

Case summary:
Severe maladministration finding
Landlord: L&Q
Published: 15 March 2022

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Complaint reference: 202014296

Complaint categories: Decants, complaint handling, transfer application

The complaint

Mr A's complaint was about the landlord's handling of his decant accommodation and application for housing transfer. It also examined his request for compensation and associated complaint.

Background and summary of events

In 2018 Mr A had to be urgently moved into temporary accommodation. This was organised by the landlord and the temporary accommodation was a hotel outside of Mr A's home town.

During the proceeding three months Mr A was moved to four different hotels. The landlord has said that at the time of the decant the managing agent agreed to his rehousing in a hotel. Mr A has said that he was told initially his hotel stay would be for a week.

Mr A's doctor told the managing agent that the hotel accommodation was not suitable and he should be moved back to his home location – either to his property or alternative accommodation – with urgency.

The landlord discussed with Mr A his move to a ground floor decant property. He declined this on account of it being too far from his doctor's surgery and he expected to return home shortly.

Following Mr A's move to a different hotel and a fall down the stairs, the managing agent contacted the landlord. It said he had previously mentioned mobility issues and a potential need for ground floor accommodation, noting that at his flat he had relied heavily on the lift. It asked that future decant accommodation be ground floor but if the decant was to continue Mr A should be given permanent accommodation in his home town where he had support networks.

The landlord noted his previous flat had not had a lift, that he had had no issues with the stairs, and that he had never mentioned previously needing a ground floor property.

The managing agent emailed the landlord to enquire how much longer the decant would continue in light of Mr A's need for ground floor accommodation near his doctor and support network. It would appear he moved back into his flat. By this time, however, the property no longer had a lift.

Mr A's doctor wrote to the local authority in support of his application for rehousing to a ground floor property within close proximity to the doctor's surgery. The doctor set

out the impact on Mr A's health and well-being and the extreme distress he had experienced.

Mr A submitted a complaint to the landlord for compensation for expenses and emotional distress suffered while decanted at the hotels. His claim included reimbursement of travel costs of friends/carers, whose visits had been less frequent while at the hotels, causing his mental health to decline. He complained his vulnerabilities had not been adequately considered and communication with the landlord during the decant had been poor.

The complaint was handled over a period of almost two years, with the final response from the landlord provided in early 2021. Mr A's complaint was supported by an advice agency and later a solicitor to progress it and chase responses, with both the landlord and the managing agent giving responses at different stages during the process. In its final response the landlord offered £350 compensation in addition to the expenses.

Mr A also made an application to his local authority for a housing transfer. The landlord told him to also submit an application for transfer via the agent in order to maximise his chance of finding a property in his locality. Mr A was rehoused by the local authority.

Assessment and findings

Under the tenancy agreement the managing agent was acting on behalf of the landlord. Therefore any act or omission by the managing agent was ultimately the responsibility of the landlord for which it was accountable to the resident.

The Ombudsman will take in turn the separate heads of complaint, although there is invariably some overlap between them:

Decant accommodation:

In order to assess whether the landlord's handling of the decant was appropriate and reasonable the Ombudsman has had regard to the landlord's rehousing policy, which covers emergency decants and the provision of temporary accommodation. Amongst the stated aims of this policy is for the landlord to minimise the stress and inconvenience of the process to residents and provide them with assistance and support to ensure they are offered a suitable property. Importantly, regardless of whether the landlord contracts out part of that process to an agent, it is the landlord that retains responsibility to the resident for its overall service provision. Accordingly, hereafter when the Ombudsman refers to a landlord obligation or a failure on its part, it is referring to both the landlord and its agent.

Firstly, it is not disputed that this was an emergency decant. As a result, under its policy, the landlord's primary objective was to ensure the resident's safety over and above finding alternative accommodation that fully met Mr A's needs at that moment in time. The Ombudsman notes its rehousing policy states that in the event of an emergency move it may contact the local authority to assist in providing emergency accommodation or alternatively, encourage residents to stay with family and friends or, if this is not possible, find a B&B or hotel accommodation. The Ombudsman does not know whether any of those alternatives were investigated by the landlord but it is

clear that under its policy, B&B and hotel accommodation is considered suitable emergency accommodation.

