

Housing

Ombudsman Service

REPORT

COMPLAINT 202301043

Arun District Council

7 March 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 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 the resident's reports regarding:
 - a. Outstanding roof repairs.
 - b. Damp and Mould.
 - c. The associated formal complaint.

Background

2. The resident is the secure tenant of the landlord which is a local authority. She lives in a 2-bedroom first floor flat with her 3 children. She and her children have multiple vulnerabilities.
3. The resident raised a formal complaint with the landlord on 7 February 2023, stating that she was in "utter despair" and needed help as:
 - a. Prior to Christmas 2022 she had raised an issue with a leak in the loft which was leaving a large mark on her lounge ceiling. She could hear dripping when it rained heavily.
 - b. There was increasing damp and mould on the external walls. The most affected room was her twin sons' bedroom which they no longer wanted to sleep in due to their "additional needs and sensory issues." Living in her home with black damp protruding everywhere was impacting on her mental health disorders and day to day living.

- c. She had repeatedly chased the roof repair and damp works and was advised that the roof had to be repaired before the damp work could be undertaken.
4. In its stage 1 response on 2 March 2023, the landlord acknowledged that a leak had been reported on several occasions and it had failed to carry out repairs. There was a delay in commencing damp work as the resident had expressed concerns about the chemicals being used. It said that she had “waited too long” for repairs to leaks, experienced failings in communication and poor customer service, and offered £500 compensation.
5. The resident escalated her complaint the same day, stating that she had been reporting the roof leak since 2017 and damp and mould since 2018. Gutter repairs alone were completed but this was nowhere near where the water marks were on her ceiling. She disputed the landlord’s claims that the works had been completed and that delays for the damp and mould work were due to her request for information.
6. In its stage 2 response on 6 April 2023, the landlord said that the roof was due for replacement from April 2023 to March 2024 and it was in the process of tendering the work. It had passed the roof repairs to another contractor to locate the leak and make recommendations. It apologised that not all work was dealt with by its previous contractor in a more acceptable timescale and the roof repairs had taken too long. The damp and mould were first raised in 2018 and work was completed at the time. In 2020 a specialist company conducted a full damp review and further work was completed. It acknowledged that the work to deal with the mould in 2023 had “not gone smoothly”, and the latest report had taken longer due to the resident’s request for information.
7. The resident remained dissatisfied with the landlord’s response and brought her complaint to this Service on 23 May 2023. She said that she had been promised that her roof would be replaced but only temporary fixes had been completed and she did not believe that the roof had been thoroughly investigated.
8. On 29 February 2024 the resident advised this Service that she moved out of the property on 1 December 2023. At the time of leaving, she still had no date for the replacement roof.

Assessment and findings

9. In reaching a decision about the resident’s complaint we consider whether the landlord has kept to the law, followed proper procedure and good practice, and acted in a reasonable way. Our duty is to determine complaints by reference to what is, in this Service’s opinion, fair in all the circumstances.

Scope of Investigation

10. The resident advised this Service that she was concerned about the health of her children and effects of damp and mould. This Service can consider any inconvenience or distress caused, as a result of any service failures by the landlord. However, it is beyond the expertise of this Service to establish legal liability or whether a landlord's actions or lack of action had a detrimental impact on a resident's health, nor can it calculate or award damages. Ultimately this would be a matter for the courts.

Outstanding roof repairs

11. Under the terms of the tenancy agreement and Section 11 of the Landlord and Tenant Act 1985 the landlord is responsible for the structure and exterior of the property.
12. It is not disputed that the landlord failed to complete the roof repairs in a timely manner. In both its stage 1 and 2 responses it apologised that the resident had "waited too long" for leaks to be fixed and that its previous contractor had not dealt with all work in an acceptable timescale.
13. When there are failings by a landlord, as is the case here, this Service will consider whether the redress offered by the landlord (apology, compensation, and offer to complete repairs) put things right and resolved the resident's complaint satisfactorily in the circumstances. In considering this, this Service takes into account whether the landlord's offer of redress was in line with the dispute resolution principles, be fair, put things right and learn from outcomes.
14. The landlord's repairs records, in relation to roof leaks, showed as follows:
 - a. On 2 November 2017 the resident reported a leak in the roof which was causing a damp patch on her lounge ceiling. The landlord raised a repair to clear nesting debris from behind the chimney and clear guttering.
 - b. On 6 December 2022 she reported the same issue. Work was completed on 24 December 2022 but no repairs notes were made in relation to this.
 - c. On 25 October 2023 a further report was made about the roof leaking.
15. In her escalation request the resident stated that someone had attended on Christmas Eve 2022 and she had shown them the water mark. They had commented about not wanting to work on Christmas Eve and said they would look outside. When she chased the damp work in January 2023, and asked what was happening about the roof, she was told that the job was completed with no further recommendations. The roofers had not gone into the loft to investigate. She had mentioned the roof leak during an inspection on 5 January 2023 and was told that it was possible the damp was being caused by the leak

in the roof. When she had asked for a timescale, she was told “months at least.”

