

Housing

Ombudsman Service

REPORT

COMPLAINT 202219034

Broxtowe Borough Council

3 August 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 the resident's:
 - a. reports of damp and mould in her property;
 - b. request for compensation for her personal belongings that had been damaged by the damp and mould.
2. This Service has also considered the associated complaint handling.

Background

3. The resident is a secure tenant of a two-bedroom property owned by the landlord.
4. On 30 April 2022, the resident contacted the landlord's out of hours repairs service to report an issue with damp and mould in her bedroom. She was eight months pregnant and had discovered a significant amount of mould covering her bedroom floor, her mattress and bed frame. The landlord attended the resident's flat on the next working day and attended again on 1 June 2022.
5. On 29 June 2022, the resident made a formal complaint to the landlord. She said that there had been ongoing damp and mould issues in her home since she moved into the property in March 2022. She said that the landlord had inspected her property, but it had lost its subsequent report and had to repeat its visit to her. She stated that she had suffered significant damage to her furniture and personal belongings. She said that her son had recently been born and she was living out of one room.
6. The resident's social worker emailed the landlord on 16 August 2022, expressing their frustration with its response to the damp and mould in the resident's

property. She had called the landlord on multiple occasions. She stated that the landlord never had records of her previous calls and neither did it have records of any works it had completed at the resident's property. The landlord had been unable to advise the social worker of the next steps it would be taking to resolve the issues.

7. On 26 August 2022, the landlord issued its stage one complaint response. It upheld the resident's complaint and apologised for the length of time it had taken to resolve the damp and mould issues in the resident's property.
8. The landlord attended the resident's property on 30 August 2022 to carry out work to her skirting boards and to fit an air vent. The works were completed on 2 September 2022. A job raised to complete a three-stage damp and mould treatment at the resident's home was cancelled as the resident had agreed that there was no further sign of mould in her home.
9. The resident made a request for compensation as reimbursement for personal belongings damaged by the mould in her home. The landlord offered the resident £210 compensation over the telephone on 25 October 2022. This was made up of £160 for the damage to the resident's bed frame as a result of the mould and £50 for the delays she had experienced. On the same day, the resident requested that the landlord escalate her complaint to stage two of its complaints process as she was unhappy with its compensation offer.
10. On 22 November 2022, the landlord issued its stage two complaint response to the resident. It apologised for the delay to the follow up inspection that had taken place on 30 August 2022. It had not found evidence that the damp was being caused by a structural issue with the property. It did not therefore believe that further works were required. It confirmed advice that it had previously given to the resident about managing the moisture levels in the air in the property. It confirmed it felt its stage one compensation offer had been appropriate, but it had decided to award an additional £100 as a goodwill gesture, bringing the final compensation offer to £310. The letter did not confirm that it was the landlord's final response to the complaint.
11. The landlord reissued its stage two complaint response to the resident on 19 December 2022, following contact from this Service. The second version of the complaint response made it clear that it was the landlord's final response to the resident's complaint. This allowed the resident's complaint to progress through the Ombudsman's process.
12. The resident asked the Ombudsman to investigate. She has told this Service that some mould has returned in her home. She would like the landlord's offer of compensation to be reviewed and increased. The resident would also like to be considered for a move to an alternative property.

Assessment and findings

The landlord's handling of the resident's reports of damp and mould in her property

