

Housing

Ombudsman Service

REPORT

COMPLAINT 202114764

Lewisham Council

09 May 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 resident has complained about the landlord's response to their reports of damp and mould.
2. The Ombudsman has also considered the landlord's record keeping.

Background

Scope of this investigation

3. The resident has stated that they have had ongoing damp and mould issues for around 14 years. Records from the landlord indicate the resident made reports from as far back as 2013 at which time there was a suspected leak under the bath resulting in damp floors and walls in the bedroom and bathroom. Records are unclear whether this was investigated and resolved fully at the time. Since then, the resident continued to report mould over the years that the landlord treated with mould washes. The Housing Ombudsman asks that residents raise complaints within a reasonable time of an issue occurring. This is normally considered to be within 6 months. This is so that the landlord can focus its resources on matters at hand as they arise and so that information on file for any potential investigation is as up to date as possible.
4. The focus of this investigation is on the period from autumn 2020 until the landlord's final response sent in July 2021. The resident contacted the Ombudsman in October 2021, and has continued to raise issues related to damp and mould to present day. The role of the Ombudsman is to assess the landlord's response to any formal complaint, and as part of this we assess the services provided by the landlord at that time. In this case, as the resident has continued

to experience issues with mould and damp after the final response, this information will be considered as it is relevant to the case.

Summary of key events

5. The landlord's repair log shows:
 - a. A mould wash and stain block booked for 12 March 2020. The notes refer to past major works to resolve damp/mould however there are no details as to when this was carried out or what repairs were completed. The notes also state that the only room affected at this time was the bathroom, and that no leak had been identified by the resident or landlord.
 - b. The landlord raised a job to investigate the cause of ceiling staining and mould on 25 March 2020. The landlord chased the resident to book repairs on 5, 15, 22 May 2020. The resident chased the repairs on 1 June and reported they had completed a mould wash themselves on 9 June 2020.
6. The resident submitted a formal complaint on 16 March 2021 noting that they had suffered mould for over 10 years and that the landlord had not resolved it. The landlord responded on 23 March and explained:
 - a. A mould wash had been booked for 23 March 2021.
 - b. A building surveyor would inspect the property on 23 March 2021 to assess any potential cause.
 - c. A heating survey would be completed on 6 April 2021.
 - d. The response also gave information on how the resident could apply for a transfer and other options for a move, as they had asked to move away from the property as a solution to living with the mould.
7. The repair logs show:
 - a. The ceiling, kitchen, bathroom, bath panel, sink and pipework were all cleaned of mould on 23 March 2021.
 - b. The heating survey was completed on 6 April 2021.
8. The resident escalated their complaint on 29 March 2021. The landlord's internal notes say that this complaint was received before the contractor had fully investigated and fed back to the landlord on the issues as offered in the stage 1 response.
9. The landlord's stage 2 response of 12 April 2021 explained:
 - a. The contractor had advised the landlord that the property was not uninhabitable.

- b. The extractor fans were in working order, though the kitchen fan needed resealing to the wall. It stated an electrician would attend to fix and test the fan.
 - c. A high damp reading was found in the wall between the bathroom and the bedroom; however, damp here had not been reported. The contractor had suggested there was possibly a leak from under the bath. The landlord stated a plumber would attend to check under the bath and complete any required repairs, including remedial work to the plaster and sealant.
 - d. The mould behind the sofa was likely due to the resident having to use the living room both during the day and as a bedroom. It acknowledged the impact from the unavoidable issue of the number of people in the property, together with the unavoidable time spent inside during covid related lockdowns. However, it also gave advice on how the resident could help minimise any condensation that might lead to mould.
 - e. The resident contacted it as soon as any of the winter damp/mould issues they had described re-appeared, as these were not ongoing at the time of the contractor's visits.
 - f. It did not have emergency or alternative properties as these were allocated by local authorities. As such it repeated its advice that the resident apply for a transfer with the local authority.
10. The contractor wrote to the resident on 25 May 2021 stating 'lifecycle damp remedial' works had been booked for 7 June 2021. An identical letter was then sent on 10 June 2021 re-offering works on 23 June 2021.
11. Following the complaint, an update on the landlord's repair logs showed:
- a. The lifecycle damp remedial works were ordered on 23 April 2021, but no completion date. This was to include the fan; opening the bath panel to trace any leak; any remedial works; replacing the bath panel and sealant and a follow up visit from a plasterer.
12. The landlord emailed the resident on the 15 June 2021 to confirm whether it could complete the work as scheduled on the 23 June 2021.
13. The resident emailed the contractor on 17 June 2021 to explain they had been unwell following the birth of their baby. They stated they did not want to be contacted about the remedial works until after the final formal complaint response.
14. On 17 June 2021, the contractor advised the landlord that it had been unable to agree access with the resident following the stage 1 response in March 2021. The contractor reported that during telephone calls the resident's focus had been on five people living in the one-bedroom property. Given the distressed nature of

