

Housing

Ombudsman Service

REPORT

COMPLAINT 202121016

Clarion Housing Association Limited

11 August 2023

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 regarding the landlord's handling of reported leaks affecting the resident's property.

Background and summary of events

Background

2. The resident is a leaseholder of a shared ownership property bought in 2015. She purchased her share of the property from a housing association who have since merged with another to form her current landlord.
3. At the time of the resident's complaint, the landlord operated a 2-step complaint procedure, under which it aimed to provide a response to complaints at stage 1 within 10 working days. If a complaint was escalated, it would carry out a Peer Review (stage 2) and issue a final response within 20 working days. The landlord would "provide timescales of what's involved to resolve your complaint and approximately how long your complaint will take" if it was unable to provide a response within the 20 working day timeframe.

Scope of investigation

4. In its stage 2 complaint response the landlord noted that, in accordance with its complaints procedure, it would not usually consider complaints "where the cause of the complaint is over six months old". However, it acknowledged the resident had advised "the issues go back to 2015", that she had raised them at the time and "continued to communicate with us about this" and it had therefore been appropriate for it to consider the complaint. The Ombudsman has decided to take the same approach and will therefore consider how the landlord responded to

reports the resident raised from 2015 onwards, rather than just the immediate period prior to her complaint.

Summary of events

5. On 28 August 2020, the landlord provided a stage 1 complaint response to the resident. It said this was regarding a complaint received on 22 July 2020 regarding “structural damage” and noted the resident had requested “an explanation on (the landlord’s) plans to rectify the structural damage and neglect for almost six years”, and how this would be dealt with. In its response it made the following findings and comments:
 - a. It apologised for any “issues (the resident) may have experiences and any inconvenience caused”.
 - b. Following a phone conversation on 24 August 2020, the developer had asked for an appointment to be set up to allow it to visit the resident’s block and inspect an area of the roof. The landlord would contact the resident to arrange an appointment and the visit would “then determine the next action plan”.
 - c. It upheld the resident’s complaint “due to the delays in resolving this issue”.
 - d. It would not be able to provide timeframes regarding any required works as “inspections are still ongoing and commencement of works is yet to be determined”.
6. On 1 October 2020, the landlord and the developer corresponded regarding the resident’s property. The landlord noted the resident was complimentary about an inspection the developer had carried out the previous day but had supplied photos showing further water ingress. The developer replied to advise it considered the leak was caused by works carried out during her neighbour’s kitchen installation. The developer sent the landlord a further email the following day outlining its findings, which included that the neighbour’s builder had “drilled through then external wall and NOT (their emphasis) re-weathered the penetration”. It also noted water was “visible under the roofing membrane and this is what is causing the damage in (the resident’s property)”. It further stated that “damage to the reveals” in areas of the resident’s property was “caused by the terrace leaks above”.
7. The resident emailed the landlord on 10 November 2020 asking for her complaint to be escalated. She noted that the developer and landlord had attended her property on 30 September 2020 to complete an inspection. While at the property, the developer had taken part of her hallway ceiling down to assess where the damp patches had come from and visited her upstairs neighbour “to see if there were any visible connections”. She noted the following:

- a. The developer advised they found damp patches on her upstairs neighbour's terrace but that, once works had been carried out, the leak continued "the same evening", which is assumed to be the same day works were completed. She notified the landlord of this as it would be meeting the developer again the following week.
 - b. She had not heard further "for a couple of weeks" and advised her complaint was related to a response she received from the developer on 16 October 2020, in which it advised it considered the leak had been caused by damage related to work her neighbour carried out to their kitchen. She noted she had been advised to "find out who gave permission and claim back on their insurance", whereas she stressed she had been reporting leaks happening since she moved into the property, and this showed the matter was unrelated to any recent works carried out by her neighbour.
 - c. She requested a "full investigation" into her case and noted, prior to the COVID-19 pandemic, a member of the landlord's staff had "worked with (her) for a year gathering evidence" and submitted a report to the developer, who had planned to visit the property with a structural engineer. However, following the onset of COVID-19 related lockdowns, this did not take place. She also noted that the developer was aware another neighbour had had "the exact same issues" which it had managed to resolve.
 - d. She stressed she felt she was being "taken advantage of" and the landlord should not accept that she was living in conditions that were "below an acceptable standard".
8. The resident's MP later contacted the landlord on her behalf on 25 November 2020, noting the resident was "concerned" that her last email had not been replied to and reiterating her request for the complaint be escalated to stage 2.
 9. On 10 December 2020, the landlord acknowledged the resident's complaint escalation request regarding "our handling of your reports of structural damage in (her) property". It apologised for the delay in acknowledging the escalation request but clarified a Head of Service would now review the complaint and it would provide a formal (stage 2/Peer Review) response within 20 working days.
 10. In internal landlord correspondence on 19 January 2021 regarding its stage 2 complaint response, a member of staff commented "I think we all agree it's a latent defect". It noted its Technical Services team would "progress" this with the developer. A further email noted that the developer had been contacted about similar leaks affecting two other properties during the initial 2-year defects period and had attended to resolve the matter. A member of the landlord's staff noted that "in my opinion, they should do the same for (the resident)".

11. The landlord provided the resident with an update regarding her complaint on 22 January 2021, advising that it would not be issuing its stage 2 response on time “due to the nature of (her) complaint”. It noted that its Technical Services team had visited the resident to inspect the property on 11 January 2021 and, following this, it would contact the developer to discuss the findings of this inspection and would “work with them to come to an agreement on how to resolve the problem”. It advised it was “unable to put a timescale” on when it would be able to provide a complaint response, and clarified that her complaint remained open “until we can arrive at a resolution”. It would contact her within 2 weeks to provide an update on its discussions with the developer. It offered an apology for the time taken to resolve the issue and “for any inconvenience caused”.
12. On 25 January 2021, records show the landlord wrote to the developer regarding “the ongoing leak” at the resident’s property. It noted the following:
 - a. The developer has been unable to attend a joint inspection on 11 January 2021.
 - b. Having carried out a further inspection and based on “historic information that the resident has kindly provided, it is clear that the leaks...are the same issues which she reported in September 2015...affecting her hallway and lounge”. It did not believe the leaks were “related to the kitchen replacement work to the flat above, which was not completed until late 2020”.
 - c. It also noted it had reviewed documentation which showed another resident had had “the exact same issue which (the developer) subsequently fixed a couple of years ago”. As the history indicated the developer had “previously accepted liability and resolved the same issues” in two other properties, the landlord therefore asked it to “confirm the next steps and timeline on when you will be resolving this”.
13. The landlord chased the developer for a response on 1 February 2021. Between then and 8 February 2021, they exchanged further emails during which the developer reiterated that it considered the leak had been caused by kitchen installation works in a neighbouring flat and, while it was prepared to carry out repairs to the resident’s property, it expected the landlord to meet the costs.
14. On 11 February 2021, the landlord sent the developer a further email, in which it set out its position as follows:
 - a. It was in agreement that there was a damaged roof membrane to the balcony of the upstairs neighbour’s property, and this was “causing water ingress when raining” into the resident’s property.
 - b. It did not agree that the damage was caused “as a result of alterations undertaken by (the neighbour) and is therefore (the landlord’s) responsibility to resolve.” As the “required repairs” had not been completed “within the five

year period prior to (the neighbour) undertaking alterations”, the responsibility for resolving the leak “falls to (the developer)”.

