

Housing

Ombudsman Service

REPORT

COMPLAINT 202209966

Arun District Council

29 February 2024

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 leaseholder 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:
 - a. the landlord's response to the leaseholder's reports of a leak from the property above
 - b. the insurance provider's repairs to the property carried out in response to an insurance claim.
 - c. the landlord's handling of repairs to the leaseholder's garage
 - d. the decanting of the leaseholder's tenant
2. The Ombudsman has also considered the landlord's complaint handling.

Jurisdiction

3. What the Ombudsman can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme (the Scheme). When a complaint is brought to this Service, the Ombudsman must consider all the circumstances of the case, as there are sometimes reasons why a complaint will not be investigated.
4. After carefully considering all the evidence, in accordance with paragraph 42 of the Scheme, the following aspects of the complaint are outside of the Ombudsman's jurisdiction:
 - a. The complaint about the insurance provider's repairs to the property carried out in response to an insurance claim are not within the Ombudsman's jurisdiction. This is because Paragraph 42(j) of the Scheme sets out that the Ombudsman may not investigate issues that fall properly within the

jurisdiction of another Ombudsman, regulator, or complaints-handling body. As the repairs were carried out by the insurance provider in response to an insurance claim, it would not be within the Ombudsman's jurisdiction to investigate this aspect of the complaint. Therefore, this issue should be raised with the Financial Ombudsman Service.

- b. The landlords handling of repairs to the leaseholder's garage following damage which occurred in approximately 2015 is also not within the Ombudsman's jurisdiction. In accordance with paragraph 42 (c) of the Scheme, this Service has time limits, and we would expect residents to raise complaints within a reasonable period, usually within 6 months of an issue occurring. In the circumstances, the Ombudsman does not consider it to be reasonable or proportionate to investigate the leaseholder's complaint in relation to events prior to 2020. However, the Ombudsman will comment on aspects, where it deems it to be appropriate.
5. Other complaints which exhausted the landlord's complaints procedure individually or were addressed in a final response in May 2022 are in the Ombudsman's jurisdiction and are considered below.

Background

6. Under the terms of a lease dated 7 September 1987 the leaseholder is the leaseholder of 2 properties, a two-bedroom flat and a separate garage. He is subject to the terms and conditions of the lease agreement. The lease has a term of 125 years. The landlord is the freeholder and is a local authority.
7. The leaseholder does not live in the property; he lets it out to a tenant. The property above the leaseholder's is owned by the local authority and is also occupied by a tenant.
8. For this report, the complainant will be referred to as the leaseholder. The local authority as the landlord, and its tenant as tenant 1. The resident's tenant will be referred to as tenant 2.
9. The landlord has no recorded vulnerabilities for the leaseholder.

Policy and legal framework

10. The terms of the lease set out a covenant by the council to insure and keep insured the property and to insure and keep insured the building wherein the property is situated. As the garage forms part of the property, the landlord is also required to insure and keep insured the garage. The lease also imposes a covenant on the leaseholder to pay a reasonable proportion of the costs of insuring the property, which includes the garage.

11. The lease also sets out that where the dwelling-house is a flat, there are implied covenants by the landlord:
 - a. To keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters, and external pipes) and to make good any defect affecting that structure.
 - b. To keep in repair any other property over or in respect of which the leaseholder has rights by virtue of this Schedule.
 - c. To ensure, so far as practicable, that services which are to be provided by the landlord and to which the leaseholder is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.
12. The lease may require the leaseholder to bear a reasonable part of the costs incurred by the landlord:
 - a. In discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) (repairs, making good structural defects, provision of services).
 - b. In insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding or reinstatement).
13. The landlord has a decant policy that sets out that it has no obligation or responsibility to decant leaseholders and shared owners (or anybody occupying properties subject to an agreement with a leaseholder or shared owner).
14. The landlord's complaint procedure is available to view on its website. It sets out a 2-stage process with complaints at stage 1 being acknowledged within 5 working days when the complainant will be given the name of an officer who will deal with the complaint. A full response will then be provided within 10 working days.
15. If the complainant remains dissatisfied, they have up to 28 days to request a review to be carried out. The final response will be issued within 25 working days.

