

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202118841*

*Peabody Trust*

*18 May 2023 (amended at review 18 July 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 about the landlord's handling of:
  - a. the resident's reports of issues with her hot water supply;
  - b. the resident's complaint.

## **Background**

2. The resident is an assured tenant of a two bedroom flat owned by the landlord.
3. On 15 January 2020, contractors working for the landlord attended the resident's home to fix the immersion heater. Following this appointment, the resident experienced the loss of hot water in her home, which she quickly reported. Intermittent total or partial hot water loss, or lack of sufficient water pressure, continued throughout the following months. The landlord attended the property on multiple occasions to attempt to resolve the issues. Any repairs only provided temporary fixes and the issues continued.
4. On 28 September 2020, the resident made a formal complaint to the landlord. She alleged that the landlord's contractors damaged her immersion heater in January 2020, and had since failed to resolve the problem. She referred to approximately 25 appointments arranged at her home, with at least nine of these missed by the contractors who did not contact her in advance to let her know. More than eight months later, the problem remained unresolved.
5. The landlord issued its stage one complaint response on 16 November 2020. It refused to consider issues that pre-dated the last six months, citing a clause in its complaints policy. For reasons that are not clear, it decided the scope of the complaint would begin from a report the resident made on 1 September 2020.

The landlord summarised events since that date and said the cause of the issues with the hot water supply was private plumbing the resident had carried out (in 2017). Nevertheless, it apologised that it had taken more than two months to identify and address the problem. It offered a total of £300 compensation comprising £2 per day for lack of hot water, and £176 for time and trouble.

6. On 20 November 2020, the resident responded to the landlord. She found the complaint response and compensation offer to be inadequate and disputed several points. This included the landlord's finding that the issues were caused by private work the resident had carried out. She felt the landlord had refused to be accountable for its failures between January and August 2020. She denied the issues with the hot water supply had been resolved.
7. The landlord accepted the complaint escalation to stage two on 23 November 2020. On 4 February 2021, the landlord issued an interim stage two response (pending the resolution of the hot water issue). It found the stage one response to be reasonable but accepted some points were disputed by the resident. The landlord acknowledged there were delays with progressing the resolution and the complaint, and stated this was down to the pandemic, staff sickness, and furloughing. It made a separate offer of £100 compensation for delays in the complaint handling.
8. In the nine months since the interim stage two response, the resident had been in regular contact with the landlord by email to get the issues resolved but did not always receive responses. She had also contacted the environmental health department at the council for advocacy. The landlord completed some work, including replacing the pump and installing an incorrect cylinder (which needed further replacement), neither of which resolved the problem. The resident was able to confirm on 31 October 2021 that her hot water system was operating correctly. The final stage two complaint response was issued by the landlord on 12 November 2021.
9. In its final stage two response, the landlord apologised for the resident's experience. It had decided to investigate the issues from the first report in January 2020, though it upheld its original decision to discount the first 8 months at stage one as "technically in compliance" with its policies. It acknowledged that there had been further delays caused by its operative installing an incorrect cylinder in April 2021 and that the resident had experienced at least nine missed appointments.
10. The landlord summarised its learning and said it had recruited more employees for complaint-handling, and specialised operatives to deal with that type of water system. It offered a total of £940 as compensation comprising £400 for time, trouble, and inconvenience, £300 for total loss of hot water, £150 for complaint handling issues, and £90 for missed appointments.

11. The resident referred her complaint to the Ombudsman. She felt the time taken to resolve her hot water issues and her complaint was unreasonable. She was particularly upset over how the landlord dealt with her at stage one. She would like the compensation offered to be reviewed.

## **Assessment and findings**

### *Hot water issues*

12. The landlord is responsible for ensuring the working provision of hot water at the resident's home. Where there is no hot water provision, this is an emergency. The relevant time periods were affected by the Covid-19 lockdowns; however, such repairs were still essential. The landlord's repairs and maintenance policy gives a 4-hour timeframe for attending to and completing emergency repairs. Works that are complex and require specialist input are to be completed within 60 calendar days.
13. It is accepted that the landlord would likely have experienced significant difficulty during the pandemic because of restrictions, such as furloughing, office closures, and staff sickness. Yet these factors do not fully explain and mitigate a delay of almost two years when there was still an expectation and obligation for the landlord to provide essential services. Internal emails showed that it, at one point, suspected the resident was tampering deliberately with the hot water system to cause faults and receive financial compensation.
14. From January 2020 until October 2021, the resident suffered intermittent issues from total and partial loss of hot water to insufficient water pressure to deliver hot water to the taps properly. The landlord said that it was not correct of the resident to say she had no hot water when she was experiencing a water pressure issue that rendered the available hot water barely useable. Despite the landlord's position, it would appear from the evidence that the resident had either no or insufficient access to hot water for much of a 21 month period. This represents a breach of the Landlord and Tenant Act 1985, the landlord's own policies, and severely impacted the resident.
15. The landlord states in its stage two complaint response that it was using "somewhat of a process of elimination" in the hope they would eventually identify and address the issue. This Service accepts that this can sometimes be the case when diagnosing complex issues. It is evident that much of the 21 months were marred with confusion over the cause of the faults, but this only partially explains how long it took to resolve the issue. Other reasons include supplier issues, and contractors not turning up to appointments. The landlord also spent some time suspecting the resident was causing the issues through deliberate tampering, but this was eventually accepted as unfounded and not mentioned in its complaint

responses. Regardless of these reasons, however, the length of time the resident was without reliable access to hot water was unacceptable.

