

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202217011*

*Lewisham Council*

*22 September 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. This complaint is about the landlord's handling of:
  - a. The resident's reports of water ingress and damp and mould in her property.
  - b. The associated complaint.

## **Background**

2. The property is a fourth-floor, two-bedroom flat. The flat is located on the top floor of the building. The resident is a leaseholder. Her lease began on 2 April 2001.
3. The leaseholder notified the landlord on 12 April 2022 of a leak that she believed was caused by water ingress from the roof. She said that the water ingress began on 6 April 2022. The water ingress occurred in a location where the leaseholder had previously experienced ingress whilst living in the property, most recently in 2020. The resident sent an e-mail chasing the landlord for a response or an update on 22 April 2022.
4. The leaseholder raised a complaint on 25 July 2022. She stated she had reported water ingress into the property from the roof but had no response. The landlord sent contractors to visit the property on 8 August 2022, but they could not locate the cause of the water ingress or see an issue with the roof or the brickwork.
5. The resident reported additional water ingress to the landlord on 9 September 2022. The landlord's contractors again visited the property and found no faults. They told the landlord they believed the likely cause was works by a third party to the roof. The resident continued to chase the landlord for updates before writing a letter to her MP on 4 November 2022. Following this, the landlord escalated the complaint to stage 1 of its complaint procedure on 7 November 2011. It provided

its stage 1 complaint response on 7 December 2022. It did not uphold her complaint. It said it had arranged an initial inspection and would complete any necessary work to the roof. It also said it would be in touch with the resident about these.

6. The resident chased the landlord for an update on these works on 19 December 2022. She said the water ingress was ongoing, worsening the dampness and mould. She described to the landlord how this was affecting her physically and mentally. She also said she had tried chasing this over the phone, but her complaint had been closed and she raised issues with the general upkeep of the estate. The landlord acknowledged this escalation on 28 December 2022. It provided its stage 2 complaint response on 26 January 2023. It partially upheld the resident's complaint as it had failed to resolve the leak in a timely manner. It also upheld the complaint points she had raised about litter on the estate and a blocked drain. It did not provide any compensation to the resident. It confirmed that roofers had visited on 12 January 2023 to repair a walkway and on 13 January 2023 to fix a crack in the step where water was seeping through into the property.
7. The resident rejected the landlord's stage 2 response, confirming she wished for this service to investigate her complaint. She felt the situation had continued to worsen. As a result, she was now unable to use her bedroom. She felt the landlord had not fixed the cause of the water ingress. She believed the drains of the roof remained blocked. She also stated that she would like the landlord to come and inspect the inside of her flat and compensate her for the dampness and mould inside the flat. She said she had spoken with her insurance company, who said they would not cover this damage.
8. Whilst the resident was waiting for the complaint investigation by this service, the landlord escalated the complaint to stage 3 of its complaint procedure, providing its response on 1 March 2023. It again did not uphold the resident's complaint, advising her should she wish compensation for the internal damage to her flat, she would need to seek this through the courts. To resolve her complaint, the resident has stated that she would like the cause of the water ingress to be identified and fixed. She also wanted the landlord to inspect and perform any necessary internal works to repair the effects of dampness and mould within the property.

## **Assessment and findings**

### *The scope of this investigation*

9. The resident has said that she has been experiencing leaks from the roof into her property since she purchased it. However, this service expects a formal complaint to be made within a reasonable amount of time, normally within six

months of the matter occurring. Therefore, whilst the historical incidents provide contextual background to the current complaint, this assessment focuses on events from the resident's report of a leak from her roof on 6 April 2022.

*The landlord's handling of the resident's reports of water ingress and damp and mould in her property*

10. The lease says that it is the landlord's responsibility to repair and maintain 'the main structure of the building and the demised premises...including all roofs and chimneys and every part of the building above the level of the top floor ceilings'. The resident's responsibilities are to 'keep in good and substantial repair and condition and properly cleansed...all fixtures and fittings'. Her responsibilities also include 'all walls, windows, glass boards and skirtings'.
11. The landlord's Leasehold Guide states that if water leaks into a leasehold property, the leaseholder should first try to see where it is coming from. The leaseholder should contact the landlord's repair service if they cannot identify the cause of the leak. The landlord would then arrange to repair if the water was coming from an area of the building it was responsible for maintaining. The guide advises leaseholders to contact their insurer about a claim for any damages. In some cases, leaseholders may also be able to raise a claim with the landlord's insurers.
12. The landlord's repair policy does not state the timescales for completing repairs to a leasehold property. For tenanted properties, its repair timescales are within 24 hours for emergency repairs, 3 working days for urgent repairs, and 20 working days for routine repairs. This service deems these reasonable response times for repairs to a leasehold property.
13. The resident reported to the landlord that water ingress was coming from the roof on 12 April 2022. She has given several reasons why she believes this may be. These include damage to the roof caused by third-party works, overflowing drains, and a poor standard of work from previous repairs.
14. The landlord has not provided any evidence to this service that it has attempted to determine the cause of the water ingress to the property. Contractors have attended to the roof but could not find the cause of the water ingress. The landlord has provided a spreadsheet of works to the building. It raised jobs on 27 July 2022, 3 November 2022 and 31 March 2023. It is not clear from this evidence what actions the landlord has taken. Given the lack of evidence and the apparent continuation of the leak, this service cannot conclude that the matter has been satisfactorily investigated or repaired.
15. The landlord should have further investigated the cause of the water ingress. It would have been reasonable to appoint a surveyor to inspect the roof and the

resident's property. The water ingress and subsequent dampness and mould have been ongoing for approximately 18 months. As stated above, there is no conclusive evidence the landlord has diagnosed the cause of the water ingress or completed the necessary repairs to stop this.

