

Housing

Ombudsman Service

REPORT

COMPLAINT 202212457

The Guinness Partnership Limited

28 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. The complaint concerns the landlord's handling of the resident's reports of damp and mould.
2. The Ombudsman investigated the landlord's complaint handling.

Background

3. The resident holds an assured tenancy on a 2-bedroom flat on the ground floor of a residential block owned by the housing association landlord. The resident lives with her husband and 3 children. For the purpose of this report, both the resident and her husband will be referred to as 'the resident'.
4. In February 2021, the resident reported a possible leak in her property affecting one wall in her children's bedroom. The landlord attended the property on 3 March 2021. It said the outdoor tap fitted on the adjacent side of the wall could be the source of the leak. It said it would require "a disk cutter to cut the bricks and inspect the cavity wall". The resident kept pursuing the repair with the landlord on a regular basis, and the landlord sent its operative to inspect the property on several occasions. It isolated the tap in May 2021 but did not inspect the cavity wall and insulation.
5. The resident formally complained to the landlord on 12 July 2022. She stated that she had had numerous visits from repair operatives and surveyors since February 2021, but the landlord did not follow the operatives' advice. The resident said damp and mould were affecting her children's health, who had developed asthma. The resident asked that the landlord complete the work and maintain timely communications with her.

6. The landlord responded on 25 July 2022 and acknowledged it had let down the resident as the damp and mould issue had not been resolved. It stated it was aware that the resident kept cleaning the wall, but the mould reappeared. The landlord recognised that previous repairs it had booked had been cancelled and that despite recommendations from its operative, it had failed to carry out the repair. It scheduled a new repair for 26 July 2022 and said it would follow this up to ensure it was completed. The landlord offered the resident £200 in compensation, and it said it learned from the outcome and would ensure its repairs team provided regular and clear updates in the future.
7. The operative attended on 26 July 2022 had an instruction to wash the mould from the resident's bedroom, which the resident declined. She contacted the landlord on 9 August 2022 and said the landlord did not take the repair seriously as it had failed to deliver on its promises to repair the leak. She asked to escalate her complaint to stage 2. The landlord responded on 13 September 2022, reiterating its stage 1 (complaint) response. It added that as 'further issues' occurred, it awarded the resident £330 in compensation for her time, effort, distress, and inconvenience. The landlord stated it "provided lessons learnt to all in question to avoid a similar situation occurring in future".
8. The resident contacted this service on 26 September 2022 and said the wall was saturated, and the landlord needed to trace the leak and repair it properly. She said mould had spread to her children's bed, toy boxes, wardrobes, and carpet and carpet grippers. Both parties informed this service in September 2023 that the situation was ongoing.

Assessment and findings

Scope of investigation

9. The resident's assertion that the landlord's handling of this case has negatively impacted her children's health has been noted. It is beyond the expertise of this service to determine a causal link between the landlord's actions (or lack thereof) and the impact on the health of the resident's family. However, where a failure on the landlord's part is identified, this service can consider the resulting distress and inconvenience.

Policies and procedures

10. The landlord's damp and mould policy says the landlord aims to provide dry, warm, healthy, and safe homes for residents. When a particularly severe or recurring damp or mould issue is identified, it will undertake a comprehensive risk assessment, which might result in a range of actions to support residents, such as funding dehumidifiers, installing ventilation systems, dry lining walls

or applying mould-resistant coverings. Where there is a serious health risk to the resident or a household member, the landlord may decant residents temporarily or permanently.

11. The landlord's compensation policy says it will pay compensation as a result of its failure to deliver the service to which it has committed. This includes where furniture or belongings have been damaged and/or distress and inconvenience caused.

The landlord's handling the resident's reports of damp and mould

12. When investigating a complaint, the Ombudsman applies its Dispute Resolution Principles, which include treating people fairly, following fair processes, putting things right, and learning from outcomes. The Ombudsman must first consider whether a failure on the landlord's part occurred and, if so, whether this adversely affected or caused detriment to the resident. If a failure by the landlord adversely affected the resident, the investigation will then consider whether the landlord took enough action to 'put things right' and learn from the outcome.
13. The tenancy agreement reflects the landlord's repairs obligations under section 11 of the Landlord and Tenant Act 1985 to "keep in repair" the structure and exterior of the property.
14. Landlords must consider the properties' condition using a risk assessment approach called the Housing Health and Safety Rating System (HHSRS). HHSRS is concerned with avoiding or minimising potential hazards. Damp and mould are potential category-one hazards that fall within the scope of HHSRS.
15. The Ombudsman's spotlight report on damp and mould says that landlords should ensure that their responses to reports of damp and mould are timely and reflect the urgency of the issue. Landlords should communicate their diagnosis clearly with residents and provide a clear action plan and timetable for the work. Landlords must ensure that jobs are not closed before they are fully resolved.
16. In this case, the resident reported to the landlord in February 2021 that there was an issue of damp and mould in the children's bedroom. The landlord sent its operatives in March 2021, who advised that intrusive tests were required. There is no evidence that the landlord acted on the operative's recommendations. The landlord sent its operatives to the resident's property again in May 2021, receiving the same advice as it did 2 months earlier, and that a possible new pipe to the tap was needed. The landlord isolated the

outdoor tap and marked the job as completed. However, this did not solve the damp and mould in the children's bedroom.

