

Housing

Ombudsman Service

REPORT

COMPLAINT 202313479

Arun District Council

18 October 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. An electrical safety inspection, including the actions of its officer and its consideration of the resident's vulnerabilities.
 - b. The installation of a new front door, including the actions of its officer and its consideration of the resident's vulnerabilities.
 - c. The resident's related complaints.

Background

2. The resident is the secure tenant of the property, owned by the landlord. The resident lived in a 1- bedroom first floor flat and the landlord has informed this Service she has moved to a new address in April 2024.
3. The tenancy is in the name of 2 tenants who are partners. The correspondence sent to the landlord that was considered in this investigation was sent by both residents to the landlord so within this report they will be referred to collectively as 'the resident.'
4. Both residents have health and wellbeing issues. One resident has post-traumatic stress disorder (PTSD) asthma and anxiety. The other resident has a mobility issue and has difficulty with stairs.
5. The resident made several formal complaints between June 2023 and October 2023. Those complaints included:
 - a. The landlord issuing a letter in June 2023 warning of legal action if an Electrical Installation Condition Report (EICR) was not booked by the

resident, despite her having already booked an appointment for September 2023.

- b. The landlord informing the resident it had to replace the front door of the property with an appropriate fire door and its refusal for the resident to pay for their own door.
 - c. The actions of the landlord's officer regarding those requests including harassment and discrimination towards the resident and that the landlord had not considered the resident's vulnerabilities when dealing with the issues raised.
6. The landlord issued a stage 1 response to the complaint regarding the EICR inspection on 14 July 2023 and it apologise if the resident felt the letters were threatening but they were designed to reinforce the importance of the EICR inspection and it was inline with its Electrical Safety Policy and clause 44 of the tenancy agreement regarding access to the property. The landlord also requested the resident contact it to book an appointment to undertake the inspection.
 7. The resident requested the complaint be escalated to stage 2 the same day, stating that the officer who responded at stage 1 was the same one who had issued the warning letter and whose actions was the subject of the complaint. The landlord declined to escalate the complaint on 18 July 2023 stating the warning letter issued was from a standard template of letters and therefore the officer who issued the warning letter could investigate the complaint.
 8. The EICR inspection took place on 4 September 2023 and identified works were required by the landlord for the property to be compliant with safety regulations.
 9. The landlord issued a stage 1 response to the complaint about the front door replacement on 20 September 2023, stating that it would not allow the resident to purchase a new door but would offer the opportunity to choose the colour and style of the replacement door. It did not agree with the resident's account of events.
 10. The resident requested that complaint be escalated on 22 September 2023 stating the complaint response showed no understanding of the resident's vulnerabilities and the behaviour of the landlord's officers amounted to discrimination. The landlord acknowledged the escalation request on 25 September 2023. On 17 October 2023 the resident asked for an update on the escalation of the complaint.

11. The landlord issued a new stage 1 complaint response on 18 October 2023. It stated that the EICR inspection was required, and it would resort to legal action if the resident did not grant access. Its officer had acted to ensure compliance.
12. On 23 October 2023, the resident provided further escalation reasons for the complaint response issued on 20 September 2023 to the landlord. She stated that a phone call from the landlord was from a private withheld number and she wanted the call to be investigated, the letters issued were heavy handed and impacted on her mental health. She also stated that the landlord had not considered his vulnerabilities and protected characteristics in arranging the visits.
13. The EICR required works were completed on 15 November 2023.
14. The landlord issued a stage 2 response to the resident on 4 December 2023. It stated that the EICR documentation was sent to all tenants and not specifically to the resident; it had properly considered the resident's health condition; and the phone call had been conducted appropriately.