Summary of events

16. The leaseholder has told this Service that in approximately 2015, a trampoline landed on his garage, causing damage to the roof. The leaseholder said that he contacted the insurance provider who he understood was responsible but was told that they no longer insured his garage. He then contacted the landlord but did not get a response. He was then providing care to his mother so did not

chase the matter. However, when dealing with flooding at his property in around 2020, he raised the issue of the garage roof.

17. On 23 November 2020, the leaseholder contacted the landlord to report that there was water leaking into his property from the flat above. The landlord noted that it was an “ongoing issue” in the property and the leaseholder thought that it was caused by leaks when tenant 1 used their washing machine.
18. Repair logs submitted as evidence by the landlord note the following repairs for the property above the leaseholder’s:
 - a. On 20 June 2020, the landlord attended to fix a leak to the toilet, it replaced and tested the flush cone and syphon nut and washer.
 - b. On 3 November 2020, the landlord attended to fix a leak to the stop cock and water meter, it resealed threaded joints.
 - c. On 30 November 2020, the landlord attended to a report that the toilet was blocked.
 - d. On 9 February 2021, the landlord attended to fix ruptured pipework in the kitchen cupboard that housed the stop cock.
19. On 10 February 2021, the leaseholder told the landlord that there was a leak through his property from the flat above.
20. On 24 February 2021, the leaseholder complained to the landlord about the lack of response to water leaks into his property from the property above. He said that:
 - a. The first leak had happened in August 2019, and tenant 2 had to move out and go into alternative accommodation, the property remained unoccupied for many weeks without any drying programme or remedial work being completed.
 - b. He had received a request for the insurance excess but had not been consulted about making a claim or signing off any works.
 - c. Certification had not been issued on completion of the works. This included electrical works, some of which (electrical cable from inside property to outside shed) he believed should not have been passed as safe.
 - d. A heat sensor was not re-installed back into the property.
 - e. There had been a further 2 leaks which had caused damage to his property. The landlord asked him to make an insurance claim, but he did not feel this was appropriate as the issue was due to the negligence of the landlord.

- f. There was a strong smell of cannabis near to his property, and he was concerned that there was growing activity in the flat above, which might have caused the leaks.
 - g. He had also reported damage to his garage roof, which had not been responded to.
21. The landlord responded on 25 February 2021, and asked the leaseholder to call it back to discuss the issues further. An email sent by the leaseholder to the landlord dated 2 March 2021, thanks the landlord for responding and its “attentiveness” regarding the issues raised, and notes that he is working with others, such as the insurance company, to resolve the issues.
 22. On 3 March 2021, the leaseholder contacted the landlord to report overflowing bins and rubbish to the front path near to the front entrance to his property. Internal emails show that the landlord raised this with the relevant service area within the council. A further internal email sent later that day states that the issue with rubbish had been resolved. The leaseholder also sent photographs of damage to his garage roof. It responded the same day and said that they would be sent to its insurance team.
 23. The landlord’s internal emails note that the garage was not included on its insured garage list although it should have been. Due to its error, on 15 March 2021, it committed to carrying out repairs to the garage roof and on 18 March 2021, it ordered an inspection of the damage.
 24. On 1 April 2021, the landlord’s insurers told the leaseholder that as it could not evidence that he was formally advised about a change in insurer, the £100 excess was waived. It also confirmed that a safety certificate was not required as the electrical contractor had only replaced light fittings. It suggested that it would instruct electricians to correct the work and fit the missing heat sensor. He could also choose to appoint his own electrician if he preferred.
 25. On 10 May 2021, the leaseholder told the landlord that he intended to withhold his service charge payments as he did not think that the insurance company or the local council were “fit for purpose”. He said that he had given until 6 May 2021 to receive a response and asked for a reply to his queries.
 26. An internal email dated 10 May 2021, acknowledges that the leaseholder has stated at the top of his correspondence on 24 February 2021 that it was a complaint. However, the landlord had not dealt with it as a formal complaint, as he had not completed a complaint form. It noted that he wanted his complaint to be escalated.
 27. On 8 June 2021, the leaseholder sent a letter titled “complaint” that set out that there had been further leaks from tenant 1’s property into his property. He said

that he had previously questioned if there “is some form of drug growing activity” in the property above, that was causing the re occurring leaks.

