

Housing

Ombudsman Service

REPORT

COMPLAINT 202312414

Arun District Council

31 January 2025

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint is about the landlord's handling of the resident's annual leasehold service charges and his subsequent complaint.

Background

2. The resident is a leaseholder of a one bedroom first floor flat. The landlord is a local authority. The resident bought the leasehold in 1992.
3. On 20 June 2023 the landlord emailed the resident a copy of a stage 1 complaint response. This complaint was in response to the resident's queries about his most recent service charge invoice for the 2022/23 period.
4. On 20 June 2023 the resident responded to the landlord. In this email he raised wider concerns, that had not been raised in his previous complaint, about its overall handling of service charges over time. He complained that since he began checking the annual service charge invoice 6 years ago, he found there to be errors each year. He said the most recent invoice had overcharged him leading to an adjustment of £313.66, with six out of seven items being incorrect. The resident provided information which he asked the landlord to consider, including information dating back to 2017 of overcharges and delayed responses to his invoice queries. The resident referred to one query in 2019 that took a matter of years to resolve. He cited the impact on his time in trying to resolve this and listed the following common problems:
 - a. Item descriptions make no sense and abbreviations are used. He said the landlord doesn't provide enough information to enable him to work out what a charge was for and if it was applicable to his flat.

- b. He said items for completely different flats, and even different blocks, are billed to him and items are incorrectly split and calculated.
 - c. He has been charged for items costing over £250 where he had not been issued with a section 20 notice.
 - d. Items are duplicated and he has been charged multiple times for the same work.
 - e. Queries about charges take months, sometimes years, to be answered before being invoices are adjusted.
5. The landlord addressed the wider concerns the resident raised through its complaint process, responding at stage 1 on 4 July 2023. It apologised for the inconvenience caused in having to raise these issues each year and partially upheld his complaint. It said that whilst it will not investigate individual invoices from previous years, as those matters are over 12 months old, it will consider the common concerns the resident reported against his recent invoice and the evidence the resident submitted when making his complaint. The landlord said:
- a. It partly upheld the resident's complaint about its use of abbreviations and clarity of information in its invoices. It identified there were some charges where it was not clear what they were for and said that wherever possible it will avoid jargon and abbreviations in future. The landlord said that because there is limited space on the invoices there may be times when abbreviations are used, and queries of these items may become necessary. It said it will provide guidance to staff on the use of abbreviations and jargon.
 - b. The landlord upheld the resident's complaint about being invoiced incorrectly for costs associated with different flats, blocks, and incorrect splits of charges. It said it had seen in the resident's documents that he had cause to challenge the invoice in six previous years which resulted in a revised bill because charges were either removed or reduced. The landlord acknowledged there are problems with its billing process, saying some of that arises from the system it currently uses which does not have the facility to correctly allocate some works. It said the other factor was human error by its staff when raising works orders. The landlord said to remedy this it is changing to a new housing management system in the 2024/25 financial year to allow charges to be allocated to the correct block or property. In the meantime, it said further checks will be done before issuing invoices. It also said staff training will be provided within 3 months, followed by quality checks, to ensure its staff raise work orders and apportion costs on the correct property.
 - c. The landlord upheld the resident's complaint relating to it charging for works that exceed £250 where it had not undertaken a section 20 consultation.

The landlord said it had considered the documentation the resident provided and had identified occasions where the resident was incorrectly charged amounts above the £250 limit that is applied to works exceeding that but where it did not consult leaseholders. The landlord said that it has taken steps to ensure it complies with section 20 of the Landlord and Tenant Act 1985 going forward. It said staff will be trained on section 20 within 3 months and a process of sharing a record of works, those works that exceed £250 but were not consulted upon, with its leasehold officer to ensure the full amounts are not recharged.

