

Housing

Ombudsman Service

REPORT

COMPLAINT 202104235

Reading Borough Council

27 April 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 concerns the landlord's:
 - a. Handling of reports of damp, mould, and condensation affecting the property.
 - b. Complaint handling.

Background

2. The resident is a secure tenant. The tenancy started on 16 June 2016. The property is a two-bedroom mid-terrace house.
3. The landlord is a Council.
4. The resident has vulnerabilities. It is recorded on the landlord's system that the resident has mobility issues as a result of cancer treatment in 2017.
5. In her complaint raised with the landlord on 5 May 2021, the resident advised issues with water ingress, damp and mould were affecting her daughter's breathing who had to regularly take steroids to treat this. The resident also explained she was in recovery from cancer and chemotherapy treatment and was preparing for a mastectomy surgery. The issues had had an impact on her and her daughter's mental and physical wellbeing.
6. It is not the role of the Ombudsman to investigate if there was a causal link between reports of health issues experienced by the resident and her daughter and the actions of the landlord. The resident may wish to seek legal advice about this, as a personal injury claim may be a more appropriate way of dealing with this aspect of the complaint. As this type of claim is more appropriately dealt with by a court or other procedure, this allegation will not be investigated.

7. The resident complained about damp in November 2019 and the landlord sent the resident information about how to manage damp and condensation. Several inspections of the damp were carried out by the landlord over the next 6 to 8 months however, this service had not been provided with records from these inspections. Dates of these inspection appear to differ amongst the landlord's subsequent internal notes therefore it is not possible from the available evidence to establish the exact dates of these inspections nor the outcome of these.
8. This review will focus on the timeframe from November 2020 when the resident reported to the landlord that water was coming through the wall in her daughter's bedroom (the second bedroom), as this was within a reasonable timeframe of the resident's formal complaint raised on 5 May 2021. Any references to the resident's reports of damp and mould prior to November 2020 within this report, is for context only.

Summary of events

9. In November 2020, the resident reported that water was penetrating through the neighbouring party wall. The landlord noted that the neighbour owned their property. The landlord arranged for its surveyor to inspect the property on 20 November 2020 to establish where the damp was coming from. This service has not seen the outcome of this inspection although the landlord's subsequent internal stage two complaint notes state this survey revealed issues with adjoining roof of the neighbouring property.
10. On 5 May 2021, the resident raised a formal complaint with the landlord about the damp and mould. She stated that there was damp on the wall of the second bedroom that the landlord had previously advised was coming from her neighbour's property who shared this wall. This issue meant her daughter could not sleep in the bedroom. However, in addition, there was damp and mould "all over the property". She had previously been told this was due to poor wall and roof insulation. She said there was mould around the windows, with water and air coming through.
11. The resident said that she her first reported this to the landlord in 2019 and that the issues identified had not been addressed despite her chasing the repairs with the landlord several times. Her neighbour informed her that their home insurance could provide help to fix the issue on the wall of her daughter's bedroom, but they needed the details of the landlord's insurance provider. The landlord had not responded to her request for this information.
12. The resident said she felt "ignored" by the landlord and her housing officer offered little support. The resident said she had done "everything" that she could do reduce the impact of damp and mould but nothing had changed.

13. The resident advised she was in recovery from cancer and preparing for surgery. She was exhausted by having to “constantly chase up” the landlord about the issues rather than focussing on her health.
14. The resident said she would like the issues addressed and for someone to come to the property again to assess the damage done. She would also like to be informed how the issues in her daughter’s room could be fixed through her neighbour’s insurance provider.
15. On 13 May 2021, the resident called the landlord advising she had not received a response to her complaint.
16. On 21 May 2021, the resident contacted the Ombudsman advising that she was unhappy about the lack of response to her complaint about damp and mould, although she had received a letter from the landlord’s solicitor asking what items had been damaged by damp and mould.
17. On 27 May 2021, the Ombudsman wrote to the landlord requesting that it provide a stage one response to the resident’s complaint. In reply the landlord advised that it had referred the resident’s complaint to its insurers whom may have already contacted the resident to discuss her claim. It said it would investigate her complaint once the claims process had been concluded and it would update us at that point.
18. The landlord’s repairs team visited the property on 2 July 2021, to assess the outstanding repairs and dampness. Repairs were identified during the visit however the Ombudsman has not seen any records from the visit although the landlord agreed during the visit for an independent damp survey to be completed at the property.
19. On 20 August 2021, the landlord’s asbestos surveyor visited the property but was refused access. The Ombudsman has not been provided with any further details and it is unclear if an appointment had been scheduled with the resident for the survey to take place on 20 August 2021.
20. On 24 August 2021, an independent damp contractor attended the property to survey the damp. The report noted that:
 - a. Mould was present within the two bedrooms on the first floor, predominately affecting the external walls and sloping ceilings and around the window reveals trickle vents.
 - b. The tenant had shown photos of mould in the lounge on the external walls/behind the sofa.
 - c. There were no bathroom or kitchen extractor fans.

