

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202307586*

*Arun District Council*

*6 November 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. Its attempts to gain access to the property to carry out essential electrical works.
  - b. The resident's complaint.

## **Background**

2. The resident is a secure tenant of the property, which is a studio flat within a block. The landlord is a local authority.
3. The landlord sent the resident a letter on 6 December 2022 stating it needed to gain access to carry out an electrical installation condition report (EICR). The landlord sent further letters in January and February 2023. Various emails were exchanged between the landlord and the resident up until March 2023, when the landlord sent the resident a letter warning of legal action if access was not granted. The landlord completed the EICR on 30 March 2023.
4. On 27 March 2023 the resident emailed the landlord and made a stage 1 complaint, which was about the landlord:
  - a. Not arranging suitable appointments with him in advance and attending without notice.
  - b. Not contacting him by text message as he had requested.
  - c. Threatening him with legal action.
  - d. Saying he was refusing to allow access.

- e. Threatening and bullying him, including the conduct of its solicitor during a telephone call and the general behaviour of a member of its staff.
  - f. Subjecting him to “punitive measures” which he said were causing him stress and anxiety and affecting his health.
5. The landlord provided its stage 1 response to the resident on 21 April 2023 in which it said:
- a. Its legal department was involved because it had made extensive efforts to arrange an appointment to carry out the mandatory works. It said this action was taken as a last resort.
  - b. Although he had stated he had not prevented access, he had not facilitated access, despite being contacted by letter, text and phone. This is why the works had not been completed.
  - c. It was concerned that the outstanding work represented a serious safety issue to him and other residents in the block.
  - d. It apologised if he had found the process distressing, however it had a statutory duty to carry out this type of work. It had no option but to visit his home to carry out the work.
  - e. It had investigated his communication with it and with its contractors and stated that he had been contacted many times, using a variety of different methods to make appointments, without success. It could find no evidence where he had been threatened or treated with contempt by its staff or contractors.
  - f. It had received a serious report from its contractor regarding his behaviour and this was not an isolated incident.
  - g. It could find no evidence that he had been bullied or intimidated by its staff or contractors.
  - h. It could find no evidence that it had taken punitive measures or threatened him. All action it had taken had been proportionate due to the seriousness of the situation.
6. The resident emailed the landlord on 4 May 2023 to escalate his complaint. He said its stage 1 response was inaccurate, biased and patronising. He stated that certain aspects of the complaint had been overlooked, such as its agreement to contact him via text message. He denied not giving access and stated he had made several attempts to do so. He repeated his complaint that he had been treated poorly by the landlord and denied being rude towards staff and contractors.
7. On 5 June 2023 the landlord provided its stage 2 response to the resident in which it said:

- a. It was not always possible or practical to communicate solely via text message, and other methods of communication had been more appropriate on some occasions. The landlord believed he was making this in to a “big issue” to “deflect from unacceptable evidenced behaviour”.
- b. He had been abusive and aggressive to staff and contractors.
- c. He had “frustrated access” after extensive communication with him and made it clear that he did not accept the landlord’s right or need to ensure that it met its repair and safety obligations.
- d. He failed to accept the potential risk to others in preventing access for it to carry out the essential works.
- e. He had admitted to blocking the contractor’s numbers and failing to return messages.
- f. His relationship with one of its staff members had deteriorated and he had developed a distrust of that staff member. He had admitted to frustrating any attempts made by the landlord to gain access.
- g. Its contractor always sent a letter giving a minimum of 48 hours’ notice before visiting. Despite him stating that he called the contractor and was told to “call back in 2 weeks’ time”, the landlord said there was no record of the phone call. In cases where no response was received, the contractor would call on the “off chance” of gaining access. It acknowledged that its contractor’s “record keeping may have failed” which explained the unscheduled visit.
- h. It acknowledged and sympathised that someone turning up at his property unannounced upsets and distresses him.
- i. It acknowledged that receiving a letter about legal action made him feel like he “went into a dark place”. It sympathised with him but stated that his behaviour contributed to this and brought about the need for legal action.
- j. It would ensure that it was noted on its systems that his preferred method of contact was text message and that it would endeavour to make an appointment before visiting.
- k. It would support his suggested approach of his using an advocate in future dealings.
- l. It acknowledged that he was unhappy with the findings in the stage 2 response, but it was satisfied that it had now investigated his complaint, and it would not be upholding any aspect of it.
- m. He had said that he was not looking for an apology and would consider it an insult if it gave one.

8. The resident contacted this Service on 5 June 2023 to request a formal investigation. He said he was not satisfied with the landlord's final response.

