

Housing

Ombudsman Service

REPORT

COMPLAINT 202116946

Arun District Council

30 July 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:
 - a. The landlords handling of the residents request for new bathroom fittings and flooring.
 - b. The landlords handling of the residents reports of damp and mould.
 - c. The landlords handling of the residents complaint including about staff conduct.

Background

2. The resident has occupied her 1-bedroom bungalow, under a secure tenancy with the landlord (a council) since 17 November 2014.
3. The resident has vulnerabilities. She has been diagnosed with depression and emotionally unstable personality disorder, for which she receives medication and other treatments. The landlord has been aware of this since July 2019, when the residents community mental health team wrote to the landlord sharing this information in support of a move.
4. The resident also has Moyamoya disease, a condition that affects the brain, symptoms can include mini-strokes, headaches, seizures, vision problems and cognitive / sensory impairment. This was disclosed as part of her housing need application in 2014 prior to her tenancy starting. At the time the document said the resident required a wheelchair for outdoor use, ground floor accommodation as difficulty with stairs, a wet room / walk in shower and grab rails.

5. The resident had reported repairs that needed addressing in her bathroom in March 2021. The landlords surveyor attended the residents property on 25 March 2021 and on 13 May 2021 an email was sent to the resident which, set out a new toilet, sink and replacement flooring was needed. Dates were offered to undertake the work, but this did not progress. On 2 September 2021, the resident reported she now had mould in her bathroom. She advised she suffered with asthma and queried why she did not have an extractor fan, as neighbouring properties did. The landlord arranged a further technical inspection of the bathroom, which took place on 28 September 2021.
6. The resident made a formal complaint on 16 October 2021. In her complaint she raised the un-professional behaviour of the officers attending for the inspection. She said it was clear to her the lack of extractor fan was the problem with the damp. She was unhappy that the repairs that had previously been promised, to replace the toilet, sink and flooring, had now been withdrawn. She said for future visits she wanted her advocate present, because of the landlords discrimination and bullying behaviour towards her.
7. The landlord provided its stage 1 response on 29 November 2021. In summary it said that it had been trying to address the works that had led to her complaint for the past 3 months without success. It agreed an extractor fan was required, but the second technical inspection had identified that the sink, toilet and flooring did not need replacing. It confirmed it was happy to fit the extractor and carry out the works identified. The resident could have an advocate present when visits were made. It was also willing to have a different surveyor to attend to provide a 2nd opinion on the works that had since been excluded.
8. The resident escalated her complaint to stage 2. Following the landlords stage 2 review its final response on the complaint, in summary was:
 - a. Damp and mould, there had been delays in fitting the required humidistat, due to; the residents ill health, refusal to allow access and the contractors slow response when the resident has agreed to works commencing. The mould spread reported was to be expected as the cause had not been rectified. A further leak to the toilet cistern could have contributed.
 - b. Dates were offered for the other bathroom repairs outlined in an email of 13 May 2021, but for a number of reasons were not actioned. The 2 surveyors who inspected 25 March 2021 and 28 September 2021, came to different conclusions, however two surveyors independent of the residents case had been offered to re-assess.
 - c. Time taken to resolve the issues; it noted some time had passed since the residents first report of the bathroom on 21 March 2021. It understood her frustration, but there was evidence the landlord had tried to resolve matters, but there had been occasions when the resident had prevented

access and works going ahead. It did acknowledge the contractors had not helped matters.

- d. It had not found evidence of un-professional or unreasonable behaviour, but it had noted a lack of empathy and sympathy for her situation. These responses combined with the time taken to resolve the repairs has left the resident frustrated with the landlord and its responses to her.

Assessment and findings

The landlords handling of the residents request for new bathroom fittings and flooring.

