

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202009785*

*Clarion Housing Association Limited*

*30 June 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 resident has complained about the landlord's handling of repairs to resolve damp and mould in his property.
2. The Ombudsman has also considered the landlord's complaint handling.
3. The Ombudsman has further considered the landlord's record keeping.

## **Background and summary of events**

### *Policies and Procedures*

4. The landlord has a two-stage complaints procedure, co-ordinated by its Customer Solutions Team:
  - a. "Complaint – If an initial attempt to resolve the query is not achieved, a formal complaint will be recorded and will be investigated. We do all we can to resolve customers issues and put things right. We aim to resolve complaints within 10 working days..."
  - b. Peer Review – At the conclusion of the complaint process, a customer may request a review of their case. They will need to be clear on what they wish to be considered as their desired outcome and what specifically they are not accepting. We aim to resolve complaints within 20 working days".
5. The landlord's Compensation Policy states that it may offer discretionary compensation on a cumulative basis.
6. The Compensation Policy contains guidance on offering discretionary compensation:

- a. "Awards of £50 to £250 – Remedies in the range of these amounts may be used for instances of service failure resulting in some impact on the complainant. Examples could include:
    - i. Failure to meet service standards for actions and responses but where the failure had no significant impact.
    - ii. Incorrectly addressing correspondence (so as to cause offence/upset, but not a breach of data protection requirements)."
  - b. "Awards of £250 to £700 - Remedies in the range of these amounts may be for cases where we find considerable failure but there may be no permanent impact on the complainant. Examples could include:
    - iii. Failure over a considerable period of time to act in accordance with policy. For example, to address repairs; to respond to antisocial behaviour; to make adequate adjustments.
    - iv. Repeated failure to meaningfully engage with the substance of the complaint, or failing to address all relevant aspects of complaint, leading to considerable delay in resolving complaint."
  - c. Awards of £700 and above – "Remedies in this range will be appropriate when there has been a significant and serious long-term effect on the complainant, including physical or emotional impact, or both."
7. With regards to shared owners, the NHBC website states "Buildmark Choice is our policy for landlords, and covers homes occupied by rental tenants and shared owners. Buildmark Choice usually covers a home for 10 years from the completion date (occasionally it's 12 years). If you have problems with your home you will need to contact your landlord or managing agent. If your home is less than 2 years old your landlord or managing agent should contact the builder/contractor in the first instance. If your home is older than this your landlord should contact us".

### *Summary of Events*

8. The resident is a shared ownership leaseholder whose lease commenced on 16 October 2015.
9. On 2 September 2020 the resident advised the landlord that he had noted mould on wood panels around the vent part of his roof when he went into the loft. He was advised to contact the NHBC which advised him to contact the landlord again so that it could make a claim. However, when he contacted the landlord again it advised him to send paperwork from the NHBC when there was no paperwork. The resident noted that the landlord held the policy documents and requested that it make a claim.

10. The resident has advised that on 10 September 2019 a surveyor inspected his property and advised the wood panel had not been treated correctly and would need to be cleaned or replaced. The surveyor advised that the landlord would liaise with builders and the NHBC so works could be carried out under the NHBC insurance. The resident has further advised that the surveyor visited again in November 2019 to advise that works would be carried out after Christmas. The information provided by the landlord does not contain a contemporaneous record of these visits.
11. On 11 March 2020 the resident emailed the landlord stating that he had received no update from the landlord since the surveyor visits. He advised that the surveyor had told him that it was likely the NHBC would cover the matter and that he would be in contact.
12. On 7 July 2020 the resident emailed the landlord asking for an update. On 20 July 2020, the landlord advised the matter had been passed to its repairs team.
13. The resident has advised that he made phone calls to the landlord on 14 September, 23 September and 5 October 2020 seeking an update, and on each occasion the landlord informed him someone would call him back; however, he did not receive a call back. The information provided by the landlord does not contain records of these phone calls.
14. On 5 October 2020 the resident completed an online complaint form advising that he had contacted the landlord in September 2019 regarding mould in his loft, and that a surveyor had inspected on 10 September 2019 and mid-November 2019. The resident stated that he emailed the landlord in March 2020 just prior to Covid and several times after lockdown restrictions were lifted; however, the landlord had not contacted him. On 14 October 2020, the landlord acknowledged the complaint.
15. On 21 October 2020 the landlord confirmed to the resident that it was investigating his complaint.
16. On 3 November 2020 the resident wrote to the landlord's Head Office as he had not received a response to his complaint. He requested that the landlord by 20 November 2020 provide the policy number for NHBC insurance, the 10-year policy for his home, the policy number and the company used for building insurance for his home.
17. On 14 November 2020 the landlord advised that it would not be able to provide the information requested by 20 November 2020. On 25 November and 2 December 2020, the landlord left the resident voicemails with the details of its building insurers.