Mr A subsequently asked the agent why he had not been offered sheltered accommodation. He has told the Ombudsman he did not request this at the time as he did not know of its existence. The Ombudsman has seen no evidence if this was ever considered an option by the landlord, but as with other forms of alternative accommodation it would have been dependent on availability, of which there is no evidence either way. It is not for the Ombudsman to comment on the Mr A's eligibility for sheltered accommodation, but having raised it in his complaint, he was entitled to an explanation from the landlord as to its consideration or otherwise of the issue. The agent's response to his question failed to provide that explanation.

Mr A has complained that having been decanted, inadequate account was taken of his vulnerabilities, with no apparent risk assessment made. The Ombudsman considers the landlord was fully aware of the Mr A's range of vulnerabilities, albeit it said it was unaware he had difficulty using stairs. He had previously been living in supported accommodation with the help of the landlord's agent and a carer/support worker. The Ombudsman has seen contradictory information as to whether the Mr A's flat had had a lift, but in correspondence the agent is clear he had used one and needed one. It is not clear why the landlord's internal enquiries showed his flat had not had a lift when the agent was of the view that it had and with Mr A heavily reliant on it.

As the Ombudsman sees it, regardless of whether or not his previous property had a lift, whatever Mr A's needs were prior to his decant these could always have been subject to change. Hence the requirement under the landlord's rehousing policy for Mr A to report any changes that might affect the suitability of his accommodation. The evidence indicates he did so, through his updates with the agent, reporting the fact of his fall, his difficulties using the stairs, and the unsuitable layout of the hotel rooms. For its part, the landlord's policy states, in recognition of the different needs of its residents, that it will '...always look at these situations on an individual basis to ensure that we are providing the most reasonable and suitable form of accommodation for our resident.' Consequently, beyond the emergency decant, the Ombudsman would have expected to see evidence of the landlord having assessed the likely duration of the decant, more proactively investigated Mr A's needs as the decant progressed and taken steps to consider options for more suitable accommodation.

The Ombudsman notes the landlord's policy states its consideration for suitable accommodation will take account of factors such as the Mr A's vulnerabilities and also the location of accommodation for specified reasons, ie for support networks and car/medical arrangements. In Mr A's case, it was necessary that he had ready access to his doctor's surgery which it seems he was required to visit on a daily basis, but also had a carer/support worker who visited him and for whom he had to pay travel expenses. It was therefore not unreasonable that he decline, on one occasion, the offer of a ground floor property on account of being too far from his doctor's surgery and his understanding that he was soon to return to his flat.

It could be the case that the landlord was actively investigating all options throughout the period of decant but was struggling to find more suitable accommodation. In which case the Ombudsman would have expected the landlord to actively engage

with Mr A as to what it was doing in order to reassure him of the efforts being made, to discuss with him what the alternatives might be, and failing that what could be done to mitigate the adverse effects of the hotel accommodation. The evidence of it agreeing to pay for taxis to medical appointments, the offer of the ground floor room – albeit too far from the doctor, and the move back to his home town – albeit after two months away – give an indication that attempts were being made by the landlord to provide some necessary tailored support for him.

But other than this, the Ombudsman has seen little evidence the landlord fulfilled its obligation under its rehousing policy to consult Mr A; provide clear information; keep him informed; and provide support and assistance to keep the disruption for him to a minimum. This is apparent from Mr A's and the agent's description of its officers lack of communication, infrequent visits and failure to attend pre-arranged meetings. It is also evident in the fact that he was still chasing reimbursement of expenses once he had returned to his flat, and ultimately sought the help of an advice agency in doing so. Not only was the delay unreasonable, but as the landlord had an obligation to reimburse expenses reasonably incurred and evidenced, having to seek the assistance of a third party to secure this reimbursement ought not to have been necessary.

The failure by the landlord to limit the disruption to Mr A was the result of evident confusion between the agent and landlord over responsibility for the suitability of the accommodation and a general failure in communication between the two. This is apparent from the complaint responses. The agent accepted it ought to have been more robust in its request for a reassessment for non-hotel accommodation, implying the responsibility to source it was ultimately that of the landlord. While in its later complaint responses the landlord repeatedly said that if the agent was aware of the unsuitability, it was for the agent to find an alternative. On one occasion it appears the responsibility was handed to Mr A himself when he was told, in response to his report that a hotel was not suitable, that nothing could be done until the following week but that he was free to find an alternative (ignoring his having said he had no internet access or money to do so). As the Ombudsman sees it, confusion over who was ultimately responsible would have caused Mr A understandable uncertainty and anxiety, and would have undermined his confidence that the issues with his accommodation would be resolved.