9. The landlord has statutory repairing obligations for its rented properties, which is set out in section 11 of the Landlord and Tenant Act 1985, which includes installations for sanitation, basins, sinks, baths, and sanitary conveniences.
10. The landlord did not provide a repair policy, however for routine day to day repairs, the general standard amongst social landlords is around 20 working days, so in the absence of a policy, these response times have been taken as a baseline against which to consider the landlord's actions in this case.
11. The resident reported that her bathroom needed replacement because of its age, it had become too difficult to clean on 12 March 2021. She has also mentioned that the floor has become slippery. The landlord arranged for a technical officer to attend to inspect on 25 March 2021 which was reasonable.
12. No report of this inspection has been seen by this Service, however a later email from the landlord to the resident confirmed that a new toilet, wash handbasin and flooring was required. Once identified, landlords are expected to complete repairs in a reasonable time period. As a routine repair these items should have been ordered and completed within 20 working days, which would have been 22 April 2021. There was no evidence to suggest that these works were progressing during this period or completed on that date. This was not reasonable as work was not completed within the standard response time.
13. On 22 April 2021, the resident wrote to the landlord to complain (separate complaint) about a contractor working on her garden, who had not re-fitted her personal fence as agreed and her dog had been injured by an untidy work site. As part of this complaint the resident refused to have the garden contractor return and said she was not "prepared to have any more works started at her home until the garden was finished".
14. From 22 April 2021, the bathroom works were put on hold by the landlord. It was understandable that the resident was frustrated and upset by the issues in relation to her other complaint. However any reluctance by a resident, to agree a start date only

goes to delay the completion of a job, which the landlord cannot be held responsible for.

15. There was evidence that the landlord wrote to the resident on 13 May 2021, setting out the bathroom works identified, and asking the resident to contact them with suitable start dates, which was appropriate.
16. There was no evidence of a reply to this email from the resident. The next mention of the bathroom from the resident was an email on 13 August 2021, to the landlord asking when the bathroom works were to commence.
17. There was also evidence of emails between the landlord and the resident arranging and confirming an appointment for the 19 July 2021, to re-inspect the garden. This was reasonable as it demonstrated that the landlord was attempting to progress works, as the resident would not agree a start date for the bathroom until this work was completed. This inspection, however, was unsuccessful, as the resident said the two operatives attending were rude and talked over her, so she said she asked them to leave.
18. As there was evidence that the landlord had attempted to progress work between 22 April 2021 and 13 August 2021 but had not obtained consent from the resident, the landlord could not be held responsible for this period of the delay.
19. The landlord, to progress matters quickly, tried to arrange an 'on the day' inspection for the contractors to assess the works to the bathroom. This was not unreasonable as the resident had been chasing the repairs and they had been outstanding for a while.
20. The resident would not agree to having an appointment that was not pre-arranged. It was noted on another occasion the resident pointed out that 2 people attended when she was told 1 was coming. This suggests that the resident likes to be prepared when the landlord or contractors are attending.
21. The resident has declared to the landlord that she has vulnerabilities. While it is not the Ombudsman's role to determine whether a resident has a disability, it is our role to look at whether the landlord had considered whether she had, or any other protected characteristic where its responsibilities under the Equality Act would apply. When a landlord is made aware of a vulnerability, it is required, in accordance with the Equality Act 2010 to give consideration as to whether the resident has a disability as defined by law. Under s20 of the Act, landlords have a responsibility to make reasonable adjustments for residents who are at a substantial disadvantage compared to residents who do not have a disability.
22. It was noted that following the residents' complaints, the landlord agreed reasonable adjustments to accommodate her going forward, which included giving the resident advanced notice of all appointments and ensuring an advocate was present at any

home appointments. While this was reasonable, it was a response to complaints from the resident and failed appointments. It would have been more appropriate for the landlord to have taken a more proactive approach to considering whether it had duties under the Equality Act to provide reasonable adjustments.

23. Had the measures in place now, been in place earlier, some of the attendances by the landlord and its contractors might have been more successful.
24. The landlord sent the resident an email on the 20 September 2021, which re-confirmed that the resident was to receive amongst other repairs a new toilet, sink and flooring. This was identified at a surveyors inspection in March 2021. Following the landlords inspection 8 days later, the resident was advised that these things would not be included in the work to be completed. The resident was understandably distressed by this.
25. The Ombudsman is usually of the view that a landlord is entitled to rely on the professional opinion of its qualified staff, however in this case it was concerning that there were 2 qualified opinions that differed so greatly.
26. Although the landlord is within its rights to change its mind about what it was willing to provide, it had agreed to replace the toilet sink and flooring for 6 months which had un-necessarily raised the residents expectations. Withdrawing the offer of replacement, damaged the landlord tenant relationship and understandably created a level of mistrust.
27. It was however a reasonable resolution for the landlord to offer a further opinion from 2 surveyors not previously involved in the residents case. However it appears from, by the residents response to this proposal that it is unlikely that the resident would have any trust in the outcome. As the resident has disabilities and is reporting that she is slipping on the flooring, the landlord could consider having an OT inspect the bathroom with its surveyor. This would increase impartiality for the resident and allow an assessment to determine whether the flooring in the bathroom needs replacement or adequately meets the resident's needs.
28. It was also noted that in an internal email the landlord considered the merit of completing the work as the resident was considering a mutual exchange. This was not appropriate. The landlord has a legal obligation to repair and maintain its rented properties, if works had been identified as necessary then they needed to be progressed regardless of whether or not a mutual exchange might progress. This would only be considered acceptable if the repairs were welfare adaptations specific to the resident, but replacing a sink, toilet and floor covering were property repairs the landlord was responsible for.
29. Overall, it was not reasonable to un-necessarily raise the residents hopes of receiving a new toilet, wash hand basin and flooring. However the landlord is within

