

Investigation report:
Severe maladministration finding

Complaint reference: 202006952

Landlord: Orbit Group Limited

Published 6 December 2022

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. Response to the resident's reports about damp and mould at the property.
 - b. Communication and handling of the associated complaint.

Background and summary of events

Background and policies

2. The resident has been an assured tenant of the landlord, at the property, from 27 March 2006. The property is a two-bedroomed house.
3. The landlord's repairs policy states that it aims to carry out routine repairs within 28 calendar days and emergency repairs that pose a risk to health and safety, within four or 24 hours, depending on the circumstances.
4. The landlord has a two-stage complaint process, whereby it aims to investigate and respond to a complaint within 10 working days at stage one and where a complainant is dissatisfied with the response and requests escalation of the complaint, within 20 working days at stage two.
5. Documentation provided to this Service, evidences the resident reporting similar issues with mould, damp and water ingress at the property in 2009, 2011, 2012 and 2018 and 2019. In an email to the landlord in October 2019, the resident's frustration is clear, with her referencing multiple reports over a number of years and citing detrimental impact to her and her son's health as a result.
6. Evidence provided to this Service, shows that issues with damp, mould and leaks were reported by the resident to the landlord in October, November and December 2019.
7. The landlord has confirmed its awareness that the resident suffers from ill health, with a potential that this may affect her memory and speech at times. The resident has also

confirmed that she has asthma, which she understands might have been brought on by the property condition.

Summary of events

8. The landlord's records show that on 10 July 2020, works were identified at the property to repair the guttering and downpipes, with the resident contacting the landlord shortly thereafter, on 14 and 15 July 2020, about damp and mould, stating that works had not been carried out to remedy this, which was causing a worsening of her asthma. She also reported a slug infestation in the property.
9. A pre-inspection was raised, which took place on or around 22 July 2020, with issues with the brickwork and guttering being noted on 27 and 28 July 2020. Specifically in respect of the guttering, the landlord's records note: *"Replace guttering around the back end of the property. Guttering is in really bad condition - it overflows and leaks and we have raised remedial repairs previously to have them cleared out but the problem still remains. This has been causing severe damp and mould issues in the property for years and therefore requires replacing. This was approved some time ago but never went ahead as there was no roofer in place at that time"*.
10. Correspondence provided to this investigation evidences communication between the resident and landlord at this time, regarding the issues with a slug infestation at the property, with the landlord advising that the guttering should be replaced to attempt to address the issue. The resident expressed her concerns however that replacing the guttering would be sufficient to resolve the slug issue within the property as this had been attempted previously with no success.
11. On 7 September 2020, the landlord's records show the same works to the guttering being raised again, having still not been undertaken and on 25 September 2020, the resident chased the landlord as to the works and on this occasion, a damp survey was raised. On the same date, internal correspondence makes reference to *"multiple failed works orders [at the property] spanning nearly two years"*, with a risk of a disrepair claim and a classification under HHSRS due to Local Authority involvement.
12. The following month, on 9 October 2020, the landlord attended the property to carry out a further pre-inspection and discuss the issues with the resident. It concluded from this visit that although there was damp and mould in the property, this was due to factors including *"lifestyle choices"* and the age of the property. It was determined that new front and rear doors would be beneficial, but its view was that undertaking this work *"would not make a huge difference"* as there would always likely be damp and mould issues. The landlord's records show that it recommended, following this visit, a management move and disposal of the property, which was not considered a viable asset.
13. On 13 October 2020, the damp survey that had been raised took place, which confirmed damp in the property. The moisture levels to the ground floor were noted as significantly in excess of the levels at which rot and defects to timber would occur. The level of works exceeded ordinary repairs, constituting major repair works which required project managing. The works and recommendations included the following:

- i. Remove floor coverings and finishes from living room and dining room floors.
 - ii. Remove timbers and joists and apply solid concrete floor with damp proof membrane and insulation.
 - iii. Apply screed finishes.
 - iv. A floating floor with damp proof membrane, insulation and floorboards could be used as an alternative.
 - v. Install a radiator in kitchen.
 - vi. Apply external wall insulation to solid wall fabric of building.
 - vii. Householder to heat and ventilate the property regularly.
14. Further internal discussion evidences the landlord's continued thinking about the property, which, as referred to above, it did not consider a viable asset and a recommendation was made that the resident be moved, which would be in the interests of both parties. This suggestion was made and the resident asked to be moved to a different area, which was where her son's school was. This was declined, as she had no family connection there. The landlord advised the resident to apply to the local authorities in and around her desired area, which she did and was also declined by them.
15. Three months later, in January 2021, the resident chased the landlord again about the damp at the property, expressing her dissatisfaction at the landlord's inaction and made reference to works being cancelled and a dehumidifier being left at the property for a month without any further contact.
16. On 14 January 2021, the landlord's records show major works that were raised two years prior, in February 2019, were to be urgently re-raised. These were:
- i. Replace guttering, downpipes and fascia boards at the front and rear of the property.
 - ii. Replace the fan in the bathroom and redecorate it.
17. On 18 and 19 February 2021, the resident chased the landlord again, stating that she did not know what was happening and although she ultimately wanted to move property, she did not know what action the landlord would be taking in the meantime, or if she stayed. The resident expressed how bad the situation in the property was and that she had been told that works had been recommended "*urgently*". She added that she had also contacted the '*lettings team*' and had not heard back.
18. On same date, the landlord replied and advised it was assessing the damp survey report and recommendations. It also advised there was a three-month delay on non-urgent works because of Covid-19.
19. The following month, on 12 March 2021, the landlord and resident discussed a management move, which the resident chased two weeks later, on 25 March 2021, with the landlord explaining on 29 March 2021, that there were difficulties in finding housing locally and reiterated its advice to register for housing with the relevant local authorities.

20. On the same date, the resident made a formal complaint to the landlord. She was dissatisfied with the landlord's response to the damp issues at the property and the lack of communication, despite the severity and urgency of the situation. The resident added that she had contacted the local authorities suggested by the landlord but they would not accept her on the housing list as she had no local connections there.
21. On 12 April 2021, the landlord issued its stage one response to the complaint. The complaint was not upheld. The landlord stated that the works had been on hold pending the resident's decision about moving and said that should she not wish to move within the local area, it would be happy to arrange for works in the property to be completed. The landlord confirmed that, in its view, the property was habitable, though it acknowledged that it required some work to 'bring the overall quality up'.
22. The landlord also explained that since the time that the resident had been offered a management move, its policy had changed and it no longer offered a management transfer unless there were extreme circumstances. The landlord again stated that the resident should apply to the local authority housing registers, should she continue to want to move to a new area and that acceptance onto these registers would enable the landlord to look at properties in those areas.
23. On 15 April 2021, the resident emailed the landlord, requesting escalation of her complaint to stage two of the landlord's complaints process. She reiterated her dissatisfaction with the landlord's handling of the damp at the property, specifically, that damp proofing in the bathroom and bedroom had not been completed, works to the door had not been carried out (the door not being fitted properly was said to be contributing to the issue of damp), no work having been done to the hung flooring, as advised by the damp report and that slugs were continuing to enter the property. The resident also referred to a deterioration in her health, and her son's health due to these issues.
24. On 5 May 2021, the landlord telephoned the resident to ask what she remained unhappy with. The resident said that the issues had been going on for years and that once she had received a response from the landlord, she would forward the relevant emails in support of her complaint. On the same date, the landlord wrote to the resident and advised that it would carry out its review once it had received these emails.
25. The landlord's internal correspondence notes, on 13 May 2021, that plaster work in bathroom was on hold and that there was a missing radiator in kitchen.
26. On 14 May 2021, a major works referral form was completed by the landlord, this referenced the works identified in the damp survey in October 2020 and listed a requirement to complete these works 'ASAP'.
27. Also on 14 May 2021, an urgent heat loss survey was raised for the property by the landlord, with a date for this to take place being offered as 26 May 2021.
28. Email correspondence, dated 19 May to 2 June 2021 confirms that the landlord approached the Local Authorities in the resident's preferred areas, to see if a direct let might be

possible. In both cases, it was confirmed that they were unable to consider the resident for a direct let, given the needs of local residents on the housing register.

29. On 27 May 2021, landlord's internal email correspondence evidences further discussions around the issues in the property, which were said to not being due to the poor provision of heating but rather, work required to windows and door and potentially a need for a visit from a damp specialist (a second damp survey was later undertaken). The radiators in the property were all assessed to be above the size requirements of what was needed besides the bathroom, which was very slightly below, however, the landlord decided not to change this because it was not believed to be the underlying issue.
30. A further internal landlord email dated 2 June 2021 said that the complaint would be closed down as it had 'done everything we can', with repairs to be completed, damp survey recommendations to be followed, with the main outstanding issue relating to the resident 'frustrating her own move by being so particular with the location'.
31. On 9 June 2021, major works were raised for the property, with repairs planned to be undertaken and recommendations from the damp survey to be undertaken as appropriate. Works included:
 - i. Remove timbers and joists; install floating floor with damp proof membrane, insulation and floorboards.
 - ii. Reinstate / replace / provide budget to customer to replace floor coverings. Make good and remove spoil.
 - iii. The front and rear doors of the property are nearing the end of their lifespan and may benefit from replacement. Please assess front and rear doors and replace if necessary.
32. On 10 June 2021, the landlord provided its stage two response to the complaint. It advised that it had contacted two local authorities, asking them to support the resident in offering her a management move but that this had been declined (the landlord has provided evidence of this to this Service). The landlord asked the resident to let it know if she would like it to look for local properties for her and went on to explain that as it had been unable to facilitate a move, it would be carrying out the major repairs and would be in contact about this.
33. The landlord apologised for the delay in responding to the complaint and offered £350 compensation in recognition of this.

