

Housing

Ombudsman Service

REPORT

COMPLAINT 202014443

Clarion Housing Association Limited

12 May 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 complains about the landlord's handling of:
 - a. repairs to the property;
 - b. the formal complaint, and;
 - c. the compensation offer.
2. The Ombudsman has also considered the landlord's record keeping.

Background

3. The landlord's complaint policy as was in place at the time of the matters complained about set out a two stage process, but did not detail any time scales for response.
4. The compensation policy as was in place at the time set out that awards of £50 to £250 may be used for instances of service failure resulting in some impact on the complainant, such as a failure to meet service standards, but where the failure had no significant impact.
5. Awards of £250 to £700 could be used in cases where there was considerable failure but no permanent impact on the complainant, for example a complainant repeatedly having to chase responses and seek correction of mistakes, necessitating an unreasonable level of involvement by that complainant, or a failure over a considerable period of time to address repairs.
6. Awards of £700 and above could be considered when there had been a significant and serious long-term effect on the complainant, such as a long stay in temporary accommodation due to mishandling of repairs.

7. A payment of £15.00 would be paid in the event that the landlord failed to keep an appointment.

Summary of events

8. The property is a flat situated in a block that is part of a Tenancy Management Organisation (TMO). The TMO will have a management agreement with the landlord outlining what services the TMO is responsible for and what services the landlord is responsible for, and the reporting process for any issues such as repairs. The Ombudsman has not been provided with details of this, and neither is the arrangement referred to in the copy of the tenancy agreement that the landlord has provided.
9. The information provided by the landlord consists mostly of a large number of emails, both internal and with the resident, over a prolonged period. It is not necessary to this investigation to summarise all of the content of these emails, and this section sets out the main interactions pertinent to the investigation.
10. On 31 March 2020 the landlord's records show that the resident reported that the ceiling was hanging off the wall above the bath, and the flat smelt of mould, saying that she was very dissatisfied with the standard of communication from the landlord, and asked how to make a complaint. A formal complaint was logged at this time and the landlord wrote to the resident confirming this, saying that it would aim to send a response within ten working days.
11. In July 2020 the resident reported that repairs were still outstanding, detailing issues such as a large hole in the bathroom, tiles coming off walls, water damage, mould in several rooms, condensation, and rainwater coming in when it rained.
12. The landlord's records show an 'escalated complaint' dated 6 August 2020 about a roof leak which had caused internal damage, damp, and mould in the property, with internal repairs outstanding since January 2020 due to confusion about who was responsible for these, the landlord or the TMO. The resident wanted to be compensated for delays in resolving the roof repair.
13. On 28 August 2020 the resident sent the landlord a pre-action protocol letter, detailing water ingress, damage to external areas affecting the internal condition of the property, mould, damp, and unsanitary housing conditions that were, '...directly causing harm to my family.' She said that the defects were causing distress, discomfort, and having a negative impact on her family's physical and mental health. She said that she was caught in the middle of a dispute between the landlord and the TMO with neither

organisation wanting to take responsibility for the repairs. She described the mould as having an impact on her children's health.