### **Assessment and findings**

#### *The landlord's handling of its attempts to gain access to the property to carry out essential electrical works*

9. The landlord has provided a copy of the tenancy agreement to this Service, but this did not include the terms. However, under section 11(1) of the Landlord and Tenant Act 1985, a clause is implied into all tenancies that the landlord is responsible for keeping in repair the installations within the home. Under section 11(6) a clause is implied that it must be allowed access at reasonable times of the day and on giving 24 hours' notice in writing.
10. On 6 December 2022 the landlord sent the resident a letter stating it needed access to carry out an EICR, giving him 7 days to make contact. This was in line with its gaining access policy and terms in its tenant's handbook. It did not record if any other contact was made prior to sending the letter. However, it noted in emails to him in December 2022 that "despite previous attempts to contact you we have been unable to arrange an appointment". In not recording previous access attempts it displayed poor record keeping, and this was a failing. It stated that the EICR was due by 5 January 2023. It referred to an incident where its contractor had called on the resident unannounced whilst working in a nearby property. It stated it did this because it had not been able to contact him by telephone and it was eager to complete the work. It apologised for this but stated that it was concerned for his safety and the safety of other residents within the block. Although this Service has not been provided with evidence of attempts to contact the resident prior to this, given the requirement to carry out the EICR it was reasonable of the landlord to call unannounced whilst in the area to make an appointment to carry out the work.
11. In an internal email on 21 December 2022 the landlord said that the EICR was overdue, and the property was not compliant. This contradicts previous internal emails sent in December 2022, stating the EICR was due on 5 January 2023. It said it did hang up on the resident during a telephone call, but explained to him that it would terminate the call before doing so. It said it did this because he was trying to manipulate the situation. The resident disputed that he had been contacted previously regarding this matter. However, the landlord stated that this was incorrect, and he had been contacted and he had not responded to calls or messages left on his mobile number. It stated that it had, "spent many hours trying to help him since July to resolve repairs issues without significant success, because he had made it almost impossible". It is important that clear

and concise records are kept, and this Service has not been provided with evidence of previous attempts at contact, and this is a failing.

12. The landlord sent the resident further letters on 5 January 2023 and 27 February 2023 stating it required access to carry out the works. This was in accordance with its gaining access policy, tenant's handbook and repairs handbook. He telephoned it on 2 March 2023 and arranged for its support staff to be present when the work was carried out. It did not record if an appointment was arranged at this time.
13. On 10 March 2023 the landlord sent an internal email regarding the resident refusing to give access. It noted that he became "aggressive and challenging" regarding a planned visit, and he had stated that he would refuse access. It said that the visit was due to go ahead on 9 March 2023, but this was changed on his request to have a member of its support staff present. It stated that, "access to the property to repair or undertake compliance works is frustrated by his ongoing reluctance to enable access". It said that he had blocked the contractors' calls, not returned numerous messages, and that he had not responded to a text message. It noted that it should now consider whether an injunction was appropriate and whether a notice seeking possession would also be appropriate. Its gaining access policy states it can consider legal action if it has made reasonable attempts to gain access. The landlord therefore appears to have acted appropriately and in line with its policy in considering legal action to gain access. However, as set out above the landlord has not provided this Service with evidence of its previous attempts at contact and this amounts to a failing in its record keeping.
14. Following the landlord's decision to consider legal action in line with its policy, its solicitors wrote to the resident on 24 March 2023 and made reference to a telephone call between them and the resident the previous day. The solicitor confirmed that allowing access for the EICR was a legal requirement, and failing to do so could have consequences for his tenancy. The solicitor said the landlord had booked an appointment for 30 March 2023.
15. Following the call made by the landlord's solicitor to the resident on 23 March 2023, he reported that the solicitor was rude. The landlord spoke with the solicitor who stated she was not rude, but assertive and fair. The solicitor said it was difficult to have a conversation as the resident was agitated and argumentative. The solicitor said she remained courteous and polite throughout. This is evidenced by the resident who stated that the solicitor seemed courteous. He did say that despite this, "there was a threat that something unpleasant would occur at my home if I did not allow access". As evidenced in the letter of 24 March 2023, the solicitor reminded him of his tenancy conditions and what actions it could take if access was not granted.

This action was reasonable and proportionate in the circumstances and was in accordance with its legal obligations and its gaining access policy.