Assessment and findings

Scope of the investigation

15. The resident said the lack of action taken by the landlord in resolving the reported issues affected her health. The Ombudsman does not doubt her comments. However, as this Service is an informal alternative to the courts, it is unable to establish legal liability or whether a landlord's actions or lack of action had a detrimental impact on a resident's health. The Ombudsman is therefore unable to consider the personal injury aspects of the resident's complaint. These matters are better suited for consideration by a court or via a personal injury claim. Nonetheless, the Ombudsman has considered the distress and inconvenience that may have been caused to the resident.
16. The resident had stated that the landlord had discriminated against her vulnerabilities and disabilities and made formal complaints regarding this. Whilst the Ombudsman can consider the reasonableness of the actions taken by the landlord's officer's in communicating with the resident and responding to the issues raised, the Ombudsman is unable to make a legal finding of discrimination in that regard. That would be a matter for the courts to determine. If the resident believes there has been unlawful discrimination she may wish to seek independent legal advice.
17. The resident referred to a notice of seeking possession (NOSP) being added to the landlord's systems in case the works required at the property were not able to be completed. From the evidence provided it was a draft NOSP that the landlord considered as a contingency in case of not being able to gain access

to the property but did not formally issue the notice or begin any proceedings. As the landlord did not issue formally a NOSP to the resident that aspect of the resident's complaint has not been investigated by this Service.

Electrical safety inspection.

18. The landlord has an electrical safety policy which states it will carry out a programme of 5 yearly electrical installation inspections and tests to all domestic properties and will include the issuing of a new satisfactory EICR certificate. The date of the inspection and test is derived from the anniversary date of the most recent EICR.
19. It does not appear disputed that the landlord's last inspection of the property was in 2017. At the time the letter requesting an appointment for the EICR inspection was issued to the resident in June 2023, the landlord had stated the next inspection was overdue. The resident stated that the appointment was not a legal requirement, she had already booked the inspection for September 2023 due to the household's vulnerabilities, and therefore had fulfilled the request made by the landlord.
20. The landlord's records noted that the EICR inspection had been overdue since February 2022. It had been deterred by the resident the previous year and had started to invoke its access policy to gain access to the property. It noted that it had the right to be granted access to undertake electrical inspections and repairs under section 2.2 of its access policy. It contested that it did not have a right to undertake an EICR inspection every 5 years, and whilst it was not a legal requirement it was widely recognised as best practice.
21. While the Ombudsman agrees with the resident that the EICR inspection was not a legal requirement, it is also reasonable that the landlord wanted to complete another inspection in order to comply with its safety obligations. This demonstrated that the landlord was taking the resident's health and safety seriously. Given that the landlord had concerns about the date the last inspection took place it was reasonable for the landlord to ask the resident to bring forward the inspection. It however must remain mindful of the resident's vulnerabilities.
22. However, the letter issued by the landlord on 22 June 2023 advising of possible legal action was not appropriate as it referenced tenancy enforcement action without being clear on what grounds it believed it would be able to act on. The landlord stating it would instruct its legal team to seek access would have caused distress and inconvenience to the resident given it was made aware of the resident's vulnerabilities. She had also queried the need for the appointment to be brought forward, given that an inspection date had already been agreed by her with the landlord's contractor.

