

Housing

Ombudsman Service

REPORT

COMPLAINT 202123688

Catalyst Housing Limited

03 February 2023

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint is about the landlord's handling of:
 - a. the resident's report that there were not enough communal bins for the properties in her building
 - b. the resident's reports of disrepair to the roof and guttering as well as damp and mould
 - c. the resident's reports that the driveway was in disrepair
2. The Ombudsman further investigated the landlord's:
 - a. record keeping; and
 - b. complaint handling

Background and summary of events

3. The resident is an assured tenant, under a tenancy agreement dated 23 August 2018. She resides in a flat in a converted house with her teenage son. The resident has mobility issues and advises that she is asthmatic and has cardiac problems. This is important as far as it relates to the handling of the damp and mould issues in the property.
4. The Ombudsman has carefully reviewed the repairs records presented to this Service by the landlord. The initial report took place on or around 8 August 2021 and related to water ingress into the property. The full particulars of the report are not included in the records. There is a further entry dated 10 August which states the resident reported water entering her property from the roof.

5. The next entry in the repairs records is 18 November 2021. There is no evidence to demonstrate that the landlord inspected the property between 8 August (the date of the original report) and 18 November 2021. The report on 18 November 2021 states the resident contacted the landlord about defective guttering which was leaking. The record states the resident was chasing a mould issue in the bathroom and bedroom and the issue was 'spreading all over the walls rapidly'. It is not clear if she reported mould when she made the initial report in August 2021.
6. The resident raised a formal complaint with her landlord, via its online webform, on 6 January 2022. The details of the form can be summarised as follows:
 - a. Two of the communal bins had been damaged. As there were 8 flats in the building, this was causing an overflow of refuse.
 - b. There was damp and mould in the bathroom as well as the bedroom occupied by the resident's son. The resident explained she was asthmatic and has cardiac problems. She asked for the ventilation to be checked.
 - c. The blocked guttering was causing water ingress.
 - d. The driveway was in disrepair and had not been maintained.
7. The landlord states an inspection took place on 2 February 2022. However, the Ombudsman notes there is no evidence of this, such as an inspection report or notes from those who inspected the property. There is evidence, however, that the landlord wrote to its contractor on 8 February 2022 to raise a works order for a humidistat (fan) in the bedroom and to check and test that the extractor fans elsewhere were functioning. This was marked as a routine repair to be completed by 16 March 2022.
8. The landlord issued a stage one complaint response on 10 February 2022, in which it offered £200 compensation and explained:
 - (i) It was sorry for the delay in replacing the communal bins. It would contact the local environmental health authority to order two more bins.
 - (ii) Following an inspection on 2 February 2022, the surveyor had referred the following repairs to the landlord's contractor:
 - i. To repair the fan in the bedroom, to assess the extractor fans in the bathroom and kitchen.
 - ii. To repair the blocked or broken guttering at the side elevation.
 - iii. To track and trace a leak in the communal areas.

- c. The landlord advised the resident that its contractor would book the repairs directly with her.
9. The landlord's caseworker sent the complaint response as an email attachment to the resident on 10 February 2022. The resident responded directly to the landlord's email on 15 February 2022. She was clear in her response that she was requesting escalation of the complaint to stage two of the landlord's complaint procedure. She explained:
 - a. The landlord had not completed any of the repairs it had agreed to.
 - b. The damp and mould had not been resolved.
 - c. The new silent extractor fan had not been installed.
 - d. The landlord provided a blue recycling bin which had not been suitable.
 - e. Whilst the gutter had been inspected on two occasions and classified as an emergency repair, no works had been completed.
 - f. The landlord had not replied to the resident's concerns about the defective driveway.
 - g. The compensation ought to be increased.
10. The resident contacted the Ombudsman on 3 March 2022. She reiterated the points she had made to the landlord on 15 February 2022. She told the Ombudsman that she was having to regularly wash the mould from the walls in the property and this was affecting her asthma. She also told us that she was due to be admitted to the hospital for a procedure on her heart and that her son had developed chesty coughs and breathing issues. She went on to advise that the landlord had not responded to her complaint at stage two of the complaint procedure.
11. The Ombudsman contacted the landlord on 28 April 2022 and asked it to respond to the complaint by 13 May 2022. The landlord's internal records demonstrate that it received this correspondence and asked that it was escalated to a manager for review on the same date. However, the landlord contacted the Ombudsman on 13 May 2022 (the date a response ought to have been provided). It stated the complaint had only been escalated on 12 May 2022.
12. The Ombudsman has reviewed an email dated 11 May 2022 from the landlord's contractor which suggests the works order raised on 8 February 2022, had been 'overlooked'. The contractor provided a breakdown of the works as follows:
 - a. Remove two faulty fans in the bathroom and the kitchen.