28. Internal emails show that the landlord did not have a record of the leak being reported as a repair. On 16 June 2021, the landlord contacted the leaseholder to ask for further information. He said that the leak occurred on 7 June 2021, following a visit by an insurance assessor. The landlord instructed its contractor to attend the property above to fix the leak.
29. On 8 July 2021, a further work order was raised that requested “rod the down pipes and waste drains on the rear of the block and on the shed at the rear. The drain/gulley is blocked, and water is going all over the rear path. Please report back any issues and what caused the blockages.”
30. On 9 August 2021, internal emails submitted by the landlord as part of this investigation show that it had been “having a nightmare” trying to access the property above the leaseholders. It had attended a further pre-arranged appointment but had not obtained access. A further appointment was arranged for 10 August 2021, and the landlord said that if it did not access the property, it would gain access via “the legal route”.
31. A further email sent on 12 August 2021 sets out that the landlord did not obtain access to the flat above the leaseholders on the following occasions: on 1, 5, 9 and 12 July 2021. Access was given on 28 July 2021 however, the washing machine was in use, so the landlord was unable to move it to check underneath. It agreed to return and was unable to gain access on 5 and 10 August 2021.
32. On 9 August 2021, the landlord told the leaseholder that it had chased the relevant team for an update about legally gaining access to tenant 1’s property and said that it would get back to him as soon as it received any information.
33. On 6 September 2021, the landlord confirmed that works to the garage roof were complete. However, on 7 September 2021, the leaseholder said that he was not happy with the repairs. The landlord responded on 9 September 2021 and asked to meet the leaseholder at the garage to assess his concerns. Following this the landlord asked the leaseholder to monitor the situation after rainfall to see if the repair had worked.
34. On 21 September 2021, the landlord sent the leaseholder a report compiled by a specialist property restoration company. It found that, on inspection his property was dry. It asked if there have been any further issues and suggested that it meet with him to agree the scope of any repairs required.
35. On 22 September 2021, the leaseholder replied and said that:

- a. There had been no moisture readings or photo evidence provided by the restoration company.
 - b. He wanted repairs to be put on hold as the source of the leak had not been established.
 - c. He was not confident that further leaks would not happen in future.
36. The landlord obtained access to tenant 1's property on 30 September 2021. It found that there was small leak to the sink and ordered its replacement, there were no issues with the washing machine and no issues in the bathroom.
 37. The landlord sent an email to the leaseholder on 6 October 2021, and asked if "recent rain" had affected the garage and if repairs had been effective. The leaseholder responded to say that he had not been able to get to the garage due to other commitments. He replied again on 12 October 2021, and said that there was no evidence of any water leaking through the repair to the garage roof.
 38. On 18 January 2022, the leaseholder contacted the landlord to say that water was coming through the ceiling into his property from the flat above. He noted that there were prolonged periods with no water entering his property, which happened when tenant 1 (above) was absent from the property.
 39. On 26 January 2022, the landlord was contacted by a loss adjustor who said that the ceiling below was going to be replaced and kitchen units had been damaged by leaks from above, and they could not complete the required works until the cause of the leaks from the flat above had been identified and resolved.
 40. The landlord told the leaseholder on 1 February 2022, that it had tried to gain access to the property above on several occasions in the last 10 days and no-one had been home on any of the visits.
 41. The leaseholder logged a formal complaint on 22 February 2022.
 42. An internal email dated 16 March 2022, shows that the landlord tried to contact tenant 1 to arrange to visit "5 times that day" but had not had a response. It had arranged to attend on 16 March 2022. The landlord visited again on 17 March 2022, but was unable to gain access. It noted that a gas sticker had been placed on the door the day before so concluded that the leaseholder had not been home in 24 hours.
 43. The landlord responded to the leaseholder's complaint on 22 March 2022, it apologised for the delay which it said was due to staff sickness. It also apologised for the lack of time it had taken to resolve the issues, and said that:

- a. A further leak at tenant 1's property, had delayed the loss assessor's visit. It was attempting to gain access to the property to identify the source of the leak.
 - b. It would arrange to meet with the leaseholder and the loss assessors to agree the scope of the works as soon as the leak was resolved.
 - c. As he was a leaseholder his claim had been forwarded to the insurance company for them to process. It had not commissioned any works at his property, this would only be done by him or his managing agent, in conjunction with the insurance company. As such, any queries regarding signing off the works should be addressed to the insurance company.
 - d. Its insurance policy would cover reasonable alternative accommodation for its own tenants. This would not extend to tenant 2, as it did not have a relationship with tenant 2. Correspondence sent by the leaseholder's managing agents indicated that tenant 2 was staying with family, and not in a hotel as previously stated by the leaseholder.
 - e. Although now rectified, it had not included his garage in its insurance schedule, which was an error. It had agreed to complete the repair work and had carried out remedial work. However, the leak was not resolved and therefore it had agreed to replace the roof.
44. The leaseholder contacted the landlord on 24 March 2022, and asked to escalate his complaint to stage 2. He said that:
- a. Delays had occurred in reporting the garage issues as he had been a carer for his mother at the time. However, over 2 years ago there had been a leak through the ceiling of his property. His letting agent had contacted the insurance provider and he discovered that the provider had been changed by the landlord without informing the leaseholder.
 - b. The insurance company had moved tenant 2 into a hotel for 8 weeks which was not 'like for like' accommodation.
 - c. Emails sent to its staff had not been responded to.
 - d. He had met with a member of its staff who was "stern" and told him that the landlord would not replace the garage roof but would fix it. The repair was "bodged," and the roof was leaking again.
 - e. He was waiting to store a classic car in the garage and had to rent alternative space.
 - f. There was no certification issued following his property's restoration.
 - g. There have been further water leaks from the above property.
 - h. He did not want any financial compensation but asked the landlord to extend his lease term to allow him to sell his property.

45. The landlord issued its response at stage 2 of its internal complaint process on 3 May 2022. It said that it had discussed the complaint with him on 13 April 2022, and set out the scope of the investigation. It found that:
- a. It had accepted in its stage 1 response that it had mistakenly left his garage out of its insurance schedule. Although it was not possible to attribute the leak from the aged roof to the contact with the trampoline, in recognition of the delays incurred, it had agreed to replace the whole roof.
 - b. The time taken to resolve the leaking roof had been “undesirably lengthy.” Although it did not find evidence that it was at fault, it agreed that it should have insured the garage and acknowledged this was frustrating for the leaseholder. It offered a £200 goodwill payment, subject to the leaseholder clearing service charge arrears.
 - c. Its insurance did not include providing alternative accommodation for tenant 2, whom it understood was staying with family. However, he should complain directly to the insurance company if he considered that the insurer had provided inadequate accommodation.
 - d. It had incorrectly told his letting agent that its insurance did not cover any rent loss. It provided a claim form and advised him to submit it to the insurance company.
 - e. An appointment had been arranged for the leaseholder to meet with a fire risk assessor to assess any potential fire risk.
 - f. Any further remedial work would not be completed until the leak from the flat above had been resolved.
 - g. It had gained access to the flat above on 2 occasions but had not been able to identify the cause of the leak. It was satisfied that it was following the correct legal process to obtain further access.
46. On 19 May 2022, the leaseholder contacted the landlord to say that the £200 offered was insufficient. He listed the expense that he had incurred because of the issues with the landlord. This included journeys from his home to the property to check work that was completed and journeys to meet members of the landlord’s staff. It also included costs incurred because the garage was not watertight and loss of rental income for his property. The costs specified amounted to approximately £3140.
47. The leaseholder told the landlord that as a form of compensation he was “requesting a position of shared freehold.”
48. An internal landlord email notes that on 14 June 2022, the locks were changed to tenant 1’s property. The landlord’s staff inspected and did not find any evidence of a leak.