13. The resident is a secure tenant, which means the landlord is legally obliged to carry out most repairs, in most circumstances, in her home. Relevant legislation says that the landlord must complete repairs within a "reasonable" timeframe. It is typically understood in the sector that best practice is to resolve non-emergency repairs within one month unless they are highly complex. However, some repair issues will require a response within a shorter timescale if they present a significant risk to health and safety.
14. The landlord attended the resident's address to inspect the reported damp and mould issue within one working day of receiving the out of hours report from the resident. The landlord was aware that the resident was pregnant, which meant the risk to her from damp and mould would have been more substantial. Therefore, this was an appropriate response from the landlord. However, it is not clear what works were carried out at the resident's property on that visit or during the subsequent visit carried out almost a month later. Photographs of the damage to the resident's belongings suggest that there was a significant issue with mould at her property that needed to be resolved in a timely manner. The lack of repair records is a failing by the landlord. It is essential that landlords keep repair records detailing any works carried out to manage repairs and also to provide this information to the Ombudsman when required as part of our complaint investigations.
15. Following the landlord's visit to the resident's property on 1 June 2022, there is no evidence that it attended her home again until 30 August 2022. The impact of this delay could reasonably be assessed to have been more significant when considering that the resident gave birth to her son in this time. The resident made a formal complaint to the landlord on 29 June 2022 and explained that she was living out of one room. However, it still did not take appropriate action to resolve the issue. The resident's social worker intervened on the resident's behalf on multiple occasions in August 2022 before the landlord booked and carried out follow on works at the resident's home. This period of three months was an unreasonable delay to the landlord's response to the resident's report of damp and mould, especially considering the resident's circumstances. It should not have been necessary for the resident's social worker to contact the landlord multiple times before it took steps to meet its obligations to the resident.
16. The evidence shows there were times when the resident attempted unsuccessfully to communicate with the landlord in order to receive updates on its response to the damp and mould, and her complaint. The landlord sent the resident an email on 11 September 2022 referring to her "several phone calls this

week” and its “lack of contact regarding the works”. On 24 October 2022, the landlord mentioned in an internal email that the resident had called it “several times this morning” asking for an update. A further internal email on 7 November 2022 described the resident calling the landlord in a state of distress explaining that it does not call her back when it promises to. There should not be a burden on the resident to pursue the landlord for appropriate levels of communication. It would have been good practice for the landlord to have proactively communicated with the resident to reduce the need for her to request updates from it. The landlord should review its processes to identify areas for improvement in how it communicates with residents. The landlord should be clear in its timescales for responding to the resident’s requests for updates and it should follow through on promises to contact the resident within those timescales.

17. The repairs records that the landlord has provided to this Service in relation to this complaint do not contain any notes relating to the first two appointments it carried out at the resident’s home on 3 May 2022 and 1 June 2022. It is not clear what took place during or after the landlord’s visits to her home on these two occasions. In her formal complaint, the resident stated that the landlord had “lost” the report written up following its first visit to her property and it had been necessary for the landlord to repeat the visit as a result. Communication from the resident’s social worker to the landlord indicated there were failures to make appropriate contact notes as the social worker stated that the landlord did not have records of the previous calls they made. The social worker said that the landlord had also been unable to explain to her any previous steps it had taken to respond to the resident’s reports of damp and mould in her home or indicate what any next steps would be. Poor record keeping can make it difficult for the landlord to provide a good service as it may not be clear what has been done previously and what the next steps should be. The landlord should review its record keeping procedures to ensure that appropriate records are kept of all contact with the resident, her advocates, and its visits to her property. These records should be available as appropriate to members of staff who may routinely communicate with the resident, such as customer service teams.
18. The landlord said it had not identified any structural issues within the resident’s property that could be causing the damp and mould in there. It had initially offered advice to the resident on managing the moisture levels in her home to avoid creating conditions where mould grows. The landlord was within its rights to offer the resident appropriate advice on environmental factors which could cause damp and mould. However, it should also ensure that it is satisfied that there is no other cause of the damp and mould. It should assess if there are any reasonable steps it could take to resolve it, such as improving ventilation in the property. The landlord was not satisfied that there was no other cause of the damp and mould as it did not assess the resident’s property for suspected rising

damp until August 2022. It should therefore have completed its investigations without delay to identify the cause of the damp and mould and resolve it.

19. The landlord should consult the Ombudsman's Spotlight Report on damp and mould - available on the Ombudsman's website - and self-assess its current approach to these issues against the recommendations in the report with a view to implementing them as necessary. The recommendations include avoiding "automatically apportioning [applying] blame [to the resident]", responding in a timely manner to reports of damp and mould, and ensuring regular communication with the resident.
20. The resident has indicated that she would like to move to an alternative property as a result of the issues she has been experiencing with damp and mould in her home. The landlord should ensure that the resident has access to appropriate advice about her rehousing options. The Ombudsman would not order the landlord to move the resident to another property at this stage as the landlord would need to assess her application for rehousing and if it agrees she should move, it would need to find her a suitable property from within its stock. The Ombudsman cannot comment on the outcome of the resident's application for rehousing as we have not seen evidence that an application has been made and if so, what the result of this was. If the resident is dissatisfied with the landlord's handling of a request for rehousing, she may be able to make a separate complaint about this to the landlord.

