

# Housing Ombudsman Service

## REPORT

*COMPLAINT 202338616*

*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 the landlord's handling of:
  - a. The resident's request to purchase the freehold of the property by way of collective enfranchisement.
  - b. Remedial repairs to the facias, soffits and guttering, and planned maintenance work to the block, including the replacement of the roof.
  - c. The associated complaint.

## **Background**

2. The resident is a joint leaseholder of a first floor flat. The flat is one of four flats situated within the block. The landlord is the freeholder of the building. The resident has been the leaseholder of the property since 20 September 2019.
3. Under section 20 Landlord and Tenant Act 1985 (s20), leaseholders paying variable service charges must be consulted before a landlord carries out repairs, maintenance or improvements which will cost any leaseholder more than £250. If a consultation is not undertaken, the landlord may not be able to recover costs over £250 per leaseholder. There is a specific process, set out in the Service Charges (Consultation Requirements) (England) Regulations 2003, that the landlord must follow before work can begin.
4. The resident contacted the landlord on 1 July 2020, to report that the facias and guttering were in need of repair. The resident informed the landlord that birds had been nesting in the roof space due to the holes in the facias where it had rotted, and the guttering was leaking which had caused damage to the wall of the downstairs property. The resident asked the landlord to arrange a repair.

5. The landlord responded on 9 July 2020 and confirmed that it had sent a request to its contractor to inspect the condition of the fascias and soffits to enable it to action the appropriate repair. The landlord completed a temporary repair to the gutters in November 2020.
6. On 15 March 2023 the resident requested permission to paint the front elevation of his property as it was in a state of disrepair and he wanted to put his property on the market. He also chased the repairs to the fascias and guttering as the state of the building had deteriorated significantly since he first reported the issues in 2020. The landlord responded on 5 June 2023 and informed the resident that it had refused his request to paint the exterior of his property. On 14 August 2023, the landlord confirmed it would be replacing the roof, fascias, soffits and guttering under a planned programme of works once the required s20 process was complete.
7. The resident raised a formal complaint on 14 November 2023. The complaint related to the delays to repair the fascias and guttering, the subsequent damage to the brickwork caused by the lack of repair, and the landlord's communication in relation to the proposed cost of the planned roof works.
8. The landlord sent the resident a stage 1 complaint response on 28 November 2023. It acknowledged that the resident had reported the gutters and fascias on many occasions over several years. It confirmed that when its contractors attended in August 2021 and advised that the guttering was "bent and rotten", no further orders were raised. The landlord also acknowledged that there had been delays to the s20 process, which had delayed the anticipated start date for the required planned work, and it offered £25 compensation.
9. Following escalation of the complaint to stage 2, the landlord sent the resident a stage 2 complaint response on 16 January 2024. It confirmed that the blown brickwork needed to be replaced and a full paint was required. It said it was unable to confirm whether a s20 consultation would be required or whether it could absorb the cost of the work as a goodwill gesture. It also acknowledged that there was an issue with birds nesting due to the rotten fascias. However, it explained that, due to the presence of asbestos, it was unable to undertake any temporary repairs. It said it would try to complete the roofing works before nesting started in 2024.
10. The landlord contacted the resident on 6 February 2024, to confirm that he would be charged for the repairs to the brickwork in accordance with the s20 rules. On 8 March 2024, the landlord confirmed that the planned maintenance work to the roof, fascias and soffits would begin on 8 April 2024, and would take approximately 22 weeks.

## **Assessment and findings**

### *Jurisdiction*

11. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint, or part of a complaint, will not be investigated.
12. In accordance with paragraph 42(a) of the Housing Ombudsman Scheme, the Ombudsman may not consider complaints that "are made prior to having exhausted a members complaints procedure, unless there is evidence of a complaint-handling failure and the Ombudsman is satisfied that the member has not taken action within a reasonable timescale".
13. After carefully considering all the evidence, the resident's request to purchase the freehold of the property by way of collective enfranchisement sits outside of the Ombudsman's jurisdiction as the landlord has not investigated this matter through its complaints process.