the resident's email, the contractor advised the landlord it would put the work on hold until the landlord had agreed how to proceed with the resident. The contractor's emails reiterated that the property was habitable, and that the work scheduled did not require a decant.

15. The Ombudsman does not have a copy of the resident's escalated complaint. However, it followed the emails in June 2021 about the contractor's contact to arrange the repairs. The landlord's stage 3 (final) response was sent on 21 July 2021.
 - a. It confirmed the repair records included reports of, and responses to, damp and mould at times going back to 2021.
 - b. It acknowledged that as the property was overcrowded, the level of moisture would contribute to any damp and mould. As such it stated an annual mould wash would be required and completed by it.
 - c. It highlighted that water penetration had been identified as a possible issue in March 2021, but that the contractor had been unable to gain access since April 2021. It asked that the resident contact it as soon as possible to agree access.
 - d. The landlord explained that the recent birth of the resident's baby moved the household into the overcrowded category and into a higher priority band for their housing application. (The Housing application and allocation of properties by the council is outside the jurisdiction of the Housing Ombudsman as it is for the Local Government and Social Care Ombudsman).
 - e. The landlord did not uphold the complaint as it believed it had responded to the damp and mould reports, and the majority of its response had been inhibited by the resident's decision to not allow access.
16. Emails after the end of the formal complaint process show the landlord asked the resident in September 2021 to give their availability for the works to be completed. The resident replied the same month asking for works to a sink, window, socket, and fan, but stated they would not allow access for any other works.
17. The resident contacted the Ombudsman some months after the end of the formal complaint process. In December 2021 they explained:
 - a. They had reported damp and mould again in November 2021. The landlord had offered a mould wash, but the resident had to reschedule this due to a hospital appointment.
 - b. The landlord had not offered support despite the resident highlighting their mental health concerns and their ongoing counselling.

- c. Her and her children's health was deteriorating due to the conditions of the property and every other week her children had colds, with the six-month-old being put on antibiotics for this.
- d. They felt the landlord had failed to address the 'root' of the damp and mould issue.
- e. They felt the landlord was using the overcrowding as an excuse, as the damp and mould had been ongoing before the property was considered overcrowded.
- f. The landlord's complaint response did not consider any of the complaints or repairs from 2007-2010.
- g. They did not trust the contractor as it had previously failed to attend appointments. (The resident did not give specific examples but referred to a period of years).
- h. The damp and mould had caused them to lose out on two potential mutual exchanges.
- i. They felt they had taken all the action asked of them by the landlord, including changing how they did laundry, opening windows, using specific beds and storage.
- j. They had contacted the local environmental health department twice, but it had not visited.
- k. They were seeking compensation for the years they had lived with mould, including damaged belongings and the impact on their health.

18. Following the complaint, and up to the date of this report, the resident has continued to raise concerns regarding damp and mould and has provided photographs of the condition of her property.

Assessment and findings

19. The resident has said she considers that the issues affecting her property have impacted her mental health. The Ombudsman does not doubt the resident's comments and notes the impact of damp and mould on one's health is well documented. However, it is beyond the expertise of this Service to make a determination on whether there was a direct link between the damp and mould within the property and the resident's health. The resident therefore may wish to seek independent advice on making a personal injury claim if she considers that her health has been affected by any action or lack thereof by the landlord. Whilst we cannot consider the direct effect on health, consideration has been given to any general distress and inconvenience which the resident experienced as a result of any errors by the landlord. This also includes the landlord's consideration or not of any vulnerabilities it was made aware of surrounding the

resident and her household and how it factored these into its responses and actions.