Post complaint

34. On 2 July 2021, a surveyor attended the property to advise the resident of works to the flooring.
35. The resident emailed this Service detailing her ongoing concerns on 26 July 2021. She said the damp and mould issues persisted, with slugs remaining constant concern. She said the landlord's communication was 'virtually non existent'. She asked for a move to a suitable property, ideally in her chosen location, with compensation to reflect the 15 years of distress and inconvenience, plus the impact on her and her son's health during this time.

She also said that the Local Authority's Environmental Health team had visited and confirmed that the property required disposal, with no amount of works likely to make any significant impact on the damp and mould issues.

36. Six months later, on 5 January 2022, the resident advised this Service that no work at the property had been undertaken, with the landlord continuing to state that it wanted to sell the property and there continued to be damp and slugs present.

Assessment and findings

Damp and mould reports

37. Once on notice, the landlord is required to carry out the repairs it is responsible for, within a reasonable period of time, in accordance with its obligations under the tenancy agreement and in law. The law does not specify what a reasonable period of time is; this depends on the individual circumstances of the case. In this case, the resident has been reporting similar issues intermittently since 2009 and more recently and consistently, since 2019, which remained unresolved.
38. Paragraph 39(e) of the Housing Ombudsman Scheme states that *"the Ombudsman will not investigate complaints which, in its opinion, were not brought to the attention of the member as a formal complaint within a reasonable period, which would normally be within 6 months of the matters arising"*.
39. The Ombudsman will not be investigating historic issues in this case - the formal complaint was brought to the attention of the landlord on 29 March 2021. However, this investigation will consider matters from September 2018; this is because although a formal complaint was not raised until 29 March 2021, it is clear from the available landlord records, that extensive works have been required for a protracted period. The resident's correspondence with the landlord and the landlord's internal correspondence, support that it was aware of the issues from this time and its own acknowledgement that it had failed to deal with these, including its confirmation in September 2020 of multiple failed works orders dating back nearly two years. It was also clear from the resident's contact with the landlord, that she was dissatisfied with the situation and its handling of it for a protracted period.
40. In considering the landlord's response to the issue of damp and mould within the property, it is noted that the resident has referred to a possible impact upon her health (and to her son's health) as a result of these issues. Whilst these concerns have been referenced here, it should be noted that the Ombudsman is not in a position to make findings about the possible impact of the issues under investigation on a resident's health, as this would be more appropriate for a court to consider. In this respect, the resident is advised to seek legal counsel if she wishes to take her concerns further.
41. The landlord does not consider the property a viable asset and its preference is that the resident move out of it, facilitating its disposal. The resident is unable to move out of it until a suitable alternative property is found. The combination of the shortage of the type of property required and local authority decisions not to allow the resident onto their housing registers due to her having no local connections, renders the resident continuing to reside

in the property and unable to move. It is of significant concern that the landlord's final response centred on the difficulty in securing the resident alternative accommodation as this meant that it missed the opportunity to respond to the substantive issue of the damp and mould within the property, which the resident explicitly raised as part of her complaint.