18. On 2 December 2020 the landlord advised that it had interviewed the surveyor who had inspected his property and that the surveyor had confirmed that there was moisture in the loft. The condensation could be due to an incorrect balance of heating and ventilation in the property. The surveyor advised to check that the fans were in properly and correctly vented, and that the flues were not detached in the loft. On this occasion, it would not be responsible for any repairs in the loft.
19. In response, the resident advised that he had not requested that the landlord carry out works, but had requested that the landlord initiate the NHBC insurance policy in order for works to be carried out under section three of the policy. He advised that he thought the mould in his loft was due to wood not being treated properly and would need to be cleaned and treated or replaced.
20. On 4 December 2020 the landlord provided the Claims Department at NHBC details of the resident's claim by phone. The landlord has not provided a record of the phone call.
21. On 4 December 2020 the landlord sent the Stage 1 response to the resident's complaint.
  - a. It stated that the policy number for NHBC was contained within the welcome pack provided when the resident bought the property, and his solicitor would have these details too. It stated that it had spoken to the NHBC on 4 December 2020, provided the reference number for the NHBC claim and stated that it would grant permission for the NHBC to liaise directly with the resident if the NHBC emailed it to request permission. The landlord also enclosed the Buildmark Cover Note dated 27 March 2015, which confirmed that the NHBC would provide 10 years insurance cover.
  - b. It stated that the NHBC had informed it on 4 December 2020 that as the claim had not been raised within two years and as the issue was condensation, the claim was not covered under section 3 of the NHBC insurance, therefore it could not assist.
  - c. It reiterated the findings of the surveyor as stated in its email of 2 December 2020.
  - d. It noted that the resident could send a report from his own contractor and send the report to its Aftercare Team so it could investigate and refer back to the developer if need be.
  - e. It noted that there was no evidence of a complaint being raised previously.
  - f. It would award £25 compensation for the delay in responding to the complaint.
22. On 21 January 2021 the resident escalated his complaint. He advised:

- a. He had not been informed that there may be an incorrect balance of heating and ventilation in the property and for the fans and flue to be checked. He requested the report from the surveyor and queried why this information was not advised in emails he received on 20 July 2020, 14 October 2020, or 14 November 2020, or during phone calls made on 14 September 2020, 23 September 2020, 5 October 2020 and 21 October 2020. The resident also noted that he had not received the NHBC policy number or received the Building Insurance Policy from the insurers.

23. On 17 February 2022 the landlord acknowledged the complaint and stated that it would respond within 20 working days.

24. On 5 March 2021 the landlord sent the Stage 2 response to the complaint. It upheld the complaint acknowledging that there was a service failure in the length of time that the complaint had been outstanding.

- a. It noted that it had provided the information requested by the resident and that it had provided details of the resident's claim to the NHBC. The NHBC had the email address of the Aftercare Team to request permission to speak to the resident directly.
- b. Its technical officers had inspected the loft but not had been able to determine whether the problem came from a defect in the building process or from the impact of how the resident lived in his property. However, there was no written report for sharing.
- c. It proposed to instruct a structural engineer to survey the resident's property to enable it to review the issue further and take appropriate action based on the survey results. It would arrange an appointment.
- d. It offered compensation of £150 comprising:
  - i. £100 – Failure in service standards leading to a loss of confidence and inconvenience.
  - ii. £50 – Delay in providing a formal response at Stage 2.

25. On 6 and 29 July 2021 the resident advised this Service that the landlord had not contacted him to arrange an inspection of his property, nor had a structural engineer contacted him. He advised that he had requested an update from the landlord on 21 May 2021.

