted with its contractor and sought evidence from it to inform its response to the resident. It received invoices for the soil order and images of the soil, taken when the contractor was completing works. The landlord also received confirmation from the contractor that the soil had been delivered by a grab lorry to the garden, this is a common method of delivery for topsoil and was reasonable to do given the substantial weight of the soil. The information the landlord retrieved was sufficient to satisfy itself that the quality of the material used was from a trusted supplier and in line with the expected standard.
48. In addition to this, the landlord got clarification from the contractor regarding the type of soil that was used in the garden to provide reassurance to the resident about why materials were used. It provided a comprehensive response to the concern raised about the standard of the materials used in the garden and its findings were supported.
49. The resident sought reimbursement from the landlord, for the costs they said they incurred to pay a gardener to remove the reported debris from the soil. The landlord's compensation explains that it will not consider compensation in instances where the loss, damage or service failure was the result of a failure to report an issue promptly or keep to an appointment.
50. There is no evidence that the resident reported debris in the soil to the landlord before they instructed a gardener. Therefore, the landlord's decision to not compensate was justified, as it was not notified of the debris or given the opportunity to investigate the concern, until after the resident had instructed their own gardener.
51. In addition to this resident also sought compensation for vet fees from their dog and, the fence that they believed had been stolen by the contractor. The landlord informed the resident that they would need to make a claim to their insurance. Its advice was in accordance with the tenancy agreement, which explains that residents are responsible for any animals living within their home. It also advises that residents should have their own insurance to cover for injury or damage to persons or, property for which they have legal liability.
52. In relation to the fence, the landlord explained that the reason for the replacement was because this was in line with the plan of works. Given that the landlord had undertaken works to raise the level of the area where the previous fence was located, it is reasonable that it replaced the fence with one that fit in line with the adjustments made.

53. Overall, the landlord has offered a reasonable resolution to the complaint. Although it did not acknowledge the delay between October 2020 and March 2021, it is evident that it communicated with the resident about the work and from March 2021 onwards, it made effort to ensure that the works were completed. When the resident complained, it recognised where improvements could have been made in its communication about the works being carried out. It thoroughly investigated the issues the resident raised about the works and the service delivered. The landlord has consistently demonstrated its willingness to complete the work that remains outstanding and has offered to meet with the resident on several occasions, so that the parties can agree a way forward. The recommendations the landlord made following its investigation into the complaint provided a satisfactory resolution to the complaint as they provided an effective plan to get the works progressed and completed.
54. Even though it found no service failure in the delivery of service, the landlord recognised the resident's negative experience with its members of staff who were initially involved with the work. At the time of providing the final response, it agreed to appoint a member of staff not previously involved with the complaint, to be a point of contact for the resident. This was appropriate to do so not to cause further frustration to the resident.
55. This Service understands that as of December 2022, the garden works remain outstanding and have not been completed since the resident notified the landlord in April 2021, that they did not want the contractor to return to the property. It is clear from the information provided, that the residents confidence in the landlord has been affected by their experience with the garden works. With that said, in accordance with the tenancy agreement, the resident must at all reasonable hours, allow the landlord and its contractors to enter the property. The landlord's responsibility for the work to the garden also remains.
56. This Service would therefore, encourage the landlord to get in contact with the resident in order to agree a way forward with the work.

The landlord's response to the resident's concern about subsidence.

57. Since this complaint completed the complaints process, the landlord has investigated a separate complaint from the resident concerning internal repairs to the property, including the suspected subsidence.
58. The resident's concerns about subsidence did not form a part of their original complaint but was raised as part of the escalation request and the landlord responded to it as part of the stage two response. This assessment will therefore consider the landlord's response to the concern when it was first raised in May 2021 and its subsequent responses to the concern, up until the stage two response was issued on 1 July 2021.
59. The landlord has a responsibility for the structure of the building therefore, a concern about subsidence would be a matter for it to investigate. When the resident reported the concern on 13 May 2021, the landlord agreed to look into the matter, in line with its maintenance responsibility.