20. The landlord's repairs policy states that it is responsible for severe water penetration and flooding in the property, as well as resealing around the bath/sink/basin and replacing wall tiles.
21. The landlord's repairs policy states that the resident is responsible for controlling the build-up of moisture in the property to prevent damp and mould appearing on walls or ceilings. The resident is advised to keep air vents clear and use extractor fans and window trickle vents (where provided) to prevent condensation.
22. The landlord's repairs policy states emergency repairs will be attended within 2 hours, and it will complete the repair within 4 hours. One day repairs will be completed within 24 hours. Three-day repairs will be completed within three calendar days. Three-week repairs will be completed within 21 calendar days. The policy does not clarify what types of repairs are covered within each category.
23. The Ombudsman's spotlight report on damp and mould published in October 2021 recommends that landlords should review their initial response to reports of damp and mould to ensure they avoid automatically apportioning blame or using language that leaves residents feeling blamed. Whilst the reports of damp and mould in the property go as far back as 2013 with the landlord finding a suspected leak at the time, it is unclear from the notes what works were done, if any. Records note that works were required to the bathroom, however there is insufficient evidence to show that these were completed. The resident continued to make reports in the following years which were treated with mould washes and this continued more recently in March 2020, and March 2021. Following these mould washes, it is clear the mould reoccurred and, rather than investigate the cause of the persistent and extreme situation, the landlord informed the resident that the damp and mould was as a result of her actions as follows:
 - a. Due to overcrowding in the property, it advised that humidity was the probable cause of the condensation leading to mould and damp.
 - b. It had found no evidence of systemic damp.
 - c. It was likely an annual mould wash would be necessary going forward.
24. In the landlord's first response, it offered the resident housing options such as a mutual exchange, alternative housing organisations and private renting. The suggestion of a mutual exchange was unreasonable, given the reasons that the resident was requesting a transfer, being the current mould and damp issues in the property. It would be unreasonable for the resident to mutually exchange a property that had not been fully investigated for any structural issues that could

potentially be impacting the damp and mould conditions within the property. Additionally, given the photographic state of the property suggesting mutual exchange as an option was not appropriate or reasonable.

25. With regards to the lifecycle damp remedial works, there is no confirmation that this has been completed. In June 2021 when the resident was contacted about works, she explained she was dealing with postnatal depression and having a baby with a disability. She advised that she did not want to be contacted about remedial works until completion of an independent investigation of her case. Whilst it is noted that the resident expressed concerns for her health and her children and did not agree a date for the appointment, given the length of time that the resident had reported reoccurring damp and mould, the landlord should have contacted her to discuss entry to the property. Internal records from the landlord in June 2021 also indicate that it had received a letter from the resident's doctor raising concerns about the resident's living conditions and the serious impact this was having on her health. Whilst the landlord considered that the property was habitable, given the resident's health and the length of time she had been making the reports, it would have been reasonable to offer the resident a decant in order to fully investigate the cause and complete any repairs. This would have assisted the resident and her family and expressed that the landlord was taking the matter seriously.
26. Furthermore, there is insufficient evidence to demonstrate how the landlord considered the resident's concerns about her vulnerabilities and those of her children. The landlord should have offered the resident additional support at this time or alternatively, directed the resident to resources where she could receive the relevant support. Considering the landlord was already aware that the property was overcrowded, the Service would have expected the landlord to be more proactive about assisting the resident with rehousing, due to the overall impact it believed the overcrowding was having on the condensation within the property and the family's wellbeing.
27. In response to the resident's concern about mould and damp, the landlord arranged a mould wash to the property in March 2020, in March 2021 and a further was planned for November 2021. While this may have assisted to improve conditions in the property for a time, it did not confirm or address the cause of the damp and mould in the property, which was and is still unclear. In the landlord's final response of July 2021, it advised that an annual mould wash would be necessary going forward even though it was aware mould and damp issues had been reported since 2013. Whilst the landlord advised that there was no evidence of systemic damp in the property, no evidence has been provided to show that a damp and mould survey was conducted on the property during the course of the complaint following the resident's reports. It is unreasonable for the resident and her family to be left in a condition in which annual mould washes are being

completed, but no thorough checks have been made into the root cause of the mould and damp. It is also unreasonable for the landlord to assume that this is caused by condensation without providing evidence that this is the sole cause of the situation.