- d. The landlord did not uphold the resident's complaint that items are duplicated and charged multiple times. The landlord said it had only considered the most recent invoice as the others are over 12 months old. It said it did not identify any duplicate charges in this invoice. The landlord said that where it refers to duplicate charges this means those repeated charges of the same date, amount, and description. It said that where the same type of repair occurs throughout the year, such as a TV aerial, then this would not count as a duplicate but would instead be charged separately. The landlord said the resident would have to raise any challenges to this at the time of billing.
 - e. The landlord did not uphold the resident's complaint about the time taken to respond to charging queries and refund overcharges. It did not consider those previous invoice queries as they were over 12 months old but said that it found no evidence of it taking over a month to resolve the concerns the resident raised about his most recent invoice. The landlord said the resident queried the invoice on 15 May 2023 and it responded on 20 June 2023. It said in its previous complaint response that it answered the resident's questions, and it acknowledged that it did not meet its service standard of communicating within 10 days. The landlord said that once its response was sent to the resident a revised invoice was issued within 25 working days.
 - f. The landlord awarded the resident £50 compensation for the distress and inconvenience caused to him.
6. The resident responded to the landlord on 4 July 2023, asking that his complaint be escalated to stage 2 in the landlord's process, along with his other complaint relating to the incorrect charges on his most recent invoice. The resident said he has had 6 years of stress, inconvenience, delays in resolving the queries, and had been threatened with court action for unpaid invoices. He said it should have upheld all aspects of his complaint, and he did not accept the offer of £50 compensation.
 7. On 6 July 2023 the landlord wrote to the resident, declining his request to escalate his complaint to stage 2 in its process, which it said was based upon

the resident's reasons for requesting an escalation. The landlord said that it felt there would be little or no further explanation it could offer at stage 2 than what it had already given. It said:

- a. Its compensation award was based upon the stress and inconvenience to the resident in resolving that year's bill. It said it cannot increase the amount awarded in relation to charging concerns about previous years, as per the terms of its Feedback and Complaints Process.
- b. In response to the resident's request that it fully uphold all aspect of his complaint the landlord said:
 - i. The most recent invoice it was able to consider had no duplicate charges and so it could not uphold this element of the complaint.
 - ii. The resident's request to escalate his complaint to stage 2 of the process referred to a bill that was issued in 2019, which the landlord said it cannot investigate because it is over 12 months ago since the invoice was issued.
- c. In respect of it partially upholding the resident's complaint about abbreviations and descriptions on the invoices, the landlord said it had explained what action it will take to reduce confusion over the terminology used, but said there may still be some jargon or abbreviations on the invoices.

8. The complaint became one this Service could consider on 10 April 2024.

Scope of the investigation

9. The resident told the Ombudsman that he has lost confidence in the landlord's ability to correctly invoice him or to respond to queries in a reasonable amount of time. He said the landlord has made errors in each of the invoices for the last six years that total an amount of overcharge exceeding £1000. The resident said the problem is systemic and would not have been identified had he not spent time and trouble challenging the charges in the invoice. The resident also said that on one occasion the landlord threatened him with court action for unpaid service charges, when he says it was the landlord's delay in responding to his invoice queries that led to the delay. He feels the £50 compensation offered is not a sufficient remedy to the stress and inconvenience caused to him these past six years.
10. The Ombudsman does not doubt the impact the events have had on the resident's time, wellbeing, and confidence in the landlord. However, such matters are better suited to consideration in a legal forum, through the courts. This Service's investigation will be focused on the concerns the landlord considered at stage 1 in its process.

11. It is not the role of the Ombudsman to determine if the resident had been overcharged. The Ombudsman will consider whether the landlord has acted fairly in all the circumstances of the case, taken steps to put right what was wrong, and if it acted in line with established policies and procedures. This Service will seek to examine whether the compensation amounts offered by the landlord were reasonable and fair in the circumstances and in line with its compensation policy.