This service failure was magnified and compounded for Mr A by the length of the period spent in decant hotel accommodation. The Ombudsman notes the landlord's policy lists B&B and hotel accommodation as being suitable for only a maximum of four weeks, not the three months in which Mr A ended up living in the hotels. Mr A has explained in detail both in his complaint to the landlord and to the Ombudsman how being deprived of the comfort and familiarity of his home environment and the accommodation's failure to meet his specific needs caused him extreme distress and anxiety, as well as expense. An explanation that has been fully supported by his doctor. It strikes the Ombudsman that for someone without Mr A's vulnerabilities this would have been a difficult and trying time, but for the resident it was clearly an even more stressful and distressing period.

Furthermore, once decanted the landlord had an obligation to Mr A under its rehousing policy to help mitigate the adverse effects of this on him and to '...keep moves to a minimum....as we recognise how stressful and disruptive this can be...'. The fact of Mr A's stay in four different hotels over three months (beyond the one

week he was initially advised it would last) indicates the landlord failed to keep moves to a minimum. It is also accepted that the first Mr A often got to hear that he was moving was via hotel staff and not the landlord itself, which will have only compounded the stress of this deeply unsettling period for him. No evidence has been provided of the reason for this, but it would be reasonable for Mr A to have expected he would at least have been provided with some advance warning of a move. And while there is no evidence to indicate the landlord could have foreshortened the period of decant, the Ombudsman does not find that the landlord took all reasonable steps in its handling of the decant to alleviate rather than aggravate its impact on Mr A.

Transfer application:

Once Mr A returned to his flat, his deteriorating health meant the property no longer met his needs and a move to a ground floor property or one with a lift was necessary. Hence his application to the local authority for rehousing and to the landlord for a transfer. He was ultimately rehoused by the local authority and the actions of the local authority, including the time it took, are not matters that fall within the Ombudsman's remit.

The Ombudsman can, however, consider the landlord's actions – and those of the agent acting on its behalf – in response to Mr A's request for help with his rehousing application and application for transfer. In considering whether it did what it was supposed to do, the Ombudsman will have regard to the landlord's transfer policy. Under this policy the landlord will accord a priority status banding to an application based on evidence of a medical need. This would appear to have been the case for Mr A, and there is evidence he submitted the necessary medical assessment.

The evidence of what transpired and what was done and by which party and the duration and reason for any delay is not clear from available information. Under its transfer policy the landlord undertakes to provide Mr A with assistance in completing the online application and the evidence shows the agent provided this support and submitted the application on his behalf. Mr A has told the Ombudsman that the agent initially completed the wrong form, and in explaining its error told him it was not a housing expert. It is not known whether this was in relation to his rehousing or transfer application and aside from the resident's account, the Ombudsman has seen no evidence to prove or discount this one way or the other and so is unable to reach a finding on it.

With respect to Mr A's rehousing application the agent says both that it was not contractually obliged to facilitate his communication with the local authority, but also accepts that it should have helped him increase his rehousing options by requesting he be considered for a move-on. The Ombudsman notes this would have been in accordance with the transfer policy which commits the landlord to identifying and promoting other housing options for its residents. The agent also accepted a small element of delay on its part in progressing his application as a result of staff changes, although of the two months it took to submit the application to the landlord it is not known how much of this time was down to this delay. Nevertheless, the Ombudsman notes the agent accepted there was an element of service failure in its support to Mr A in his application to the local authority.

For the landlord's part, the information it has provided shows that it was also responsible for an element of delay with respect to his transfer application. It took 5-6

months from receiving his application to accepting it onto its database. Approximately two months of this was down to the fact that despite the agent having submitted the form to the landlord the form had not found its way to the officer dealing with the application and a further copy had to be requested. There was then a technical system fault on the landlord's side which impacted the transfer process, although the extent of this and any consequent delay is not known.

It is neither possible nor appropriate for the Ombudsman to speculate whether, if the above failings had not occurred, Mr A could have been rehoused sooner and whether that would have been through his housing or transfer applications. But what is apparent from the available information is that the above elements of mishandling and delay on the part of the landlord and agent undermined Mr A's confidence that his need for alternative accommodation was being progressed as systematically as it ought to have been. In the Ombudsman's view, the understandable frustration and confusion this caused Mr A has yet to be adequately recognised by the landlord.

Request for compensation:

Mr A has complained that the compensation offered by the landlord failed to have adequate regard to the distress and inconvenience he suffered as a result of its mishandling of his decant. This compensation is distinct from the £1,800 reimbursement of expenses.