- d. They could not confirm that the guttering and rainwater goods were functioning correctly. (although signs of water marks on the joints/ wall suggest that there was a problem).
- e. The external ground level was at least 150mm below the level of the Damp Proof Course as recommended by current building regulations.
- f. The windows are double glazed units with the benefit of trickle vents. All trickle vents were open at the time of the survey.
- g. There was an area of blown plaster left of the bedroom window.

21. The report recommended:

- a. Extractor fans in the kitchen and bathroom to be installed.
- b. A further radiator to be installed to the rear of the lounge to increase surface temperature during the colder months.
- c. Removal of area of blown plaster and replaster -approximately 4 sqm.
- d. Resident to check the guttering and downpipes at times of heavy rain and report any leaks or overflows directly to the landlord.

22. The report concluded that the property suffered from mould and condensation due to inadequate ventilation and heating. It stated that if the condensation problem continued after the landlord had installed extractor fans in kitchen and bathroom, then it recommended installing a whole house ventilation system (PIV).

23. On 1 October 2021, the Ombudsman advised the landlord that the resident had informed us that the water penetration was still affecting her home. She had advised that a damp specialist had attended in August 2021, however no action had been taken since then. We asked the landlord to provide a stage one response to the resident's complaint.

24. On 2 November 2021, the landlord provided the resident with a stage one complaint response. It acknowledged that her complaint was about ongoing issues with damp in her property.

25. It advised that it had investigated her complaint and said it was sincerely sorry for any distress caused to her during the course of this process and for the delay in responding to her complaint.

26. Within its response, it acknowledged that the damp in the second bedroom was inspected and found to be as a result of a defect on the neighbouring private property. It said the resident was advised to go through the neighbour's insurance. Following its most recent visit on 2 July 2021, its housing manager

provided her with a contact number to help with the claim and it said it had also advised her neighbours on the appropriate repairs required.

27. The landlord stated that during its July 2021 visit, the following issues were identified:
 - a. black mould behind the washing machine.
 - b. damaged back panel for the sink unit.
 - c. no extractor fans in the kitchen and bathroom and.
 - d. UPVC trims around some doors and windows had come loose.
28. The landlord stated during its visit it had also it agreed to arrange an independent specialist damp report. It stated it had now received the independent damp report and it had authorisation to proceed with their recommendations including: an extra radiator in the living room, 4 sqm of plastering, extractor fans in the bathroom and kitchen and a whole house ventilation system to aid the extract fans.
29. It stated that all the repairs and remedial works identified during its visit along with the recommendations in the report had been raised and allocated to the relevant contractors. The landlord said that once they have availability, they would contact her directly and arrange access to complete the works. It had also passed on to its glazing contractors the works to replace 5 x double glazed units identified as 'blown'.
30. The landlord apologised for the time taken to resolve the issues however said had it installed the extractor fans as previously proposed, it believed it would be "further forward" in resolving the dampness issues.
31. On 25 November 2021, the resident raised a stage two complaint with the landlord. Within her complaint, she said that she had not expected it to take this long for the landlord to resolve the issues. She raised a concern about the surveyor refusing to access the loft during a specialist damp survey.
32. On 13 January 2021, the landlord and a sub contractor met with the resident at the property to establish all further areas affected by the leaks including all possible remedial works that may be carried out in order to achieve a more suitable solution to resolve the damp issues surrounding the property.
33. The landlord carried out a stage two investigation. Its reports dated 23 January 2022 note the findings as:
 - a. Its visit in November 2020 to assess the damp revealed issues with the adjoining roof. It made "slow progress" in engaging with the owners and

explaining the impact that the disrepair of their roof was impacting upon the property.

