

Housing

Ombudsman Service

REPORT

COMPLAINT 202008231

Broxtowe Borough Council

1 July 2021 [amended 20 August 2021]

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 complaints are about the landlord's:
 - a. Handling of repairs to the shower.
 - b. Response to concerns that were raised about the replacement shower.
 - c. Handling of the formal complaint.
 - d. Response to concerns that were raised about the resident's mother injuring herself when using the replacement shower.

Jurisdiction

2. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint will not be investigated.
3. Paragraph 39(i) of the Scheme states that the Ombudsman will not consider complaints which, in his opinion, '*concern matters where the Ombudsman considers it quicker, fairer, more reasonable or more effective to seek a remedy through the courts, a designated person, other tribunal or procedure*'.
4. After carefully considering all the evidence, in accordance with paragraph 39(i) of the Housing Ombudsman Scheme, complaint d, as set out above, is outside of the Ombudsman's jurisdiction.
5. The resident's concerns in relation to the use of the low wattage shower, and her belief that it resulted in her mother's fall are noted and understood. However, this is not a matter that the Ombudsman can investigate given that it concerns the

issue of liability. Such decisions are most appropriately made by either an insurer or the courts as these bodies can establish where liability lies, the issue of causation and then whether any damages should be awarded.

6. This is a matter that falls outside of the Housing Ombudsman's remit, and therefore has not been investigated as part of this complaint. However, the Ombudsman has assessed how the landlord responded to the concerns that were raised by the resident in relation to this when it issued its formal complaint response.

Background and summary of events

7. The resident is a joint tenant of the landlord's property. She resides at the property with her mother. The property is a three bedroom mid-terrace house. The resident has advised that her mother is partially sighted.

Landlord's obligations, policies and procedures

Repairs

8. The landlord's repairs and maintenance responsibilities include – the structure and exterior of the property, external decoration, space and water heating equipment (where installed by the landlord), plastering, common areas, kitchens and bathrooms.
9. The Repair Handbook (the handbook) states that "an emergency repair is where there is serious risk to the health and safety of the property occupants, or where their welfare would be at risk". The handbook provides some examples of such repairs including – no heat or hot water, serious water leaks, total loss of electric power, blocked waste or soil pipes and toilet not flushing, where there is only one toilet at the property.
10. The handbook does not provide details of any service standards where non-emergency repairs are concerned – with the exception of those included under the Right to Repair scheme.

Complaints

11. The landlord has a two-stage complaint process. Its Customer Complaints Procedure (the procedure) states that the landlord will take the following steps on receiving a complaint:
 - a. Send an acknowledgement of the complaint within 3 working days.
 - b. A senior officer will conduct a thorough investigation of the complaint and provide a response directly within 15 working days.

- c. Where it is not possible to respond within these times, it will contact the resident to advise them of an estimated date of response.

12. If residents are unhappy with the stage one response, they can progress to stage two. The complaint will be referred to the Complaints Team, who are not involved with the stage one investigation. If after receiving the stage two response, the complainant can refer their complaint to the Local Government and Social Care Ombudsman or Housing Ombudsman.

Summary of events

13. On 11 March 2020, the resident contacted the landlord to report that the electric, over-the-bath, shower was broken. A job was logged for 19 March so that the shower could be inspected, and a repair completed, as necessary. The resident says that the member of staff in the contact centre had advised that they would call back if the job could be brought forward.

14. On 13 March, as they had not heard from the landlord, the resident called the contact centre to find out if an earlier appointment could be booked. The resident says that they were unable to use the bathtub owing to mobility issues and therefore wanted to know if the repair could be completed at an earlier date. The resident says that during the conversation on 13 March, it was established that the notes from 11 March did not detail that a call back would be made to confirm whether an earlier appointment could be scheduled.

15. It is not clear what transpired following this; however, the landlord contacted the resident on 16 March to advise that the repair could not be expedited. The resident was unhappy with this, and said that she wished to make a formal complaint. Internal discussion took place between landlord staff, and a further call was made to the resident later that day. The member of staff was unable to speak with the resident, and so a voicemail message was left. However, it was explained that the repair was not an emergency; and that the appointment for 19 March would have to be postponed owing to the then emerging situation regarding the Covid-19 pandemic.

16. The landlord's Interim Housing Repairs Assistant Manager (the manager) subsequently spoke with the resident on 17 and 18 March to discuss the decision not to treat the repair as an emergency. It was explained that as there was a bathtub, and hot water, the residents had access to washing facilities.

17. The landlord issued its stage one response to the complaint on 14 April. In its letter, it said:

- a. On 11 March, the resident called to inform the repairs department that the electric shower had broken. A job was logged for 19 March for an electrician to check the shower.

