

Housing

Ombudsman Service

REPORT

COMPLAINT 202124577

Lewisham Council

30 November 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. Repairs.
 - b. Reports of damp and mould.
2. We have also decided to investigate the landlord's record keeping and complaint handling.

Background

3. The resident lives in a 3-bedroom flat on the first floor of an apartment block. They live there with their two adult children. The resident and one of the children told us they have asthma and other health issues.
4. The resident said that they have been reporting issues with damp and mould in the property since 2010. The first report we have evidence of is from 2016. On 17 August 2016 the landlord inspected the property in response to a complaint from the resident. The report from that inspection identified the following works:
 - a. Blown plaster requiring further inspection.
 - b. Repairs required to 6 windows.
 - c. Renewal of extractor fan in bathroom.
 - d. Double glazing to be looked into.
5. Further repair notes were made between 2016 and 2018. These say that "all timber windows are in poor condition". Broken windows are also noted in two separate logs in 2018. The resident said that these were removed and replaced

with plywood sheets in 2013 as a temporary measure. According to the resident, these sheets remained in place until 2021.

6. In September 2020, the resident started receiving assistance from a trusted person. They raised a complaint on 15 September 2020 that the property was not fit for purpose. In particular, the broken windows and persistent damp were making the flat impossible to heat sufficiently. The resident said that the cost of heating was excessive and was causing health problems. The landlord responded on 25 September 2020. It acknowledged that there was an issue with the windows and these were due for replacement in financial year 2021 to 2022. It also offered to send a technical advisor to do a damp and mould inspection on the property.
7. The resident escalated the complaint on 4 October 2020. They said that the landlord did not address several points of the complaint. The escalation also highlighted that the resident felt that the condition of the property was causing health issues. The resident was unhappy that works would not be completed until the following year at the earliest. The resident said they had already consulted damp and mould specialists who said that the mould would continue to return until the property was brought up to a decent condition.
8. The landlord responded with its stage 2 response on 8 October 2020. The landlord said that it was unable to commence works earlier as there were leaseholders in the building and replacement of windows were considered major works. This meant that it had to consult with residents prior to beginning the works. It highlighted further works that would be required at the same time.
9. The landlord conducted a mould inspection on 20 November 2020. The report highlighted:
 - a. Severe black mould in every room.
 - b. Rotten window frames.
 - c. Lack of ventilation.
 - d. Kitchen door missing.
 - e. Multiple extractor fans not working.
 - f. Unclear if heating is working properly.
10. The resident chased the required repairs between January and March 2021. During this time the landlord said that it would not replace the windows in the flat as they needed to be done by a different department. On 29 April 2021 the landlord noted in its repair log that it replaced 2 casement windows and 1 pivot window.

11. There is no evidence of activity between April 2021 and December 2021. This seems to be as a result of the warmer weather. In December 2021 the resident chased the other window replacements. The landlord responded on 10 December 2021 to offer an apology for the delay. The landlord also offered £500 in recognition of the distress and inconvenience caused.
12. In April 2022, the resident responded to reject the offer of compensation. They further went on to say that, as a result of a failure to repair, there was a draught through the entire property. The resident said that the problem had been present for 11 years and requested £6500 as compensation. The landlord treated this response as an escalation to stage 3 of its complaints procedure. This required an independent adjudicator.
13. In June 2022, the landlord confirmed that it completed a number of repairs to the property. This included:
 - a. New windows.
 - b. New ventilation system.
 - c. Mould wash.
 - d. Devices for monitoring damp levels in the property.
14. On 4 July 2022 the landlord sent its final response to the resident. It said:
 - a. It would not consider anything prior to 2020 as this was when the complaint was raised.
 - b. There are no issues which would be classed as a category 1 hazard (under the Housing Health and Safety Rating System).
 - c. Mould washes would need to be regular – it is normal for mould to return when a resident “cannot afford adequate heating”.
 - d. It considered £500 sufficient compensation for the 6-month delay in inspecting the windows.
15. The resident remains unhappy with the landlord’s response and says the issues are still present. They say that the flat currently costs over £300 per month in summer to heat to the level needed. The resident asks for £20,000 in compensation for the effects of the poor state of the property over an extended period.

Assessment and findings

Scope

16. The landlord in this complaint has limited their investigation to 6 months prior to the formal complaint raised in 2020. The landlord told us that it does not have a

system for recording customer contact by phone or in person covering the period. The first record of a complaint is from 2016 and the resident has told us they repeatedly raised the issue over the years between 2011 and 2022. Based on the evidence we have available, we think that the resident did raise the matter on a number of occasions. We also consider that, even if the complaint was first raised in 2020, the evidence shows that the concerns about the windows and damp and mould have been ongoing since 2016. It is important for landlords to consider all previous repair logs whenever a related complaint is raised. Therefore, the landlord should have considered the matter as arising in 2016.