49. The leaseholder contacted the landlord on 24 June 2022 and said that his long-standing tenant 2 had issued a termination notice and the main reason for her leaving was the previous re-location to non-like for like, alternative accommodation which consisted of a hotel room with her children for a period exceeding 8 weeks. He told the landlord that he now faced further financial disadvantage due to the landlord's handling of the water leaks from the property above.
50. Evidence submitted by the landlord show that on 24 June 2022, the landlord asked if the leaseholder's request for it to "buy back" his property could be considered. Internal emails show that the landlord stated that it was not its policy to do this.
51. The leaseholder contacted the Ombudsman on 11 August 2022, and said that:
 - a. He had not received a response from the landlord or its insurer regarding it not providing adequate accommodation for his tenant following the flood.
 - b. The landlord had not provided him with change of insurer information.
 - c. By not insuring his garage, it had caused him to be financially disadvantaged and not able to claim on insurance for damage to the roof.
 - d. He had not paid service charges for 2 years as the landlord was not inspecting or overseeing any maintenance to the property. He had requested its maintenance procedure.
 - e. He had photographic evidence of blocked gulley's, which he believed was making his property damp on the outside.
 - f. His tenant of 12 years had handed their notice in because of the continual leaks.
 - g. He believed that the property above was being used for drug cultivation.
 - h. He had asked the landlord to buy his property from him, however, it had said that it did not have the funding to do so.
 - i. As a resolution he wanted a share of the freehold to allow him to manage his property himself without the landlord's involvement.
52. The leaseholder contacted the landlord on 29 September 2022, and said that he was waiting for a new kitchen and ceiling, following the leaks. Tenant 1 had moved back into the property, he therefore questioned what guarantee he would have that leaks would not happen again which could cause another tenant to leave.
53. On the same day, the landlord wrote to the leaseholder to advise him that it had considered his request for a share of the freehold of his property and the property above. It had looked at the implications for it in becoming a co-owner

of the freehold of the building. It has also taken legal advice and decided not to agree to sell the freehold to him.

54. This Service wrote to the leaseholder on 30 September 2022. We advised him that the repair works and decant was arranged directly by the insurance company rather than the landlord, and we do not have jurisdiction over the insurance provider or how it may have handled repairs or a decant.

Events since referral to the Ombudsman

55. On 20 October 2022, the landlord wrote to the leaseholder and said that it was responding to an email sent on 11 October 2022. It said that:
- a. He had sent emails to a member of its staff who had confirmed (29 September 2022) the council's position regarding his request to purchase the freehold to his property and the property above. This staff member had since retired. It apologised for any delays caused because of this.
 - b. It aimed to respond to all correspondence within 10 days, however, he could make a further complaint if he had experienced any delays.
 - c. It could not discuss details regarding specific tenancies due to confidentiality. However, it advised him to report any issues that his tenant had with the tenant above to its housing team.
 - d. It apologised that his tenant left because of leaks from the property above. However, it had done work to clarify the causation of the leaks and had not identified any water pipe issues.
 - e. It could not guarantee that there would not be any further leaks but understood that there had not been any recent issues.
 - f. He should seek legal advice regarding withholding service charges due to the condition of the landlord's property and him sighting vermin in the area. It also noted that this could have an implication on his lease.
 - g. There had been no recorded reports of vermin in the area. Also, the neighbourhood officer had been on site on 11 October 2022, and found no reported issues of rubbish or any other matters of concern.
 - h. A leak to the guttering had been reported on 31 May 2022 which was repaired on 17 June 2022. It understood that the issue was resolved however it asked him to make a further report if the gutter was still leaking.
 - i. The landlord's records showed that all maintenance issues reported had been addressed. Any tenancy matters should be referred to its neighbourhood team with specific details.
56. On 25 October 2022, the leaseholder contacted the landlord and confirmed that the damage to his garage roof had happened approximately 6 years previously.

He had contacted the insurance company who he believed was responsible at the time and was told that the insurance provider had changed. He had contacted the landlord to ask for information but had not had a reply. Unfortunately, he was caring for his mother at this time and was not able to chase this up until he contacted the landlord in around 2021 to report a leak from the property above.