*Events following conclusion of the complaint procedure*

26. After this Service in June 2022 advised the landlord that the resident's case had been allocated for investigation, the landlord reviewed the case and issued an Addendum dated 15 June 2022 to the Stage 2 complaint response of 5 March 2021. It stated that in August 2021 it had instructed a structural engineering

company to attend and survey the property. However, its surveyor could not gain access to the property, and this was not followed up as the surveyor then left the employment of company. The landlord accepted that it should have been more proactive in pursuing this and apologised for the delay this caused. The landlord did not explain why it did not take prompt steps to ensure the survey was carried.

27. The landlord further stated that it chased the structural engineering company for the report from September 2021 but accepted there was a long gap in actions between this being chased and an appointment being made to survey the resident's property. It noted that an appointment was made for 6 March 2022 but once again the surveyor could not gain access to the property. A new order was raised for the structural engineering company to attend on 10 June 2022, and it had now received an initial report which it would analyse. Whilst the landlord in the letter confirmed the survey had now been completed, it did not comment on how it would learn from the resident's case and prevent similar, lengthy delays occurring again.
28. The resident has advised this Service the structural engineering company has since sent him a copy of its report and he is awaiting confirmation from the landlord of its conclusions and of any further action to be taken.
29. The landlord in its response of 15 June 2022 offered the resident a further £500 compensation comprising:
  - a. £250 – Failure over a considerable period of time to act in accordance with policy. For example, to address repairs.
  - b. £250 – Customer repeatedly chasing for a response.

### **Assessment and findings**

30. The landlord has not provided contemporaneous evidence of the initial surveyor inspection which the resident advised was in September 2020. This lack of records is concerning and a serious failing on the part of the landlord. Clear record keeping and management is a core function of a repairs service, not only so that a landlord can provide information to the Ombudsman when requested, but also because this assists the landlord in fulfilling its repair obligations. Accurate and complete records enable outstanding repairs to be monitored and managed, and enable the landlord to provide accurate information to residents and promptly respond to queries. Staff should be aware of a landlord's record management policy and procedures and adhere to these, as should contractors.
31. Furthermore, the landlord did not update the resident on what action it would take after the inspections, nor did it respond to the resident's email of 11 March 2020 in which he requested an update. This demonstrated inaction on the part of the landlord which caused unnecessary delay. Moreover, the landlord failed to

adequately manage the resident's expectations insofar as he understood the landlord would arrange for NHBC to carry out works in early 2020 on the basis that it had confirmed there was a defect – untreated timber; however, there is no evidence that the landlord confirmed there was a defect or that it explored the possibility of referring the matter to the NHBC at this time.

32. After the easing of lockdown restrictions, the resident resumed pursuing action to eradicate the mould in his loft, emailing the landlord on 7 July 2020. He has stated that after receiving no response that he pursued an update by phone. The landlord has not kept a record of the phone calls that the resident advised he made in September and October 2020 therefore it cannot be confirmed what was said and agreed by the parties. Regardless, there is no evidence that the landlord made clear what action it was going to take in respect of mould in the resident's property, exacerbating the delay in the handling of his case. This prompted the resident to make a formal complaint.
33. It was the landlord's responsibility to submit a claim on the resident's behalf in respect of alleged defects. It did not do so until 4 December 2020, according to its responses. This was an unreasonable delay as this was over a year since it had inspected. The landlord also did not keep a record of the claim, therefore there was no audit trail to confirm the details of the claim, the decision reached and if and how the claim could be progressed further. Given that the resident had an expectation that the NHBC would resolve a defect in his property and that a claim should have been submitted a year earlier, it was unreasonable that the landlord did not seek to obtain a formal response from the NHBC which outlined exactly how it made its decision.
34. In fact, the landlord's advice to the resident about the outcome of the claim was ambiguous insofar as it advised in its complaint responses that the NHBC had rejected the claim and that the resident should commission his own contractor. However, it also stated that the NHBC may contact it again and seek to liaise directly with the resident, which indicated that the claim had not been closed. Had the landlord obtained a formal response from the NHBC it may have been able to provide a more definitive response. The inconvenience to the resident was exacerbated by the fact that the resident did not have authority to discuss his claim with the NHBC directly.
35. It was not until the landlord responded to the resident's complaint that it confirmed the findings from the inspections it had carried out. Its finding was that it could not conclude that the mould resulted from a defect in the building and/or from a lifestyle issue for which the resident was responsible for resolving. It also found that there may be an incorrect balance of heating and ventilation in the property and that the fans and flue should be checked. As noted above, there is no evidence that the landlord had advised the resident of these findings at the time of the inspections or that it took appropriate steps to manage his