Repairs, damp, and mould.

17. Social landlords are expected to provide housing to residents which meet the definition of a decent home. The standard of a decent home, from 2006, is that:
 - a. It meets the current statutory minimum for housing.
 - b. It is in a reasonable state of repair.
 - c. It has reasonably modern facilities and services.
 - d. It provides a reasonable degree of thermal comfort.

18. The Housing Health and Safety Rating System (HHSRS) sets the minimum standard for housing safety. It lists 29 common hazards, the impacts these hazards can have, and the possible causes. There is advice for landlords on how to categorise the hazards as category 1 (requiring urgent repair) or category 2 (repair if needed). Relevant to this complaint, it provides the following advice on damp and mould:
 - a. Threats to health from:
 - i. House dust mites.
 - ii. Mould or fungal growth.
 - b. Possible impacts:
 - i. Breathing difficulties.
 - ii. Asthma.
 - iii. Depression and anxiety.
 - iv. Infection.
 - c. Causes (directly related to dampness):
 - i. Reduced ventilation.
 - ii. Increased humidity.
 - iii. Warmer indoor temperatures in winter because of dwelling design.

19. It also provides the following advice on extreme cold:
 - a. Health effects:
 - i. Small risk of health effects below 19°C.
 - ii. Cardiovascular issues.
 - iii. Respiratory diseases.
 - iv. Sleeping in cold bedrooms greatly increases risk.
 - b. Causes:
 - i. Changes in outside temperature.
 - ii. Poor insulation.
 - iii. Poor heating system.
 - iv. Excessive damp.
20. The landlord currently has a damp and mould policy. This policy was created in April 2023 so does not cover the period complained about. The Housing Ombudsman has guidance for landlords on how we consider damp and mould complaints. This is contained in our spotlight report issued in October 2021.
21. The landlord has provided repairs logs which go back to 2016. There are two inspection reports available. One from 2016 and one from 2020. There is no indication that any other inspection reports were created during the period complained about.
22. The first inspection report from 2016 identified “blown plaster”. Blown plaster is when plaster separates from the brickwork behind it, usually due to damp or water ingress. Later repair logs confirm that damp was identified in the walls. The inspection report says that the plaster needed to be “hacked off”. It also said that the landlord should check for defects when doing this. There is no report, or follow-up notes, to indicate that the landlord did check for or find any defects. While we cannot be sure what defects were present in 2016, we are concerned that the landlord does not appear to have carried out sufficient checks on the structure of the building.
23. In the same inspection, 6 windows were noted as being “in poor condition” and in need of repair. The inspection also said that the landlord needed to look at double glazing in the property and repair the extractor fan in the bathroom. The resident said that one of the windows was repaired with plywood in 2013 and never fully fixed. Although this was not mentioned in the inspection, we think that this is likely to be accurate based on the landlord’s desire to repair windows as part of a major works programme. The mould inspection from 2020 does highlight the kitchen windows being “held together with tape”. There are

no notes of any repairs being done until 2018. When repairs were done, they seem to be limited to an inspection of the bedroom window and repairing broken glass in another window. In 2021 a further 3 windows were fixed, with the remaining windows fixed in 2022. This is far too long for any resident to wait for repairs.

24. The landlord's lack of records in relation to repairs provides little confidence that any meaningful inspection was done. The records we do have do not indicate any level of understanding of the issue affecting the resident, or any urgency in completing the required repairs. The general line taken by the landlord, between 2016 and 2022, was that the windows would be replaced as part of "major works". It is not reasonable for a landlord to wait on a major works program to complete necessary repairs to a property. The Landlord and Tenant Act 1985 makes it clear that repairs must be completed within a reasonable timeframe. The further explanation by the landlord that it needed to consult leaseholders in the building before completing works was also not reasonable. The landlord is required to provide the repairs to the resident, regardless of who else is in the building. Section 20 consultations are only required for works which affect the leaseholder. Repairs exclusively to non-leasehold flats do not need a consultation.
25. In 2020, the mould inspection was completed by a specialist and highlighted severe and persistent issues. It highlighted that windows were in very poor condition, in some cases rotten. It said that there were concerns that the heating was not working properly and the extractor fans were broken. These issues were contributing to the "severe" black mould on the walls and ceilings in every room. The landlord did begin some works in early 2021 to tackle the mould issue. It installed new extractor fans, for example, and began monitoring damp levels. However, the resident reported a return of the mould in 2022. There is no indication the landlord attempted to investigate this further.
26. The final response from the landlord said that it had compensated the resident for the 6-month delay in replacing the windows. This was not a reasonable response. The landlord first identified that repairs were needed in 2016 so it was actually a 6-year delay. This is why it was important for the landlord to consider the full history of the repairs in its investigation.
27. The final response also said that there was no evidence of category 1 hazards. It is unclear why the landlord has said this. It is for the landlord to identify hazards in its properties. The landlord did not complete any form of inspection under the HHSRS. The mould inspection does point to the likelihood that there is a hazard in the property. A failure to investigate this hazard, or categorise the hazard according to the HHSRS, does not allow a landlord to say the hazard does not exist.