- b. On 20 August 2021, the resident refused access to its asbestos surveyor. An asbestos survey was necessary to establish if there was asbestos in the property before undertaking particular works. The resident had agreed to allow an asbestos survey and a new appointment had been made.
 - c. During the damp survey on 24 August 2021, the loft hatch was not accessed due to the dangerous position of the hatch over the staircase. It had previously refused the installation of a loft ladder to the hatch as the location of the hatch was in a difficult to access location and it did not encourage the use of the loft space for storage purposes.
 - d. During the visit on 13 January 2021, it assessed the loft and to allow future maintenance work in the loft space, it was agreed to move the loft hatch so that it was easier to access, and this had been ordered for completion by the end of February 2022.
 - e. During the visit on 13 January 2021, the resident requested for insulation in the property to be addressed and it agreed to have a survey completed to assess the missing level of insulation from previous works that may require replacement or topping up.
 - f. It reiterated that the resident previously refused to have the extractor fans fitted due to her belief that she could be seen through the fan. It explained it did not fit open style fans and the ones it fitted had louvred controls within them. It said once the asbestos survey had taken place, the fan to the bathroom could be fitted. In the kitchen, it was noted that previous ventilation ducts had been closed off and it would now identify a suitable location to install that fan, again following the findings of the asbestos survey.
 - g. Regarding the outstanding external works to the gutters, masonry painting, repointing, a rebuild of the front steps, and a window service, it had discussed these with the planned maintenance supervisor, and they had confirmed that they were in this current financial year's work programmed and would be concluded by 31 March 2022.
 - h. As long as access was provided it expected that works would be completed by the end of April 2022, although it noted it had no specific insulation works identified at this stage.
34. On 25 January 2022, the landlord provides a stage two final response letter. It summarised its understanding of the resident's complaint to be about the delay in resolving the condensation and damp issues in her property.
35. The landlord referred to the remedies suggested by both its repairs team and the damp and mould specialist and stated that it was confident that the agreed works

would reduce the condensation within her property. It stated that it was important that everybody “worked together” and that the resident followed the advice given alongside the ventilation and insulation works.

36. Regarding the penetrating damp coming from the neighbouring property, the landlord stated this was identified early on in the process, and it accepted that it had taken some time to remedy. It explained that this property was privately owned and said it could not simply complete the necessary works as it would do on its own property. It had to liaise with the owners and noted that a repair had now taken place.
37. The landlord acknowledged that communication could have been improved and the stage one response should have included a request for the resident to provide access for the asbestos survey as this could have helped speed the process up.
38. On 10 February 2022, the resident told us she is unhappy the landlord is trying to blame her for not letting operatives in and not ventilating her property well enough. She said there were still outstanding repairs including asbestos under her kitchen sink and she said the wall insulation had not yet been installed.
39. In response to the Ombudsman’s information request, on 25 May 2022, the landlord told us that following the roof repair it also agreed to carry out internal wall cavity insulation to improve the quality of air tightness and reduce the heat loss in the dwelling. It confirmed that this work was carried out on 11 April 2022. It also installed an additional radiator on 12 April 2022. Furthermore, the landlord said, as a goodwill gesture it also renewed the existing radiator in the lounge situated on the front external wall. It also said the area behind the washing machine had been mould washed and treated. Regarding the extractor fans, as the original ventilation for the extractor fan in the bathroom covered by wall units, this presented a problem, and a decision was to install a window fan which was being progressed.
40. On 20 June 2022, the resident advised the Ombudsman that the works were ongoing and there had been problems installing the extractor fans.
41. On 6 March 2023, the resident advised loft insulation was resolved “last week”. However, “everything else” remained unresolved and she has not been informed of when the repairs would be completed.

Assessment and findings

The landlord’s handling of reports of damp, mould, and condensation affecting the property.

42. Section 11 of the Landlord and Tenant Act 1985 places a statutory obligation on the landlord to keep the structure and exterior of the property in repair. This obligation on the landlord is echoed in the tenancy agreement.
43. The landlord also has a responsibility under the Housing Health and Safety Rating System, introduced by The Housing Act 2004, to assess hazards and risks within its rented properties. Damp and mould growth are a potential hazard and therefore the landlord is required to consider whether any damp and mould problems in its properties amount to a hazard and require remedying.
44. In the landlord's 'repairs handbook' and 'damp letter' sent out to residents, it advises that condensation is the most common cause of damp and mould, and it explains what residents can do to avoid and manage condensation and damp to reduce the risk of mould growth. It advises residents how to 'make less moisture', 'increase ventilation' and 'keep your home warm'.
45. The causes of damp and mould can vary and range from condensation as a result of moisture in the property but can also be indicative of leaks or structural issues with the building as well as inadequate insulation and ventilation. Information on the landlord's website does explain such causes. However, overall, it is clear that the focus of the information the landlord provides to residents on condensation, damp and mould is on how they should manage and deal with issue. As the root causes of damp and mould can often relate to structural defects or aspects of the building that the landlord is responsible for, it is important that the landlord's materials recognise this in order to strike the right tone. This approach is explained in the Ombudsman's Spotlight on Damp and Mould, therefore, a recommendation has been included below for the landlord to read this report and review its information provided to residents to ensure it does not put the onus solely on them to address the issue.
46. During the timeframe investigated, the landlord identified that repairs and remedial works were needed to address the damp and mould identified in several rooms of the property. It also found that defects with the neighbouring property's roof, was causing a leak which was affecting the wall of the second bedroom. Despite this, it is noted that some of the language used in its communications with the resident, inferred blame. This was particularly apparent in its stage one response whereby the landlord mentioned that the trickle vents in her windows were found shut although in the most recent inspection, the report states they were open. The landlord also said it would have been further forward in resolving the issues had she not previously refused to have extractor fans installed. Further, its comments also seem to put the onus on the resident to progress the work needed to the neighbouring property, whereas it was more appropriate in the circumstances for it to do so (this matter is considered further below).