23. Section 44 of the resident's tenancy agreement refers to access to the property for gas and electrical safety checks. It states the landlord is required to give notice of at least 24 hours and the resident at all responsible hours must allow the landlord to enter the home. The landlord can take legal action to enter the home if access is not allowed. It is therefore clear the landlord can request access to carry out gas and electrical safety checks.
24. However, section 47 of the tenancy agreement states the landlord is responsible for maintaining and repairing the wiring and electrical installations in the property and will ensure an electrical inspection is carried out every 7 years. There was no evidence that the resident was provided with an amendment to the tenancy terms that would have superseded those conditions.
25. The landlord did not appear to give consideration to section 47 of the tenancy agreement. It is not clear that it would have had grounds for tenancy enforcement action if the resident did not comply with its request to bring the date of the inspection forward from September 2023. The tenancy stated electrical inspections would take place every 7 years and the landlord had conducted the last inspection in 2017. At the time of the letter it had been six years since the last inspection.
26. Section 19.2.1 of the landlord's tenancy and lettings policy states the landlord must have regard to those who have a disability. The correspondence from the resident made it clear to the landlord that the household had characteristics that would be protected under the Equality Act 2010 and that the landlord was not considering those in its dealing with the EICR inspection.
27. The public sector equality duty is a duty on public authorities to consider how decisions they make can affect people protected under the Equality Act 2010. The landlord would be obligated to think about the needs of the resident who may be disadvantaged or suffer inequality, when making decisions about how it provided its services and implement its policies. The Access Policy referred to by the landlord does state in section 6 how it will consider the Equality Act 2010 and its Public Sector Equality Duty when invoking the policy.
28. There was evidence the landlord considered, on 27 June 2023, if it should consider amending the warning letter for its more vulnerable tenants but there was no further evidence this was progressed. It instead wrote to the resident on 29 June 2023 explaining that the letter was written the way it was due to highlighting the seriousness of the matter and was a standard letter sent to all residents. The same letter then proceeded to inform the resident of the landlord having legal options to complete the inspection.
29. There is no evidence that the landlord was singling the resident out or acting differently than it was to other tenants in terms of trying to get the inspection

and subsequent works completed. However, the Ombudsman has seen no evidence in the landlord's responses to the resident that it addressed or considered what the resident had informed it about the household's vulnerabilities. It instead focused on getting the inspection completed at a date earlier than the resident had agreed with the contractor, rather than considering making any reasonable adjustments.

30. The landlord in its stage 2 response said that it was not harassing the resident and the letters issued were from a standard suite of letters issued to all residents. It could have explained this clearer to the resident at the time the letters were issued. Alternatively, it could have considered amending the letter to ensure she was made aware of any consideration it had given to the stated vulnerabilities and disabilities in its request for the date in September 2023 to be brought forward.
31. The inspection on 4 September 2023 found that works were required. The landlord's records noted the resident refused for any works other than a fuseboard change to take place. She mentioned possible asbestos in the ceiling and, as she was moving from the property the following year, requested for the works be completed then. The resident also disputed the findings of the EICR, stating the operative who completed the inspection said there were no issues only for the report to identify works required.
32. The landlord informed the resident the identified works needed to be completed within 28 days to remain compliant. It was correct that the works needed to take place. It did consider the resident's concerns about asbestos and stated that, as a previous asbestos survey was out of date, it would complete another inspection before commencing the works required in the EICR inspection, however, both works had to take place within 28 days. This was an appropriate response from the landlord. It also provided an email to the resident on 7 September 2023 that explained the required works. This was also an appropriate response from the landlord.
33. After being provided a copy of an asbestos survey from 2017 by the resident, the landlord communicated with its electrical contractor about the suitability of the survey and if it was happy to proceed. The contractor stated it would need an up-to-date survey before it could proceed with the works. It was entitled to rely on the expertise of the contractor in that decision.
34. The resident asked for a second opinion on the EICR. The landlord could consider the resident's request. However, the inspection was completed by an accredited contractor. As stated above, the landlord would therefore be entitled to rely on the findings of the contractor it appointed to conduct the initial inspection and carry out any identified works that were required to remain

compliant. In this case, the landlord declined the resident's request as it was under no obligation to consider a second opinion.

35. The resident provided a GP letter on 3 November 2023, stating that she had requested a letter asking that no work was carried out during the winter months. The landlord considered the letter and determined that as the letter was not the GP specifically stating no work should be carried out, it would proceed with the works with adjustments in place. This was a reasonable response from the landlord as it showed it considered the letter but ultimately had to balance that with the need to complete the works under statutory requirements.
36. The asbestos survey took place on 13 November 2023 and the EICR works were completed on 15 November 2023. Although the works identified took place outside of the 28 days required, the landlord was taking the steps necessary to get access to the property to complete the works safely. This included liaising with the resident and contractors to achieve an agreed date for the works, there was no failure in the landlord's attempts in completing the works once the EICR inspection had taken place.
37. Overall, although there were no failures in the landlord's handling of the works required after the EICR inspection, this report has identified failures in its handling of arranging the inspection. Thus, we have made an order for the landlord to pay compensation to the resident for the distress and inconvenience caused.