- b. Install a new humidity sensor fan in the kitchens and bathrooms.
 - c. Due to the damp in the back bedroom, to install a new humidity fan.
 - d. To assess all new units on completion.
13. It is convenient to note there is no reference to the issues with the roof, guttering or driveway – or the communal area leak.
14. The resident informed the Ombudsman on 16 May 2022, that the landlord had not responded to the complaint. In turn, the Ombudsman contacted the landlord again on 18 May 2022 to ask it for its response.
15. The landlord issued its final response on 30 May 2022. In assessing what had happened, the response advised various appointments had been booked for the fans to be installed and repaired. In respect of the driveway, the landlord accepted it was defective and said it would 'see what it could do'. The landlord increased the compensation to £700 in '*recognition of the additional delays and inconvenience*' caused.
16. The resident referred her complaint to the Ombudsman for an independent review. In response to our request for information, the landlord stated it did not have information about the floor level of the resident's home. It said the resident had a recorded mobility impairment from 2016. There was no evidence that the repairs had been completed or that the roof and guttering had been inspected at that time.
17. The Ombudsman asked the landlord for evidence the works had been completed. It explained as follows:
- a. The guttering repairs were completed on 11 February 2022 and 27 May 2022
 - b. The repairs to the roof were completed on 26 January 2022
 - c. The humidifiers were regarded as functioning adequately enough on 27 May 2022
 - d. There were no orders for the driveway.
18. The email chain provided by the landlord includes the following notes:
- "[The] resident called chasing guttering job as she is saying job was not done. [the contractor] is saying this job is completed [the] resident is crying and saying no work has been done as she have to give them access."*

“Mould has Been cleaned but keeps appearing after 2 weeks roofer is attending to look at guttering”

19. The resident informed the Ombudsman that the work has not been completed – and she is experiencing the damp and mould in her home. She advises that when she cleans it, it returns after around two weeks.
20. There is no evidence that the landlord inspected the property and the building to confirm the works had been completed – in light of the differing stances of its resident and contractor.

Assessment and findings

21. I have separated the complaint issues and will assess them separately for the benefit of clarity.

The bins

22. There is no evidence this was reported until the resident raised a complaint on 6 January 2022. It is clear the landlord took responsibility to rectify the matter. It is accepted that it provided recycling receptacles. There is no evidence to suggest this issue has since been resolved. On that basis, it would be reasonable for me to find service failure in the landlord’s handling of the replacement damaged bins.

The roof, guttering and damp and mould

23. The landlord’s records are poor in this respect. It suggests the resident reported water ingress in August 2021 and reported damaged guttering and *chased* damp and mould treatment in November 2021. Based on this, it would be entirely logical to find that, on the balance of probabilities, the resident raised issues with damp and mould at the same time as she the water ingress in August 2021. It is likely she would have raised the damp and mould first to have later chased it.
24. I find that the guttering was reported in November 2021. I further find that the landlord had notice of a communal leak in the building in August 2021 and confirmed this on 2 February 2022.
25. When the landlord received the reports in August and November 2021, it was required to inspect the property within a reasonable time. Following the inspection, it ought to have determined how it would complete the repairs. It was then obliged to complete those repairs within a reasonable time.
26. In this case, there is no evidence that the landlord inspected the roof, the gutters or the damp and mould when the issues were initially raised. In fact, it appears that an inspection did not take place until 2 February 2022, after the resident had raised a complaint – which was some six months after the first reports. It cannot

reasonably be said that this was a 'reasonable time' to inspect. The landlord has produced no evidence or reasons as to why this delay was outside of its control.