14. In October 2020 the resident complained about the delays in dealing with her formal complaint and the way it was being handled. She also described her property as, 'unfit for human habitation' stating that it was exposed to the elements, had a serious damp and mould problem, and was excessively cold.
15. The resident was decanted in mid-March 2021 for works to commence on 22 March 2021, for approximately two weeks. Works were completed by early April 2021. The landlord stated around this time that now a 'resolution' was in place it would progress the closure of the complaint. The resident said she did not want the complaint closed until all works to the property had been completed.
16. After returning home from the decant, the resident reported outstanding repair issues such as the toilet leaking and two fans still needing to be installed. In emails dated 8 and 12 April 2021 she explained that water had penetrated some of her storage bags spoiling some clothes, a dressing gown, and a heated blanket. She also reported that there was mould damage to two wardrobes and parts of the beds which were in close proximity to the walls. She noted a missing bath towel, and a broken HDMI cable.
17. The landlord carried out a post-inspection on 21 April 2021 and agreed some follow up works. In relation to the reported damage to belongings, it said that these should be considered as part of the resident's claim (it is understood this referred to the formal complaint).
18. Throughout this time the records demonstrate that the resident regularly contacted the landlord to obtain updates and express her concerns about a failure to carry out the works to her home or to respond to her complaint. She had to repeat some requests on several occasions, for example for written details of a surveyor's inspection of the property on 15 September 2020.
19. In April 2021 the landlord confirmed that it would finalise the complaint and asked the resident for details of outcomes that she sought. The resident replied on 6 May 2021 setting out the outcomes she was looking for, which included an explanation for the length of time it had taken to address the repair, and compensation to cover the following:
 - a. Delay in dealing with the repair from a first report made in 2017.
 - b. Failure to carry out appropriate repairs causing a longer delay in rectifying the problem.
 - c. Damaged belongings which were reported to the landlord during a visit to the property.

- d. Loss of a room during the decant.
 - e. Inconvenience and disturbance to the family.
 - f. Severe maladministration in relation to the leak.
 - g. Length of time that the property had been left exposed to the elements with rainwater coming in.
 - h. Appointments that had been missed
20. The landlord's stage one response dated 18 May 2021 said that damage to the ceiling was first reported at the end of March 2020, and it provided a chronology from this point onwards. It said that a roof repair which caused a leak into the bathroom was initially repaired on 13 July 2020, and the remaining items in the complaint were associated with a further leak and subsequent bathroom repairs.
21. The landlord acknowledged that there was a 'considerable delay' with starting the bathroom repairs. The reasons for this were unclear but concerned a dispute over repair responsibilities between the landlord and the TMO. It said, 'As the repair requirements were complex, the issue was escalated to our Head of Repairs, to provide a solution.' While the repair responsibilities were still under discussion the resident reported further leaks. A joint visit was attended in August 2020 by a contractor and the landlord's Building Services Surveyor. This determined that a temporary decant was needed to enable repairs to be carried out.
22. A further inspection was carried out in September 2020, and a cost approval process started for the substantial roof repair and scaffolding. The works were approved in October 2020. The resident was advised on 19 October 2020 that scaffold would be in place that week and the roof works to start shortly after. The roofing works were confirmed as having started on 20 November 2020 and completed on 26 November 2020.
23. In relation to the internal repairs, further inspections were conducted in December 2020 to check for any further leaks into the bathroom and to prepare a report of internal works required. Following a drying out period, 'and completion of internal authorisation processes', the internal works were scheduled to start on 15 March 2021. At this point the resident was required to temporarily move from the property. The expenses reimbursement for the decant period was being dealt with in line with the decant policy.
24. The letter noted that most of the internal work had now been completed, with a small number of outstanding issues that the resident wanted to be addressed following the repair. Regarding fans and bathroom light repair, works had been booked for 17 May 2021. The landlord confirmed that an

appointment of 16 April 2021 had been missed due to staff sickness, and it apologised for this.