28. Following on from the landlord's final response on 21 July 2021, the resident has continued to raise her concerns about the condition of the property and further mould washes have been arranged, however, the landlord has not provided evidence of any support to the resident with assurances that the root cause has been established.
29. While the property was noted to be fit for human habitation by the landlord's inspectors, the resident explained clearly the effect the conditions in the property were having on her and her family and given her concerns about her children's health, the landlord should have treated the reports as urgent. Photographic evidence shows that there has been extensive damage to the resident's property, including mould on her children's mattress and the baby's cot bed. The walls within the property are all covered in mould in both the living room and the bathroom. Evidence from the children's school also indicates that their living conditions have affected their attendance at school. Whilst the letter from the school is dated 24 February 2023, it states their attendance this current school year is 70.94% and was 92.33% the previous year, with the absences attributed to coughs, colds and infections. The letter also clearly notes the concerns with damp and 'shocking' levels of mould within the property. This substantiates the resident's claims through the complaint about the impact the situation was having on her and her family and the deterioration of their health.
30. It is also important to note that the letter from the Specialist Health Visitor of February 2023 also noted she had 'never observed such extensive mould in the 14 years I have worked in the community as a Health Visitor'. It is unlikely that this level of mould growth, as we have also seen within the photographs, would have occurred instantly and is likely to have built up within the property over time and cannot be solely attributed to condensation. I state this as taking away from the fact that the bedroom and living room is overcrowded, this cannot explain the mould and damp on the front door and ceiling directly above this.
31. It is understandable, given the historical reports of damp and mould in the property, that the resident is frustrated that the issues continue. On 7 March 2023, the Ombudsman requested the landlord provide a copy of the damp survey reports, the heating report, confirmation of whether the lifecycle damp inspection was completed and clarification on what its process was with regarding overcrowding. This information was not provided to the Service at the point of the initial investigation and following the most recent request. As such, the Ombudsman is unable to confirm whether the actions agreed by the landlord, and the decisions it had made were in line with the contractor's survey reports.

Without this information, the Ombudsman is unable to fairly conclude that the correct actions had been taken by the landlord with regards to the resident's reports of damp and mould.

32. Overall, the landlord's handling of the damp and mould reports in the property was and continues to be poor. It states it has conducted multiple inspections but has failed to provide copies of the reports to the Ombudsman, to evidence the outcome of the inspections. As per the landlord's repairs policy, it is responsible for severe water penetration in the property and no evidence has been provided to indicate actions were taken to investigate whether there were any leaks within the property even though there was an indication of water penetration within the walls as per the findings in March 2021 and again no survey reports have been provided to show that this information was acted upon. It is of concern that records note there was a suspected leak under the bath resulting in damp floors and walls in the bedroom and bathroom in 2013 and this is the same as highlighted in 2021. The lack of clear records means the Ombudsman cannot be certain whether a leak was identified in 2021 and repaired or whether the property was further inspected to ensure the property no longer exhibited signs of moisture ingress and was now dry. This again goes to speak to the lack of evidence that the landlord has taken adequate steps in both investigating the matter or finding a reasonable solution over a significant period of time.
33. The Ombudsman would expect a landlord to keep a robust record of contacts and repairs, yet the evidence provided by it has not been comprehensive in this case. It is vital that landlords keep clear, accurate and easily accessible records to provide an audit trail. The lack of records here suggests an issue with the landlord's overall record keeping.
34. Whilst the landlord has advised that the property is habitable, evidence provided by the health care professionals and the children's school regarding the concerns about the property indicate that there is a health risk with the family living in these conditions, the same concerns which were raised in a letter to the landlord from the resident's doctor in June 2021.
35. To date, the landlord has not reacted appropriately to these concerns and has failed to show that it has acted fairly and proportionately to the resident's reports. Therefore, the Ombudsman has found severe maladministration with regards to the landlord's handling of the residents reports of mould and damp. This Service has considered the distress and inconvenience caused to the resident as well as the length of time (to present day) that she has been reporting issues about damp and mould within the compensation amount ordered. This is in line with the Ombudsman's remedies guidance where severe maladministration has been found.