16. The landlord’s records of 21 February 2022 referred to the roof being on a replacement programme, arranging for the specification to be put together, and Section 20 consultation to be carried out. Further records of 28 February 2023 referred to “if the roof has been left in the same condition as reported back in December 2022, its not surprising that there are ongoing roof leaks. Not sure if a temporary fix, other than replacing the missing tiles will resolve the issue.”
17. In the landlord’s stage 1 and 2 responses it set out its expected timescale for the roof replacement. It said that the roof was due for replacement in the financial year 2023 to 2024. It was in the process of tendering and anticipated replacement within 6 to 9 months (September to December 2023). Its stage 2 response repeated the timescale of 2023 to 2024, it anticipated completion of tendering at the end of May and expected work to start around June or July. While it did not specify which year it is presumed this related to 2023, being the financial year, it had specified in its responses.
18. In the landlord’s explanation to this Service, it stated that its tender was in August 2023 with a closing date of September 2023. The resident advised this Service, on 29 February 2024, that when she vacated the flat on 1 December 2023, she still had no date for the replacement roof. The resident had reported a further roof leak in October 2023 which would have caused further distress and concern. While the financial year, 2023 to 2024, was not over when the resident left in December 2023, no evidence was provided to suggest that the landlord had provided any updates in terms of what stage it was at of its tendering process or provided an updated timescale for replacement.
19. In its stage 1 response, the landlord summarised that the resident had waited “far too long” for the roof leak to be repaired, had experienced failings in communication resulting in poor customer service, as well as damage to her lounge ceiling. It recognised that the resident and her family had experienced considerable delays and distress as a consequence of the issue raised over a significant period of time. It offered £500 compensation, being the maximum payment that could be offered under its compensation policy.
20. Given the landlord’s acknowledgement of its failings, apology and offer of compensation, a finding of reasonable redress would have been made, however, it failed to provide any updates in relation to the replacement roof, did not demonstrate any learning from the complaint about the roof leaks, or say how it would prevent a similar situation from happening in the future. For these reasons a finding of service failure is made and an award for additional compensation is made for distress and inconvenience.

Damp and Mould

21. The landlord's damp and mould repairs policy set out its process for dealing with reports of damp and mould. This includes an initial inspection where damp readings are taken, along with photographs of any damp and mould, a review of the ventilation and summary report of the causes and required remedies. Works are then completed and should a further inspection be required, it agrees an appointment for an external surveyor to undertake a full survey with imaging, damp course assessment and metering along with a structural review.
22. The landlord's repairs records showed the resident reported damp and mould in every room on 6 December 2022. The landlord inspected on 5 January 2023, and a repairs order was raised on 3 February 2023 to attend and treat mould in the property and any other mould related works required. The order showed as completed 13 March 2023.
23. The resident stated that she had been reporting damp and mould in her home since 2018. In its stage 2 response the landlord said that the concerns raised in 2018 were responded to and works completed. In 2020 a specialist company completed a full damp survey and further works were carried out. The evidence provided demonstrated that the landlord had previously responded to reports of damp and mould and completed treatment. Its response to the resident's previous reports was reasonable.
24. The landlord has a responsibility under the housing health and safety rating system (HHSRS), introduced by The Housing Act 2004, to assess hazards and risks within its rented properties. Damp and mould growth are a potential hazard and therefore the landlord is required to consider whether any mould problems in its properties amount to a hazard that may require remedy. Landlords should be aware of their obligations under HHSRS, and they are expected to carry out additional monitoring of a property where potential hazards are identified.
25. This Service's spotlight report on damp and mould, published October 2021, provides recommendations for landlords which included 26 recommendations which included:
 - a. Adopt a zero-tolerance approach to damp and mould interventions. Landlords should review their current strategy and consider whether their approach will achieve this.
 - b. Ensure they can identify complex cases at an early stage and have a strategy for keeping residents informed and effective resolution.
 - c. Ensure they clearly and regularly communicate with their residents regarding actions taken or otherwise to resolve reports of damp and mould.

