

Housing

Ombudsman Service

REPORT

COMPLAINT 202122577

Birmingham City Council

8 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 is about the landlord's:
 - a. Handling of the resident's reports of damp and mould at the property.
 - b. Complaint handling.
 - c. Record keeping.

Background and summary of events

2. The resident is an assured tenant of the landlord and the landlord is a local authority. The property is a two bedroom ground floor flat where the resident lived with her adult daughter.
3. The landlord has told this Service that it has no known vulnerabilities recorded for the resident. However it is noted that it accepts the resident is registered blind and has mobility issues. The resident's daughter has raised the complaint on her behalf and as such has been referred to as the resident within the report.

Legal framework

4. The landlord's repairs policy confirms it is responsible for the repair and maintenance of:
 - a. The structure of the property which includes walls, damp proof course and membranes, external doors and door frames.
 - b. Internal components including walls, skirting boards, curtain battens, doors, door frames, hinges, floors, stairs, ceilings, water pipes, cooker point, kitchen units, basins, sinks, baths, toilets, heating systems.

5. It explains that a resident is responsible for reporting any repairs that it is responsible for. It also adds that a resident must allow access for inspections, repairs and maintenance work. It confirms, among other things, the following:
 - a. Urgent repairs are those concerned with protecting the health and safety of the resident and their family. It says such repair should take 1, 3 or 7 working days.
 - b. Routine repairs are targeted to be completed within 30 days of being reported.
6. It also confirms the need for it to incorporate the Housing Health and Safety Rating System (HHSRS) into its surveys and says for homes to be decent they should be free of category one hazards.
7. The landlord has a responsibility under HHSRS, introduced by The Housing Act 2004, to assess hazards and risks within its properties. Damp and mould are a potential hazard and therefore the landlord is required to consider whether any damp and mould problems in its properties amount to a hazard that may require remedy. A landlord should be aware of its obligations under HHSRS and is expected to carry out additional monitoring of a property where potential hazards are identified.
8. The Decent Homes Standard sets the minimum expectation of quality that all social homes must meet. It explains that for a home to be considered 'decent' it must be free of hazards assessed as serious under HHSRS.
9. The Ombudsman's Spotlight Report on Damp and Mould from October 2021 recommends that a landlord should:
 - a. Adopt a zero tolerance approach to damp and mould.
 - b. Avoid taking actions that solely place the onus on the resident and should evaluate the mitigations it can put in place to support the resident and satisfy themselves that it is taking all reasonable steps.
 - c. Review the number of missed appointments and consider what steps may be required to reduce these missed appointments.
 - d. Ensure that it clearly and regularly communicates with residents regarding actions taken or otherwise to resolve reports of damp and mould.
 - e. Identify where an independent, mutually agreed and suitably qualified surveyor should be used, share the outcomes of all surveys and inspections with residents to help them understand the findings and be clear on next steps. It should then act on accepted survey recommendations in a timely manner.
 - f. Identify complex cases at an early stage.

10. The landlord operates a three stage complaints procedure.
 - a. Stage 1 procedure aims to deal with the complaint straight away. Where this is not possible the complaint will go to stage 2 straight away.
 - b. Stage 2 procedure aims to investigate the complaint and respond within 15 working days.
 - c. Stage 3 procedure is a review of the stage 2 decision. It says an independent officer will respond to this within 20 working days.

Summary of events

11. The evidence shows that the landlord was aware of damp and mould at the property in November 2020. Its internal notes from this time show it accepted there was damp and mould at the property. The landlord has told this Service that it made attempts to make appointments to visit the property between January 2021 and April 2021. It has also said the resident declined a decant at this time, however it has not provided evidence to support this.
12. On 12 May 2021 the landlord, in its capacity as a local authority, accepted the resident's housing application and awarded her band 1 due to her disabilities.
13. It is unclear what happened following the above, but the evidence shows that on 17 September 2021 the resident raised a complaint and provided the landlord with photos of the property. She said:
 - a. She lived with her elderly disabled mother who was registered blind in a property with damp and mould.
 - b. She was told the landlord would paint over the damp again which she felt was unacceptable as the approach had not worked previously.
 - c. She said her mother was waiting for a property more suited to her needs.
 - d. She told it of the impact the situation was having on them and how she felt the landlord was not helping.
14. This Service has been provided with the photos that were sent to the landlord at that time. The photos show:
 - a. Doors that are damaged within the property.
 - b. A bedroom wall that has a significant amount of mould.
 - c. A further wall with significant mould.
 - d. The bathroom with patches on the wall.
15. The landlord acknowledged the complaint on 27 September 2021 and said it would respond within 15 working days. An internal email from the same day

referenced “severe mould/damp in the bathroom and within the property” from the photos provided by the resident. It said its previous damp paint had not worked and asked if there was anything other than paint that could be done.