36. In considering the amount of compensation due to the resident, the Ombudsman has taken into account that the most recent report of damp and mould was raised in March 2020, however, it is also noted that evidence provided clearly shows that this issue had been ongoing as far back as 2013. The insufficient records are unable to show that the water penetration found at the time was thoroughly investigated by the landlord and subsequently the resident continued to make reports after this time. As such, compensation has been awarded to the resident from 12 March 2020 to 4 May 2023, as the resident has indicated that the problems have continued to persist, and the evidence provided supports this. Compensation for the landlord's failings have been calculated at 75% of the rent amount (excluding service charges) of £93.90 per week which is £70.43 for a total of 49 months (212 weeks) which equates to £14,931.16. This Service has also taken into consideration the impact this situation has had on the resident's entire family and ordered further compensation for the significant distress and inconvenience at 25% of the rent per week which is £23.48 over the 49 months (212 weeks) which equates to £4,976.70.

37. An order will also be made for the landlord to either decant the resident until at least 4 September 2023 in order to complete extensive investigations into the cause of the damp and mould and carry out the relevant remedial works.

Determination (decision)

38. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was severe maladministration by the landlord in respect of its handling of the resident's reports of damp and mould.

39. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was maladministration by the landlord in respect of its record keeping.

Reasons

40. The landlord has failed to provide sufficient evidence to demonstrate the steps it took to investigate the root cause of the damp and mould in the property.

41. The landlord has failed to demonstrate how it supported the resident and her family whilst dealing with the re-occurring damp and mould as well as consideration of the health and wellbeing of the family, particularly as it was made aware of health conditions within the household and the additional impact of the overcrowding in the property.

42. The landlord has attributed the cause of the severe damp and mould to the lifestyle of the resident and has failed to take account of external factors being the cause of the damp and mould, of which it was aware back in 2013, prior to the property being deemed overcrowded.

43. The landlord failed to provide evidence of surveys carried out in respect to the mould and damp issues in the property, as well as clarity on what actual repairs have been done on the property to date with regards to water penetration in the walls.

Orders

44. The landlord is ordered within four weeks of the date of this report to:

- a. Arrange for its Chief Executive to provide a personal apology to the resident for the failings identified in this report.
- b. Pay the resident £19,907.86. This is comprised of:
 - i. £14,931.16 for the landlord's severe failure to adequately investigate the residents reports of mould and damp within the property.
 - ii. £4,976.70 for the significant impact and distress and inconvenience experienced by the resident whilst living at the property, caused by the landlord's failures when handling the resident's reports of damp and mould.
- c. Provide the resident with its insurers details so that she can make a claim, should she chose to, for the damage caused to her belongings.
- d. Decant the resident for the duration that is required to inspect the property to establish what works are required to address the ongoing damp and mould within the property and complete these works, alongside redecorating of the property. The Ombudsman provisionally notes that a minimum of 4 months may be required to complete this, following which the landlord should confirm completion to the Ombudsman.
- e. Consider whether, having regard to the resident and her family's vulnerabilities, the condition of the property and the extent of any works required are such that the decant, needs to be made permanent. The landlord should confirm its decision in writing to the Ombudsman and resident, alongside its reasoning.
- f. Consider producing a damp and mould policy. In informing its decision the landlord should self-assess against the recommendations set out in the Ombudsman's Spotlight Report on damp and mould.
- g. Review its record keeping to ensure that there is a clear audit trail following reports to demonstrate actions it has taken appropriate actions.
- h. Review its repairs policy, to provide more detail regarding what specific issues are classed within the different repair attendance timescales.