- c. It also noted that “only four of the properties (in the block) had this balcony design and three out of the four had had this exact same issue”. It reiterated that the developer had carried out similar repairs to two other properties in the block and felt this had established a “precedent for liability for this issue being accepted” by the developer.
 - d. By way of resolution, it requested the developer treat the balcony leak as a defect and resolved it at its own cost. It advised if an agreement was not reached by 12 February 2021, the landlord would log a claim with the “the building warranty insurer”. It also clarified it retained the right to undertake the repairs itself and recharge the developer for the work.
15. On 2 March 2021, the landlord discussed the complaint and repair issues in internal correspondence. Its Customer Solutions team requested an extension to its stage 2 response and noted that, as of 19 February 2021, the developer had refused to accept liability for the repair. The landlord would therefore be contacting the building insurer “to agree the process for carrying out the work and claiming the cost back”.
16. Landlord repair records indicate it attended the property on 17 March 2021 to “investigate a roof leak”.
17. Internal landlord correspondence from 19 March 2021 noted that its Technical Services team had conducted a joint visit with its repairs service the previous day and “identified that the issue causing the leak is the metal box guttering and hopper”. It advised that a working platform was needed to reach the guttering and would be arranged for the following week and that “once the leak has been resolved”, its repairs team would book repairs to the resident’s ceiling where the developer had made “access holes”. It noted that the resident had been updated and enquired whether the complaint could now be “closed down”.
18. On 26 March 2021, the landlord issued its stage 2 complaint response, apologising for the delay. It made the following comments and findings:
- a. It noted the resident complained on 22 July 2020 regarding the “time taken to rectify the structural damage to (her) property”. It noted she stated she had been reporting the issue “since moving into the property in September 2015” and that, despite it referring the matter to property developer, “the issue remained outstanding” and she had been left chasing updates.
 - b. The resident’s reasons for requesting a complaint escalation were that the developer had “inspected the damage” to the property on 30 September 2020 but she had “again been left chasing updates on when the agreed works would commence”. She had also been told on 16 October 2020 that the leak

affecting her property “was as a result of (a) defect with the new kitchen installation undertaken in your neighbour’s” property, carried out a few weeks before the developer’s inspection. It noted she disagreed with this assessment as she had been reporting the issue since 2015 and had requested a full investigation and for the leak to be resolved.

- c. It apologised for the time taken “to get to this” and advised there had been a “delay in progressing (the issue) with (the developer) to find a solution”. It said the developer had not accepted that “the issue (she was) reporting is a defect with their build (of the property)” and had insisted that damage to the resident’s roof membrane was caused by kitchen works carried out by her neighbour. It advised that it had “reservations” about the developer’s conclusions, but that “in the interest of fostering good a relationship with our customer” it had decided to look at other options to remedy the leak.
- d. Its Technical Services Team had “taken the lead” on the repair since the resident’s complaint escalation request. It advised that following its inspection on 18 March 2021, it had identified the cause of the leak (metal box guttering and hopper) and its scaffolding contractor would visit on 2 April 2021 to “survey the logistics” of setting up a scaffold. It would provide the resident with a date for the repair once this had been done. It would also repair damage caused to the resident’s ceiling by the developer during its investigations and its Technical Services team would monitor the works until completion.
- e. It agreed there had been a “prolonged delay” in resolving the leak and there was “no evidence to show that we kept you updated as we ought to have”. It explained the team originally dealing with the matter had been restructured but accepted that this did not “excuse the fact that (we) have been aware of the problem” and it should not have required the resident’s “persistent contact” for it to “eventually take action to rectify the problem”. It apologised for its “poor handling of this matter” and for any inconvenience caused.
- f. It noted it would normally not consider issues under its complaint procedure “where the cause of the complaint is over six months old”. However, it acknowledged the resident had advised she had notified it of the issue soon “soon after moving into the property” in 2015 and had “continued to communicate with us” about it. It therefore considered it had appropriately dealt with her communication as a complaint and it should “also award compensation to recognise the time and efforts (the resident had) put into pursuing a resolution”. It had therefore “recommended £500 discretionary compensation” be awarded.
- g. It also acknowledged the delay in providing a stage 2 complaint response. Although it noted this was “mainly because we were liaising with (the developer) to find a solution”, it accepted it had not kept to the 20 working day response target. It offered a further apology and an additional £100 “discretionary compensation”.