its rights to decide if and when something needs replacing. If it still functions or can be repaired it does not have to replace, and changing its decision does not amount to maladministration. Had the resident given access when the works were originally identified and ordered, the landlord would not have inspected the fixtures and fittings a second time. Furthermore the landlord has offered to review the decision with an independent assessment from surveyors not involved in the case.

30. There was a finding of service failure against the landlord for failing to demonstrate that it had considered its responsibilities under the equality act when delivering its repairs service to the resident. The Ombudsman's spotlight report on Attitudes Respect and Rights, stresses that landlords must obtain a clear and consistent understanding of their responsibilities to vulnerable residents. This has been somewhat addressed by providing the resident with her requested reasonable adjustments since her complaint, but a proper assessment should be completed.

The landlords handling of the residents reports of damp and mould.

31. On 2 September 2021, the resident reported that although she was aware she was having other works completed to the bathroom, she now had damp and mould. She pointed out that she did not have an extractor fan as neighbouring properties did. She also reported that she suffered with asthma.
32. Government guidance on addressing the health risks of damp and mould requires that a landlord tackle the underlying issue promptly, and act with urgency when concerns have been raised about tenant health.
33. The landlord accepted that the property should have an extractor and agreed to supply one. However it arranged a surveyors visit, to inspect the residents bathroom prior to this being ordered. Its damp and mould policy says if an inspection is deemed necessary it would be a surveyor from a "specialist company", there was no indication that the surveyor in attendance on 28 September 2021 was from a "specialist company".
34. As part of its evidence for its processes in inspecting and tackling damp and mould the landlord sent in a blank inspection report and 2 master letters that that explain the outcomes to residents. There was however no evidence that any of this documentation had been completed for the resident in relation to her report of damp and mould.
35. The absence of the process paperwork, combined with the absence of a "specialist" surveyor being in attendance, was indicative that a damp inspection had not been carried out in accordance with its damp and mould policy and procedure. There was also a finding at a later date that a toilet leak was seeping into the wall, it was undetermined when this started, but it was acknowledged it may have contributed to the spreading damp and mould.

36. The resident said that the landlord told her at the appointment on 28 September 2021, that she should be cleaning the mould off herself. Its damp and mould policy publicised on its website, indicates that cleaning mould and chemical mould washes were a residents responsibility.
37. While the landlord has the right to set out in its repairing policies responsibilities for residents, such as cleaning mould spores off of walls and ceilings, it must be prepared to make reasonable adjustments to that policy if someone is vulnerable. A reasonable adjustment might be the landlord undertaking this service for the resident.
38. As the resident had stated she had medical problems including limited use of her hands and asthma, it would have been appropriate to consider making a reasonable adjustment in this case, but it did not. It therefore failed to demonstrate that it had given any consideration to its responsibilities under the Equality Act.
39. It was evident that there was further delay in getting the extractor fitted, which may have contributed to the damp and mould spreading. This was deemed in part down to the resident not providing access following a period of ill-health and then her belief, that she should not allow works to progress when she had a complaint with the Ombudsman.
40. This was a misunderstanding as the Ombudsman would never discourage any landlord action taking action that would bring a resolution to a matter, even when there was a complaint with us. While these delays were unfortunate, they could not be considered to be within the landlords control.
41. It was however, acknowledged that some of the delay was caused by the landlords contractors. It said in the stage 2 response when given permission to complete the work, they were slow to respond, and the landlord could have done more particularly to resolve the damp and mould. This indicates that the reasonable response times expected of the landlord were not met. As the resident had health problems that can be negatively impacted by damp and mould, this was not acceptable.
42. Overall it was not evident that the landlord had adhered to its damp and mould policy. The response from the landlords contractors, did not demonstrate the urgency required for treating damp and mould when health issues are established. It is acknowledged that the resident preventing access was responsible for a some of the delay, but this could have been better managed if an assessment of her vulnerabilities had been completed and reasonable adjustments put in place by the landlord.
43. There was detriment to the resident as a result of difficult and unsuccessful appointments, as well as the spread of damp and mould to other parts of her