16. The evidence shows that between 8 October and 17 November 2021 the landlord made several unsuccessful attempts to contact the resident by telephone. Due to no response the landlord wrote to the resident on 18 November 2021. Here it apologised for its delay in responding to the resident’s complaint. It said it had been unsuccessful in reaching the resident and confirmed that its contractor would attend the property on 1 December 2021. The landlord treated this letter as its response to the resident’s complaint.
17. The landlord attended the property on 1 December 2021 but there was no answer. Its notes say “as the property looks in a very poor state I feel we have a responsibility to get into the property as soon as possible...net curtains are black with mould all over them and looking at the photos it does look in a very poor state of repair”. Its internal email from the same day suggested it arrange access and said it was likely the resident would need to decant due to the property condition.
18. On 3 December 2021 the resident spoke to the landlord and explained that whilst her mother was at home on 1 December 2021, she was elderly, disabled with hearing and visual impairments. She requested a housing inspector attend the property and provided the landlord with an updated contact number.
19. The evidence shows the landlord treated the resident’s contact as an escalation request. It acknowledged the resident’s request to escalate her complaint on 6 December 2021 and said it would respond by 5 January 2022. It provided its stage two response on 7 December 2021 and said:
 - a. It received the resident’s escalation request on 3 December 2021.
 - b. It apologised for the missed appointment and said a further appointment had been arranged for 15 December 2021.
 - c. It trusted this clarified matters and told the resident that she had reached the end of its complaints procedure.
20. Following the inspection on 15 December 2021, the landlord’s internal email said:
 - a. It attached photos to show the mould was everywhere. On the walls, ceilings, doors and frames. It added that the photos show it was “a severe case of mould”
 - b. There was wet washing on the radiators and a clothes horse.
 - c. The resident was “quite agitated” when advised it could not find any building defects.

- d. The resident told it about a leak from the property above.
 - e. “I have been in a few of these flats lately and they do not have mould issues in them so the problem is the tenants lifestyle”. It said all windows were closed and no fans were switched on. It said the excessive moisture was building up and migrating to all the surfaces.
 - f. It appreciated the needs of the resident and her disabled mother wanting to be moved and that finding a suitable property would not be easy so it raised a damp repair for extensive washing down and mould treatment.
21. A further internal email from the same day said “as this is clearly a lifestyle issue ...any further mould treatment will be rechargeable”.
22. At this time the landlord raised a damp repair and said the property would need extensive washing and mould treatment.
23. The landlord has said it spoke to the resident on 16 December 2021. Its internal email says the resident was unwilling to accept the information it relayed and was told the resident was going to the press. She requested a second opinion in terms of an inspection. It said the bottom line was that the resident wanted a permanent move and she was told “this is not how the process works”.
24. The resident emailed the landlord on the same day and asked for a second opinion. She told it how she felt the inspector did not carry out his duties correctly. How he did not greet her or her mother and how she felt there was a racial undertone
25. Following this, on 17 December 2021 the landlord said it had concluded its investigation into the matter and would not conduct another inspection of the property but would arrange for the works.
26. In her response, the resident asked the landlord to provide its inspection report in writing. The landlord said it had no obligation to provide or produce reports for general repairs. It referred the resident to the Ombudsman if she remained unhappy. It is noted that in her response the resident referred the landlord to the Ombudsman’s Spotlight report on damp and mould.
27. The landlord’s internal notes say the resident refused mould treatment on 7 January 2022. Its notes refer back to its inspection from 15 December 2021 and explain that its attempts to arrange for mould to be treated was refused.
28. It is noted that on 23 January 2022 a newspaper published an article about the property which included photos. It said:
- a. The resident had said that the “hellhole home had damp and mould growing in every room of the two-bed property”.