### *Scope of investigation*

14. The resident's complaint concerns the landlord's handling of, and response to, concerns raised in relation to the proposed cost of the replacement roof. We should make it clear that the Ombudsman cannot review complaints that concern the level of service charge or rent, or the increase of service charge or rent. This is in line with paragraph 42(d) of the Housing Ombudsman Scheme. However, we can assess whether the landlord's overall communication with, and responses to, the resident were appropriate, fair and reasonable.
15. Complaints that relate to the level, reasonableness, or liability to pay rent or service charges are within the jurisdiction of the First-Tier Tribunal (Property Chamber) and the resident would be advised to seek free and independent advice from the Leasehold Advisory Service (LEASE) (<https://www.lease-advice.org/>) in relation to how to proceed with a case, should he wish to do so.

### *Remedial repairs to the facias, soffits and guttering, and planned maintenance work to the block, including the replacement of the roof*

16. The evidence shows the resident reported that the facias and guttering were in "desperate need of repair" to the landlord on 1 July 2020. He also informed the landlord that there were birds nesting in the roof space due to the holes in the facias, and that the leaks from the guttering had started to affect the wall at the front of the block.
17. The lease placed an obligation on the landlord to maintain, repair, paint, and decorate the external walls, woodwork, roof, gutters, and drainpipes of the

building. The landlord confirmed on 9 July 2020, in line with the lease, that it had asked its contractors to attend and provide a report on the condition of the fascias and soffits to allow it to action the appropriate repair. However, there is no evidence to suggest that the contractors attended or provided a report. There is also no evidence to suggest that the landlord was monitoring the required repair, or that it chased its contractors for the report. The landlord's lack of investigation and demonstratable action in the circumstances was unreasonable in its position as freeholder.

18. The resident chased the repairs in October 2020 and November 2020 and asked the landlord for an update. He told the landlord that the birds had caused damage to the property and he was concerned that the state of the property would deteriorate over the winter. A contractor attended the property at the end of November 2020 to carry out a temporary fix to the gutters and take measurements of the soffits. The evidence suggests that the resident continued to chase the landlord in relation to the required repairs throughout 2021 and 2022.
19. The resident contacted the landlord again on 14 February 2023, as the repairs were still outstanding. The landlord informed the resident that the work to the gutters and fascias had been included in a planned programme of works, which included a full re-roof, in the next financial year. It said it would need to consult residents and go through the tender process. However, it hoped the work would be completed by the late summer, dependant on whether the birds were nesting.
20. Under common law, once a landlord is on notice of a defect, it must carry out repairs within a reasonable time, depending on the circumstances. This may include the time required to complete the s20 consultation process. If the defect is liable to cause further damage, the landlord should consider carrying out temporary repairs before more permanent repairs can be completed.
21. At this point it had been almost 3 years from the date the resident first reported the issues. Although the landlord did undertake temporary, short term repairs to the gutters, it has not provided any evidence to show it considered temporary repairs to the fascias to at least stop the birds accessing the roof space. Therefore, it would be reasonable to conclude, as the repairs were still outstanding, that the landlord did not act in accordance with the lease or its responsibilities under common law. It failed to carry out repairs within a reasonable time, and its inaction was inappropriate in the circumstances.
22. This Service accepts that the fascias contained asbestos, and that there are certain health and safety requirements to consider and comply with when dealing with asbestos, which can lengthen the repair/replacement process. However, there is no evidence to suggest that any consideration was given to

the facias/asbestos during this time period, or that this contributed to the overall delay. There is also no evidence to suggest that the resident was kept up to date with the progress of the repairs, or that he was informed of the landlord's decision to include all repairs as part of a planned programme of works prior to his phone call on 14 February 2023. This was unfair and unreasonable.