17. The resident kept pursuing the repair with the landlord, and in August 2021, the landlord sent its surveyor to inspect the resident's property. The surveyor recommended that the plaster in the bedroom would need to be hacked, damp-proof installed, and the bedroom replastered. This job was due to take place in August 2021 but was cancelled. As a result, there were no outstanding damp and mould repairs for the resident's property despite the resident's sustained pursuit of the issue. This was a reoccurring theme as the resident's repairs were also closed in February 2022 and July 2022. This was not appropriate. It aggravated the situation and caused additional distress for the resident. She told the landlord she did not think it took the repair seriously. The landlord's subsequent inaction further damaged the landlord-tenant relationship. This was not appropriate.
18. It is concerning that the resident's repairs were closed, and the property was not flagged as an outstanding damp and mould case on the landlord's system. An order has been made below for the landlord to consider whether it has robust measures to ensure its database accurately reflects the condition of its stock, particularly in the context of damp and mould. Further recommendations can be found in the Ombudsman's spotlight report on damp and mould (October 2021) and the follow-up report (February 2023), which can be found on this service's website.
19. In the event that a repair is being delayed, landlords can mitigate the impact on residents by providing regular updates explaining the delay and the landlord's plan to solve it. However, in this case, the landlord did not communicate with the resident effectively during this time; it did not explain the delay, it did not provide a timetable for the work, and it compounded the frustration of the resident, who kept chasing the repair. The landlord, therefore, has failed to follow its damp and mould procedure. There is no evidence that the landlord had a plan to rectify the ongoing damp and mould issue.
20. Delaying the repair for a protracted period of time resulted in further damage to the resident's property and her belongings and evidently caused distress and inconvenience. This was magnified by the fear for her children's health, whom the landlord knew had underlying medical conditions. According to the evidence, the landlord recorded on 12 July 2022 that one of the resident's children had been diagnosed with asthma. On 28 January 2023, the resident sent the landlord a letter from the family doctor, which said: "The child has had recurrent respiratory issues during the last few years and was diagnosed with Asthma in June 2022. Mum reports extensive mould in the home, which may be exacerbating the health issues. Please support the family to get

moved to prevent further issues as soon as possible if this cannot be rectified quickly".

21. The resident's second child has type 1 diabetes. This service has seen a letter from the treating hospital that the resident sent the landlord advising that mould exposure can bring on respiratory illnesses and that every precaution should be taken to ensure people with type 1 diabetes are not exposed to it, as this can lead to complications. Although the landlord's duty to repair is not dependent on the medical condition of its residents, in this case, the landlord had medical documentation advising it to 'take every precaution to 'rectify quickly. The landlord had failed to show any urgency in handling the repair on the resident's property. The situation was still ongoing 7 months after it received medical evidence. This is a serious failing by the landlord.
22. The landlord has failed to consider that the resident's child has asthma and, as such, sleeping in a damp and mouldy room was detrimental to the child's health and against clear medical advice available to the landlord. The landlord had considered installing trickle vents to the window in the children's bedroom; however, this job was also cancelled in July 2022. This service has seen evidence that the landlord raised this again on 14 August 2023 but has yet to take action. The landlord told this service that it considered decanting the resident on a temporary basis, but it provided no evidence to support this, and it has not happened to date.
23. On 24 May 2023, the landlord told the resident that the property had been placed on a list of 'cavity extracts and refills'. However, it advised it did not have a contractor to carry out the work. This service has seen internal emails from September 2023 stating the landlord did not have "the time or budget to carry out any extraction or reinstallation works at [the resident's address] due to its scale". It also said that it had started a new procurement process for a contractor, meaning work will not begin until 2024 at the earliest. This was not appropriate.
24. The landlord has an obligation to ensure its homes are safe for human habitation. It must meet its regulatory obligations under HHSRS and Section 11 of the Landlord and Tenant Act 1985. Under the circumstances, a delay of nearly 3 years was not appropriate. If the landlord did not have a contractor, and it could not have hired one to complete the work, and it did not have effective interim measures, then it should have followed its damp and mould policy and relocated the resident and her family. This succession of failures amounts to severe maladministration by the landlord.
25. Overall, living in a property with damp and mould for almost 3 years has caused evident distress and inconvenience to the resident and her family. It also caused frustration because, while the landlord identified what needed to

be done, the follow-up inspections and mould wash seemed untargeted at solving the ongoing disrepair at the resident's property. The landlord's responses did not reflect the urgency or seriousness of the situation.