expectations as to the next steps. Indeed, the resident was still of the understanding that there was a defect that the NHBC would assume responsibility for resolving.

36. The landlord's records indicate that the surveyor was questioned about the inspections he had previously carried out as part of the complaint investigation. Interviews after the event may not be as reliable as notes and surveys recorded at the time as recollections can change over time and details can be forgotten. This highlights the need for landlords to keep contemporaneous repair records.
37. The landlord in its Stage 2 response advised that it would commission a structural surveyor to inspect the property. It thereby raised the resident's expectations that it would assume responsibility for investigating the mould in the resident's property and seek to find a resolution through the developer if necessary. However, having done so, the landlord did not arrange the structural survey or kept the resident updated in reasonable time, with periods of long delays in action. There was a failure, therefore, in the landlord effectively monitoring the proposed resolution to the Stage 2 complaint. It would appear that it was only due to this Service notifying the landlord of this investigation that the landlord reviewed the Stage 2 commitments, recalled the structural engineering company and finalised an appointment. This compounded the previous delays in the landlord's handling of the case and exacerbated the inconvenience to the resident.
38. In identifying whether there has been maladministration, the Ombudsman considers both the events which initially prompted a complaint and the landlord's response to those events through the operation of its complaints procedure. The extent to which a landlord has recognised and addressed any shortcomings and the appropriateness of any steps taken to offer redress are therefore as relevant as the original mistake or service failure. The Ombudsman will not make a finding of maladministration where the landlord has fully acknowledged any failings and taken reasonable steps to resolve them.
39. In this case, the landlord's responses at both stages of the complaint were outside the timeframe set out in the landlord's complaint procedure. For these delays it offered a total of £75 which comprised £25 for the delay at Stage 1 and £50 for the delay at Stage 2. This award was in line with the guidance in the compensation policy for instances of service failure resulting in some impact on the complainant, such as failure to meet service standards for actions and responses. However, effective complaint resolution also requires a landlord to identify why something went wrong so it can learn from the complaint and try to avoid similar failings. In this case, the landlord did not identify why the responses were delayed or indicate how it could such delays happening again.

40. In the Stage 2 response of 5 March 2021 the landlord offered £100 for the failings in dealing with the substantive issue complained about up until that point in time. This offer was not proportionate to the circumstances of the case, given that it failed to take any effective action on the mould reported by the resident until December 2020 when it contacted the NHBC and advised the resident of the outcome of the inspections. Moreover, the distress and inconvenience caused to the resident was exacerbated by the fact that the landlord had raised his expectations that the NHBC would carry out works in early 2020 but then failed to respond when works were not arranged, and he sought an update.
41. The landlord made a further offer of compensation in June 2022. Given the passage of time it was appropriate for the landlord to further review its handling of the case, although this was not evidently self-initiated but prompted by the Ombudsman's investigation.
42. The landlord offered £250 for the resident's time and trouble in chasing a response, and a further £250 "for a failure over a considerable period of time to act in accordance with policy. For example, to address repairs" which was in line with the middle category of compensation in the Compensation Policy. However, over a year had elapsed since the Stage 2 response without the action proposed being taken, and this delay compounded the previous lengthy delay after the resident's initial report in 2019. Additionally, the landlord did not explicitly set out which policies it had failed to follow, and therefore didn't demonstrate that it had fully recognised what had gone wrong.
43. The offer of compensation, at the lowest end of the compensation range, was not proportionate to the circumstances of the case. The Ombudsman therefore finds that whilst the landlord has sought to resolve the resident's complaint by offering compensation, its offer was not fully proportionate to the cumulative circumstances of the case.