- d. Identify where an independent, mutually agreed and suitable qualified surveyor should be used, share the outcomes of all surveys and inspections with residents to help them understand the findings and be clear on next steps. Landlords should act on accepted survey recommendations in a timely manner.
26. As part of the evidence requested by this Service, the landlord was asked to provide a self assessment against the 26 recommendations of the spotlight report. This has to date not been provided.
27. In relation to the resident's complaint and her reports of damp and mould in February 2023, the landlord responded that there had been delays in treating the mould. The delay resulted from the resident's request for additional information concerning chemicals in the products to be used and the time it took it to provide the information. It appreciated her concerns about her family's health, the information was provided as quickly as possible but inevitably did impact the time it took to complete the work.
28. However, there were delays in the landlord completing the works which were not solely due to the resident's request for information about the chemicals being used. She had reported her concerns about mould in every room on 6 December 2022 which was not inspected until 5 January 2023. There was a delay in raising repairs until 3 February 2023 and shortly after the resident raised her complaint. A further inspection was carried out on 13 February 2023 and works were completed 13 March 2023, a month later. There was also evidence of a cancelled appointment by the contractor in February 2023 who was due to attend at 8am but contacted the resident at 8.20 am stating it could not attend that day.
29. This Service empathises that the situation would have been distressing for the resident given the reappearance of damp and mould in her home. The landlord failed to respond promptly to the resident's reports on 6 December 2022, completing works on 13 March 2023. For these reasons this Service finds service failure in the landlord's response to the resident's reports of damp and mould.

Associated formal complaint

30. The landlord operates a 2-stage complaints policy. Stage 1 complaints are responded to within 10 working days and stage 2 complaints within 20 working days.
31. The resident raised her complaint to the landlord on 7 February 2023. The landlord's records of 9 February 2023 refer to treating the resident's complaint as a "service enquiry". The complaint was not formally acknowledged until 14

February 2023 following a conversation with the resident. On 15 February 2023 the resident wrote to the landlord asking why the acknowledgment of her complaint was from 14 February 2023 as she had been advised it would be backdated to 7 February 2023.

32. This Service's complaint handling code states:
 - a. Effective complaint handling enables residents to be heard and understood. The starting point for this is a shared understanding of what constitutes a complaint. A complaint must be defined 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. The resident does not have to use the word 'complaint' for it to be treated as such.
 - b. Landlords should recognise the difference between a service request and a complaint. A service request is a request requiring action to be taken to put something right. A complaint should be raised when the resident raises dissatisfaction with the response to their service request.
33. It was evident from the resident's correspondence that she had previously reported issues which had not been resolved and thus should have treated it as a complaint from the outset.
34. This led to delays in the landlord's complaint handling and added frustration for the resident. The resident raised her complaint on 7 February 2023 and the landlord responded on 2 March 2023, 23 working days later.
35. The landlord wrote to the resident on 28 February 2023 and apologised for not sending its response at stage 1. It was awaiting further information and had been working to move matters forward. It had failed to respond within 10-days and this would be addressed in its stage 1 letter with appropriate compensation. In its stage 1 response it acknowledged that it had not responded within its policy timescale of 10 working days. However, its policy stated that if there were mitigating circumstances the deadline for a response could be extended by a further 10 days and its response was sent within this period. However, there was no evidence that the landlord had explained any mitigating circumstances to the resident. Furthermore, it offered no compensation for its stage 1 complaint handling delays as outlined to the resident on 28 February 2023.
36. On 28 March 2023 the landlord's internal records referred to contacting the resident to ask for an extension to respond at stage 2. The resident responded on 30 March 2023 stating that it was "unacceptable". She had waited 20 working days which was the timeframe given and she saw no exceptional circumstances as to why it required an extension. The landlord responded the

same day and apologised. It stated that a new manager had been in touch and advised that it would investigate at stage 2, however, he had only just started in the role, and it would require extra time to look into all the matters raised. This was in line with its policy and an additional week was not unreasonable.

37. The landlord failed to initially to log the resident's complaint at stage 1 of its complaints process, instead treating it as a service enquiry. It also failed in its handling of her stage 1 complaint as outlined above. For these reasons this Service finds service failure in the landlord's handling of the resident's complaint. An award of compensation will be made in relation to complaint handling.

Determination

38. In accordance with paragraph 52 of the Housing Ombudsman Scheme (the Scheme), there was service failure in relation to the landlord's handling of the resident's reports of:
 - a. Outstanding roof repairs.
 - b. Damp and Mould.
 - c. Associated formal complaint.

Orders and recommendations

Orders

39. The landlord is ordered to pay the resident £850 broken down as follows:
 - a. £500 offered in its stage 1 response for its delays in completing roof repairs.
 - b. £100 for distress and inconvenience for failing to update the resident about the roof replacement.
 - c. £150 for time and trouble in relation to the landlord's delays in dealing with damp and mould.
 - d. £100 for complaint handling failures.
40. The landlord is ordered to send a written apology, by a senior member of staff, for the failures identified in this report.
41. The landlord is ordered to complete the self assessment against the 26 recommendations set out in this Service's spotlight report on damp and mould and consider its strategy for monitoring properties with identified damp and mould.

42. Within 4 weeks of this determination the landlord must provide evidence of the above.

Recommendations

43. The landlord should consider reviewing its staff training needs to ensure that all relevant officers can clearly identify a service request or complaint as outlined in the complaint handling code.