- b. Mould was growing on walls, ceilings and doors in the living room, bathroom, kitchen and both bedrooms.
 - c. The resident had said the property had been repainted but mould continued to return.
 - d. The resident felt extremely let down by the landlord. She said she could not cope anymore, she had anxiety and was not sleeping. She said she needed to move and had put up with it for long enough.
 - e. The resident's mother was disabled and had suffered a stroke last year.
 - f. The resident was blamed for causing the damp in the property. She said she was told the problem "must" be them as no other property in the block was like it.
 - g. The resident said washing or painting over the mould would not make a difference.
 - h. The landlord apologised for the condition of the property and said it was committed to treating all the mould in the property. It said it was "sorry for the poor living conditions caused by the mould in the tenant's property."
29. The photos published in the article show significant mould growth in the property. The bathroom, walls, ceilings and doors show mould growth. The photos show peeling on the ceiling and of some plaster on the walls.
30. The resident's GP wrote to the landlord on 27 January 2022 explaining her mother's vulnerabilities and thanked it for reconsidering an application for her to move to a suitable property. It said the mother was 74 years old, had previously suffered from a stroke, was visually impaired and had mobility issues.
31. On 4 May 2022 the landlord offered the resident a new property and noted her mother's disability needs and the disrepair. The new tenancy was signed on 23 May 2022 and it is understood that the resident moved into the new property on 26 June 2022.

Assessment and findings

Handling of reports of damp and mould at the property

32. From the landlord's repair and contact records it is unclear when the resident initially made reports of damp and mould at the property and as such it is difficult to assess how long the damp and mould issues have been ongoing for. However the landlord's repair notes show that on 16 November 2020 it was aware there was damp and mould at the property.
33. There is no evidence to show it conducted a damp survey at that time, instead the evidence shows it made attempts to attend the property and its later notes

from 27 September 2021 refer to its previous damp paint work as not resolving the issue. As such it is reasonable to conclude that between November 2020 and September 2021 the landlord did some work to address damp and mould at the property. However, there is no evidence to show it monitored the issue or instructed a damp specialist at that time. This was not appropriate.

34. When the resident raised further concerns about damp and mould on 17 September 2021, it was appropriate for the landlord to have explored what other works, instead of paint works, it could do to support the resident.
35. The evidence shows that between October 2021 and November 2021 the landlord made a number of attempts to contact the resident by telephone. These attempts were unsuccessful and on 18 November 2021 it wrote to her saying it would attend on 1 December 2021. Whilst it was appropriate for the landlord to tell the resident it would attend the property to conduct an inspection, it should not have taken it 53 days to do this. Especially when it found the photos sent to it showed “severe mould/damp” at the property. The landlord’s failure to act swiftly here was not appropriate, especially given the resident’s vulnerabilities.
36. It is noted that the landlord attended the property on 1 December 2021 and that it was unable to gain access. At this time the landlord said “the property looks in a very poor state I feel we have a responsibility to get into the property as soon as possible”. Following this it was appropriate for the landlord to inspect the property on 15 December 2021, however it did not conduct a damp survey and has not provided evidence to show this inspection was conducted by a damp specialist. This was not appropriate.
37. After its inspection on 15 December 2021 the landlord listed points that it felt meant the damp and mould was due to the resident’s ‘lifestyle’. It raised a damp repair which included “extensive” washing down and mould treatment. However it offered no reasonable alternatives despite it finding “mould was everywhere”.
38. It is noted that the following day, the resident challenged the landlord’s view and asked for a second opinion. It seems the resident was challenging its approach to treating the mould as this had not worked previously. The landlord refused a further inspection and said it had no obligation to produce a report for such repairs. The landlord’s approach here was unreasonable.
39. It is acknowledged that following its inspection it made some attempts to contact the resident to gain entry into the property and its notes say its offer of decant and temporary accommodation were refused. However there is no evidence to show it made any further attempts to complete works after 7 January 2022. This again was not appropriate.