42. It is also of concern that the landlord's correspondence referred to potential lifestyle issues in advance of its September 2020 inspection, despite the history of failed works appointments and its subsequent position that the property required disposal. The landlord's viewpoint at this stage presents as unsatisfactory and lacking in credibility. The landlord's viewpoint, as detailed in its April 2021 stage one response, that the property remained habitable also lacks credibility given the history of the case. The moisture readings, as detailed in the October 2020 damp survey were significantly in excess of acceptable levels throughout the entire ground floor, with recommended works identified, but not progressed at the point of the stage one response. Based upon this alone, the landlord's view that the property was fit for habitation presents as wholly unsatisfactory.
43. Notwithstanding the landlord's preference of ultimately disposing of the asset that is the property, it nonetheless retains its duty to carry out repairs and works within a reasonable period of time and to ensure the property is in a decent and habitable standard. The Housing Health and Safety Rating System (HHSRS), categorises damp as a serious '*category 1*' hazard to health and the presence of damp and mould may deem a property to be uninhabitable under the Homes (Fitness for Human Habitation) Act 2018. Additionally, criterion D of the Government's '*Decent Home*' standards state that a property should provide "*a reasonable degree of thermal comfort*". The landlord has an obligation to ensure that the property does not fall foul of these standards, in addition to its general repair responsibilities.
44. The landlord's assessment of the condition of the property was confusing and contradictory, with its acknowledgement in July 2020, of a problem with "*severe damp*" at the property and its failure to carry out works and a further acknowledgement in September 2020, of repeated repairs failures over a period of two years, with it then determining at the inspection on 9 October 2020 determining "*lifestyle choices*" as the root cause of the issues. Just four days later, it again identified damp in the property, which required urgent major repair works. This raises questions about the landlord's record keeping, communication and decision making.
45. It is clear that there were serious problems with damp and mould at the property throughout the period of time that this report is focussing on, as well as related issues with slugs at the property for a substantial period of time and that required repairs were not carried out. Failure to carry out works is a serious failure on the part of the landlord and this is particularly serious given the length of time and the severity of the issues. It is apparent that the landlord was focussed primarily on the resident's desire to find suitable alternative accommodation and when it was unable to facilitate this it responded to the re-housing issue rather than addressing the property condition issues. It then sought to focus on completing required repairs only once it was clear that the move was unlikely to materialise. This included not raising the major works identified in October 2020 until May 2021, an inexplicable delay of seven months.

46. This approach meant that the landlord not only failed to complete repairs that it had identified were required at the property, but also failed to respond to these concerns through its complaints process. As a result, the resident has been required to live with the wholly unacceptable living conditions for a protracted period, and continues to do so to this day, with her most recent reports to this Service continuing to refer to works having not been completed.
47. There was also confusion and disagreement over some of the works required, including a finding that the windows and doors were not an issue in July 2020, but in April and May 2021, these were identified as in fact being an issue, contributing to the problem and requiring repair. Similarly, a larger radiator was identified as being needed in the bathroom, which it later declined to do in May 2021, as it then believed it to not be the underlying issue, or to make any difference to the problems of damp, mould and slugs. This lack of clarity added to the resident's sense of confusion and contributed to the overall protracted delay in resolving these issues.
48. There is no evidence of any of the identified works having been carried out, including, works to the guttering, downpipes, fascias, windows, doors, radiators, fans or anything else and the resident has confirmed that matters remain unresolved (as of January 2022). Irrespective of whether the resident is moving home and when that will be, the landlord cannot neglect its repair responsibilities and where the landlord deems the property to be irreparable, it is not able to allow the resident to continue to reside there, as she has been, in a property with serious issues with damp, mould and a slug infestation, as described.
49. Finally, there is no evidence of the landlord taking any steps at all, to address the reports of slugs, which were reported as an infestation on a number of occasions; an infestation that was caused by the condition of the property and not the resident's lifestyle or otherwise and the landlord was consequently required to address.
50. In all the circumstances of the case, including consideration of the resident's vulnerability, the Ombudsman considers the landlord's approach to have been lacking in customer focus, with disjointed and unreliable decision making throughout. The result has been a resident left living in a wholly unsuitable property for an extended period. As such, an overall finding of severe maladministration has been determined here, with an order for substantial compensation dating back to September 2018 and an order to resolve the case within a three-month period, whether this be through completing repairs or otherwise. It is also recommended that the landlord re-visit its attempts to re-house the resident, with the focus on finding a suitable property near to her current address if one cannot be found in her chosen area. Whilst this is not the resident's desired outcome, the Ombudsman considers it essential that she is either moved away from this issue, or for the property to be raised to a suitable standard as soon as is practicable.
51. The landlord is also advised to read and take note of the recommendations outlined in the Ombudsman's recent spotlight report on managing damp and mould cases. In particular, focussing on resolving such issues in a proactive manner rather than reacting to issues as they occur.