Assessment and findings

12. As part of the terms of a lease, where a landlord wants to carry out works over a certain value, the leaseholders should be consulted under the Landlord and Tenant Act 1985 section 20. This consultation should be carried out if any one leaseholder's contribution to the work is estimated to be, or does, exceed £250. If a consultation is not carried out properly before work commences then the landlord would only be able to recover £250 per leaseholder, regardless of the final bill.
13. The landlord's Feedback and Complaints Process says that it would not normally investigate complaints about something that happened more than 12 months from the date of a complaint, unless in its opinion there are exceptional circumstances.
14. The Ombudsman's Complaint Handling Code (the Code) says that a landlord must accept a complaint unless there is a good reason not to do so. It says that where a landlord declines to consider a complaint its policy must be clear and fair in its reasoning, with one example being where the issues giving rise to the complaint occurred over six months ago. The Code also sets out that a landlord must provide an explanation for its reasons to not accept the complaint.
15. This Service has seen evidence that the resident challenged the landlord's decision not to consider invoicing errors and problems experienced in previous years. The resident said that the landlord should afford discretion as he felt the numerous problems arising over multiple years, and which in some cases took years to resolve, met the exceptional criteria set out in its policy and highlighted a systemic issue.
16. The landlord said that it would consider the resident's concerns of a systemic issue. However, it said it would not consider the outcomes of his historic communications and related final balances paid in those previous financial years because of the 'extensive period' that had elapsed since he raised concerns with it about those charges. The landlord said at the time the resident raised these individual concerns there was no further escalation by the resident and so it would consider any concerns surrounding previous years' bills as historically resolved.

17. This Service has considered the landlord's decision not to consider the previous invoices that the resident challenged. This Service is satisfied that the landlord considered the resident's request of exceptionality and that it communicated its reasons for this decision in its email communications with the resident between 22 June 2023 and 6 July 2023. The landlord acted in line with its own policy and complied with the Code. Whilst the landlord did not consider the individual invoices, it did agree to consider the wider concern the resident reported of a potentially systemic issue. Which, this Service considers was fair and reasonable in the circumstances.
18. Paragraph 5.9 of the Code says that if all or part of the complaint is not resolved to the resident's satisfaction at stage one it must be progressed to stage two of the landlord's procedure, unless an exclusion ground now applies. In instances where a landlord declines to escalate a complaint it must clearly communicate in writing its reasons for not escalating as well as the resident's right to approach the Ombudsman about its decision.
19. The landlord did provide reasons for its decision, in line with the Code. This Service also considered the landlord's reasoning not to escalate the resident's complaint to stage 2 in its process, alongside the resident's reason for requesting escalation. The resident sought the landlord to uphold all aspects of his complaint and increase the compensation amount, saying he had 6 years of stress and inconvenience relating to the service charges.
20. This Service understands the landlord's decision not to escalate the complaint to stage 2, given the reasoning the resident gave was rooted in his concerns which the landlord had already excluded, that the problems he reported are historic and relate to matters over 12 months old. As such it was not unreasonable for the landlord to, at that time, direct the resident to this Service to consider his complaint.
21. This Service has considered the landlord's handling of the resident's stage 1 complaint and made the following observations and findings:
 - a. The landlord partially upheld the resident's complaint about the use of jargon and abbreviations. This Service has considered the landlord's reason for not fully upholding the complaint as the resident seeks. Whilst the landlord did identify failings by it in this regard, it also identified that where there is limited space for a description on an invoice there are times when the use of abbreviations and jargon may be necessary. The Ombudsman understands there could be limitations in this circumstance and considers the landlord's approach to redressing this with training, guidance, and new systems is a reasonable one. This Service has considered if there is more that could be done in this regard, however, and has made a recommendation in respect of this later in this report.