property and damage to her belongings. This has resulted in a finding of maladministration.

The landlords handling of the residents complaint including about staff conduct.

44. The resident complained about the landlords handling of her complaint about staff conduct. Following this investigation however, this has been expanded to include the landlords handling of the residents complaint in general, due to the failings in complaint handling this investigation identified.
45. In July 2020, the Housing Ombudsman published a new complaint handling code, with the purpose of enabling landlords to resolve complaints raised by their resident's quickly and to use the learning from complaints to drive service improvements. All member landlords were required to complete a self-assessment against the Code and take appropriate action to ensure their complaint handling was in line with the Code, by 31 December 2020.
 46. The landlords complaint handling code was not fully compliant with the Code at the time of the residents complaint, as it did not take the opportunity to develop an individual complaint handling code for its landlord functions and continued to adopt the Council's corporate complaint handling procedures.
 47. The Code required that a landlord must accept a complaint unless there is a valid reason not to do so. It stated that if a landlord decides not to accept a complaint, a detailed explanation must be provided to the resident setting out the reasons why. The resident has the right to take that decision to the Ombudsman and where appropriate the Ombudsman will instruct the landlord to take the complaint.
 48. The landlord refused to take the residents initial stage 1 complaint of 16 October 2021. It wrote to the resident advising her that it was unable to progress the complaint further as the resident had stated that she would not allow the landlord access without her advocate present.
 49. This Service advised the landlord on 22 October 2021, that it would not expect it to discontinue investigating or close a complaint because the resident had refused access, this was not compliant with the Code.
 50. The landlord acknowledged the residents complaint via this Service on 26 October 2021. This was 3 working days which was compliant with the Code, but not the landlords complaint handling policy, which at the time stipulated an immediate acknowledgement.
51. It provided its stage 1 response in 25 working days on 29 November 2021, which did not meet the 10-working day response time set out in the Code or the landlords complaint handling policy. The landlord decided to take an email received on 22

November 2021 as the complaint, even though it had acknowledged the complaint of 16 October 2021 as instructed by this Service on 26 October 2021. As a result it failed to acknowledge or apologise for this service failing.

52. The resident requested an escalation of her complaint on the 2 December 2021. The acknowledgement should have been 3 working days to meet the landlords complaint policy timescales and 5 working days to be code compliant. A complaint acknowledgement to the resident has not been provided; however an internal email suggests an investigator was assigned on 10 February 2022, with a response date for 17 March 2022. This timescale extensively exceeds both the landlords complaint response time and was not Code compliant.
53. In accordance with its procedure, the landlord arranged a completely independent manager to review the complaint at stage 2 which was appropriate. The review was thorough, and its response provided 8 April 2022, was detailed. It acknowledged at the start, that both this reply and its stage 1 response did not meet the service response timescales for which it apologised,
54. Apologising and explaining was appropriate. However a consistent failure to adhere to timescales throughout the process, is something the landlord needed to address. This could be seen as the landlord placing a lack of importance on the process, increasing the risk of further damage to the landlord tenant relationship and a lack of trust in the landlords complaints procedure.
55. An effective complaints process enables a landlord to learn from the issues that arise for residents and to take steps to improve the services it provides and its internal processes. There was no evidence that the landlord had taken any lessons from its finding about its complaint process, or was looking to make service improvements which was not reasonable.
56. Moreover the landlords compensation policy allows for discretionary payments for service failures such as this. The delay between the resident submitting her complaint on 16 October 2021 and receiving a final response 8 April 2022 was significant and yet the landlord failed to properly consider this policy and no financial redress was offered.
57. Part of the residents complaint was about the conduct of the landlords staff. A particular incident was raised about the surveyor and the contractor who attended to inspect the bathroom. The resident said that they told her there was nothing wrong with the floor, laughed at her, and said she must be slipping over on a bar of soap. She said they also said mould is normal in a bathroom and that she was not cleaning it properly.
58. This was an event that took place in the residents home with no other witnesses present. The landlords staff did not agree that this was the conversation that took

place, and without any independent evidence to support either account made any investigation limited.