The Ombudsman has reviewed the £120 compensation the landlord paid the resident for the inconvenience and distress of being temporarily rehoused. While the landlord cannot go back and undo Mr A's experience of the decant, in awarding him compensation it can at least provide him with tangible recognition of the impact on him of its mishandling of the decant.

Having identified the service failures detailed in this report, however, the Ombudsman does not consider the landlord's award goes sufficiently far in providing that tangible recognition. In the Ombudsman's opinion, the landlord has failed to show that between itself and its agent it took adequate steps to minimise for Mr A the disruption of the emergency decant and to mitigate its impact on him. Its inadequate communication with Mr A – through infrequent visits, cancelled appointments and failure to return calls - failed to reassure him that it was taking seriously his concerns over the unsuitability of the hotel accommodation; failed to update him on what action if any it was taking to resolve the situation; failed to manage his expectations as to the duration of the decant; failed to explain or provide advance warning of moves; and was slow to reimburse expenses.

In assessing compensation, it is necessary to look at the particular impact on Mr A. As already explained, it was not the landlord that was responsible for the fact that Mr A had to be urgently decanted or for the length of his stay away from his property. But it was responsible for taking reasonable steps to mitigate the impact of this on him, especially in light of his vulnerabilities. Mr A had stayed for three months in four different hotels; two months of which had been spent out of area. The cumulative effect of the landlord's communication failures identified in this report compounded Mr A's worry, frustration, and sense that his situation was not being treated with the urgency or seriousness it deserved. In the Ombudsman's view, the compensation the landlord offered Mr A failed to take adequate account of the cumulative effect of its mishandling on a resident with his particular physical and mental health vulnerabilities.

Complaint handling:

In considering complaint handling it is necessary for the Ombudsman to distinguish between the actions of the landlord and its agent. That is because much of what it considers went wrong in the overall complaint response was the landlord's failure to effectively manage the complaint process which resulted in confused and overlapping complaint handling between itself and the agent.

The Ombudsman's Complaint Handling Code sets out what a resident can and should expect from its landlord when they complain. Note the reference to landlord and not a third party, such as an agent. That is because while a landlord may contract out aspects of its service provision, it is the landlord which has the tenancy agreement with the resident, and as such it is the landlord that retains overall responsibility and accountability to the resident for the service provided.

In the Ombudsman's experience, when a landlord uses a managing agent, it will often – as part of its complaints process – require the agent to provide a Stage 1 response, but with the landlord providing the necessary Stage 2 review if the resident remains dissatisfied. However, that is not what appears to have happened in this case. It seems that the landlord expected the agent to provide all complaint responses to those aspects of service provision for which it considered the agent to be responsible. Hence its repeated reference in its Stage 1 and 2 responses to the agent's contractual responsibility for providing support, including communication with the landlord, sourcing suitable accommodation if the hotels were considered appropriate, and assisting with the resident's transfer application.

That might well have been an accurate explanation of the agent's contractual responsibilities (although it is not for the Ombudsman to say one way or the other) but it ought not to have been of relevance to Mr A how the landlord chose to manage his tenancy. Indeed it is not clear how Mr A would have been aware of this division of roles and there is no evidence that he was advised of this by either party.

What was of relevance for the resident was that someone take responsibility for what had occurred, provide an explanation and take steps to put matters right.

The landlord's failure to effectively manage the complaints process is evident from the outset. Mr A first complained and made clear that he was seeking not only reimbursement of expenses but compensation for distress and inconvenience caused by what he saw as the mismanagement of his decant. When that failed to elicit a complaint response, an advice agency stepped in on his behalf to pursue his reimbursement of expenses. A further complaint around this time also elicited no response from the landlord and which resulted in his further, duplicate complaint. At which point it seems the agent chose to respond direct to Mr A in the absence of a contribution from the landlord. The reason for this failure to respond to Mr A's complaint concerning mismanagement of the decant is not clear, but would appear to be a general confusion as to which party had responsibility for response and to which aspect, combined with poor record keeping which failed to provide a clear picture of the up to date position on the complaint.

The fact that the landlord had reimbursed the resident £1,800 in what it told the agent was a disturbance payment, a fact of which the agent was unaware and was in fact for reimbursement of expenses, points again to inadequate and imprecise record keeping by the landlord and a lack of liaison between the landlord and the agent. Further, this imprecision by the landlord is evident in its alternatively referring to its

reimbursement of expenses as a goodwill payment and a disturbance payment. These are very different payments to that for reimbursement of expenses and this lack of clarity caused a deal of confusion on the part of the agent and also for the Ombudsman in its investigation.