16. The resident originates from outside of the UK. Although she can speak and understand English very well, there remains a slight language barrier with verbal communication. The resident's request for all communication to be in email form was not always respected by the landlord, particularly during stage one of the complaints process, contrary to its duties under the Equality Act 2010. This Service notes that the landlord has, as of March 2023, made available a reasonable adjustments for customers policy, which will hopefully make similar issues less likely to occur in the future.
17. The resident has a friend who has helped her write emails to the landlord. Had the resident not had this assistance, nor her own understanding of the hot water system, it is reasonable to conclude that she may have struggled even more to get her issues resolved.
18. The evidence shows the resident sent several emails to the landlord. She often received no response to her emails. In December 2020 and March 2021, the landlord gave annual and sick leave as the reason why the resident was not receiving timely responses. This was despite informing her that the issue had been escalated to senior management. On 27 May 2021, the landlord used the lack of staff availability due to meetings and leave as a reason for the lack of communication. The landlord stated that they would send a further response shortly after 2 June 2021, however there was no further contact until a holding reply was sent on 14 July 2021. At this point, the resident had contacted the landlord another four times and had contacted her local council's environmental health department for advice and support. It was the end of July before the landlord sent a confirmation that the relevant team had been contacted to arrange for a further inspection. The hot water issues had at this time been ongoing for 18 months.
19. The resident received repeated assurance from the landlord that the delays would be factored into the final compensation offer. These assurances do not mitigate those lengthy delays, nor replace agreement with the resident about any required extensions to complaint handling. It is troubling that the issue had been escalated to senior management, and any necessary efforts to delegate elsewhere were not made. This Service recognises that, on rare occasions, staff absence may impact service delivery. However, senior management at the landlord have a responsibility to manage resources to keep this to a minimum and ensure its obligations are met. It appears when the landlord's complaint handler was absent, the work was not reassigned. To repeatedly use staff absence as an excuse for service failure is unacceptable.

20. Despite the resident's problems with her hot water system, the landlord appeared to treat this with a lack of necessary urgency. On 28 October 2020, the resident sent the landlord a detailed email stating her concerns. The landlord responded seven minutes later with a single sentence reply re-directing the resident to a section of a previous email. It may appear that the landlord had not fully considered the concerns of an evidently frustrated resident if it was able to respond within seven minutes. It implied that the resident, a woman for whom English is not her native language, had not understood a previous email. The landlord should have sought to ensure the resident did understand the content of the previous email.
21. The landlord eventually accepted that it was works carried out by its contractors that caused the original issues with the hot water system. These issues were then prolonged by the landlord's failure to diagnose the cause, its installation of incorrect parts, and various delays. Often these delays were down to a lack of effective engagement from the landlord, and several missed appointments. This was unacceptable and caused severe detriment to the resident. It should also be noted that these events took place during a global pandemic, where there was a particular emphasis on the importance of hand-washing to protect from the Covid-19 virus. The resident described the stress caused to her and her daughter as they hadn't been able to adequately wash themselves at the time of this public health messaging.

### *Complaint handling*

22. The landlord's complaints policy gives ten working days for a stage one complaint response, and 15 working days for a stage two response. In this case, the stage one response took 35 working days. The stage two response was issued four days short of a full year after the stage one response (albeit with an interim response issued after 11 weeks). There is no evidence that the landlord agreed such lengthy extensions with the resident. The policy does not state that any outstanding issues must be resolved before the complaint can be appropriately handled. This was a severe failure in complaint handling and completely unacceptable.
23. At stage one of the complaints process, the landlord used a clause in its complaints policy to dismiss the first eight months of ongoing issues the resident was experiencing with her hot water supply. The clause states: "all complaints should be submitted to Peabody within six months of when the event occurred or it became known to the complainant. Peabody may exercise discretion in exceptional circumstances when considering whether to accept a complaint submitted outside of the timescale". The stage two response upheld this position, but did consider events from January 2020, which was the correct action to take.