23. The resident asked the landlord on 15 March 2023 for permission to paint the exterior of his property as the leaking gutters had damaged the paintwork to the front elevation, and he was considering putting his property up for sale. He also chased the repairs to the facias and gutters. The landlord spoke to the resident by telephone on 27 March 2023 and discussed the proposed roof replacement works, although this Service has not been provided with a file note or a transcript of the conversation. The resident sent a follow up email to the landlord on the same day and asked it for an approximate cost of the work. The landlord confirmed on 8 March 2023, that it was unable to provide an approximate cost until the tender process had been completed.
24. The landlord sent the resident an email on 5 June 2023 to inform him that it had refused to grant permission for him to paint the exterior of his flat. It did not provide any explanation or reason for its decision. The landlord's leasehold information provided on its website says resident's must not make repairs on landings, stairways, shared communal areas, structural parts of the building and other parts of the building and grounds that are not owned by the resident. It explains that if any such work was carried out by residents, members of their household, visitors or agents, they would be required to pay for any damage caused. Additionally, residents would not be covered under the landlord's insurance policy if an accident or damage was caused as a result.
25. Therefore, the landlord acted in accordance with the guidance set out on its website. However, it did not explain its reasoning behind its decision or sign post the resident to the guidance on its website, which was unreasonable. There is also no evidence to suggest that it questioned why a leaseholder would want to, or be willing to, go to the expense, time, and trouble of carrying out work that he was not responsible for under the terms of his lease. The resident's request should have prompted the landlord to inspect the paint/brickwork and carry out the necessary repairs in line with the lease, or to start the consultation process, if required, in relation to the brickwork repairs. At the very least it should have considered temporary repairs to stop further deterioration of the brickwork.
26. The resident made a formal complaint to the landlord on 14 November 2023, in relation to the outstanding repairs to the facias and guttering, the proposed roof repairs, and the lack of communication from the landlord. In addition to the contact already mentioned in this report, the resident said he had sent

numerous emails to the landlord, and left numerous voicemails, between November 2020 and March 2023. The resident said:

- a. He had asked permission to paint the exterior of the building as the leaking gutters had severely affected the paint and brickwork and caused damp issues in his property.
- b. He had received a letter about the proposed roof replacement in June 2023. Since then, he had left further voicemails and sent further emails in an attempt to obtain the price of the work, discuss payment options, and to establish a timeframe for the repairs. He had been told he should have received a second letter, although he had not received it.
- c. The brickwork had started to crumble in the areas affected by the leaking gutters and he did not feel he should have to pay towards the brickwork repairs, as they could have been prevented by the landlord repairing the gutters and painting the wall when the issues were first reported.

27. The landlord's stage 1 response dated 28 November 2023, said:

- a. It could see that the gutters had been reported on several occasions and they were last attended to in August 2021, when they were cleared, sealed, and refixed. However, it acknowledged that its contractors also reported, at the time, that the guttering was bent, and the fascias rotten. Although no further orders were raised, and it could not find any information as to why the contractors report was overlooked at the time.
- b. In February 2023 it had advised the resident that his property was on a planned maintenance programme for the following financial year, but that the resident's would need to be consulted and the tendering process carried out. It had hoped that the process would have been completed by late summer, dependent on the birds nesting.
- c. The second stage of the s20 process had been overlooked by the landlord's leasehold team, and had only just been sent out, which had delayed the process and the start date of the work. Therefore, it was anticipated that the work would start after mid-February 2024.
- d. It apologised and acknowledged that it was evident the resident had reported repairs required to the gutters and fascias for several years and the issues were still outstanding. It would ask its contractor to establish whether a temporary repair could be made whilst it was waiting for the roof replacement works to be completed.
- e. It was unable to confirm the cost of the roof repairs as they would be included in the second stage of the s20 process. Once the costs had been sent out the resident could speak to the leasehold team to discuss available options.