The landlord's claim that it had responded to Mr A's complaint, likely by phone, is neither substantiated by evidence nor in accordance with the agent's account. This confusion points again to inadequate record keeping on the part of the landlord and inadequate liaison between itself and the agent in its response to the complaint. This failure to maintain full records of complaints is contrary to the Ombudsman's requirement within its Code for a full record to be maintained. Its failure to do so not only impacted the agent and landlord's ability to respond effectively to the complaint but has also hindered the Ombudsman's investigation of it.

In the Ombudsman's view, the landlord's failure to manage the complaints process resulted in Mr A engaging the assistance of a solicitor in October 2020 in order to pursue his outstanding complaint of a mismanaged decant and the distress caused. While not strictly necessary that he instruct solicitors for this purpose, doing so appears to have prompted the first evidence of the landlord formally engaging, under its complaints process, with this aspect of the resident's complaint. But even then, the Ombudsman sees it effectively passed back to the agent the issue of support, suitability of accommodation and his transfer application.

Not only was that contrary to its own complaints policy which was to consider complaints about actions by those acting on its behalf and to do so at the earliest opportunity, but also contrary to the Code's requirement that a landlord address all points raised in a complaint and to do so preferably within a two stage process.

The landlord's lack of overall responsibility for the complaints process led to confusion on the part of both Mr A and the agent with respect to how to progress his complaint and this inevitably resulted in him receiving a delayed response. While his complaint about his transfer application was dealt by the agent, his complaint about the decant and its management straddled both the agent's complaints procedure and the landlord's. The frustration of both the agent, but more importantly Mr A and those acting on his behalf is apparent from their communication with the landlord and the Mr A, ie in their reference to the complaints process having been "strenuous" and the agent's reference to its frustration in acting as a complaints "middle man" between the resident and the landlord, unaware of whether his complaints had been resolved.

The Ombudsman notes that the confused complaint and sometimes duplicate handling and passing of responsibility allowed matters to fall between the gaps with none of the parties seemingly aware of who was dealing with the complaint, what stage it had reached or whether it had been resolved. This resulted in Mr A receiving a final response to his complaint about the handling of the decant some two years after he had first made his complaint and even then with no clear acceptance of overall responsibility from the landlord for its handling.

This delay, coupled with the time and trouble to which Mr A had to go in seeking responses to the various aspects of his complaint was evidence of the lack of an appropriately customer focused complaints process and, in the Ombudsman's opinion, was entirely unreasonable. It is clear these combined failures over a considerable period of time caused the resident understandable frustration, upset, inconvenience and further undermined his confidence in the landlord's handling of

his concerns. As the Ombudsman sees it, the £260 compensation offered by the landlord for its delayed complaint handling and escalation, and Mr A's time and effort in seeking a resolution falls significantly short of the tangible recognition the resident deserves for the distress and inconvenience its complaints handling caused him.

Determination

We found severe maladministration in the landlord's handling of Mr A's decant accommodation. We also found severe maladministration in its handling of his associated complaint.

We found maladministration in the landlord's handling of Mr A's request for compensation and service failure in the landlord's handling of his application for a housing transfer.

We ordered the landlord to apologise to Mr A for the extent of its failings identified in this report and the impact on him.

We ordered the landlord to pay £3,250 in compensation to Mr A for the distress and inconvenience, delayed processing of his housing and transfer applications and its complaint handling failures.

We also ordered the landlord to provide Mr A with a written explanation of the consideration it gave to providing him with sheltered accommodation during the decant.

We further ordered the landlord to provide the Ombudsman with details of a plan for a review of this case in order to learn lessons and implement improvements to prevent the failures identified in this report. It should review its contractual and liaison arrangements with the managing agent to ensure that housing management issues are resolved as effectively and quickly as possible, and that there is effective communication between the parties.

The landlord's review should encompass its overall handling of this case, including how it worked with the managing agent, in order to establish what procedural changes, staff training and guidance are necessary. In particular, the Ombudsman will expect to see evidence that the landlord has considered how it will better manage emergency decants for vulnerable residents so as to minimise the impact and improve its oversight and accountability for sub-contracted tenancy support services.

The Ombudsman would expect to see evidence of the landlord having reported the outcome of its review to its Board and share a copy of its findings with the managing agent.