57. He sent a further email on the same day that included photographs of rubbish that he said was outside his property. He also said that he had reported vermin in the area. During October and November 2022, the leaseholder contacted the landlord on several occasions to enquire about the condition of the land outside his property. On 27 October 2022, he asked the landlord to confirm who was responsible for cutting the grass and maintaining the area outside his property.
58. On 27 October 2022, the landlord sent an email to the leaseholder to update him that it had tried to contact tenant 1 to discuss concerns that he had raised regarding visitors to the property and the condition of the “private garden” but had not had a response. The landlord explained that it intended to visit tenant 1 the following week.
59. On 3 November 2022, the leaseholder told the landlord that there was rubbish “blighting” his property. He said that he had reported this to the landlord and provided photographs. He also said that he had heard drilling and heavy hammering coming from the property above. He had also heard debris falling down the chimney. He was concerned that someone upstairs was breaking into the chimney stack which could be in immediate danger of collapse if the chimney breast was being broken away.
60. On 4 November 2022, the leaseholder wrote to the landlord that he believed the building structure was being compromised by the tenant above. He also asked who was dealing with his issues as he had not received a response and explained that his property was losing money due to the rubbish being left at the front. He asked for an immediate response concerning the “on-going rubbish blight” and said that due to heavy rainfall urgent maintenance was required to repair gutters and drains.
61. On 2 June 2023, the leaseholder raised a further complaint with the landlord, he said that:
 - a. He should not have to pay council tax as his property was unoccupied due to works required resulting from an insurance claim due to a leak in the flat above.
 - b. The landlord had taken too long to repair wall ties which had delayed a new bay window installation to the leaseholder’s property.

- c. It had failed to provide maintenance records for the property showing works carried out in the last 5 years.
 - d. The condition of the communal garden at the front of his property was poor.
62. The landlord issued its response on 27 June 2023. It found that:
- a. Following the leaseholder's contractor attending to install a new bay window in March 2023, he had reported that the structure around the window was unsafe. The landlord had referred this to its insurers. After a further inspection on 30 March 2023, which assessed that the property was not deemed to be structurally unsafe, works were ordered. There were several delays due to a further assessment of work required and delays to colour matching the bricks, and the work was completed on 23 June 2023. The landlord apologised for the delays.
 - b. It apologised for not sending the leaseholder repair and maintenance records for the previous 5 years. It said that they would be sent by 14 July 2023.
 - c. Regarding the condition of the garden at his property, it had already responded to this as part of a separate stage 1 response and had not considered them as part of this response.
 - d. It noted that an invoice had been issued for £1501.38, which was his service charge contribution. It acknowledged that it could not be certain that the prescribed process had been followed so said that this amount would be changed to £250 which was the maximum charge that could be added when the process had not been followed appropriately.
 - e. It offered £50 compensation.

Assessment and findings

Scope of the investigation

63. The leaseholder has reported several issues to this Service, and we acknowledge that the leaseholder has expended considerable time and trouble in bringing this complaint to us. However, this Service is unable to investigate aspects of the complaint due to the jurisdiction issues as set out above, appropriate advice has been given regarding this.
64. The leaseholder has also told us that leaks from the property above occurred in around 2019, 2020 and 2021. While this Service acknowledges that this will have undoubtedly caused distress and inconvenience and time and trouble to the leaseholder and tenant 2. It would not be proportionate to investigate leaks that occurred some years before. This investigation will therefore refer to previous leaks for context but will focus on events following the leak that was

reported to the landlord in February 2021 and was considered as part of the landlord's internal complaints process.

65. The leaseholder has said that as a resolution he wants a share of the freehold to allow him to manage his property himself without the landlord's involvement. Such an outcome is not within the Ombudsman's authority to provide. As such an order regarding the requested resolution cannot be made by the Ombudsman.
66. The leaseholder has also raised subsequent issues with the landlord that have not exhausted the landlord's internal complaints process during the time that the matters set out within this complaint were being assessed. While the Ombudsman recognises that these issues should be investigated. It would not be appropriate to investigate them as part of this complaint as the issues are separate and different and do not form part of the initial complaint that exhausted the landlord's internal complaint process on 3 May 2022. Therefore, a separate complaint will be opened. This will include issues reported as part of the leaseholder's complaint made in June 2023 regarding:
 - a. The time the landlord has taken to repair wall ties which has delayed a new bay window installation to the leaseholder's property.
 - b. It had failed to provide maintenance records for the property showing works carried out in the last 5 years.
 - c. The condition of the communal garden at the front of the leaseholder's property.