24. The Ombudsman's complaint handling code has guidance on what can be excluded from complaint handling where a problem originally occurred more than six months ago. "Where the problem is a recurring issue, the landlord should consider any older reports as part of the background to the complaint if this will help to resolve the issue for the resident. (N.B. it may not be appropriate to rely on this exclusion where complaints concern safeguarding or health and safety issues.)" Issues leading to a lack of hot water supply are a health and safety issue and had not been resolved, so it was inappropriate in this case to exclude any older reports.
25. If a resident raises a complaint about an issue that was resolved more than six months ago, the landlord could reasonably conclude that the resident should have raised the complaint earlier unless there were exceptional circumstances. However, the landlord's application of its policy creates an outcome that makes it impossible for residents to complain that any issue has taken longer than six months to resolve. It should not disregard reports of issues that remain unresolved after six months. The stage one complaint response was inadequate considering the landlord refused to account for the issues starting, and being reported, in January 2020. The landlord should review its complaint handling policy in accordance with this Service's Complaint Handling Code.
26. The resident has said that she was dealt with in a heavy-handed manner by the landlord. She stated that she felt the landlord gave the impression on the phone of being motivated more by closing her case than resolving it fairly. The communication from the landlord is uncomfortable to read, as the language used could be interpreted as patronising and dismissive, when it should have been understanding and reassuring.
27. One of many examples of such language is in an email from the landlord dated 27 October 2020. The landlord writes, "I've explained this several times, however, I'll do so again". The emails at stage one feature this type of language throughout. The landlord also criticised the resident because it felt that her emails take the "opposite approach" from her "reasonable, engaging, and appreciative" approach on the phone. The emails from the resident are not abusive, but evidently come from a place of genuine frustration over the issues she was experiencing with the landlord. The landlord should have made efforts to understand the clear frustrations the resident was feeling and respond in a sympathetic manner that reassured her they understood the severity of the issues.
28. Email correspondence from the landlord at stage one also repeatedly requests the resident to confirm if she is taking legal action or has "contacted the small claims court", because of her referring to case law in her emails. In one email, the landlord tells the resident to "please stop signposting me to legal cases". The purpose of this line of questioning was to establish if the landlord could close the

complaint down as legal actions “take precedence” over the internal complaints process. The Ombudsman is clear that until the court receives the relevant application after the pre-action protocol has been completed, the landlord should not prevent access to its complaints process. The landlord should revisit its approach towards complaints and view them as an opportunity to learn and put things right.

29. In the 21 months between the start of the issues and their final resolution, the resident was at times incorrectly suspected of deliberately causing the issues or was blamed for them because of minor private works completed in 2017. She stated she was treated as “a vexatious and troublesome complainer, and effectively ignored”. Suffering the lack of a basic utility (even if intermittently or due to water pressure issues) for such a length of time would normally be considered an example of serious landlord failure.
30. The landlord has seriously undermined the landlord-tenant relationship in its handling of this issue. It is likely that the resident now has little confidence in the landlord’s willingness and ability to appropriately deal with any issues she has in a timely manner.

### **Determination (decision)**

31. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was severe maladministration in the landlord’s handling of the resident’s reports of issues with her hot water supply. This is due to unacceptable delays in resolving the issue over a period of nearly two years.
32. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was also severe maladministration with the landlord’s handling of the resident’s subsequent complaint. This is due to the severe delay in issuing responses and the landlord’s treatment of the resident throughout, but especially at stage one.

### **Orders**

33. The landlord must apologise to the resident for the exceptionally poor handling of her repair issues and her complaint. It should acknowledge and apologise for the way the resident has been treated throughout, but particularly at stage one of the complaints process. The landlord should consider issuing the apology directly from its chief executive.
34. Within four weeks of the date of this report, the landlord is to pay £1,800 compensation to the resident’s bank account, comprising:

- a. £1000 for failure to restore a fully functioning hot water system for 21 months, this amount includes the £300 the landlord previously offered for total loss of water.
  - b. £100 for ten missed appointments, including the £90 the landlord previously offered.
  - c. £400 for time and trouble as the landlord previously offered.
  - d. £300 for the distress the resident experienced to get the issue resolved. This recognises the anxiety, worry, frustration, and uncertainty the resident experienced.
35. The landlord must also pay the resident £500 for its failures in complaints handling, comprising:
- a. £250 for the heavy-handed and unsympathetic manner in which resident was treated, in particular at stage one of the complaint process.
  - b. £250 for poor complaint handling; this amount includes £150 the landlord previously offered.
36. The landlord to carry out a full review of this case to further identify specific learning points and improve its working practices following the findings of the Ombudsman's investigation. The review should also:
- a. Clarify its complaints policy, particularly around the six-month timeframe with regards to raising complaints about issues that have not yet been resolved.
  - b. Consider how the Housing Ombudsman's dispute resolution principles and Complaint Handling Code can better inform its complaint handling.
37. Evidence of compliance with the above orders should be shared with the Housing Ombudsman within six weeks of the date of this report.