27. The landlord has not produced an inspection report or any detail of the level and nature of the inspection. It is, therefore, not clear what the landlord found the cause of the damp and mould to be.
28. In terms of the repairs, the landlord categorised them as 'routine repairs' – which it was entitled to do. However, this was not done when they were initially reported in August 2021 or when the resident chased in November 2021, but only in February 2022 after the resident had raised a formal complaint. The landlord ought to have known that the time to repair runs from the date that the repair was reported by the resident and not when the landlord finally raises a works order.
29. It appears, however, that the landlord was treating the damp and mould as condensation related. I arrive at this conclusion because of the works order raised. Namely, it raised works for extractor fans. There is no evidence at all that the landlord considered the instance of water ingress from the roof or gutters or leaks in the common parts as a cause of damp and mould or eliminated those possibilities. Therefore, its proposed actions were not only unreasonably delayed, but could have been inappropriate. In short, extractor fans would be of little assistance where the damp was caused by water ingress from the roof, the gutters, or the common parts.
30. There is no evidence that any of the repairs issues were resolved by May 2022 when the landlord issued a final response. There is evidence that the contractor 'overlooked' the repairs issues from February 2022 to 11 May 2022.
31. Under sections 9A and 10 of the Landlord and Tenant Act 1985 (as amended), the landlord was under a duty to ensure the property was fit for human habitation, including free from mould. There is no evidence at all that the landlord considered its obligation here or assessed whether the property was fit for the resident and her son, in light of the health concerns raised.
32. The Ombudsman set out clear guidance on how to deal with damp and mould in tenanted properties in our Spotlight Report on Damp and Mould. This sets out best practice for landlords in handling damp and mould cases. In Chapter 3 we stated:

“It is important that these types of cases are handled with particular care to ensure they are resolved effectively, maintain the relationship between the resident and the landlord and reduce the risk of the resident feeling the need to resort to a disrepair claim.”

“Landlords should ensure they have strategies in place to manage these types of cases with an emphasis on ensuring that the resident is kept

informed, feels that the landlord is taking the issue seriously and that the matter is progressing.”

“Where specialist surveys are required, landlords should ensure the need is identified early on and that work orders are progressed in a timely manner.”

“The outcome of these surveys, and any other inspection at the resident’s property, should be routinely shared with, and explained to, the resident. This includes being clear where on any recommendations or actions that are not going to be followed up and the rationale for this to aid the resident’s understanding”

33. The landlord did not meet these outcomes or indicative behaviours when handling the resident’s reports of disrepair in her home.
34. When the landlord provided its case file to the Ombudsman, the Housing Officer said they did not have details about the property. Good housing and stock/asset management is incumbent on landlords regularly checking their stock, and checking in on their tenants and whether their homes meet a decent standard and are in repair. This is evidence that the Housing Officer has not attended the premises or considered the condition of the property, perhaps in some time. That is not appropriate.
35. The latest information received from the landlord is that the resident raised concerns about the mould returning every two weeks. There is no evidence that the landlord has since inspected it or tried other means of resolving it. It appears that this matter has been outstanding for the resident and her son from August 2021 to date. That is nearly 19 months – which is not acceptable. This was whilst the landlord reasonably knew about the resident’s health concerns as she had informed it of the same during her complaints.
36. The important point to note here is that during this period, the resident and her son have remained in a damp and mouldy home – for which rent was being paid. The resident’s pleas for the issues to be resolved, because of hers and her son’s health, remained largely unheard and not acted upon.
37. Based on the evidence I have seen, I consider there was a failure by the landlord to inspect, determine the cause of the damp and mould and offer a lasting and effective resolution within a reasonable time. For that reason, I hold the landlord responsible for severe maladministration.

The damaged driveway

38. The tenancy agreement placed an obligation on the landlord to keep in repair the pathways, steps, or other means of access.