59. The investigator did however look at a number of complaints the resident had made about staff and whilst he could not find any evidence of un-professionalism or poor conduct, he did note that there was often a lack of empathy and sympathy towards the resident and her situation. This was a service failing of the landlord as empathy and respect should underpin all interactions with vulnerable residents.
60. This outcome was symptomatic of the landlord not fully considering the residents vulnerabilities and proactively putting reasonable adjustments in place. Had it done so the frustrations at not gaining access, progressing works or being able to arrange appointments spontaneously, might have been avoided.
61. Furthermore, the landlord did not demonstrate again, that there were lessons to be learnt from this failing and address how this was going to be avoided in the future. The Ombudsman's spotlight report on Attitudes Respect and Rights, highlights that improvements could be made if landlords obtained a clear and consistent understanding of their responsibilities, were more flexible, and adapted core services to better meet the needs of vulnerable residents.
62. In response to the residents complaint about damp and mould spreading and damaging her belongings, the landlord recommended consideration be given to a compensation payment being made to the resident in respect of proven losses.
63. The Code requires that any remedy offered must reflect the extent of any service failures and the level of detriment caused to the resident as a result. Also when offering a remedy, landlords should clearly set out what will happen and by when. Recommending consideration be given by the landlord as to whether a "compensatory payment is made" was not sufficient. The response was not clear on the offer of financial redress, and it did not give the resident an indication as to whether she would receive it or not, which for the resident, would have a bearing on whether a resolution had been reached.
64. The Code requires complaint handlers to have the authority and autonomy to act to resolve disputes quickly and fairly. The landlord was working to a corporate complaint handling process, and the investigator was from a different corporate department. The investigator did not have the autonomy to specify a financial payment or an amount in offer of redress, which was not appropriate, and not code compliant.
65. No failings were identified in the landlords handling of the residents complaint about the conduct of staff. In circumstances where there are conflicting views of an event or conversation with no independent witnesses the investigator is limited.
66. There were, however, significant failings throughout the landlords handling of the residents' complaints generally. This in part was because the complaint process was

not compliant with the code, and did not adopt all the recommended practices within it. Moreover, it failed to adhere to many aspects of the complaint policy it was using. This caused unnecessary delays which in turn caused detriment to the resident in not getting a quick resolution, and a delay in accessing the Ombudsman's Service.

67. The Code became statutory from April 2024 and all social housing providers must now have a complaint handling policy that complies. All landlords were required to self-assess and evidence had to be provided to this Service by 30 June 2024. An order for the landlord to self-assess against the Code, for the failings identified in this investigation has not been necessary.

Determination

68. In accordance with paragraph 52 of the Housing Ombudsman's Scheme, there was service failure in the landlords handling of the residents request for new bathroom fittings and flooring.

69. In accordance with paragraph 52 of the Housing Ombudsman's Scheme, there was maladministration in the landlords handling of the residents reports of damp and mould.

70. In accordance with paragraph 52 of the Housing Ombudsman's Scheme, there was maladministration in the landlords handling of the residents complaint including about staff conduct.

Orders and recommendations

71. The Ombudsman orders that the landlord within 4 weeks

- a. Apologises to the resident for the failings identified in this investigation.
- b. Contacts the resident to discuss her disabilities, and determine whether it needs to make any further reasonable adjustments in accordance with the Equality Act and provides a copy of the outcome to this service.
- c. Arranges a further inspection of the residents bathroom, with a surveyor not previously involved in the residents case and considers including an occupational therapist. Drafts a schedule of works and agreed timescales for any works identified at the inspection (copy to this service)
- d. Reviews the situation with the damp and mould at the residents property to ensure any measures put in place have been successful.
- e. Pays the resident the sum of £1000 broken down as follows:
 - i. £450 for the failures identified in the landlords complaint handling.

- ii. £350 for the distress and inconvenience caused to the resident by the landlords failure to consider whether it had any responsibilities under the Equality Act.
- iii. £200 for the landlord not properly implementing its damp and mould policy.