The landlord's response to the leaseholder's report of a leak from the property above

67. The leaseholder reported a leak from the property above to the landlord on 10 February 2021. Repair records submitted by the landlord show that it attended the property above the day before to fix a leak reported by its tenant, they do not show that they attended the property below. However, this Service acknowledges that the repair operatives would not be aware of any requirement to.
68. Between the 10 and 23 February 2021, there is no evidence that the landlord contacted the leaseholder or his tenant to enquire about the leak to the property below. This was not reasonable, when the leaseholder reported a further leak through the ceiling it should have responded in line with its repair obligations as set out in the terms of the lease to assess the situation. This was a failing on the landlord's part.
69. The leaseholder contacted the landlord on 23 February 2021, to discuss insurance excess and an internal email following the call notes that the

leaseholder was “unhappy” as there had been 3 leaks from the flat above into his in the past year.

70. Internal emails show that the leaseholder also contacted the landlord to complain about the lack of response to the leak and said that the leak had not been fixed properly on the previous occasions. The landlord checked its records and confirmed that the leaks were not related, and that it had attended to fix the leak in its property when it was reported. This was appropriate. However, there is no evidence that the leaseholder was informed of this which was not reasonable and will have caused frustration and time and trouble as the leaseholder was not aware of the landlord’s position.
71. The landlord gave inaccurate information to the leaseholder when he asked about accommodation for his tenant and provision for any rent loss. The Ombudsman acknowledges that this was remedied (in part) in its stage 2 response when it referred the resident to the insurance provider, however, the information provided should have been accurate in the first instance. This would have avoided further inconvenience for the leaseholder who expended considerable time and trouble contacting the landlord on numerous occasions looking for answers to his queries.

The leaseholder contacted the landlord again on 2 March 2021 and thanked it for its response and “attentiveness” concerning the damage that has occurred and told it that he intended to re-establish an insurance claim for the damage caused by the leak. It was reasonable for the landlord to consider that its part in dealing with the leak was complete as the leak had stopped and any residual damage would be completed by the insurance provider.

72. Considering the above evidence, the landlord was not responsive to the leaseholder’s situation when he called to report a further leak in February 2021. It should have checked its repair logs and identified that there had been previous leaks that had caused detriment to the property below (including the tenants decant in around 2019). There is no evidence that the landlord responded proactively by contacting the leaseholder or his tenant to assess the situation fully, despite the leaseholder reporting the leak on 10 February 2021. He was also given inaccurate advice when he asked about rent loss and temporary accommodation for his tenant. He was therefore left too long not knowing what was happening to his property, which was unreasonable. In the Ombudsman’s opinion there is evidence of service failure regarding the landlord’s response to the residents reports of a leak from the property above.

The landlords handling of the leaseholder’s tenant decant

73. The landlord’s decant policy sets out that it has no obligation or responsibility to decant leaseholders and shared owners (or anybody occupying properties

subject to an agreement with a leaseholder or shared owner). This includes the leaseholder's tenant. This Service notes that there is no evidence that the landlord explained this to the leaseholder or provided him with a copy of its policy when the issue was first raised. However, it is acknowledged that there is no requirement on the landlord to do this although it would have better managed the leaseholder's expectations from the outset if the landlord had been more explicit in its approach to the leaseholder's questions.

74. The landlord did tell the leaseholder in its stage 1 complaint response dated 22 March 2022 that its insurance policy would cover reasonable alternative accommodation for its own tenants. However, this would not extend to his tenant, as it did not have a relationship with them. This response was reiterated in its stage 2 response, when the landlord also noted that although it understood that the leaseholder's tenant was staying with family, advised him to refer the issue to the insurance company if he believed they had provided inadequate accommodation. This was an appropriate response in line with its policy position and the terms of its insurance.
75. This Service acknowledges the landlord's position regarding this issue. The decant policy is explicit in setting out its obligations. In the Ombudsman's opinion there was no maladministration regarding the landlords handling of the resident's tenants decant.