16. Part of the resident's complaint is about the landlord not contacting him via text message, as previously agreed. This Service has been provided with no evidence of such an agreement. However, within its stage 2 response the landlord accepted that he wanted to be contacted by text message but explained the reasons why it was not always possible to do so. This was reasonable as there can be good cause for contact by other means.
17. The landlord has legal obligations it must fulfil, and it must consider the health and safety of every resident within the block. Its actions were taken with this in mind and in accordance with its policies. However, in not being able to provide evidence to this Service of access attempts made there was a failing. Therefore, there was service failure, and an order has been made that the landlord pay £100 compensation. This is in line with this Service's remedies guidance where there was a minor failure that was not appropriately acknowledged by the landlord.

#### *The landlord's handling of the resident's complaint*

18. The landlord defines a complaint as per paragraph 1.2 of the Housing Ombudsman's Complaint Handling Code (the Code) under its complaints policy. This is defined as, 'an expression of dissatisfaction, however made, about the standard of service, actions or lack of actions by the landlord, its own staff, or those acting on its behalf, affecting an individual resident or group of residents'. It operates a 2 stage process. It will log and acknowledge stage 1 complaints within 5 working days and respond within 10 working days, unless it agrees an extension with the resident, although the extension will be no longer than 10 working days. It will log and acknowledge stage 2 complaints within 2 working days and respond within 20 working days unless it agrees an extension with the resident. These timescales are in accordance with the Code in use at the time.
19. The Code in use at the time sets out how a landlord should respond to complaints. Under paragraph 5.1 a landlord should respond to a stage 1 complaint within 10 working days. If it needs a further 10 working days in exceptional circumstances, it must contact the resident to explain this. Any further delay beyond this must be agreed with the resident. It should escalate the complaint if asked to do so by the resident (paragraph 5.10) and should respond within 20 working days (paragraph 5.13).
20. The landlord sent an internal email on 15 March 2023 concerning the resident making a stage 1 complaint. It was reluctant to accept his complaint at stage 1 and suggested he was complaining to delay the process of gaining access.

This response was not in accordance with the Code or its complaints policy. The resident attempted to make a complaint at this time, but it was not accepted. This Service was not provided with details of the complaint, but it is clear from this communication that the resident had expressed dissatisfaction. Therefore, not accepting the complaint was a failing.

21. The resident raised a stage 1 complaint by email on 27 March 2023. The landlord sent an internal email on 28 March 2023 questioning again whether to accept his complaint as a stage 1 complaint. It acknowledged the complaint on 30 March 2023, in accordance with its complaints policy and the Code. It emailed him on 6 April 2023 and said that it would need an extension due to staff shortages. It said it would respond by 18 April 2023. This timescale was in accordance with the Code and its policy.
22. The landlord provided its stage 1 response on 21 April 2023. This was 16 working days after the complaint was acknowledged, but only 3 days later than the extension date given of 18 April 2023, which was a minor failing. It responded to most of the points raised but it did not adequately respond to the issue of contractors turning up at his property without an appointment. It also did not respond to his complaint about only being contacted by text message, which was a failing.
23. On 4 May 2023 the resident escalated his complaint. The landlord acknowledged this by email on 9 May 2023, and said that it would respond by 5 June 2023. He stated that his complaint about not being contacted by text was not addressed in its stage 1 response.
24. The landlord sent the resident a draft stage 2 response on 31 May 2023 for his comments and feedback. He responded by email on 1 June 2023 and accused the complaint handler of "lying and collaborating with colleagues". It sent its stage 2 response on 5 June 2023, in accordance with its complaints policy and the Code. It addressed all the issues raised at stage 1. It stated that he had said he did not require an apology and would feel it an insult if it gave one.
25. The landlord should have accepted the resident's complaint sooner and was late with its stage 1 response. It did not fully address all the issues raised and therefore there was service failure. To reflect the time and trouble caused to the resident, an order has been made that the landlord pay £50 compensation. This is in line with this Service's remedies guidance where there was a minor failure that was not appropriately acknowledged by the landlord.



## **Determination**

26. In accordance with paragraph 52 of the Scheme, there was service failure in the landlord's handling of its attempts to gain access to the property to carry out essential electrical works.
27. In accordance with paragraph 52 of the Scheme, there was service failure in the landlord's handling of the resident's complaint.

## **Orders**

28. Within 4 weeks of the date of this report the landlord is ordered to:
  - a. Pay the resident £150 compensation made up of:
    - i. £100 for any distress and inconvenience the resident may have incurred as a result of its handling of its attempts to gain access.
    - ii. £50 for any time and trouble caused to the resident as a result of the landlord's complaint handling.
  - b. This money is to be paid direct to the resident and not used to offset any monies that he may owe the landlord.
  - c. Confirm compliance with these orders to this Service.