40. It is also acknowledged that the resident's mother was offered alternative accommodation due to her disabilities in May 2022 and the resident has confirmed they moved on 26 June 2022. However there is no evidence to show the landlord provided the resident with further support between 7 January 2022 and 26 June 2022. This was despite it knowing the condition of the property. It is acknowledged that there were some issues with gaining access to complete works, however there is no evidence to show the landlord progressed matters during this time or considered alternative avenues to meet its ongoing obligations.
41. The landlord's lack of action here was not appropriate. It failed to act in line with its repairs policy or wider obligations to make the property decent. Its actions also fell short of the recommendations made in the Ombudsman's Spotlight report on Damp and Mould from October 2021 as:
- a. It did not adopt a zero tolerance approach to damp and mould.
 - b. It did not evaluate the mitigation it could put in place to support the resident and satisfy it that it was taking all reasonable steps.
 - c. It did not identify where an independent, mutually agreed and suitably qualified surveyor should be used, share the outcome of all surveys and inspections with resident to help them understand the findings and be clear on next steps.
 - d. It did not ensure that it clearly and regularly communicated with the resident regarding actions taken or otherwise to resolve reports of damp and mould.
42. Overall the landlord was reasonably aware of the issue at the property in November 2020 but did not instruct a damp specialist to assess the situation at that time or after further reports were made in September 2021. It did this despite photos showed significant mould in the property and it finding the property had "severe mould/damp", was in a "very poor" and "terrible state". It then took 53 days to inspect the property and refused a further inspection when the resident disputed its approach. Whilst it is acknowledged that it made some attempts to gain access, there is no evidence to show it offered support after 7 January 2022 leaving the resident and her vulnerable mother in the property with "severe" damp and mould.
43. Its lack of action was not in line with its repairs policy, its obligations under HHSRS and its wider obligations to ensure the property was 'decent' especially when it found the condition of the property was "very poor".
44. The landlord's handling of damp and mould at the property was not appropriate and amounts to severe maladministration.

45. When deciding an appropriate remedy, the landlord's failings over an extended period of time have been taken into account. Whilst it is difficult to determine how long the issues had been ongoing for and the full extent of the condition of the property, it is reasonable to conclude that the resident had limited respite due to the property condition. When considering this rental compensation of 60% has been decided as appropriate in these circumstances.
46. It has been acknowledged that the landlord made some attempts to complete some work at the property and that it was unable to do this. It is also recognised that the resident moved from the property in June 2022. When considering this a timeframe of 32 weeks has been decided as appropriate in these circumstances. This is to recognise it not acting swiftly and not offering support after 7 January 2022. A weekly rent amount of £108 has been used for the calculations. 60% of this is £64.80, multiplied by 32 weeks amounts to £2,073.60 rental compensation.
47. It is important to explain that the calculation of rental compensation is not exact and as mentioned previously it has been difficult to determine how long the issues have been ongoing for. As such, in these circumstances it is appropriate to make a further order for compensation in light of the distress inconvenience, time and trouble caused to the resident.

Complaint handling

48. The resident raised the following points as part of her complaint on 17 September 2021:
- a. She lived with her elderly disabled mother who was registered blind in a property with damp and mould.
 - b. She was told the landlord would paint over the damp again which she felt was unacceptable as this approach had not worked previously.
 - c. She said her mother was waiting for a property more suited to her needs.
 - d. She told it of the impact the situation was having on them and how she felt the landlord was not helping.
49. The landlord provided its stage one response on 18 November 2021. This timeframe of 44 days was not appropriate and exceeded the timeframe the Ombudsman's Complaint Handling Code (the code) said it must not exceed. Whilst it did recognise its delay and apologised. It did not address the resident's complaints, instead its response confirmed that it had arranged for a member of staff to attend the property. The landlord's response was not in line with the code as it did not address points raised in the complaint and it did not provide reasons for its decision.

50. The landlord adopted a similar approach for its stage 2 response and again used this to confirm the next appointment date. This was not appropriate.
51. It is also noted that the resident contacted the landlord after its inspection and told it how its inspector had not greeted her or her mother and how she felt there was a racial undertone. The landlord failed to recognise what the resident said here and told her that its investigation had come to an end. The landlord's approach was not appropriate especially in light of the concerns raised by the resident and the vulnerabilities it was aware of.
52. Overall the landlord's complaint handling was poor. The landlord used its stage 1 and stage 2 responses to confirm appointments with the resident and did not address the complaint raised, explain the approach it adopted or provide reasons for its decision. It is acknowledged that it did attempt to assess the situation of the property however it should have measures in place to separate its process for confirming appointments from its complaint response.
53. The resident was clearly unhappy with the landlord's approach in treating the damp and mould at the property and the landlord missed opportunities to alleviate her concerns about its approach, demonstrate it understood her concerns and explain what it was doing to address the issue. When considering the landlord's approach, it is reasonable to conclude that it was unlikely to resolve the complaint through its own process and this would have added to the resident feeling "purposefully...ignored". The landlord's approach meant the resident had to repeatedly chase it and involve this Service.
54. The landlord's failings here amount to severe maladministration.