The landlord's complaint handling

76. The Housing Ombudsman's complaint handling code (the Code) sets out that a complaint shall be defined as an expression of dissatisfaction, however made, about the standard of service, actions, or lack of action by the organisation, its own staff, or those acting on its behalf, affecting an individual resident or group of residents. Further, the resident does not have to use the word complaint for it to be treated as such. Landlords should recognise the difference between a service request (pre-complaint), survey feedback and a formal complaint and take appropriate steps to resolve the issue for residents as early as possible.
77. When the leaseholder first complained to the landlord in February 2021, although he did not complete a complaint form, it was clear that he was setting out his dissatisfaction with the landlord. However, his correspondence was not treated as a formal complaint which was not appropriate and a missed opportunity for the landlord to address the issues at an early opportunity.
78. The landlord's internal email dated 10 May 2021, acknowledges that the leaseholder used the word complaint in his letter. The landlord also noted that it had not logged a complaint as the leaseholder had not completed a complaint form and that he wanted to escalate his complaint. However, it did not take any action to remedy this at this point or indeed log a complaint or escalate the

matter. This was not appropriate and not customer focussed and a further failing on the landlord's part.

79. The leaseholder then contacted the landlord again on 8 June 2021, the title of his email was 'complaint' however, while the Ombudsman acknowledges that contact was made with the leaseholder, the matter was still not logged as a formal complaint. This prevented appropriate investigation of the issues raised, was a further missed opportunity to resolve the issues and caused the leaseholder an undue delay in escalating his complaint which was not appropriate and a further failing.
80. The landlord logged a formal complaint on 22 February 2022, which was responded to on 22 March 2022, which was approximately 20 working days later. The Ombudsman acknowledges that the landlord apologised for the late response (which it said was due to staff illness) however, its late response was not in line with the landlord's complaints policy that sets out that complaints at stage 1 will be acknowledged within 5 working days and responded to within 10 working days. It is also not compliant with the Code.
81. The landlord escalated his complaint to stage 2 on 24 March 2022, which was responded to on 3 May 2022, some 30 working days after escalation. Whilst only a short delay the response time was not in line with its complaint policy that sets out that stage 2 complaints will be responded to within 25 working days of escalation.
82. Considering the failings identified it is the Ombudsman opinion that there is evidence of maladministration regarding the landlord's complaint handling.

Determination (decision)

83. In accordance with paragraphs 42 (c) and (j) of the Housing Ombudsman Scheme, the following complaints are outside the Ombudsman's jurisdiction:
 - a. the insurance provider's repairs to the property in response to an insurance claim.
 - b. the landlords handling of repairs to the leaseholder's garage.
84. In accordance with paragraph 52 of the Housing Ombudsman scheme there was service failure regarding the landlord's response to the leaseholder's reports of a leak from the property above.
85. In accordance with paragraph 52 of the Housing Ombudsman scheme there was no maladministration regarding the landlord's handling of the leaseholder's tenants decant.

86. In accordance with paragraph 52 of the Housing Ombudsman scheme there was maladministration regarding the landlord's complaint handling.

Reasons

87. There is no evidence that the landlord checked its records and noted that previous leaks had also caused detriment to the property below. There is also no evidence that the landlord contacted the leaseholder after he reported the leak that occurred in early February 2021.
88. The landlord complied with its own decant policy that was explicit about its responsibilities.
89. The landlord did not formally log the leaseholder's complaint when it was first made or even after subsequent complaints were made. Despite acknowledging this, it took no action to remedy it. It also failed to comply with its own policy by not responding to the resident's complaint in a timely manner at stage 1 and did not learn from this by also responding late at stage 2.

Orders

90. Within 4 weeks of the date of this report the landlord to:
- a. Apologise to the leaseholder for the failings identified in this report.
 - b. Pay the resident a total of £900 which is made up of:
 - i. £100 for time and trouble, distress, and inconvenience caused by its response to the leaseholder's reports of a leak from the property above.
 - ii. £600 for time, trouble, distress, and inconvenience caused because of its complaint handling failures.
 - iii. £200 offered as a goodwill gesture in its stage 2 complaint response (if it has not already paid this).
 - iv. This payment is to be made to the leaseholder direct and not taken in payment for any monies which may be owed to the landlord.
91. Within 6 weeks of the date of this report the landlord to review its complaint handling practice in this case and implement any necessary remedial action to ensure it complies with the Ombudsman's Complaint Handling Code going forward.