The landlord's handling of the resident's request for compensation for her personal belongings that had been damaged by the damp and mould

21. The resident asked the landlord to reimburse her for her damaged belongings after it had issued its stage one complaint response. She emailed the landlord a list of items that had been damaged by the mould and the cost of replacing each item. She asked the landlord to reimburse her in full for the items that needed replacing. The landlord offered her £160 for her bed frame (plus £50 to recognise the delay) over the telephone on 25 October 2022. It did not offer compensation for any of the other damaged items. The resident had to ask the landlord to put its offer into writing, which should not have been necessary for her to request as the landlord should have done this automatically. Verbal offers that have not been appropriately recorded by the landlord are more difficult for the resident to effectively challenge if she was unhappy with the offer.
22. The resident has told this Service that she felt the landlord blamed her for the damp and mould in her property. She stated that she felt the landlord had made this clear when making its offer of compensation. This Service has seen evidence that the landlord made a reduced offer of compensation to the resident because it felt that she could have avoided the damage to most of her belongings by "moving" them, which was inappropriate in the circumstances.

23. The resident lives in a two-bedroom flat, with both bedrooms having been affected by the damp issues. It is not clear to where the resident could reasonably have moved a large volume of personal items, including furniture, in order to be sure that they would be unaffected. It was also the case that the resident first identified how serious the mould problem was after her belongings had been affected. She could not have been expected to move her belongings before she was fully aware that her belongings were at risk of damage. She was also heavily pregnant, and it would have been inappropriate for her to move lots of items, including furniture. There is no evidence that if she had moved the items, that they would have been unaffected by the mould, especially considering the landlord's delay to responding satisfactorily to the issue. This was an unreasonable approach for the landlord to take towards the resident's compensation request. It also indicates that the landlord had not fully considered the resident's circumstances and what would be reasonable in those circumstances.
24. In offering the resident reimbursement of £160 for her bed frame, the landlord accepted that it was liable for the damage that had been caused to it by the damp and mould in her home. It was unreasonable to therefore suggest that the resident was responsible for the damage caused to her other belongings. The landlord should review the resident's claim for reimbursement for her damaged items and make a new compensation offer to her. The landlord would be entitled to ask for evidence to support the resident's claim such as receipts and/or photographs of the damaged items but it should be reasonable in any requests, and it should take into account that the resident may not have receipts for every damaged item.

The landlord's handling of the resident's complaint

25. The resident made a formal complaint to the landlord about the damp and mould issues at her property on 29 June 2022. In its stage one complaint response, the landlord stated that the resident made her complaint on 16 August 2022. This Service has not seen evidence that the resident complained on this date (although her social worker had sent an email to the landlord that day). The landlord provided this service with the resident's email of 29 June 2022 when providing evidence of the resident making her complaint to it. The resident did not use the word 'complaint' in her email. However, it is not necessary for the resident's communications to contain the word 'complaint' before it can be treated as such by the landlord. This is in accordance with the Ombudsman's Complaint Handling Code ('the Code') which sets out our expectations of landlords' complaints handling. The resident made it clear that she had made a previous service request from the landlord and that she was disappointed with the service she had received. This was all that was required for the landlord to treat the resident's email as a complaint by starting its complaint process.