Record keeping

55. Paragraph 10 of the Housing Ombudsman Scheme confirms the Ombudsman's expectation in relation to the provision of information, it says:
- a. The landlord must provide copies of any information requested by the Ombudsman, that is, in the Ombudsman's opinion, relevant to the complaint. This may include the following records and documents:
 - i. Any internal files, documents correspondence, records, accounts or minutes of meetings in hard copy or electronic form.
56. It is recognised that the landlord has provided some information to this Service, it has not provided, or not been able to provide, all the information requested as it is unclear when the resident initially raised reports about damp and mould at the property. It is also unclear when it initially completed some work to the property and why it decided to adopt the approach it did before September 2021.

57. It is also noted that on 1 July 2022 the landlord told this Service that it had no recorded vulnerabilities for residents at the property. This was despite it writing to the resident on 12 May 2021 and 4 May 2022 about her housing needs due to disabilities. This was also despite the resident repeatedly telling it of her mother's vulnerabilities and her GP also telling it of her vulnerabilities in January 2022.
58. The landlord should have systems in place to maintain accurate records of reports of concerns about the property, its response, inspections and investigations. This should also include appropriate systems in place to record resident's vulnerabilities. Good record keeping is important to evidence the actions a landlord and its contractor have taken. A failure to keep adequate records indicates the landlord's repairs processes are not operating effectively. The landlord should be aware of when reports were raised about a property, including the works raised and completed by it and its contractor.
59. Its staff should also be aware of its record management policy and procedures and should adhere to these. Its staff should also be aware of its vulnerable residents.
60. Overall the landlord has not provided this Service with information to show when the resident initially raised reports about damp and mould at the property. It has not provided evidence to show the work completed by its contractor despite it referring to previous unsuccessful damp related paint work. The landlord has told this Service it has no recorded vulnerabilities for the resident despite the evidence to the contrary. As such there was maladministration in the landlord's record keeping.
61. In cases where such serious failings are found, the Ombudsman would normally make orders designed to prevent these failings happening again. In this case, we have not done so in relation to damp and mould or complaint handling. This is because following earlier work with the landlord, it has already changed its complaint handling policy to bring it in line with the Ombudsman's Complaint Handling Code and is taking steps to improve its complaint handling process. It is already considering its approach to repairs and record keeping and other recommendations made by this Service as part of a recent special report.

Determination (decision)

62. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was severe maladministration in relation to the landlord's:
- a. handling of the resident's reports of damp and mould at the property.
 - b. complaint handling

63. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was maladministration in the landlord's record keeping.

Reasons

64. The landlord failed to complete a damp survey or instruct a damp specialist in November 2020 or when further reports of damp and mould were made in September 2021. It did this despite it saying the property had "severe" damp and mould. Whilst it made some attempts to attend the property, it did not act swiftly and did not offer further support after 7 January 2022 leaving the resident and her vulnerable mother in a property that was in a "very poor" and "terrible state".

65. The landlord missed opportunities to rebuild the resident's confidence in its approach and demonstrate it understood her concerns. Instead it used its complaints process to confirm appointments with the resident and failed to address the complaint raised, explain what it would do and why.

66. The landlord has not provided information to show when the resident initially raised reports of damp and mould at the property and evidence of the work it did at that time. It has also incorrectly told this Service that there were no recorded vulnerabilities despite it being made aware of these.

Orders

67. The Ombudsman orders the landlord to arrange for a senior leader responsible for housing to apologise to the resident for failings identified within this report, in person (or in writing if preferred by the resident). This should be within four weeks of the date of this report.

68. The Ombudsman orders the landlord to pay the resident a total of £3,823.60 compensation within four weeks of the date of this report. Compensation should be paid directly to the resident and not offset against any arrears. This comprises:

- a. £2,073.60 rental based compensation to acknowledge the landlord's failure to appropriately address the resident's reports of damp and mould.
- b. £1,000 for the distress, inconvenience, time and trouble caused by the highlighted failings relating to damp and mould.
- c. £750 for the distress, inconvenience, time and trouble caused by its complaint handling failings.

69. The Ombudsman orders the landlord to conduct a senior management review of this case within six weeks of the date of this report. It should identify what went wrong and the changes/improvements it will make to ensure its procedures and working practices enable it to meet its repairs obligations in such circumstances.

It should provide a copy of its review to this Service and a summary to the resident.