52. Communication problems are present both internally and externally, with the resident. In respect of internal communication, there is confusion, contradiction and disagreement as to the assessment of the property, root cause of the issues, required works and what to do with the property, with the resident living in it, given that it did not consider it a viable asset. Whilst differing opinion as to the root cause of issues and recommended works is not entirely uncommon, there was a lack of consistency, ownership and decision making and an absence of a joined-up approach, which led to inaction on its part.
53. The landlord did not communicate with the resident what it would and would not do and when or reasons for its decisions. The resident chased the landlord on a number of occasions about the same issues because she was left in the frustrating and unacceptable position of being unaware of if, how and when, the problems were going to be addressed.
54. The landlord's complaint response, despite being inappropriately delayed, having not been provided within the timescale set out in its complaints policy, or with any explanation, were also wholly inappropriate in themselves. Despite the landlord's own recognition, on at least two occasions, of a series of serious failings on its part in respect of issues of damp and mould at the property and associated required repairs, its complaint response does not acknowledge this, instead, stating that it did not carry out the repairs because it was waiting for the resident to decide whether she would be moving.
55. The situation was in fact the opposite, with it being aware of the problems from at least 2019, acknowledging its failures internally and with the resident repeatedly chasing the landlord as to when the problems would be resolved. The landlord's responses to the resident's contact chasing it as to the repairs, never stated it was awaiting her decision as to moving before it would carry out works.
56. In any event, other than a momentary pause, it would be inappropriate for the landlord to delay or not carry out repairs it was obliged to do for weeks, month and years, knowing there were serious problems concerning damp, mould and slugs, which was the case here. Even in circumstances where the resident was in the process of making a decision as to whether to move property, this would not negate the necessity of the landlord being responsible for repair, even if a very short-term pragmatic decision was made to hold off. This was not a short-term delay but extensive and prolonged delay over a protracted period of time.
57. The failure to identify and address this serious and significant issue presents as a significant failure of the landlord's complaints process, contributing to the overall failures identified on this case. The resident explicitly referred to her dissatisfaction with how the landlord had managed the damp/mould situation in the complaint that she raised. The landlord's failure to respond to these concerns within its final response amounts to a serious failing given the facts and history of this case. A complaints process is intended to assist a landlord to identify and address potential service failures. However, the landlord's decision to limit the focus of the complaint in this case not only meant that it missed the opportunity to respond to the substantive issue and identify a resolution, it also treated the resident unfairly, by failing to pick up on her ongoing dissatisfaction, and associated difficulty in occupying the property.

58. The £350 compensation in recognition of the delay in its complaints handling is high for this aspect of the complaint and perhaps encompassed delay in responding to the issues themselves, although this is not explicitly set out. Compensation is not the only way of responding to a complaint, however. Often an apology, recognition of what went wrong, an explanation as to this and steps that the landlord will do to learn from it and put things right, are equally, if not more important. In a case such as this, the repairs are the primary concern, remaining unresolved and the complaints response still does not address next steps in this regard. It is alarming that given the passage of time, the works remain unresolved at this point in time and there has been no attempt to remedy the issues, with another winter having passed. As such, a finding of maladministration for the landlord's communication and complaints handling is considered appropriate, with an additional amount of compensation to be paid.

Determination (decision)

59. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was severe maladministration in respect of the complaint about the landlord's handling of reports of damp and mould at the property.

60. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was maladministration in respect of the landlord's communication and complaint handling.

Reasons

61. The landlord failed to complete works required at the property over an extended period, dating back as far as 2018. This included an acknowledgement that it had failed to complete repairs on 'multiple' occasions during this time and a failure to raise major works following an October 2020 damp survey report. The landlord also sought to limit its responsibility on this significant issue by referring to its difficulty in securing alternative accommodation within the resident's preferred area, rather than focussing on its repair responsibilities, through its complaint responses. In all the circumstances of the case, the Ombudsman finds that the landlord did not focus on the needs of the customer, failed to communicate effectively and that its decision making was of an unsatisfactory standard throughout.

Orders and Recommendations

Orders

62. Within four weeks, the landlord to pay the resident £5000 compensation, comprised of:

- i. £4400 in recognition of the excessive period, dating from September 2018 to May 2022, during which the resident has been living with damp and mould issues within the property (£100 per month, from September 2018, until three months after this investigation report).
- ii. £600 to reflect the landlord's communication and complaint handling failures throughout.

- iii. The landlord to note that the £5000 compensation is total amount and not in addition to the £350 already paid.
- 63. The landlord to complete required works at the property within three months of the date of this report, or else find a long term solution for the resident, by sourcing alternative accommodation.
- 64. Within four weeks, the landlord to provide a sincere apology, in writing and at a senior level, for the extensive failures on this case, and for the detriment this has caused. This apology to be sent to the resident and shared with this Service.
- 65. The landlord to complete a review, at senior level, of this case. The findings of this review to be shared with the Ombudsman within three months of this report.

Recommendation

- 66. The landlord to consider the findings of the Ombudsman's spotlight on damp and mould cases ([Housing Ombudsman Spotlight report on damp and mould \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk)) – The landlord to share the findings with relevant staff, including training where appropriate and to incorporate the findings of this report in its management of such cases in future.