- b. When deciding on the priority for every repair, it must consider many factors. As the residents have a bath at the property, and had hot water, the repair was not considered an emergency.
 - c. During a conversation on 13 March, the resident was advised that the repair was not an emergency and that it would be carried out on 19 March.
 - d. Later that week, all non-emergency repairs were cancelled owing to the Covid-19 outbreak. The decision was taken, in line with government guidance, to minimise the contact between staff and residents.
 - e. On 16 March, the resident was informed that the appointment scheduled for 19 March would not go ahead.
 - f. During a conversation with the manager on 18 March, the resident advised that they could not use the bathtub. However, it was explained that they had access to hot water from the bath, and so they could gain access to washing facilities.
 - g. It did not feel that it had failed to provide an appropriate level of service, and the complaint was not upheld.
 - h. The decision to cancel the appointment on 19 March, and the decision to regard the repair as non-emergency were both correctly made.
 - i. It would look to rebook the work when the restrictions were lifted.
18. The repair subsequently took place on 27 April, and a new shower was fitted.
19. On 13 May, the resident wrote to the landlord to ask for her complaint to be escalated. In the letter, the resident detailed the reasons why she was unhappy with the stage one response, she said:
- a. If the initial call on 11 March had been handled correctly, the repair could have been completed before the Covid-19 restrictions were implemented, and the whole situation could have been avoided.
 - b. The landlord had not followed its complaints procedure, and they had not been informed who the investigating officer would be. As a result, they were not able to confirm the main points of the complaint and they did not know what the manager had discussed with the member of staff who issued the complaint response.
 - c. The landlord had not addressed the fact that they were unable to use the bath. This had been discussed with the manager, and she had informed the residents that it would be expected that they would be able to stand in the bathtub and repeatedly bend down to collect water to pour it over themselves – as opposed to lying down in the water. The resident expressed concern that this was not something that either she or her mother would be able to do.

- d. The landlord had not considered the poor customer service from the call centre over 11 and 13 March as part of the complaint.
- e. The repair was carried out on 27 April. However, they were not given any prior notification that the job had been rebooked and that somebody would be attending the property. The resident pointed out that restrictions had not been lifted by this time. As such, she wished to know if the repair had changed to an emergency repair.
- f. On 11 May they had to contact the call centre as the water pressure was too low – and they were unable to shower properly. An operative attended the property on 13 May – without prior notification – and assessed the water flow. The resident said that the operative explained that the hotter the water, the slower the flow would be; and that this was a result of the lower wattage unit that had been installed.
- g. They wished to request an alternative shower, and that they would be willing to pay.
- h. In addition, given the continuing situation with the Covid-19 pandemic, they wished to know what safety protocols and measures had been introduced to protect staff and residents during repairs. While the operative on 27 April had worn a mask, they had another attend on 21 April in relation to an emergency boiler repair. The resident said that this member of staff did not wear a mask, and had asked them to sign paperwork. They therefore wished to know what the landlord had meant when it had advised that it had implemented Covid-19 restrictions in line with government guidance.

20. The landlord issued its stage two response to the complaint on 28 July. In its letter, it said:

- a. On 13 March, the resident reported that the shower was not working correctly, and that they were unable to use the bath “due to a disability”.
- b. An appointment was scheduled for 19 March, but the resident had queried whether this could be brought forward.
- c. On 16 March, the resident was informed that the repair would have to be postponed owing to the Covid-19 outbreak. During this conversation, the resident expressed dissatisfaction with the decision. A further conversation took place later that day and landlord staff confirmed that the repair was not classed as an emergency as the property had hot water and a bath.
- d. On 17 and 18 March, the manager spoke with the resident and reiterated that the repair was not an emergency.
- e. In relation to the replacement shower, it was not faulty and was working correctly. It added that the shower was replaced “as part of the moderations (sic) process with a lower wattage shower to help maintain emergency bills”.

- f. If the resident wished to purchase a new shower, they would require permission for the alteration to be made. In addition, works to install the shower would need to be contracted from a reputable source as it would not undertake this work.
 - g. It had reviewed its records and was unable to find any record of a mobility disability that would render either resident unable to use the bath. However, if the resident wished to provide further information i.e. a doctor's note, this could be looked into further. It added that any adaptations could then be considered by the appropriate team.
 - h. The resident's calls had been returned in a "timely manner", and it could not guarantee that phone calls would be returned on the same day.
 - i. There was no record of the call that had taken place on 11 March. The first record of contact was on 13 March, when the resident spoke with the repairs team.
 - j. In relation to the complaint investigation, the resident had received a letter informing her that the complaint had been referred to the Head of the Housing Department. It was subsequently delegated to the Assistant Housing Repairs Manager, as the most senior officer with knowledge of the issues. During the initial telephone call, when registering the complaint, it was understood that the resident's concerns were in relation to a lack of response from the Housing Repairs Team. The landlord apologised if there was a misunderstanding; and added that the resident may find it beneficial to log future complaints in writing.
 - k. It had reviewed its records, and could not find any record that the resident had been notified that the repair would take place in April. It acknowledged that the residents should have been notified of this appointment, and apologised for the inconvenience that was caused.
21. The landlord concluded that overall it was satisfied that the repairs and telephone calls were handled appropriately. It acknowledged that the power of the shower had reduced, but it said that it was in full working order. The landlord also acknowledged the resident's comments that her mother had fallen and injured herself when using the new shower. It said that it was unable to investigate this issue, as it was "unable to ascertain whether the lower wattage shower contributed" to the fall.
22. The resident subsequently contacted the Ombudsman in November 2020, as she was unhappy with the landlord's final response. In her correspondence, the resident explained that the reasons for their continued dissatisfaction included:
- a. That the landlord did not adequately consider their reasons for not being able to use the bath as an alternative to the shower.