19. Following the landlord's attendance on 17 March 2021, its repair records show a follow-on order was raised on 13 April 2021 for a scaffold to be erected. A further repair was raised on 14 April 2021. Although the initial wording was identical to the repair raised on 17 March 2021, additional notes outline the work that was carried out: "removed failed aquapole on three gutter joints, dried and brushed out gutter...primered 7lm of gutter, installed 7lm of reinforcing mesh brace coated 7lm and top coated 2 x 7lm". It noted this would need water testing with dye 2 weeks later. It is unclear from its records whether a further appointment took place on 30 April 2021, but it is noted that further follow-on works were subsequently raised on 5 July 2021 to carry out "plastering and redecorating" in the resident's property.
20. Repair records show that a repair recall was raised relating to the plastering and decorating on 18 August 2021 as "(the) work has not been done properly". The attending operative's notes from 8 September 2021 indicated that "the concrete is still wet". A further order was then raised on 19 September 2021 to "inspect damp/leak causing plaster to bubble". Records indicate an inspection took place on 21 October 2021 when it was noted that "there are signs of leak on the part of the boarding closer to the side of the kitchen". The attending operative advised the boarding would need "to be cut so as to check where this is coming from" and an order to carry out a further inspection was raised the same day.
21. On 29 November 2021, records show the landlord attended and cut an "inspection hole" in the resident's property to "poss(ibly) trace leak". A follow-up appointment was to be booked for 4 weeks' time but there is no record regarding any further inspection or attendance around that time. The repair records provided to this investigation do not cover later than January 2022.
22. On 10 December 2021, the resident referred her complaint to this service. She advised that she had any further contact from the landlord since it issued its stage 2/Peer Review response and her property continued to be affected by leaks. Her desired outcome was for the leak to be resolved and for this service to investigate the actions of both the landlord and the developer, although this service advised concerns regarding the latter would lie outside of its jurisdiction as the developer was not a member of the Housing Ombudsman Scheme.
23. This service asked both parties for an update on the situation and the landlord provided email correspondence between it and the resident which indicated a further inspection took place on 11 March 2022 with identified follow-on works being completed on 14 April 2022. The exact nature of the works was not specified. The landlord also advised the resident had since reported further damp and mould in the property, but it did not consider this to be "related to the original issue". It clarified it did not consider it was responsible for any repairs as the resident was a shared owner but advised that a surveyor would contact her to

arrange an inspection as “a neighbour also has an issue”. It did not indicate a timeframe for the inspection to take place.

Assessment and findings

24. The Ombudsman has noted that the developer disputed the landlord’s findings regarding the cause of the leak to the resident’s property. However, the evidence available also shows that the landlord and resident were in agreement over the issue, namely that the leak affecting her property was caused by a defect within her upstairs neighbour’s balcony.
25. Landlord repair records provided to this investigation only go back to May 2018, with the first reference to a leak at the resident’s property being noted on 29 August 2018 (“gutter leak – hallway external leak linked to gutter above (the resident’s flat). Causing damp patches and paint to peel off”). A further issue with the guttering was reported on 7 January 2019 (“gutter above (the resident’s) rear window and hallway window causing severe damp in the flat and plastering coming off wall”). This indicates the issue had been ongoing for at least 2 years prior to the resident raising her complaint in July 2020. However, correspondence provided to this investigation shows the landlord does not dispute the fact the issue had occurred since the resident moved into the property in 2015 and that she had reported the matter long before her complaint was raised in July 2020.
26. While landlord repair records do show several attendances to the resident’s property between 2018 and 2020 and the Ombudsman acknowledges that leaks can sometimes be challenging to resolve first time around (a fact also fairly acknowledged by the resident in her correspondence with the landlord), it appears to have ultimately failed to resolve the issue until April 2022, almost 7 years after she moved into the property. This is a significant length of time and amounts to a serious failing which would have caused the resident distress and inconvenience. From the correspondence seen by this investigation, she was also caused to expend a sizeable amount of time and trouble in attempting to progress the issue and chasing the landlord for updates.
27. In its stage 2/Peer Review complaint response, the landlord acknowledged the issue had been, as of March 2021, ongoing for 6 years and offered an apology and compensation accordingly. It was positive it acknowledged there had been a “prolonged delay” and that there was a lack of evidence it had kept the resident updated. It was also appropriate it accepted it had been “aware of the problem”, that the leak should have been resolved without the requirement of the resident’s “persistent contact” and that it apologised for its poor handling of the matter. These were reasonable findings for the landlord to have made and indicated it appropriately recognised several failings regarding how it responded to the resident’s reports. Internal correspondence also showed the landlord initially