28. The landlord also attempted to justify the return of the mould based on the resident's means. The final response said this was consistent with normal household use "when a householder cannot afford adequate heating". The Ombudsman's spotlight report made clear to landlord's that they should not make findings which imply blame on residents for damp and mould. The landlord's own investigations show an issue with damp between the plaster and the brickwork, which is noted in the HHSRS as leading to an inability to heat a home properly. The mould inspection from 2020 also raises concerns about the heating system in the flat, which was never investigated further. The return of the mould also occurred before the windows were replaced, which is another contributing factor. In short, there is no evidence that the resident bears any blame for the damp or mould.
29. The resident has reported spending more than £300 per month, during summer, to heat the flat to a liveable standard. This is not consistent with the landlord's finding of "normal use" and points to the flat not meeting the definition of a decent home. While it is impossible for us to directly link the failings to a specific cost amount, we do think it is likely that the landlord's failings increased the resident's energy bills.
30. The resident has highlighted to us, and the landlord, a number of medical issues in the household. These included allergies, asthma, and mental health difficulties caused by the condition of the property. The resident also developed COVID-19 during the complaint and has said they still suffer from the effects of the illness. There are no records to explain what the landlord knew at various points, but we think it was likely they were aware of the illnesses. There is no evidence, even after we know it was aware, that it took these illnesses into account. While we cannot draw conclusions linking the health conditions to the property conditions, these are factors a landlord should consider when investigating a complaint.
31. The findings of this report show a lack of care and attention in the landlord's treatment of the resident. This improved somewhat in 2020 but the records do not demonstrate any significant learnings or reasonable efforts to complete repairs recommended by its own staff. With this in mind there has been a finding of severe maladministration in all elements of the landlords handling of repairs, and reports of damp and mould.
32. While we are not a court, we are required to have due consideration of the law which includes considering what compensation would be awarded by a court in similar circumstances. The compensation ordered below is reflective of this. In light of the very severe failings in ensuring the resident could live in a decent, and safe, home the amount awarded is significant. The landlord must also take concrete steps to ensure the flat is safe to live in.

Record keeping and complaint handling

33. The Ombudsman's spotlight report on Knowledge and Information Management sets out expectations for landlords on how they manage housing information. It highlights that service provision often ends up failing because "the data and information needed to provide an effective and efficient service is missing, incorrect or misused/not used." The HHSRS also guides landlords to keep accurate and adequate records on properties and their safety.
34. We asked the landlord to provide all relevant information in respect of this complaint, and any related repairs as far as 2016. It was only able to provide a repair log, which had single line entries for most records, and emails from 2020. When questioned on this it did provide an inspection report from 2016, but no other reports. However, it also said that it did not have a customer records system for recording contact with residents. It said anything done by phone call or in person would, if necessary, result in a works order. The inspection report from 2016 was attached to an email which referenced a "complaint about disrepair" in the property. There are no other notes indicating contact with the resident, and no related letters or emails.
35. The resident on the other hand has reported raising issues with damp and mould every year since 2011. We have no reason to doubt the resident's account and find it likely that the resident did contact the landlord on a regular basis. However, as the contact was made by phone, the landlord simply did not record it. This has, as the spotlight report identifies, resulted in serious failings. The lack of awareness of previous issues, or awareness of the customer's circumstances, meant the landlord did not provide a reasonable level of service. There is no evidence complaints were handled in a reasonable manner, and no evidence the landlord investigated the impact on the resident. This is concerning.
36. Landlords are expected to be sympathetic and understanding of residents' needs. They are also expected to be proactive when responding to concerns, especially in respect of housing safety. However, the landlord did not acknowledge these needs or expectations until the resident asked an advocate to contact the landlord on their behalf. Even then, it is not clear the landlord understood these needs or was able to respond appropriately.
37. Although the landlord is unable to provide evidence of how it responded to complaints prior to 2020, it does have sufficient records of the complaint in 2020. This is because the advocate primarily contacted the landlord by email. These complaint records do show the landlord responded to the complaint within its timescales and following its policy. It also acted flexibly in reconsidering the stage 2 complaint more than 6 months after it issued its

response. It also allowed the resident to escalate the matter to stage 3, even though this was outside the landlord's policy.