- b. The landlord did not uphold the resident's complaint about duplicate charges because the most recent invoice had no duplicates. This Service considers the landlord's conclusion was a reasonable one, given the period of time the complaint focused on showed this not to have been a problem.
- c. The landlord did not uphold the resident's complaint about it taking months, or sometimes years, to respond to a complaint. The landlord's complaint policy sets out that the landlord should respond to stage 1 complaints within 10 working days of the complaint being received. The landlord acknowledged that it failed to meet its stage 1 complaint handling timescales in respect of the resident's previous complaint about his most recent invoice but said that it responded within one month. This Service understands the landlord's approach to this concern, the resident reported matters took months or years and yet it responded within a month. The Ombudsman also understands that the substance of this previous complaint is not considered here. However, this Service considers the landlord could have made efforts to remedy what was a failing by its own admission, as it did fail to meet its response timescales. The landlord also missed the opportunity to apologise for the previous delay. As such, this Service has made an order to this effect and considers there was a Service failing by the landlord in the handling of this element of the resident's complaint.
- d. The landlord upheld the resident's complaints about the following:
 - i. Charges for different flats, blocks, or incorrectly split and calculated items.
 - ii. Charges for items costing over £250 where a section 20 notice was not issued.

The Ombudsman considers the landlord took appropriate steps to remedy these elements of the resident's complaint with the implementation of a new system, staff training and guidance, improved communications, quality checks, and information sharing with its leasehold officer about works over £250 that it does not consult upon.

22. This Service has considered the compensation the landlord offered and whether the amounts offered were reasonable redress in the circumstances of the case. The landlord's compensation policy set's out amounts of compensation based upon the level of responsibility by the landlord and the level of impact on a customer. The amount the landlord awarded of £50 for the resident's distress and inconvenience met its award for compensation where it was partially responsible, and the nature of the event had a low impact on the customer. This Service has considered the circumstances of the resident's complaint against the awarding criteria used. The landlord took 26 working days to respond to the resident's previous complaint about his most recent service charge invoice, following which, it then provided its adjusted invoice.

This Service has seen no evidence of a longer impact relating to this recent invoice and the landlord has taken other non-monetary steps to right the wrongs the resident had experienced in this instance and in his poor experiences these last six years. As such, this Service considers the landlord's application was in line with its own policy and was fair in the circumstances of the case.

23. The landlord acknowledged the resident has had cause to contact it over the past 6 years, and it apologised for the inconvenience caused by the repetitious experiences. The landlord also acknowledged the resident's reluctance to believe that it had taken steps to put right what was wrong so the poor experiences would not reoccur. When the Ombudsman considers a complaint, it looks at whether steps have been taken to right any wrongs. This includes apologies, changes or improvements to services, financial remedies, and an acknowledgement of failings. Overall, this Service considers that the landlord was reasonable in its approach to the resident's complaint, it has demonstrated it had taken the resident's concerns seriously and taken steps to improve the resident's future experience. This is demonstrable in its commitment to staff training and guidance, quality checks, and new systems. The landlord has also told this Service that it is in the process of developing a service charge policy.
24. In summary, the Ombudsman considers the landlord has, in the main, taken steps to remedy the resident's complaint. However, it could have taken a more robust and resolution focused approach in its response to the concern about its delays addressing the resident's service charge queries and concerns.

Determination

25. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was service failure by the landlord in its handling of the resident's service charge concerns and queries.

Orders and recommendations

Orders

26. Within 4 weeks of the date of this report the landlord should write to the resident to apologise for its failings identified in this report.
27. Within 4 weeks of the date of this report the landlord should pay the resident £50 compensation for its delay in responding to the resident's service charge concerns. This award is further to the £50 the landlord had already offered in response to this complaint. The landlord must update this Service when the payment has been made and provide evidence to confirm it has paid the £50, plus the £50 it awarded at stage 1 in this complaint.

Recommendations

28. Whilst the Ombudsman understands there may be instances where certain jargon or not often used abbreviations may be used, this Service recommends the landlord consider whether there is more that can be done to limit the ongoing queries around jargon or abbreviations used by it. For instance, a list of agreed and often used abbreviations shared with residents or made available on its website.