- f. In line with its compensation policy, it offered compensation of £25 for the inconvenience caused to the resident
28. The resident escalated his complaint to stage 2 on 29 November 2023, as he was unhappy with the landlord's response.
29. The resident sent the landlord his written observations on 30 November 2023, in line with stage 2 of the s20 process. He also asked the landlord to withdraw the s20 and issue a new s20 in relation to cleaning the roof tiles and replacement of the fascias, soffits, and guttering as he believed a full roof replacement was not required. He asked the landlord for a full explanation as to why it thought a full re-roof was required, and he asked it to justify the cost per leaseholder.
30. The landlord confirmed on 5 December 2023 that it would not withdraw the s20. It also confirmed that it was developing a major works recharge policy and it would not expect leaseholders to pay the costs in full upfront and a payment plan would be agreed. This was a reasonable action for the landlord to take in consideration of the likely expected costs to leaseholders. It explained that it had to comply with the timescales set out within the s20 process and it would provide an additional response by the end of 12 December 2023. It also referred the resident to the Service Charges (Consultation Requirements) (England) Regulations 2003.
31. However, given that the s20 process can be complex and difficult to navigate, there is no evidence to suggest that the landlord signposted the resident to the leasehold information available on its website or the Leasehold Advisory Service (LEASE) for free and independent advice, particularly as he was clearly concerned by the landlord's plans to replace the roof and the proposed cost of the work. This was unreasonable and unfair.
32. The landlord provided a full response to the resident's written observations on 12 December 2023. It explained that the roof was coming to the end of its life and the tiles were beginning to crack and break. It said it would have to remove the lower section of the roof and tiles to replace the fascias, soffits, and guttering. Therefore, it was more cost effective to complete the roofline works and replace the roof at the same time. This does appear to be a reasonable approach, though formal challenges to the landlord's decision should be dealt with by the First-Tier Tribunal. However, it would have been fair and appropriate for the landlord to have provided the resident with this information at the start of the s20 process.
33. The landlord contacted its contractor on 2 January 2024 and asked them to assess whether any temporary repairs could be completed to the guttering and fascias whilst it was waiting for the work to the roof to begin. It explained that



“matters had come to light” which could push the roof replacement works back further. Although it is unclear to this Service, from the evidence provided, as to what these matters were. The landlord also booked an external inspection of the brickwork and paintwork to the front elevation of the property on 3 January 2024.

34. On 3 January 2024, the landlord contacted its contractor and explained that it had been made aware that the facias contained asbestos (AIB), which meant a 14 day notice was required to the health and safety executive before any work could begin. The landlord therefore concluded that it would not be able to make the temporary repairs. It is unclear from the information provided how or why it came to that conclusion, particularly as it was already aware that it was likely the roof repair work would be pushed back. It was also aware that birds would most likely begin to nest in the roof space once nesting season began, and that this would further delay the roof works. Therefore, the landlord’s decision not to pursue the possibility of temporary repairs to the facias was unreasonable and unfair in these circumstances.
35. The landlord inspected the brickwork to the front elevation on 4 January 2024. It noted that the brickwork on the bay, where the paint had peeled away, was crumbling. It said it believed the leaking gutter joint above had caused excess water to get behind the paint work and cause damage to the bricks. It noted that the blown bricks would need to be replaced, cracks would need to be addressed, and a full repaint was required. The landlord also noted that there were several failed guttering joints to all 3 sides of the resident’s property, and some of the brackets had dropped due to the rotten facia boards. The facias were rotten on all 3 sides and there was a downpipe that was not attached to the gutter on the side of the property. The landlord said it had noticed on Google street view that the property had got “a lot worse since June 2022”.
36. The landlord sent the resident a stage 2 complaint response on 16 January 2024. It said:
  - a. It had inspected the brickwork and found there to be crumbling bricks on the bay where the paint had peeled away. The blown bricks needed to be replaced and a full paint was required. It had requested a quote for the work, but it did not know whether the cost would come under the threshold for a s20 consultation. Although once the price was known, it would consider whether it could absorb the cost of the works as a goodwill gesture.
  - b. It had not approved the resident’s request to paint the brickwork in March 2023 for insurance reasons and because works carried out by a third party often led to issues “down the line”. Therefore, it always gave a “blanket no” to such requests.