25. It concluded that, 'there has been a considerable delay in providing you with a full resolution to your repair requirements. The specific reasons for the delays are unclear, but can be largely attributed to the number of required internal processes, for example, seeking cost authorisation, providing inspection reports, and arranging a decant from the property.' It also noted that staff resourcing issues and Covid-19 restrictions had also contributed.
26. The landlord acknowledged that internal processes should have been handled more efficiently. It said, 'Please be assured that the feedback from your complaint is noted and where feasible, improvements will be put into place to avoid similar situations. We would like to offer our apologies for the length of time taken and the inconvenience to you of completing the repairs.' It offered a total of £415 of compensation as follows:
- a. Discretionary payment in recognition of a delay over determining responsibility - £250.
 - b. Discretionary payment in recognition of a failure to meet service standards for actions and responses - £100.
 - c. Discretionary payment in recognition of a delay responding to the complaint - £50.
 - d. Missed appointment 16 April 2021 - £15.
27. The resident escalated the complaint on 28 May 2021, stating, 'There are some discrepancies and issues that have not been addressed that I would like to be further discussed/investigated.' She explained that it was incorrect to say that the leak was first reported in March of 2020, rather this was the date that the formal complaint was raised and in fact she began reporting the leak via the TMO in 2017, as per a protocol outlined in the Tenancy Agreement, and there had been multiple visits from contractors prior to March 2020.
28. The resident explained that she had also reported and provided pictures of items damaged during the decant and/or whilst she had to stay in a hotel, which had not been included in the compensation breakdown. A staff member had visited the property on 21 April 2021, and she was told this would be discussed with a manager, but she had heard nothing since.
29. Overall, the resident did not consider that the compensation offered was reasonable, '...considering the gross failures that have been allowed to occur, the inconvenience and distress to myself and my family, the damage to my property as a result of mould damage/workmen in my flat and also considering

the length of time that has elapsed since the initial report starting in 2017.' The resident also said that there was more than just one missed appointment.

30. On 20 July 2021 the landlord provided its stage two response. It set out the resident's reasons for escalation as being a dispute about the compensation amount due to the issue dating back to 2017, and more than one appointment having been missed.
31. The landlord noted that the resident had explained they had been experiencing and reporting issues with leaks and ongoing issues linked to the roof repairs since 2017. As part of the stage two investigation, it had now obtained evidence of emails sent to its contractor about the leaks from as early as November 2018 to date. It apologised for its previous incorrect response which had been due to a lack of records. Regarding the additional missed appointments, the landlord said that if the resident could provide details of these it would investigate further.
32. It concluded, 'I am sorry that our records on this situation are not as robust as we would have liked them to be.' It detailed action it had taken in 2019 to overhaul its systems, saying, 'All departments are required to record their communications on the same process and system so we have one version of the truth.'
33. The landlord said that it was awarding an additional discretionary payment of £700.00 to acknowledge that it was unable to track a full picture of what happened since the initial report back in 2017. The compensation was set out as follows:
 - a. Discretionary payment in recognition of the lack of data and record keeping - £700
 - b. Discretionary payment in recognition of a failure to meet service standards for actions and responses - £100
 - c. Delay responding to stage 1 - £50
 - d. Complaints handling at stage 1 - £50
 - e. Missed appointment 16 April 2021 - £15
 - f. Delay responding to peer review - £25
34. The landlord said that this totalled £915.
35. On 2 September 2021 the landlord emailed the resident noting that it had not had a response from her regarding arranging payment of the compensation amount. In an email dated 3 September 2021 the resident stated that she had previously written to the landlord, '...indicating that some items had been

destroyed during the time this problem occurred in my flat as well as a result of the decant process.’ She noted that this was not referenced in the final response. She also said, ‘The initial compensation amount needs to be added to your figure also.’

36. The resident sent a further email dated 11 September 2021 regarding the damaged items, and provided copies of her 8 and 12 April 2021 emails. She also explained that the stage two review compensation offer was missing the discretionary payment of £250 for a delay in determining ownership, and also detailed another missed appointment on 20 April 2021.
37. The resident concluded, ‘I disagree with the compensation amount, this doesn’t include things that were damaged during the time that I had to be removed from my home as well as the furniture in the home that was ruined by mold damage...In my opinion, the amount of compensation rewarded for some aspects of this complaint does not reflect the stress that this situation has caused me and my family - in addition to the length of time that it has taken to sort out this problem.’
38. The landlord provided an ‘Addendum to Peer Review’ letter dated 7 October 2021. In this it noted that all repairs related to the complaint were completed. It apologised for not directly responding to claims of damage to personal items prior to the decant, concluding, ‘I believe it to be appropriate to pay the additional £415.00 compensation for the reported damages as a one off discretionary payment for this oversight and inconvenience.’ This brought the total to £1,355.00