suggested offering £100 for each year the resident had been affected by the leak, again acknowledging there had been a significant delay in resolving the issue.

28. However, in the Ombudsman's opinion, the amount of compensation offered by the landlord was not sufficient and failed to properly reflect the length of time taken to resolve a leak it accepted had first been reported in 2015 and the detriment this caused the resident. It is noted it ultimately did offer the resident £600 "discretionary compensation", but this included £100 related to its complaint handling, meaning its final offer fell short of the originally suggested £100 for each year the leak had been unresolved. In any case, considering that at the time of its stage 2 reply the leak had remained unresolved for 60 months, the £500 offered by the landlord equated to an award of roughly £8.33 per month which in the Ombudsman's view, was inadequate. It did not reflect the seriousness of the case and did not amount to an appropriate offer of redress in the circumstances.
29. It is acknowledged that some of the delays in resolving the leak, particularly following the resident's complaint, was caused by the landlord's negotiations with the developer, who it attempted to get to carry out any repairs as a defect. Having satisfied itself that the matter was a latent defect, it was reasonable of the landlord to take this approach. However, by the time it had entered these discussions with the developer, it was already almost 5 years since the resident had first reported the leak at her home and there had therefore already been a significant delay for which the landlord was ultimately responsible.
30. Having pointed out to the developer during its January and February 2021 correspondence that they had already rectified similar issues in 2 other properties in the resident's block during the initial defect period, it remains unclear from the evidence provided why the landlord had not previously linked the issues the resident reported with the other cases. This meant that a pattern of issues at the block appears to have been missed, at least initially. This was not appropriate and calls into question the landlord's ability to identify core issues being raised.
31. Correspondence shows the resident had raised the leak directly with the landlord's aftercare team soon after moving into the property. In an email sent in August 2016 she sent pictures showing "how much water" was entering the property and noted that the leak was "clearly not repaired", although it is not clear from the evidence who undertook that repair. However, as noted above, the landlord appears to have missed an opportunity to link the reported leaks together much sooner and likely missed a chance to make the developer rectify the resident's leak during the defect period, as it apparently did at two other properties in the block.
32. This ultimately had a significant effect on the resident, whose leak remained unresolved for several years, and meant she was not treated in the same way as her neighbours. From the evidence seen by this investigation, it remains unclear

why there was an inconsistent approach taken by the landlord in the resident's case, with it initially attending to the property to carry out repairs in 2018 and 2019, before later attempting to get the developer to address the repair as a defect. Correspondence shows its aftercare team had also been in communication with the developer regarding ongoing leaks in August 2019, going as far as to obtain an inspection report from them.