26. As the situation is ongoing and it is unclear what action the landlord plans to take to resolve this, an order is made below to address this, in line with the Ombudsman's remedies guidance, which can be found on the Ombudsman's website.
27. In recognition of the distress and prolonged inconvenience experienced by the resident, the loss of room, and the loss of enjoyment of her home, further orders have been made below to put this right. This service has calculated compensations in line with the Ombudsman's remedies guidance for situations where severe maladministration by the landlord has occurred; the landlord's response further exacerbated the situation and undermined the landlord-resident relationship. A full breakdown of the compensation can be found in the orders section below.
28. The landlord's compensation policy states that the landlord would pay the resident the costs of damaged belongings. The landlord was notified by the resident that mould had spread from one wall initially to the ceiling, other walls, carpet, and furniture. The resident told this service that the damage was as follows:
 - a. bunk bed £200
 - b. 2 mattresses at £110 each = £220
 - c. bedding including duvet and pillows £81
 - d. carpet and underlay £150
 - e. wardrobe £90
 - f. chest of draws £99
 - g. toy storage £80
 - h. curtains £20
 - i. light shade £10.
29. Considering the failure identified in this report, an additional order has been made below for the landlord to offer compensation for the damaged items at the resident's property.

The landlord's complaint handling

30. In its final response letter, the landlord said it "provided lessons learnt to all in question to avoid a similar situation occurring in future". However, while the landlord said lessons were learned, it provided no details. It is unclear what actions and by whom it would take to prevent similar issues from reoccurring. As referenced in the Ombudsman's Complaint Handling Code, examples of learning include changes to policies and procedures and acknowledging where things have gone wrong. An order has been made below to address this.
31. The Ombudsman's Complaint Handling Code says landlords must confirm the complaint definition in writing to residents. The resident must be asked for clarification if any aspect of the complaint is unclear. The landlord's final response letter did not define the complaint. Stage 2 was meant to give the landlord another opportunity to resolve the complaint within its internal complaint procedure. Instead, the landlord discussed in its response the resident's immersion heater located in the resident's bathroom. This was not related to the damp and mould in the children's bedroom and was not part of the complaint. The body of the landlord's response contained 209 words. Of those, 141 words were irrelevant to the complaint, or 67%. This caused distress to the resident and made her feel that the landlord had not taken the time to listen to her concerns. This was not appropriate.

Determination

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

Orders

34. The landlord must follow the following process, updating the resident and this service at every stage:
- a. Within 4 weeks from the date of this report, the landlord must instruct a specialist damp surveyor to inspect the property and produce a report detailing the remedial works required.
 - b. Within 4 weeks from the date of the surveyor's report, the landlord must follow the report's recommendations in full.
 - c. On completion of the works, within 8 weeks from the date of this report, the landlord must confirm with its surveyor that the works were carried

out in line with the surveyor's recommendations and that the damp and mould issue has been resolved.

- d. The landlord must return to the property 60 days after it has completed the works to verify that it is free from damp and mould and that no further work is required.
- e. Given the likely intrusive nature of the works, the landlord should consider whether a temporary decant is needed.

35. Within 4 weeks from the date of this report, the landlord must conduct a full senior management review of this case to identify learning and improve its working practices. The outcome of the above review must be shared with this service within 4 weeks from the date of this report. It must include a review of its:

- a. Repair procedures to ensure an effective mechanism is in place to ensure works have been completed and to a reasonable standard of repair before they are allowed to be marked as completed or cancelled.
- b. Damp and mould policy to ensure it is comprehensive in identifying that cases, such as the resident's case, are not allowed to be prolonged for an unacceptable length of time.
- c. Complaint handling to ensure it complies with the Ombudsman's Complaint Handling Code and that it considers company-wide training to embrace a positive complaint culture that embraces learning and strives to improve services through the internal complaint process.
- d. Record keeping to ensure that its records of damp and mould-affected properties are accurate.

36. Within 4 weeks from the date of this report, a senior management team member must apologise to the resident in writing, setting out the findings of its senior management review. A copy of the letter must be shared with this service.

37. Within 4 weeks of the date of this report, the landlord must pay the resident a total of £2,720.58, broken down as follows:

- a. Compensation for the loss of room and loss of enjoyment of her home, as 10% of the rent paid. Starting from 3 March 2021, when the landlord initially inspected the property, and concluding on 3 November 2023, 28 days from the date of this report. This service has taken the average weekly amount the resident paid during this period of 139 weeks, which was £102.20 and awarded £1,420.58.

- b. £1,000 for in compensation for the distress and inconvenience, time and trouble caused by its handling of the damp and mould.
 - c. Pay the resident £300 in compensation for the distress, inconvenience, time and trouble caused by its handling of the complaint.
 - d. If the landlord has already paid the resident the compensation of £330 awarded during its internal complaint process, this can be deducted from the total amount. Payment must be made to the resident's bank account and cannot be offset against any arrears. Evidence of compliance must be sent to this service within 4 weeks from the date of this report.
38. Within 4 weeks of the date of this report, the landlord must work with the resident to agree on what items it is going to offer compensation for once the works have been completed. A confirmation of this list must be sent to this service.