Assessment and findings

39. The resident has explained that she is dissatisfied with the level of compensation offered by the landlord, which she has said does not reflect the stress that the situation caused her and her family. She notes the effort it took to get the issues recognised, assessed, and the ‘multitude of back-and-forth communication’. The resident states that this was extremely distressing and time-consuming, with the landlord refusing to accept responsibility for the repair. The resident has said, ‘In particular, the condition the property was in for an extended amount of time, the disruption, routine disruption and lack of suitable cooking facilities during 'decant' - caused my youngest child extreme distress due to her Autistic Spectrum Disorder and anxiety diagnosis. This problem lasted over a period of years and caused great distress to myself but also my young children; one of which has a disability.’
40. The resident explains that the property had black mould covering the walls in the bathroom and in the bedroom, water poured into the bath when it rained,

the walls were wet, and the carpet was damp. She states, 'I believe that during this time the property would have been considered as unfit to live in.'

41. The resident says that the condition the property was left in for an extended period of time, and in particular the mould growing where the children slept, has caused 'long-term trauma' and the children are now afraid of the mould returning. She also explains that during the decant the family had to stay in one hotel room with no cooking facilities, and that the landlord ignored her requests to address the matter of property damaged because of the leak and mould, and the subsequent repair work.
42. More recently the resident reports that the leak appears to have returned, and there is still a large crack in the wall outside, close to where water is again appearing on the internal walls. She explains, '...the external wall is visibly in a state of disrepair and this damage reflects on issues currently affecting the property. I believe there are structural/roofing/external defects that were not fixed appropriately during the previous repairs process.' The resident is concerned that she is again having to provide access for multiple repair visits and is worried that the problem is starting again.
43. To resolve the complaint the resident would like an increase in the amount of compensation offered and evidence of improvements in the landlord's handling and administration of cases such as hers. She would also like the landlord to conduct a thorough inspection of the roof and the external condition of the property. She states, 'Should this not be in good order, I would like to request that Clarion move me and my daughters to an appropriately sized home; where we are not in over-crowded conditions and don't have to experience persistent problems with leaks and water coming into the property.'
44. When investigating a complaint, the Ombudsman applies its Dispute Resolution Principles. These are high level good practice guidance developed from the Ombudsman's experience of resolving disputes, for use by everyone involved in the complaints process. There are only three principles driving effective dispute resolution:
 - a. Be fair - treat people fairly and follow fair processes;
 - b. put things right, and;
 - c. learn from outcomes.
45. The landlord has accepted that there were a number of failings on its part in its handling of the repairs and formal complaint, therefore this is not in dispute and it is clear that the resident was not treated fairly, and fair processes were not followed. This investigation therefore focuses on whether the landlord has

taken sufficient action to 'put things right' for the resident and remedy the adverse effect its failings had on her, and 'learn from outcomes'.

Putting things right

46. In terms of the compensation amount, the landlord has provided a breakdown of its calculations, which although do not directly correspond to the specific adverse effects as detailed by the resident, do provide some acknowledgment of the impact the failings had. The landlord added an additional amount at stage two, which was reasonable and demonstrates that the landlord was taking the resident's concerns seriously and was willing to alter the compensation offer considering new information about the timeline for the repair. It also recognised additional failings in complaint handling. Overall, the amounts detailed were roughly in line with its compensation policy.
47. However, the landlord added the amounts up incorrectly (the total should have been £940, not £915), failed to include the payment in recognition of a delay over determining responsibility at £250 from the stage one offer (or make clear that this was being superseded by the subsequent compensation offer, if that was the case), and did not consider the resident's request for compensation for damaged belongings. Neither did it refer to the resident's claim for compensation for the inconvenience and distress she and her family had experienced.
48. When the resident detailed why she was unhappy with the compensation amount in September 2021, the landlord again reviewed its offer, which demonstrates that it was trying to 'put things right.' Given that the resident had not provided much information about the damaged belongings or the amount she was seeking in compensation for these, the £415 discretionary payment was a reasonable amount in lieu of any further details or evidence of associated costs.
49. However, the landlord again did not include the payment of £250 for a delay in determining ownership, and did not address the missed appointment on 20 April 2021. Neither did it address the resident's comments about the overall amount failing to reflect the distress that the situation caused, and the time and trouble expended on the matter.
50. There is little indication that the landlord considered the resident's concerns about the living conditions in the property in its complaint response and compensation calculations and did not therefore demonstrate that the adverse effect of its failings, which were serious and cumulative, had been seriously considered. As part of this investigation, the Ombudsman asked the landlord to provide records concerning the resident's reports of the leak and mould at the property, such as copies of any survey or inspection reports. As noted, the