33. However, the report was not contained within the landlord's records and this service has not seen evidence that the issue was followed up appropriately by the landlord, which ultimately prompted the resident's complaint. It is also unclear why the landlord only appears to have attempted to push the developer to address the issue as a defect in 2021, when it had already liaised with them at least 18 months prior. Overall, there is a lack of evidence to show the landlord had a consistent approach to managing the resident's repair through its aftercare and general repairs teams, both regarding the leak itself, and how other residents in the block had different outcomes relating to similar issues. This was not appropriate and meant the resident was not treated fairly.
34. It is also noted the landlord's complaint responses, while acknowledging the failings noted above, unduly focused on the delays caused by its negotiation with the developer, rather than its own failure to correctly identify the cause of, and ultimately rectify the leak, in the preceding years. This was also not appropriate.
35. Just prior to issuing its final complaint response, records show the landlord attended the resident's property and identified that the leak was caused by defective guttering. Records show it carried out repairs in April 2021 and carried out redecoration works once this was done in July 2021. While it was positive the landlord followed through on actions that it set out in its peer review response, it is noted that the resident had cause to email it on 16 June 2021 regarding a lack of contact over the follow-on works. This was not appropriate, and it is of concern that, after the landlord's peer review response identified it had not kept the resident updated on the original repair issue, its communication with her continued to be poor, suggesting it had not learned from its review of the case.
36. Additionally, records also show that the repair order was later recalled. Repair records as well as correspondence from the resident indicate that the repair was not successful and the leak remained and, when the resident referred her complaint to this service in December 2021, she advised the leak was still ongoing. The landlord has since advised that a further repair was completed in April 2022, and it now considers the matter resolved. However, this was a further 12 months after it carried out repairs in April 2021 meaning there was a further, significant, failure to resolve the issue in a timely manner.
37. While the landlord's attempt to resolve the leak is acknowledged, it meant that overall, it was almost 7 years before the leak was finally rectified and, while there

were disagreements between the landlord and developer over whether the issue was a latent defect or not, it was ultimately the landlord's responsibility to resolve the matter. The evidence shows it did not manage the repair consistently, keep the resident appropriately updated and the resident was not treated in the same way as her neighbours. The leak remained unresolved for a significant period prior to the landlord's complaint responses in 2021 and remained unresolved for a further year after that. The landlord's overall response was neither reasonable nor appropriate and would have caused the resident a great deal of distress, inconvenience and time and trouble contacting it regarding the progress of the repair, or the lack of it. In the Ombudsman's opinion, taking all the above into consideration, there was severe maladministration by the landlord regarding its response to the resident's reports of leaks affecting her property.

38. As noted above, while it was appropriate that the landlord offered the resident an apology and compensation in its final complaint response (which records indicate has been paid), in the Ombudsman's opinion it did not suitably reflect the gravity of the case and the detriment the resident had been caused. An order has therefore been made for the landlord to pay the resident £4,400 compensation. This consists of £500 to reflect the distress and inconvenience caused to the resident and £50 compensation for each month the issue remained unresolved from when she moved into the property in September 2015, a period of 78 months. The landlord's previous payment of £500 to reflect its poor repair handling is acknowledged and will be deducted from the Ombudsman's final award, meaning the final compensation ordered will be £3,900.

Determination (decision)

39. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was severe maladministration regarding the landlord's handling of reported leaks affecting the resident's property.

Reasons

40. The landlord failed to rectify the leak(s) reported by the resident for a significant length of time, causing her a high level of distress and inconvenience. It did not appear to manage her repair consistently or in the same way as it did other reported leaks within the same block and this meant the resident had a vastly different outcome to two of her neighbours, who had similar issues resolved in a much timelier manner.

41. While its complaint response acknowledged the poor handling of the repair and poor communication, its offer of compensation was insufficient and a further 12 months passed before the leak was finally resolved, compounding the failings, and adding further distress, inconvenience and time and trouble to the resident.

Orders and recommendations

Orders

42. The landlord is ordered to, within 4 weeks of the date of this determination:
- a. Write to the resident to apologise for its poor handling of the reported leak. This letter should be sent by a member of staff at director level.
 - b. Pay the resident £3,900 compensation to reflect the poor handling of the repair and the significant delay that occurred prior to resolution and the distress and inconvenience caused to the resident.
43. The landlord is also ordered to, within 8 weeks of the date of this determination, carry out a review of the case to establish how oversight and engagement with third parties could be improved to avoid the inconsistencies in responding to different residents identified in this report. This review should be conducted by senior management and should be shared with the Ombudsman once completed.

Recommendations

44. The landlord should, within four weeks of this determination, arrange an inspection with the resident to assess her further reports of damp and mould in the property, as it mentioned its correspondence with this service. On completion of the inspection, it should share a copy of its inspection report with the resident and provide a written action plan regarding any works it agrees to carry out.