### *Complaint Handling*

44. Notwithstanding the landlord's intention to resolve the resident's complaint by offering compensation, it has not resolved the substantive issue over two and a half years after the resident's first report of mould in his attic, with lengthy periods of inaction and delays in its complaint responses. It remains the case that the landlord has not completed the action it committed to in order to reach a final decision.
45. Additionally, the landlord has not offered an explanation to either the resident or this Service why it took nearly a year for it to review commitments made in the Stage 2 complaint response, and how it will prevent this from happening again. Reliance on the Ombudsman's notification of investigation to prompt such a review is not effective complaint handling, and risks delaying fair outcomes. This

does not reflect the Ombudsman's Complaint Handling Code, Part 5.8 of which sets out that "When offering a remedy, landlords should clearly set out what will happen and by when, in agreement with the resident where appropriate. Any remedy proposed must be followed through to completion."

46. Landlords are expected to apply this Service's Dispute Resolution Principles when dealing with complaints – Be Fair, Put Things Right and Learn From Outcomes. In this case, the landlord has not demonstrated these principles. Indeed, the fact there was another lengthy delay after the Stage 2 response indicates that the landlord failed to appreciate why the resident had raised a complaint in the first instance. These serious and cumulative failings by the landlord caused significant inconvenience, time and trouble to the resident and impacted the landlord's handling of the substantive issue.

### **Determination (decision)**

47. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was maladministration by the landlord in respect of the landlord's handling of repairs to resolve damp and mould in the resident's property.

48. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was severe maladministration by the landlord in respect of the landlord's complaint handling.

49. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was maladministration by the landlord in respect of the landlord's record keeping.

### **Reasons**

50. After its initial inspections, the landlord did not update the resident on what action it would take, nor did it respond to the resident's email of 11 March 2020 in which he requested an update. Moreover, the landlord failed to adequately manage the resident's expectations insofar as he understood the landlord would arrange for NHBC to carry out works in early 2020. Thereafter, there were further delays by the landlord in responding to and updating the resident. Ultimately, it was not until 4 December 2020 that the landlord made a claim to the NHBC which was an unreasonable delay as this was over a year since it had inspected.

51. Having decided to commission a structural surveyor, as stated in the Stage 2 response, the landlord did not arrange the structural survey or kept the resident updated in a reasonable time, with periods of long delays in action. Whilst the landlord has sought to resolve the complaint by offering compensation, its offers are not proportionate to the circumstances of the case, and it has not demonstrated that it has fully identified what went wrong, put things right and learnt from outcomes. Ultimately, it has not completed the action it committed, stated in the Stage 2 response, to resolve the complaint. Its serious complaint

handling failings have caused significant inconvenience, time and trouble to the resident.

52. There have also been failings in the landlord's record keeping. The landlord has not kept a contemporaneous record of inspections carried out. It also did not keep a record of the claim to the NHBC, therefore there was no audit trail to confirm the details of the claim, the decision reached and if and how the claim could be progressed further. The resident has also stated that he made phone calls to the landlord for which it has not disagreed with but has not provided a record of.

### **Orders**

53. Within the next three weeks, the landlord is ordered to:

- a. Apologise to the resident for the failings identified in this case.
- b. Pay the resident compensation of £1200, comprising:
  - i. £450 for the inconvenience, time and trouble caused by failures in the handling of the complaint.
  - ii. £750 for the distress and inconvenience caused by its delays in the handling of the resident's report of mould and failings to manage his expectations of the action being taken on his case.
  - iii. If the landlord has already paid the resident the £675 offered during the complaint procedure, this should be deducted from the total sum above.

54. Within the next four weeks, the landlord is ordered to:

- a. Write to the resident to explain its conclusions having considered the structural engineer's report, clearly setting out any further action it intends to take.

55. Within the next six weeks, the landlord is ordered to:

- a. Review the record keeping in this case, considering the failings identified. The landlord should then confirm to this Service the outcome of the review and any action to be taken, or which has already been implemented, to prevent the failings identified by this investigation arising again.
- b. Identify the reasons for its failure to monitor completion of actions agreed in its Stage 2 complaint response. The landlord should then confirm what action it will take to prevent this from happening again.