26. The landlord should have responded to the resident's email of 29 June 2022 in line with its complaints process. This would have meant acknowledging her complaint within five working days and issuing its formal stage one complaint response within 10 working days. However, there were nearly two months between the resident complaining to the landlord and the landlord issuing its stage one complaint response on 26 August 2022. This was an unreasonable delay. In its complaint response, the landlord did not acknowledge or apologise for the delay as it had incorrectly stated that the resident complained on 16 August 2022. An offer of compensation in recognition for this failing will be appropriate.
27. The landlord did not offer compensation or any other remedy to the resident in its stage one complaint response. It considered the resident's request for compensation at a later stage and made an offer to her by telephone nearly two months following the complaint response. The Code states that complaint responses should be in written format and they should include information about any remedies that the landlord had decided to award. The landlord should have included any offer of compensation in the stage one complaint response. If it had not had the appropriate opportunity to fully consider how much compensation to award, it should have included information in the complaint response about any next steps required to complete its assessments. This would have been appropriate because the resident may not have known she could ask the landlord to pay compensation as a remedy to her complaint.
28. The resident asked the landlord to escalate her complaint to stage two of its complaint process on 25 October 2022 as she was unhappy with its compensation offer. The landlord acknowledged the complaint on 27 October 2022 and issued its stage two complaint response on 22 November 2022. This was in line with its complaints process. The stage two complaint response did not make it clear that it was a final complaint response. This caused a delay to the resident's complaint becoming 'duly made' to the Ombudsman and starting the next stage of our process. The landlord should ensure that it includes this information on its complaint responses to avoid confusion about which stage a complaint is at and how the resident can escalate their complaint further if they wish to.
29. The landlord offered the resident £310 compensation to remedy its failings in its response to the damp and mould issues at her home. The landlord does not currently have a compensation policy but it has stated that it is due to review this, which this Service encourages. The Ombudsman's remedies guidance (published on our website) sets out our approach to compensation. The remedies guidance suggests that an award of £350 for distress and inconvenience may remedy cases where maladministration has been found and the impact on the resident is not considered to have been permanent. Examples include the

resident having to repeatedly chase for responses and a failure over a considerable period of time to act in accordance with policy.

30. The landlord should pay an additional award of £250 to recognise the delay in handling the resident's complaint at stage one of the landlord's complaint process. The Ombudsman's remedies guidance suggests this would be an appropriate award where there was a significant failure to follow complaint procedure which led to delays in resolving the complaint issue.
31. This Service also considers it appropriate for the landlord to award the resident compensation based on rent. This would be based on the resident's weekly rent at the time of the issues, the number of rooms that were significantly affected by the damp and mould, and the number of weeks the issues were ongoing from a week after the date of the resident's first report to the landlord, as detailed further below.

Determination

32. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord's handling of the resident's reports of damp and mould in her property.
33. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord's handling of the resident's request for compensation for her personal belongings that had been damaged by the damp and mould.
34. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord's handling of the resident's complaint.

Orders

35. The landlord is ordered to apologise to the resident for its handling of her reports of damp and mould and the subsequent impact this had on her. The apology should be issued within 28 days of the date of this determination.
36. The landlord is ordered to pay the resident £1,090 in compensation, made up of:
 - a. £540 of compensation based on rent. This has been calculated based on the resident's weekly rent at the time of the issues and approximately 40% of her property being affected by the damp and mould over a period of 16 weeks;
 - b. £350 in recognition of the distress and inconvenience caused to the resident;

- c. £250 for the delay in handling the resident's complaint at stage one of the landlord's complaints process.

37. If the landlord has already paid the resident the £50 for delay to repair offered at stage one of its complaint process and the £100 goodwill gesture offered in its stage two complaint response, these amounts can be deducted from the total. It should make the payment directly to the resident within 28 days of the date of this determination.

38. The landlord is ordered to review the resident's claim for compensation as reimbursement for her damaged belongings. When calculating its offer it should consider any evidence, including receipts, that the resident is able to provide. Where receipts are unavailable, the landlord should consider what would be a reasonable amount to offer for each item. It can deduct any amount that has already been paid to the resident as compensation for damaged belongings, i.e. the £160 for the bed frame. The landlord should make its renewed offer to the resident within 28 days of the date of this determination. If the resident is dissatisfied with the revised offer, she can raise this as a new complaint through the landlord's complaints process.

39. The landlord is ordered to carry out a review of this case to be carried out by a senior member of staff. It should assess its response to the issues in this complaint and identify where improvement is needed in the following areas:

- a. its response to reports of damp and mould, with reference to the recommendations made in the Ombudsman's Spotlight Report on damp and mould, available online via the Ombudsman's website;
- b. communication with residents about repairs;
- c. record keeping;
- d. complaint handling.

40. Where areas for improvement are identified, the landlord should make an action plan designed to address these areas. The review and action plan should be provided to this Service within 8 weeks of the date of this determination.

Recommendations

41. The resident has indicated in correspondence with the Ombudsman that the damp and mould may have returned at her property. Therefore, the landlord should carry out an inspection of the resident's property. It should assess for areas affected by damp and mould and respond appropriately to any issues identified in line with its repairs policy.