39. The evidence provided to this Service suggests the resident only made the landlord aware of the damaged driveway on 6 January 2022. On 30 May 2022 in its final response, the landlord said it would 'see what it could do about this'. No evidence has been produced to demonstrate the driveway has been inspected or repaired. This is against the backdrop that the landlord recognises the resident has mobility issues and the resident advised she needed to use a wheelchair at times.
40. Of some significance is that the resident ought to be able to freely come and go from her home. It appears the landlord has not carefully considered its obligations under the Equality Act 2010 to eliminate discrimination and ensure that the resident is not subjected to a substantial disadvantage in being able to access her home.
41. The landlord had the chance to rectify this issue via the complaints procedure. In the landlord's most recent correspondence with the Ombudsman, it said that no repairs had been raised for the driveway. This means the driveway has been an outstanding matter for the resident for at least 12 months. This is a significant failure in light of the resident's mobility issues. I therefore find the landlord responsible for severe maladministration.

The landlord's complaint handling

42. Under paragraph 9 of the Housing Ombudsman Scheme, the landlord is bound to comply with the Ombudsman's Complaint Handling Code. This requires that complaints are dealt with quickly and fairly. This includes responding within the following timescales:
- a. To acknowledge a complaint within five days
 - b. Within ten working days of acknowledgment, to provide a full response at stage one of the complaint procedure
 - c. Within twenty working days of the escalation request
43. There are times when a landlord is not able to respond within those timescales. The Code explains that landlords should update residents and explain when a response is likely to be due.
44. Pursuant to the Code the landlord was required to respond at stage one no later than 20 January 2022. It responded after this on 10 February 2022. There is no evidence that the landlord contacted the resident to explain the timescales had been extended.
45. The resident requested escalation of the complaint on 15 February 2022. Under the Code, the landlord ought to have responded by 15 March 2022. It responded

on 30 May 2022, which was after two chasers from the Ombudsman. There is no evidence the landlord contacted the resident to request extensions or explain the reasons for the delay. The landlord's remedies did not fully address and resolve the resident's concerns or detail its learning.

46. On this basis, I have no option but to find the landlord responsible for maladministration.

Record keeping

47. There is an obligation on landlords to create and maintain adequate records to be able to demonstrate they have complied with their legal and regulatory obligations to the Regulator and this Service. Inspections, interactions with residents, and completion of repairs must be recorded with adequate supplementary evidence, such as photographs, in cases of dispute.

48. Whilst the landlord's final response states that an inspection of the property took place on 2 February 2022, there is no evidence of the extent of that inspection. There is no information about the leaks and water ingress or how they were handled. In addition, the landlord's housing officer stated they did not have information about the property.

49. When the resident stated the repairs had not been completed and the mould was returning – the landlord failed to inspect and take photographs. It does not appear the landlord has updated its records about the resident's health conditions beyond the mobility issues reported.

50. Taken together, the landlord has failed to demonstrate it has complied with the duty of good administration, including keeping and maintaining adequate records.

Determination (decision)

51. Having carefully considered all the evidence and arguments presented by the parties, I have determined that:

- a. The landlord was responsible for **service failure** in the way it handled the bins
- b. The landlord was responsible for **severe maladministration** in the way it handled the repairs, including the damp and mould
- c. The landlord was responsible for **severe maladministration** in the way it handled the condition of the driveway
- d. The landlord was responsible for **maladministration** in the way it handled the complaint

- e. The landlord was responsible for **service failure** in its record keeping.

Reasons

52. Paragraph 52 of the Housing Ombudsman Scheme states:

When investigating, the Ombudsman is concerned to establish whether the member has been responsible for maladministration (which includes findings of service failure, maladministration and severe maladministration). This may include, but not exclusively, circumstances where the member:

- a. failed to comply with any relevant legal obligations;*
- b. failed to comply with any relevant codes of practice;*
- c. failed to apply its own policies and/or procedures;*
- d. delayed unreasonably in dealing with the matter;*
- e. behaved unfairly, unreasonably or incompetently; or*
- f. treated the complainant personally in a heavy-handed, unsympathetic or inappropriate manner.*

The bins

53. The landlord accepted responsibility for arranging new bins to be delivered. The correct ones were not delivered, and the resident explained that there were not enough refuse bins for eight flats. There is no evidence the landlord has resolved this issue as a service request or via its complaint procedure. I therefore find the landlord delayed unreasonably in dealing with this matter under paragraph 52(d) of the Scheme.