information that the landlord has provided mostly consists of emails. The only record of an inspection of the property is a brief email dated 16 September 2020 which states, 'There is some damage to the bathroom ceiling and the tenant reports that water comes in when it rains...The tenant also reported mould to the bedroom, it was behind a bed so I could not see this...'

51. This inspection appears to have been carried out in response to the resident's pre-action protocol letter. In this letter she described water ingress, damage to external areas affecting the internal condition of the property, mould, damp, and unsanitary housing conditions. The 16 September 2020 email does not provide sufficient evidence of the landlord fully assessing these issues.
52. In addition, it was another seven months before the repairs were carried out, and the resident has said that conditions deteriorated during this delay. There is reference to another inspection and a report in January 2021, but details of this are not contained in the emails provided. Overall, it is not clear what the landlord's position was on this point, although notably it has not disputed the resident's descriptions of the condition of the property.
53. In lieu of sufficient information to the contrary, the resident's description of conditions in the property is accepted. In light of this the total amount of £800 provided for the repair issue (consisting of £700 in recognition of the lack of data and record keeping, and £100 in recognition of a failure to meet service standards) was insufficient to 'put right' the adverse effect the landlord's failure to carry out the repair in good time had on the resident. This is especially the case given that the landlord has accepted that the repair had been ongoing since 2017/2018 and was not completed until mid-2021.
54. While the £700 is in the upper bracket of compensation under the landlord's compensation policy, and goes some way to recognising that the resident experienced adverse effect, little consideration has been given to the impact the condition of the property had on the resident and her family for a prolonged period, and the distress and inconvenience experienced due to this. The resident had outlined in her communications with the landlord her concerns about this and that she felt it was 'unfit for human habitation'.
55. Further, the amount of £50 for the year delay in providing its stage one response was inadequate for the time, trouble, and frustration this caused to the resident, who was unable to progress the matter to stage two and to the Ombudsman for a long period.
56. As such, an order to remedy is made below. The amount ordered takes into account the resident's reports of how the matter impacted her and her family, the time, trouble and frustration that she experienced pursuing this, as well as

the cumulative impact of the landlord's failures. It also takes into account the £1,355 that the landlord has already offered.

Learning from outcomes

57. There is insufficient evidence that the landlord has taken robust action to 'learn from outcomes' in this case. It has said that feedback from the complaint was noted and 'where feasible' improvement would be put into place to avoid similar situations. However, it is not clear where this feedback was shared, or whether improvements were made, and the consideration of failings in this case through the complaint procedure therefore appears cursory.
58. The landlord also detailed action it had taken in 2019 to overhaul its systems, saying, 'All departments are required to record their communications on the same process and system so we have one version of the truth.' It is not clear how this will address all the failings in this case, for example, the delay in determining that it was the landlord's responsibility to carry out the repairs rather than the TMO.
59. As the landlord has itself stated, the specific reasons for the delays in this case were unclear but could largely be attributed to the number of 'required internal processes'. It therefore would have been prudent to have reviewed these internal processes to determine what could be done to improve these to avoid such lengthy delays in the future.
60. Neither did the landlord comment on the very long delay in providing the stage one response, or provide reassurance that it would take action to ensure that such an unreasonable timeframe for responding to a complaint did not recur. Part 5.5 of the Ombudsman's Complaint Handling Code sets out that "A complaint response should be sent to the resident when the answer to the complaint is known, not when the outstanding actions required to address the issue are completed." It is not reasonable to delay a complaint response for such a long period to await ongoing repairs: A response should be sent, and then outstanding repairs/actions should be tracked and updates provided to the resident.
61. Overall, the landlord's failings in complaint handling were serious and the adverse effect on the resident was significant. There were lengthy delays, poor records, and an absence of demonstrable learning by the landlord in this case.