- c. It had faced ongoing problems with its communications via the leasehold email and phone number due to the post being vacant which had affected the service it had provided to leaseholders. It apologised for any inconvenience caused to the resident.
  - d. It was sure the resident was aware that when birds were nesting, they were protected by law, and the landlord could not remove them. It had thought that repair works could be undertaken to prevent the birds from returning and nesting again, however it was “not that simple” as it was tied into the roof replacement work. The birds had entered the roof space via holes in the fascias, which contained AIB. AIB asbestos was notifiable to the health and safety executive before work could commence. The gutters, soffits and fascias were being replaced as part of the roof replacement works, which was under a s20 consultation. Therefore, the repair work could not be carried out in isolation. The holes would be blocked once the roofing work was complete, which it would try and complete before nesting began in 2024.
  - e. It recognised that the resident wanted it to acknowledge that its lack of maintenance had caused more damage to the building which he felt leaseholders should not have to pay for. It acknowledged that there had been delays in the roofing works taking place, however, this did not negate leaseholders from having to pay their share of the service charge.
  - f. It upheld the majority of the issues raised by the resident and it apologised for the inconvenience caused. It acknowledged that the communication from its leasehold and repairs teams required improvement.
37. The landlord’s stage 2 response did not take into consideration that the resident first reported the issues with the gutters and fascias on 1 July 2020, and that he had continued to do so for almost 4 years, whilst the repairs were still outstanding. The landlord’s comment that the delays “did not negate leaseholders from having to pay their share of the service charge” was unfair and insensitive. This is because it has an obligation and is expected to complete the repairs it is responsible for within a reasonable period of time.
38. The landlord did not consider the distress and inconvenience caused to the resident or the damage the delays had caused to his own property. It did not offer to increase the compensation of £25, offered at stage 1, in relation to the distress and inconvenience caused by the delays to the repairs or provide adequate solutions to the resident’s concerns. It would have been reasonable of the landlord to provide the resident with details of the buildings insurance policy so that he could make a claim for any loss or damage to his own property. Particularly as he had reported damp associated with the ongoing issues with the gutters and failing brickwork.

39. The landlord also did not acknowledge that the condition of the brickwork had been left to deteriorate from March 2023, when the resident first asked if he could paint the front elevation. Although it did say it would consider whether it could absorb the cost of the works as a goodwill gesture, which was fair and reasonable in the circumstances.
40. The landlord contacted the resident on 6 February 2024 to inform him that its contractor needed to erect scaffolding to fully assess the brickwork to the front elevation of the property and provide a quote for the remedial repairs. It also confirmed that all costs would be charged “according to the s20 rules and split 4 ways due to the layout of the property”. It is unclear from the evidence provided whether this was the landlord’s final decision in relation to the recharge costs, as it said in its stage 2 response that it would decide once the costs were known. This was confusing, and the landlord should have realised that this would likely add to the resident’s distress and concern.
41. The landlord’s overall communication with the resident throughout this case was poor. He was not kept up to date with any progress. He had to constantly chase the landlord for information and updates, which contributed to his overall feelings of frustration and distress. Although the delays were attributable to the landlord, at times it failed to show empathy towards the resident and its responses were insensitive and unfair. It is still unclear to this Service as to whether the landlord has made a decision in relation to the recharge of the costs to repair the damaged brickwork, or whether the roofing works have commenced.
42. In summary, the landlord delayed unreasonably in repairing the gutters, fascias and soffits. It also delayed unreasonably in repairing the damaged brickwork and failed to comply with its obligations to repair the property, within a reasonable period of time, under the lease and at common law. The landlord’s communication with the resident was poor. Its responses at times were unfair, insensitive and unreasonable. It failed to signpost the resident to the information held on its website and the Leasehold Advisory Service (LEASE) and failed to provide reasonable redress through its complaints process.
43. As a result of these failings, and the level of detriment caused to the resident by the delay in completing the required repairs to the fascias, soffits and guttering for a period of 4 years, and the further delays in completing the repairs to the damaged brickwork, the Ombudsman finds that there was maladministration by the landlord in this case.