The repairs including damp and mould

54. The resident reported disrepair to the roof and guttering, including water ingress, damp and mould in late 2021. The landlord was under a contractual duty to inspect and repair within a reasonable time. There is no evidence that the landlord arranged for an inspection of the property until the resident raised a complaint on 6 January 2022. Whilst the landlord stated an inspection took place in early February 2022, there is no documentary evidence to support that or the findings of the inspection.

55. The landlord has arranged extractor fans indicating it was treating the mould as condensation related - without assessing the impact of any water ingress into the property from the roof or guttering.

56. There is no evidence the landlord inspected the property after the resident stated the repairs had not been completed and the damp and mould was returning. The Ombudsman finds there is no persuasive evidence the repairs have been completed.

57. Based on this, I find that the landlord failed to comply with the relevant legal obligations in the tenancy agreement to repair and delayed unreasonably in dealing with the matter. It was also unsympathetic to the resident given her worries about her and her son's health. The resident has had to remain in a damp and mouldy property for a significant period.

The driveway

58. The landlord was under a duty to ensure access points remain in repair. The evidence demonstrates the resident raised concerns with the driveway on 6 January 2022. There appears to have been no assessment if the resident can safely access her home given her mobility issues. This was a failure to comply with its legal obligations and, further, unreasonably delaying dealing with the matter. This is likely to have had a significant impact on the resident.

The complaint handling

59. The landlord failed to provide responses in line with the Ombudsman's Complaint Handling Code as it was required to.

Conclusions

60. Taken together I take the view that the resident will have been caused substantial distress and inconvenience by the landlord's failings. It is clear she felt worried about hers and her son's health and I am not satisfied those fears were taken seriously by the landlord.

Orders

61. The landlord is **ordered** to:

- a. pay the resident £3,550 compensation (see paragraphs 62-64 for more information); and
- b. arrange a full survey/inspection of the property and building and complete any outstanding works (see paragraphs 65 to 67 for more information)

The compensation order

62. The landlord is required to pay the compensation to the resident within 28 days of the date of this determination.

63. When the Ombudsman awards compensation, we take into account the failure and the impact on the resident. In this case, the failures by the landlord, and the impact on the resident of those failures require a fair and commensurate level of compensation to be awarded. The £3,550 compensation comprises:

- i. £150 to recognise the distress and inconvenience caused by the delays in resolving the issue with the bins
- ii. £1,500 for the resident having to remain in a damp and mouldy home for around 19 months. This includes the failure to assess the cause and offer a lasting and effective repair.
- iii. £1,250 for the way the landlord handled the repairs to the driveway and the impact of the potential access issues.
- iv. £500 compensation for the distress and inconvenience and time and trouble caused to the resident for its overall handling of these issues.
- v. £150 for the distress and inconvenience caused by the delays in the complaint procedure

64. The compensation ordered replaces the landlord's previous offer of £700. If the landlord has already paid the resident £700 this should be deducted from the £3,550 ordered. The landlord should provide evidence of compliance with the above to this Service within four weeks of the date of this determination.

The inspection/survey order

65. The purpose of the inspection/survey is to assess the building and the resident's property to determine the *cause* of any damage and *repairs required* in respect of:

- a. The damp and mould in the resident's home and whether the water ingress is the cause of the damp and mould
- b. The gutters and roof and water ingress in the common parts
- c. The driveway

66. In arranging the survey, and to comply with the Ombudsman's order the landlord **must:**

- a. Within 28 days of the date of this determination, appoint a surveyor who has not previously inspected the property or building. The landlord can choose an independent surveyor if it wishes.
- b. Within 28 days of the date of this determination, to contact the resident to arrange the inspection and survey. It must agree a mutually beneficial time

with the resident for the inspections to take place within 14 days where possible.