16. The landlord's delays have been extensive and unreasonable. The time taken to complete the repairs falls considerably outside the timescales mentioned in its repairs policy. These delays have caused significant distress and inconvenience to the resident. She remains unable to use one of the bedrooms in her property, along with damage to her personal belongings caused by the dampness and mould.
17. The resident spent considerable time and trouble pursuing updates from the landlord since raising her complaint. Her communications were often not responded to. When the landlord did respond, this often lacked a substantive response. This was likely to have caused additional significant concern and inconvenience.
18. To resolve her complaint, the resident has said she would like the landlord to complete remedial works to the interior of her property to deal with the dampness and mould caused by the water ingress. However, as this would not fall under the landlord's repair responsibility, it would not be expected to complete these.
19. The landlord has directed the resident to claim against her insurance, which is correct and fair. The resident has spoken to her insurance, but this appears to have been to her home insurance. It would be more appropriate for her to make a claim on her leasehold building insurance. The landlord should also provide the resident with details of its insurer so she can potentially claim against its insurance policy.
20. The landlord has not provided any form of compensation to the resident despite upholding the complaint at stage 2 of its complaint process and acknowledging that it had failed to deal with the leak reasonably. Given the length of time the leak had been ongoing, it would have been reasonable for the landlord to pay the resident compensation for the distress and inconvenience its actions had caused.
21. Overall, there was severe maladministration in the landlord's handling of the resident's reports of water ingress, dampness, and mould in her property. The water ingress appears to have originated from the roof, making this the landlord's responsibility. Almost 18 months after the original report, it has yet to diagnose the exact nature of the problem or stop the water ingress. This has led to additional damage to the resident's belongings, as well as distress and inconvenience caused to her.

22. For the distress and inconvenience its failures have caused, the landlord should pay the resident £1500. This compensation award is in line with this service's remedies guidance. The amount is proportionate where a series of significant failures have had a seriously detrimental impact on the resident, where the landlord's response to the failures undermined the landlord/resident relationship, and where the failures accumulated over a significant period.
23. The landlord should, within the next four weeks, arrange for a surveyor to diagnose the exact cause of the leak. It should then complete the necessary repairs to ensure no further water ingress. It should complete these within the timescales set out in its repair policy and provide written confirmation to the resident when completed.
24. The landlord should also perform a management review of this case to determine where its failings occurred and what it can do to prevent these in the future.

*The landlord's handling of the associated complaint*

25. The landlord's complaint policy states that at stage 1 it will aim to respond within 10 working days. At stage 2, it will respond within 20 working days. After this, a resident can request to escalate their complaint to a stage 3 complaint response, or they can refer their complaint to this service.
26. The assessment of this complaint has had to rely on the landlord's complaint policy detailed on its website.
27. The landlord failed to properly log or deal with the resident's complaint in the first instance. This was logged online on 26 July 2022 at stage 0. However, the resident received no response. The landlord has since updated its complaints policy to remove the stage 0.
28. The landlord failed to properly treat the resident's complaint as such until 4 November 2022. This was a failure in service. The landlord said it would provide its response by 21 November 2022. It failed to meet this deadline. Overall, it took the landlord four and a half months to respond to the complaint.
29. The resident escalated her complaint to stage 2 on 19 December 2022. The landlord failed to provide its response until 26 January 2022. Its response time was outside the timescales set out in the landlord's complaint policy and again represented service failure.
30. The landlord failed to update the resident about the actions it said it would take at both stage 1 and stage 2 of its complaints process. Considering these letters centred around actions the landlord intended to take, this service would have expected the landlord to follow up on these and provide the resident with substantive updates.

31. Overall, there was maladministration in the landlord's handling of the resident's complaint. It failed to meet the timescales set out in its complaints policy and to follow up on the actions it promised to take.
32. The landlord should pay the resident £200 compensation for its failings. This compensation award is in line with the Ombudsman's Remedies guidance for a failure which adversely affected the resident.

### **Determination**

33. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was severe maladministration in the landlord's handling of reports of water ingress and damp and mould.
34. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord's handling of the associated complaint.

### **Orders**

35. It is ordered that within four weeks of the date of this letter, the landlord:
  - a. Pay the resident £1700, consisting of £1500 for its failure to handle the reports of the water ingress and damp and mould in line with the lease agreement, and £200 for its failure to handle the resident's complaint in line with its internal policies.
  - b. Write to the resident apologising for its service failure (the apology should come from the landlord's executive director for housing).
  - c. Complete a surveyor's report determining the exact cause of the water ingress, and the necessary actions to stop any further damages (it should set out timescales for these actions and provide a copy to the resident).
  - d. Provide the resident with the details of its insurer for her to be able to make a claim on its insurance.
36. It is ordered that within six weeks of the date of this letter, the landlord is to carry out a management review of the resident's case and provide a copy of the review to this Service. This should act as a follow up to the report presented to its executive leadership team on 26 July 2023 (following a previous severe maladministration finding) and include:
  - a. the outcome of its proposed August 2023 review of the recommendations within the Ombudsman's Spotlight report on Knowledge and Information Management (KIM) against its current record keeping practices.
  - b. confirmation of what staff training it has delivered since July 2023, including on compensation and remedies.

- c. what “non-structural changes” it has made to its leaks resolution team since July 2023 and how these will ensure that leaks into resident flats are diagnosed and remedied in an appropriate timescale in future.

37. The landlord should provide evidence of compliance with all the above orders within the timescales specified.