47. Overall, the landlord's written responses were defensive in tone and in her reply, the resident said she felt she was being 'blamed' despite doing everything she had been told to do. Again, our Spotlight report on Damp and Mould highlights the importance of landlords communicating in a manner that reflects a shared responsibility to tackle such issues and which avoids residents feeling they have been unfairly blamed.
48. As previously mentioned, in November 2020, the landlord identified that the cause of water ingress on the wall of the second bedroom was due to a leak from the neighbour's roof. As the neighbouring property was privately owned, the responsibility to repair the roof rested with the owner. Nonetheless, as the landlord was aware that the issue was causing damage to the property, it had a duty to take steps to progress the repair with the owners. This Service has not seen evidence of the landlord's communication with the neighbour from when it identified the problem in November 2020 until the roof was repaired in January 2022. In its stage two investigation notes, the landlord acknowledges that it made "slow progress in engaging with the owner" and in May 2022, the landlord told this Service that as a repair carried out by the owner did not resolve the leak, it decided to carry out the roof repairs at its own cost which was completed in January 2022. Again, we have not seen evidence of its engagement with the neighbour at any stage however, the landlord's job and payment records confirm it arranged for a repair to the neighbour's roof in January 2022 that resolved the water ingress.
49. Therefore, the 15-month timeframe taken to resolve the source of the water ingress indicates there was an unreasonable delay with addressing this issue. Whilst, for the reasons explained above, the landlord is not directly responsible for the delay, on balance the evidence indicates that it could have been more proactive in getting the issue addressed more quickly. Nonetheless, as it ultimately took ownership of the issue and provided the repair itself after no effective fix had been provided for more than a year, this demonstrates the landlord acted reasonably in this regard.
50. In regard to the damp and mould throughout the rest of the property, as explained above, this review has not considered events during the timeframe prior to November 2020. However, on balance, the landlord was aware, or ought to have been aware, of the damp and mould problem at the property at the date of this inspection. Therefore, it is reasonable to expect the landlord at this stage, to have taken steps to address the damp and mould over the subsequent months, however, there is no evidence of it doing so. The lack of action taken to address the damp and mould indicates the landlord was not taking the issue sufficiently seriously during this period.
51. Following the resident's formal complaint raised on 5 May 2021, regarding the lack of any resolution to the damp and mould problem, the landlord inspected the

property again in July 2021 and identified the need for repairs. It also agreed to having an independent damp contractor carry out a survey. This took place on 24 August 2021. Therefore, its inspection of the property and engagement of a specialist damp contractor to also assess the damp and mould issue shows the landlord showed a willingness to properly investigate the causes of the damp, as such it acted appropriately here.

52. The inspection report from the damp specialist confirmed the presence of damp and mould and identified the cause as inadequate ventilation and heating. Within the report, it was noted the windows were double-glazed and had trickle vents that were open at the time of the inspection, however, it found that there were no extractor fans in the kitchen and bathroom. The report stated however that it understood the landlord was due to install these. The report also recommended various other repairs and remedial works including an additional radiator in the lounge to allow satisfactory means of heating this room and installation of a PIV ventilation unit if the issues were ongoing after installation of the extractor fans.
53. In the stage one response dated 2 November 2021, the landlord confirmed that all the repairs and remedial works identified by the damp specialist and by its repair team during the July 2021 inspection had been raised with contractors and said that they would be in touch with her to arrange access to complete the works.
54. As such, by agreeing to carry out all of the repairs and remedial works recommended, this demonstrates a commitment by the landlord to resolve the damp and mould issue.
55. In her stage two complaint the resident raised a concern about the loft not being accessed by the damp specialist. The landlord's stage two investigation notes state this was because of "the dangerous position of the hatch over the staircase". It is noted however the landlord subsequently inspected the loft when it attended the property on 13 January 2022, and it agreed to move the loft hatch so that it was easier to access. The landlord's notes at the time state this work was expected to be completed by the end of February 2022.
56. In its final response on 25 January 2022, the landlord referred to the works that had been approved to be undertaken and said it was confident that once completed, the damp and mould issue would be resolved. The landlord did not give an expected timescale for completion of the works although its stage two investigation notes refer to the end of April 2022. Whilst this review has not assessed the landlord's actions during the timeframe after the final response, we would expect the landlord to show it has followed through with the repairs promised in its final response.