Determination (decision)

62. In line with section 54 of the Scheme, there was severe maladministration on the part of the landlord in its handling of the formal complaint.

63. In line with section 54 of the Scheme, there was maladministration on the part of the landlord in its handling of:
- a. repairs to the property;
 - b. the compensation offer, and;
 - c. record keeping.

Reasons

64. The landlord failed to address both the repairs to the property and the formal complaint in a reasonable time frame. It was inappropriate that there was a delay in determining responsibilities between the landlord and TMO, and there is no evidence that the landlord has reasonably addressed this. The landlord has not provided appropriate, contemporaneous records of its inspections of the property, either before or after 2019 when it overhauled its systems. The resident was not treated fairly, and fair processes were not followed. The resident reports that the leak has still not been rectified.
65. The landlord's offer of compensation did not fully take into account and remedy the adverse effects the failings had on the resident and their family, and there is insufficient evidence that the landlord has taken steps to 'learn from outcomes'. Therefore, a series of orders and recommendations are made to address this. The amounts of compensation ordered below take into account the adverse effect caused to the resident by the landlord's failings, set against the compensation already offered by the landlord.

Orders

66. Within one month of the date of this report, a senior member of the landlord's staff should issue an apology to the resident in person (or through the resident's preferred form of communication) so that the landlord-tenant relationship may be strengthened.
67. Within one month of the date of this report, the landlord must pay the resident a total of £2,270, broken down as follows:
- a. £1,335 offered by the landlord at the end of the complaint procedure, if not already paid.
 - b. £250 to cover the amount offered by the landlord at stage one of the complaint procedure in recognition of a delay over determining responsibility, which was then missing from the final offer.
 - c. £15 for the 20 April 2021 missed appointment.
 - d. £150 for the frustration, time and trouble caused by the delay in the stage one response.

- e. £500 for the adverse effect the landlord's failings had on the resident and their family.

68. Within six weeks of the date of this report, the landlord must:

- a. Carry out a case review, to determine what action is required (or has already been taken) to address the failings identified by the landlord and the Ombudsman in this case. This should include:
 - i. How responsibility for repairs is determined where a TMO is in place, and whether improvements in this area are required to avoid delays in identifying responsibilities.
 - ii. Definition of the relevant 'required internal processes' which were identified by the landlord in the complaint procedure, and how these may be improved.
 - iii. Consideration of why there were record keeping failures following the overhaul of systems in 2019, and identification of further actions to strengthen its record keeping processes and systems.
 - iv. How reports of poor living conditions/uninhabitable properties due to damp and mould can be assessed, and outcomes recorded and accessed by landlord staff.
 - v. How complaints will be addressed where repairs are ongoing. The landlord should consider the Ombudsman's Complaint Handling Code when reviewing this matter.

A copy of the review, setting out its findings, should be provided to the Ombudsman.

- b. The Ombudsman recommends that the landlord reviews its record keeping practices in relation to the logging and remedying of defects in new build properties, considering the failings highlighted in this case. This is to ensure that accurate and accessible records are kept and maintained, both of works raised and completed and of contact with residents and the contractor.
- c. Write to the resident (copying in the Ombudsman), setting out the status of the current leak reports, any works that have already been carried out, any that are planned, and her options regarding re-housing.