- c. Encourage the surveyor to complete their report within 14 days of the date of the inspection.
- d. Share the report with this Service and the resident within 5 working days of receiving the inspection report. The landlord *may* redact any personal and commercially sensitive information in the resident's copy.
- e. Within 5 days of receiving the inspection report/survey, ensure that works orders are raised to complete any works – or – tender for the works to be completed.

67. The landlord **must** use its *best endeavours* to ensure that the works are completed within 8 weeks of the inspection report. It should keep adequate records of how it has done all it could reasonably do in the circumstances to comply with this order.

Recommendations

The Ombudsman makes the following recommendations for the landlord to:

- Complete a lessons learning review of this case to understand:
 - Why the repairs were overlooked
 - Why the property was not inspected when the resident made contact to say the works had not been completed
 - Report on how it can prevent similar failures from occurring again
 - Disseminate its learning to its repairs staff and contractors – whilst protecting the resident's right to anonymity and personal data
- Meet with the resident to share learning and with a view to rebuilding trust and confidence in the landlord
- Ensure its staff are trained on the obligations under the tenancy agreement
- Arrange for its complaint staff to undergo training on the Ombudsman's Complaint Handling Code

Annex – list of landlord’s duties

68. Under clause 2(3) of the tenancy, the landlord is responsible to:

“(…) keep in good repair, the structure and exterior of the Premises including:

- (i) drains, gutters and external pipes;
- (ii) the roof, but not including any aerial or satellite equipment erected other than by the Association;
- (iii) outside walls, outside doors, windowsills, window catches, sash cords and window frames, door and window furniture, including necessary external painting and decorating;
- (iv) internal walls, floors and ceilings, doors, door frames, door hinges, door furniture and skirting boards but not including internal painting and decoration, unless in sheltered accommodation;
- (v) chimneys, chimney stacks and flues but not including sweeping;
- (vi) pathways, steps or other means of access;
- (vii) plasterwork;
- (viii) integral garages and stores;

69. Under section 11 of the Landlord and Tenant Act 1985, the landlord is under a duty to:

11 Repairing obligations in short leases.

(1) In a lease to which this section applies (as to which, see sections 13 and 14) there is implied a covenant by the lessor—

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

70. Section 9A of the Landlord and Tenant Act 1985 states:

“Fitness for human habitation of dwellings in England

(1) In a lease to which this section applies of a dwelling in England (see section 9B), there is implied a covenant by the lessor that the dwelling—

(a) is fit for human habitation at the time the lease is granted or otherwise created or, if later, at the beginning of the term of the lease, and

(b) will remain fit for human habitation during the term of the lease.”

71. Section 10 of the Landlord and Tenant Act 1985 states:

In determining for the purposes of this Act whether a house [or dwelling] is unfit for human habitation, regard shall be had to its condition in respect of the following matters—

- *repair,*
- *stability,*
- *freedom from damp,*
- *internal arrangement,*
- *natural lighting,*
- *ventilation,*
- *water supply,*
- *drainage and sanitary conveniences,*
- *facilities for preparation and cooking of food and for the disposal of waste water;*
- *[in relation to a dwelling in England, any prescribed hazard;]*

and the house [or dwelling] shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition.

72. Spotlight on Damp and Mould. In Chapter 3 we stated:

“It is important that these types of cases are handled with particular care to ensure they are resolved effectively, maintain the relationship between the resident and the landlord and reduce the risk of the resident feeling the need to resort to a disrepair claim.”

“Landlords should ensure they have strategies in place to manage these types of cases with an emphasis on ensuring that the resident is kept informed, feels that the landlord is taking the issue seriously and that the matter is progressing.”

“Where specialist surveys are required, landlords should ensure the need is identified early on and that work orders are progressed in a timely manner.”

“The outcome of these surveys, and any other inspection at the resident’s property, should be routinely shared with, and explained to, the resident. This includes being clear where on any recommendations or actions that are not going to be followed up and the rationale for this to aid the resident’s understanding”