57. In response to our evidence request on 25 May 2022, the landlord advised that apart from the roof repair, the following works to the property had been completed:

- a. Installation of internal wall cavity insulation (11 April 2022).
- b. Installation of an additional radiator and as a goodwill gesture, renewal of existing radiator in the lounge (12 April 2022).
- c. Removal and replacement of plaster to the affected wall of the second bedroom (9 sqm).
- d. Removal of the back door to re-insulate around it as well as well as external paintwork carried out for reduction of damp in the external rear wall. Jet washing and gutter cleaning were also carried out here.
- e. Installation of a new loft hatch on 28 March 2022.
- f. Area behind the washing machine had been mould washed and treated (November 2021).

58. As the works undertaken do not include all the repairs recommended or promised, for example the extractor fan in the kitchen, a window fan in the bathroom and a whole house ventilation system to aid the extract fans, on 5 April 2023, the Service asked for an update from the landlord in regard to any outstanding repairs. This has not been provided as such an appropriate order has been included below.

59. In summary, the landlord took appropriate steps to investigate the reports of water ingress, damp and mould and then identify and agreed to undertake multiple repairs to address the damp and mould. However, due to the overall extended timeframe taken to commence the repairs to address damp and mould in the property, on balance it would have been appropriate for the landlord to also offer the resident compensation for stress, inconvenience and time and trouble. Furthermore, because the evidence indicates that not all of the repairs recommended or promised during the complaint process were delivered within a reasonable timescale of its final response, this is further evidence of the landlord not doing enough to resolve the complaint.

60. Given the failures identified in this report, it is reasonable for the landlord to pay the resident £700 in compensation for stress and inconvenience. This is in accordance with the Ombudsman's Remedies Guidance which recommends between £100 to £1000 for maladministration where a failure has had a significant impact on the resident.

Complaint handling.

61. The landlord operates a two stage corporate complaints procedure which requires the landlord to provide a stage one complaint response within 20 working days at stage one, and within 30 working days at stage two.
62. The resident raised a formal complaint with the landlord on 5 May 2021. On 27 May 2021, the landlord told the resident that it had referred her complaint to its insurers and had decided to suspend the complaint until the conclusion of this claim. The resident's complaint concerned the landlord's failure to address damp and mould in her property. Whilst it was reasonable for the landlord to refer any claim for damage to property to its insurers, in the main, the resident's complaint concerned the service it had provided in response to her reports.
63. The Ombudsman's Complaint Code (the Code) makes clear landlords are required to accept complaints unless there is a valid reason to do so. Whilst the Code sets out exclusions, they do not apply to the resident's case. Therefore, its decision to "suspend" the complaint was inappropriate and unjustified.
64. The landlord subsequently provided a stage one response on 2 November 2021 after intervention from the Ombudsman. However, its decision to put on hold the complaint prolonged the complaints process for six months and ultimately affected the timeframe taken to provide a resolution to the issues.

Determination (decision)

65. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration by the landlord when handling reports of damp, mould, and condensation affecting the property.
66. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration by the landlord when handling the resident's related complaint.

Reasons

67. Whilst the landlord eventually agreed to undertake extensive repairs and works needed to address the damp and mould problem, there were unreasonable delays by the landlord, and it missed opportunities to act sooner. This caused the resident additional stress and inconvenience.
68. The landlord's refusal to accept the resident's complaint and suspend it for six months was unreasonable and this delayed conclusion of the complaints process.

Orders and recommendations

69. The Ombudsman orders that the landlord:

- a. Provide a written apology to the resident for the failings identified in this report.
- b. Pay the resident £900 in compensation comprising:
 - i. £700 for failings in handling reports of damp, mould, and condensation affecting the property.
 - ii. £200 for complaint handling failures.
- c. Confirm in writing to the resident and to the Ombudsman which of the repairs identified in the complaints process to address the damp and mould have been provided and which are outstanding. The landlord should include a timescale of when any outstanding repairs will be delivered.
- d. Comply with the above orders within four weeks.

70. The Ombudsman recommends that the landlord:

- a. Read our Spotlight on Damp and Mould and review its information provided to residents.