Installation of a new front door.

38. The landlord's fire safety policy states that all flat entrance doors should be a FD30s standard, fitted with a positive self-closing device. It had a programme to replace flat entrance doors to ensure compliance.
39. An email from the Council's fire safety service to the resident on 12 September 2023 confirmed that the front door no longer met the required minimum safety standards and should be replaced.
40. The landlord is responsible for the structure of the building and is therefore responsible for the external doors of the property. It can therefore replace the door if it chooses to do so. Given that fire safety service had confirmed to the resident that the door was not compliant, this would have been an appropriate step for the landlord to take.
41. A phone call took place between the landlord and the resident on 8 September 2023. The resident said after speaking with the landlord's officer, the officer had said legal action would be taken if the door change was refused by her. She said the threats made by the officer were affecting her and her partner's vulnerabilities and asked the landlord to work with them to come to a resolution.

42. The landlord's records about the same call stated it informed the resident that it gave her the choice of providing a date for installation or it would use a formal process to complete the replacement. The records noted it informed the resident a choice of additions including spyhole, window and knocker could be discussed but she had declined. The landlord noted the resident informed it of the effects the installation work may have on her health. It also noted that she was talking over its officer and the officer terminated the call. The landlord's records did not evidence that the officer gave consideration to what the resident had said regarding the stated vulnerabilities or the effects the works may have. It did not evidence it provided any advice or proposal to try and resolve any concerns. This was a shortcoming by the landlord that did not demonstrate it was appropriately considering the needs of the resident especially given the call was terminated by the landlord's officer.
43. The landlord was informed later that day the resident had passed out following the call and a complaint was raised about the requirement for the door, and the actions of the officer during the phone call. The resident stated she was not refusing the installation of the door. However, she was informed by the fire safety service that doors being installed by the landlord were not of a good enough quality. Thus, she would be happy to pay for her own front door. This complaint was about the same officer complained about regarding the EICR inspection letters.
44. The landlord did not uphold the resident's complaint in its stage 1 response issued on 20 September 2023 or the stage 2 response on 4 December 2023. The landlord stated its officer had not been rude, dismissive, threatening or discriminatory. It stated its officers would not normally make calls from withheld numbers but may do if officers did not have access to work phones. In such cases, they would always introduce themselves at the start of the call.
45. The landlord evidenced it considered the resident's concerns about the type of door and offered solutions regarding the additions that could be added to the door. This was an appropriate action by the landlord in the circumstances.
46. The landlord on 13 November 2023 did advise the resident that to assess the type of door that could be fitted an inspection was needed and proposed a date of 15 November 2023. This was also an appropriate step for the landlord to take.
47. The resident questioned the length of time it would take to install the new door. However, the landlord's contractor was best placed to advise of the time it would take and provide that to the resident. The contractor informed her of timescales, from 2 hours to a full day, depending on the type of door being fitted. The landlord is entitled to rely on the contractor's expertise regarding the installation time.

48. Throughout the period covered in this investigation regarding the door, the resident made it clear a new door was not being declined but rather the quality of the door being offered. She, consequently, offered to pay for an alternative door to be fitted. The landlord in the stage 2 response in December 2023 confirmed it would not allow the resident to arrange to install a fire door but would allow her to choose the colour and style of door from a selected range. The landlord did confirm it was correct that it would take legal action to ensure the door was replaced.
49. While the landlord could have been more understanding of the resident's concerns regarding vulnerabilities during the call made on 8 September 2023, it was correct in its communication regarding the requirement of the door needing to be replaced and in its attempts to get the door works completed. There was no maladministration by the landlord.

The resident's complaints.