60. It initially advised that it would look into the matter once the garden works resumed at the property. The decision to do so was reasonable given that on the 22 April 2021, the resident informed it that they did not want any internal work to be carried out until the garden works had been completed.
61. When the landlord responded to the complaint, it recognised that the resident's concern was ongoing and in light of this, recommended an urgent inspection of the property. This Service is aware that the landlord following through with this recommendation and an inspection was completed in August 2021, by a structural engineer.
62. When it responded to the complaint, the landlord agreed to arrange for an investigation as to whether there was subsidence in the property. The landlord followed through with its recommendation and arranged a structural survey of the property in August 2021. This Service, however, has not been provided with a copy of the surveyor's findings.
63. The landlord's response to the concern about the subsidence was appropriate overall. It took responsibility for the repair, confirmed the action it would take in arranging a survey and followed through with its agreement to do so.

Complaints handling

64. The landlord's feedback and complaints policy states that at stage one, it aims to provide a response within ten working days of receipt. At stage two, the landlord aims to respond within 20 days. If it is unable to reach the target response times, the policy states that it will notify a resident of this.
65. At both stages of the complaints procedure, the landlord's responses were issued outside of its target timeframe. Prior to its stage one response, the landlord, on 23 April 2021, apologised to the resident for the delay in its response and informed the reason for this was due to new issues being raised during the course of the investigation. It was appropriate for the landlord to offer an apology and explanation for the delay.
66. At stage two, the landlord's response was also delayed although this Service recognises that as part of the stage two investigation, it undertook interviews with various members of staff and also met with the resident. The date it issued the response would have been directly impacted by the availability of those parties who were required to provide feedback to inform the investigation. Until those interviews were completed, it would not be able to issue a substantive response. The response was issued just over a week after the target date but the landlord did not apologise or acknowledge this in its stage two response.
67. Not doing so was a service failure. Considering the delay in its initial response, the resident experienced a significant delay overall, in their pursuit of the complaint. The landlord's compensation policy allows for it to offer goodwill in recognition of time and trouble, where it has failed to meet a policy. In this case, it would have been appropriate to offer the resident a gesture of goodwill to recognise the delay they experienced in the landlord's responses to the complaint, but the landlord have not done so. An order has therefore, been made

to reflect the inconvenience to the resident as a result of the time taken for the landlord to respond to their complaint.

Determination (decision)

68. In accordance with paragraph 53(b) of the Scheme, the landlord has offered reasonable redress in relation to the complaint concerning its handling of the repairs to the garden.
69. In accordance with paragraph 52 of the Scheme, there was no maladministration in the landlord's response to the resident's concerns about subsidence.
70. In accordance with paragraph 52 of the Scheme, there was a service failure in the landlord's handling of the complaint.

Reasons

71. Whilst there was a delay in the landlord starting the works, it acted fairly in how it progressed with the work. It kept the resident informed of what work it intended to do and took prompt action to address the concerns the resident raised about the works. In addition, it undertook a thorough investigation into the resident's complaint and demonstrated a willingness to work with the resident to address their issues so that the parties could agree a way forward. The recommendations it made in its final response, were appropriate as a resolution to progress the outstanding work.
72. In relation to the response to the concerns about the subsidence, the landlord followed through with its commitment to arrange a survey.
73. There were delays in the landlord's complaint responses and it did partially acknowledge this. But it did not take these delays and the impact they had on the time taken to conclude the complaint, into account when it provided its final response or, offer any redress to put this right for the resident.

Order

74. It is ordered that within three weeks, the landlord pay the resident £50 in recognition of the delays in its response to the complaint.

Recommendations

75. It is recommended that within three weeks, the landlord contact the resident with a date to meet and agree the outstanding work to the garden (from the schedule agreed in March 2021). Once the parties have met, it is recommended that the landlord write to the resident to confirm the schedule of works and the dates which they will be completed.
76. The landlord is to provide this Service with an update on its efforts to finalise the garden works.