*The associated complaint*

44. The landlord operates a 2 stage formal complaints process. Its policy says that stage 1 complaints are responded to within 10 working days. Stage 2 complaints are responded to within 20 working days.
45. The resident raised a formal complaint on 14 November 2023. The landlord provided a stage 1 response on 28 November 2023. This was within the landlord's timeframe for stage 1 responses set out in its complaints policy.
46. The resident escalated his complaint to stage 2 on 29 November 2023. The landlord acknowledged his complaint on the same day and informed the resident that its anticipated response date was 4 January 2024.
47. The landlord contacted the resident on 3 January 2024 to extend the deadline for its response to 11 January 2024, so that an inspection of the brickwork could take place prior to the response being issued. The landlord sent a further email to the resident on 11 January 2024, to extend the deadline for response to 16 January 2024. This was to allow for a leaseholder meeting to take place and as the investigating officer was not in work for the 2 days following the meeting.
48. The landlord provided the stage 2 response on 16 January 2024. This was 28 working days from the date of escalation and outside of the timeframe of 20 working days set out in the landlord's complaints policy. Within the stage 2 response the landlord acknowledged the delays and offered the resident £50 compensation.
49. Where there are admitted failings by a landlord, the Ombudsman's role is to consider whether the redress offered by the landlord put things right and resolved the resident's complaint satisfactorily in the circumstances. In this case the landlord's offer of £50 compensation and its acknowledgement of the delays represents reasonable redress for the identified failings. In the Ombudsman's opinion, the landlord has been able to evidence it made reasonable and proactive efforts to resolve the complaint and "put things right" in accordance with the Ombudsman's Dispute Resolution Principles.
50. In summary, although there was a minor delay in the stage 2 response, the landlord attempted to put things right through its complaints process. The redress offered by the landlord was reasonable in the circumstances, and in line with the remedies guidance provided by the Ombudsman for cases where there was a minor failure by the landlord in the service it provided. The landlord is therefore to pay the overall compensation of £50 if it has not already done so. The finding of reasonable redress is dependent on the compensation being paid.

## **Determination**

51. In accordance with paragraph 42(a) of the Housing Ombudsman Scheme the resident's complaint in relation to his request to purchase the freehold of the property by way of collective enfranchisement is outside jurisdiction.
52. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration by the landlord in its handling of remedial repairs to the facias, soffits and guttering, and planned maintenance work to the block, including the replacement of the roof.
53. In accordance with paragraph 53(b) of the Housing Ombudsman Scheme, there was reasonable redress by the landlord in its handling of the associated complaint.

## **Orders and recommendations**

### *Orders*

54. Within four weeks from the date of the report, the landlord must:
  - a. Apologise to the resident for the failings identified in this report.
  - b. Pay the resident compensation of £800 (the landlord can deduct from the total any amount it has already paid) in recognition of the distress and inconvenience caused by the landlord's handling of remedial repairs to the facias, soffits and guttering, and planned maintenance work to the block, including the replacement of the roof.
  - c. The landlord must pay the compensation directly to the resident.
55. Within eight weeks of the date of this report, the landlord must:
  - a. If it has not done so already, obtain a quote for the work to the front elevation of the property and make a decision as to whether it will be absorbing the costs of the work, as mentioned in its stage 2 response. If it is not absorbing the costs, it must provide the resident, and this Service, with the reasons for its decision to allow the resident to seek independent advice.
  - b. Carry out a full and thorough review of this case to identify what went wrong in relation to the communication, monitoring and action of leaseholder repairs. The landlord should identify and implement required service improvements and provide a copy of the review document and action plan (for implementation) to this Service.
56. The landlord should reply to this Service with evidence of compliance with these orders within the timescales set out above.

### *Recommendations*

57. It is recommended that the landlord should, if it has not already done so, pay the resident the £50 compensation it offered in its stage 2 response.
58. The landlord should reply to this Service within four weeks of the date of this report to advise of its intentions in regard to the above recommendation.