38. As highlighted above, however, these responses were somewhat deficient because of the insufficient record keeping. In our view, this meant the landlord did not properly consider the complaint and therefore its response cannot be considered reasonable. As a result, we have found maladministration in the landlord's record keeping and complaint handling.
39. The landlord has told us that they have, since the events complained about, brought the housing management organisation under direct control. We have not seen any evidence however that the landlord has undertaken significant learnings from the complaint. This is reflected in the orders.

Review of policies and practices

40. The policies in place at the time of this complaint have the potential to create unfairness in the landlord's handling of complaints and repairs. There is no process for keeping records of non-written contact. The policy in place for repairs outlines the legal position of repairs in the landlord's properties, it does not demonstrate any procedure for handling repairs. In particular it does not list any expectations for operatives in respect of record-keeping, communication, handling inspection reports, or quality assurance. The landlord does have a damp and mould policy which was created after the events complained about, but it is unclear this has been retrospectively applied to existing complaints.
41. The Ombudsman also has several other cases awaiting investigation which raise complaints about similar issues. We have therefore issued a wider order under paragraph 54(f) of the Scheme for the landlord to review its policy or practice in relation to the service failures investigated in this determination, which may give rise to further complaints about the matter. We have set out the scope of the review below.

Determination

42. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there has been severe maladministration in the landlord's handling of repairs and reports of damp and mould.
43. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there has been maladministration in the landlord's record keeping and complaint handling.

Orders

44. It is hereby ordered that, within 6 weeks of the date of this report, the landlord pay £19,500 to the resident. This includes the payment of £500 already made. This is comprised of:
 - a. £12,000 for distress and inconvenience caused by the landlord's failure to repair the windows and effectively treat the damp and mould. This is calculated at 40% of the rent paid between 2016, when the issue was first raised, and 2022, when the windows were fixed. This has been rounded up.
 - b. £3,000 for the landlord's failure to properly inspect the properties safety and suitability for habitation, as well as the landlord's failure to inspect the resident's heating as recommended.
 - c. £3,000 in recognition of the increased costs the resident would have faced due to the landlord's failure to complete adequate repairs to the property over an extended period.
 - d. £1,500 in recognition of the landlord's failures in record keeping, and complaint handling, leading to additional distress for the resident.
45. It is also ordered that the landlord, within 6 weeks of the date of this report undertake a full survey of the property. This survey must consider all matters in the property which fall within the landlord's repairing obligations. Within 6 weeks of the date of the inspection, the landlord should complete all repairs identified as require by the survey. If it is not possible to do this it must write to the resident with a plan of when it will be able to complete the repairs.
46. Within 6 weeks of the date of this report, the landlord must apologise to the resident for the failings identified. This apology should be written by the Chief Executive.
47. In accordance with paragraph 54(f) of the Housing Ombudsman Scheme, the landlord is ordered to carry out a comprehensive review of its practices in relation to responding to requests for repairs and record keeping. The review must be conducted by a senior figure within a team independent of the service areas responsible for the failings identified by this investigation. The review must be carried out within 12 weeks and include the following (as a minimum):
 - a. The landlord's process for identifying and completing repairs.
 - b. Record keeping, including why phone calls are not recorded.
 - c. Communication practices.
 - d. Risk management, especially where vulnerable residents are concerned.
 - e. Whether other residents have been impacted by similar issues – including where a complaint has not been raised.

48. Following the review, the landlord must, within an additional 4 weeks, produce a report that sets out:
 - a. Its findings and learning from the review.
 - b. Recommendations on how it intends to prevent similar failings from occurring in the future.
 - c. The number of other residents it has identified as experiencing similar issues.
 - d. The steps it proposes to take to provide redress, at the earliest opportunity, to those residents who have been similarly affected by the identified failings. This should include resolution of the issues and consideration of compensation awards that are proportionate to the level of detriment each resident has experienced, if caused by a failing by the landlord.
49. The landlord must embed the recommendations made in the report into its practices and have them inform practice in other areas of service delivery, where relevant, with appropriate oversight.
50. Evidence of compliance with these orders should be provided to the Ombudsman within 16 weeks of the date of this report. The landlord should also provide an update on its progress after 6 months.