50. The landlord issued a stage 1 response to the resident's complaint about the EICR inspection, which was dated 13 June 2023. However, it referred to receiving the complaint on 3 July 2023. The email sent to the resident providing the stage 1 response was dated 14 July 2023. There was therefore a failure by the landlord to correctly date the stage 1 complaint response.
51. After receiving the stage 1 response, the resident requested the complaint be escalated to stage 2. This was on the basis that the officer who responded at stage 1 was the officer who issued the letter referred to in the complaint. Thus, it was the same officer whose actions the complaint was about and therefore was not impartial to investigate the complaint.
52. The landlord refused to escalate the complaint, stating that the stage 1 complaint had been upheld. That was incorrect, the stage 1 complaint was not upheld. Although the landlord stated the element of the complaint regarding the terminology of the letters issued was upheld, the element of the complaint relating to the resident being asked to bring forward the date for the inspection was not upheld.
53. The landlord also failed to acknowledge that the resident's request to escalate the complaint was about how the complaint was handled. It should have identified that this was the issue. The correct resolution would have been for it to discuss the reasons for escalation with her, and consider either escalating the complaint to stage 2 or opening a new stage 1 complaint for its handling of the complaint.
54. The Ombudsman's Complaint Handling Code states that a landlord must not unreasonably refuse to escalate a complaint through all stages of the

complaints procedure and must have clear and valid reasons for taking that course of action. Reasons for declining to escalate a complaint must be clearly set out in a landlord's complaints policy and must be the same as the reasons for not accepting a complaint. The landlord's complaint policy did not specify any reasons that would have allowed it not to consider escalating the complaint. It was therefore unreasonable that it declined to escalate the complaint at that time.

55. The landlord, in its refusal to escalate the complaint, did however provide a full response to the resident. It explained why the officer's name was on both the stage 1 response and the letter regarding the EICR inspection, so it is not clear why it did not issue the response as a formal complaint response to the resident. This was a failure by the landlord.
56. There was also evidence of further failures in the landlord's complaint handling. The resident made a complaint on 8 September 2023 regarding the fire door. This received a stage 1 response dated 20 September 2023 that was initially requested to be escalated to stage 2 on 22 September 2023 and again on 23 October 2023. Although the landlord acknowledged the escalation to stage 2 on 25 September 2023, the stage 2 response was not issued until it provided a combined complaint response to that and 2 other complaints on 4 December 2023. This was 52 working days after the original request to escalate the complaint was made and outside of the landlord's complaint policy timescale of 20 working days.
57. It failed to acknowledge the delay in the stage 2 complaint response or offer any redress to the resident.
58. The stage 2 decision, issued on 4 December 2023, was not appropriate. The letter stated it was responding to the 2 previous complaints that had received a stage 1 response on 20 September 2023 and 18 October 2023. It also mentioned a third reference which was in response to a new complaint the landlord stated it had received on 25 October 2023.
59. It is acknowledged the complaints made by the resident were similar, and it is understandable the landlord may wish to respond as 1 complaint decision. The landlord did not explain to the resident why it was responding to 3 complaints on the same stage 2 response. It would have been appropriate and informative to the resident for the landlord to explain why a combined response was being issued.
60. Overall, this Service finds that there was maladministration by the landlord in its handling of the complaint raised in July 2023 as it was not appropriate for the response to be issued by the officer who was complained about. There were

delays in its response at stage 2 for the complaints made in September 2023 and October 2023.

Determination

61. In accordance with paragraph 52 of the Housing Ombudsman Scheme:
 - a. There was service failure in respect of the landlord's handling of an electrical safety inspection, including the actions of its officer and its consideration of the resident's vulnerabilities.
 - b. There was no maladministration in respect of the landlord's handling of the installation of a new front door, including the actions of its officer and its consideration of the resident's vulnerabilities.
 - c. There was maladministration in respect of its handling of the resident's related complaints.

Orders

62. Within 4 weeks of the date of this report the landlord must:
 - a. Provide a written apology for the failures identified in this report to the resident.
 - b. Pay the resident £150 for the distress and inconvenience caused by its handling of the EICR inspection.
 - c. Pay the resident £200 for the distress and inconvenience caused by its handling of the related complaints.