- b. There was poor communication between the contact centre and the repairs department resulting in a lack of response.
- c. There was a lack of guidance provided by the landlord to its residents regarding the expected standard of protective equipment that was to be used when entering properties – together with other safety precautions.
- d. After the stage two response, the landlord had advised that someone would be in touch to respond specifically to the concerns the resident had raised about precautions during Covid-19, but they had not heard anything further.
- e. It was not clear why the shower repair was postponed but then subsequently took place before restrictions had been lifted. In addition, that no prior notification in relation to the appointment was provided.
- f. The landlord did not investigate the issues surrounding the fall in the bath.
- g. That they were not contacted at any stage to discuss the complaint – and that in the stage two response, the landlord said it had no record of the initial call on 11 March.
- h. The shower which had broken was a higher wattage shower; however, it had been installed during the modernisation process.

23. In correspondence to the Ombudsman in March 2021, the landlord advised that it does not have a specific Covid or Personal Protective Equipment (PPE) policy. Rather, it undertakes work in line with Government guidance. The landlord explained that its Senior Maintenance Officer had discussed the relevant PPE issues with the resident in December 2020. It said that in relation to the member of staff who had attended on 21 April, they had been spoken to directly about the importance of wearing face coverings and adhering to “the safe system of work” which was in place. It added that a further reminder had been sent to all operatives regarding the importance of face coverings.

Assessment and findings

Repairs to the shower

24. When the landlord received the resident’s report that the shower was broken, it booked in an appointment for 19 March. The resident says that during the call on 11 March, the member of staff advised that they would call back if an earlier appointment could be booked. The resident says that as no call back was received, she contacted the landlord again on 13 March, as they were unable to wash and therefore wished for the repair to take place sooner.

25. The landlord has advised that it has no record of the initial call on 11 March. It has therefore not provided the Ombudsman with any evidence relating to this. The resident’s comments regarding the call are not disputed. However, in the

absence of any contemporaneous evidence, this Service cannot reach any conclusions about the discussion that took place and what had been agreed.

26. Nevertheless, in the stage one response, the landlord acknowledged that the initial report was received on 11 March. Furthermore, the stage two response detailed that on 13 March, the resident had called to query whether the appointment could take place sooner. This therefore suggests that some discussion around the appointment had taken place prior to 13 March, and that the initial report had been made before that call. That there is no contemporaneous evidence relating to the call on 11 March is indicative of poor record keeping.
27. In relation to the categorisation of the repair, the landlord advised that it was not an emergency repair. While the landlord's comments in relation to this are noted, it is not clear how it reached this conclusion. Although it is noted that the residents had the use of the bathtub and that there was hot water, they had advised that they were unable to use the bathtub owing to mobility issues.
28. The evidence shows that the landlord was informed of the mobility issues as early as 13 March. However, there is no evidence which shows how the landlord considered this and how it was able to conclude that the repair did not constitute an emergency. This was a failing by the landlord.
29. In the circumstances, the landlord should reasonably have undertaken an assessment of the situation; and clearly detailed why it was considered that the bathtub could be used, despite the concerns that the resident had raised. This may not necessarily have resulted in the repair being expedited; however, there was a lack of assessment, and the landlord cannot demonstrate that it had considered any potential welfare issues that may have arisen as a result of the shower being broken.
30. On 16 March, the landlord informed the resident that the repair would be postponed owing to the Covid-19 outbreak. At this time, government guidance was that individuals should minimise contact with people outside of their household. This was then followed by the lockdown regulations which came into effect on 26 March. Guidance for landlord and tenants was subsequently issued on 28 March.
31. Under the guidance, it was recommended that access to properties should only take place for serious and urgent issues. However, it was added that a "pragmatic, common-sense approach" should be taken where non-urgent issues were concerned.
32. The decision to postpone the shower repair in light of the Covid-19 outbreak was not unreasonable, given the Government guidance. However, as detailed above,

it would have been appropriate for the landlord to have given consideration to the concerns that the resident had raised about their inability to use the bathtub, and for it to have carried out an assessment once it became apparent that the appointment of 19 March would not be able to go ahead.

33. It is noteworthy that the repair did subsequently take place on 27 April – prior to restrictions being lifted, and without its classification changing to an ‘emergency repair’. This is contrary to what had been advised in the stage one response. Evidence provided to the Ombudsman details that the landlord had electricians who were willing to go into properties, despite the pandemic, and this repair was prioritised. However, there is no evidence which shows that this was conveyed to the residents either at the time, or during the complaints process. In the circumstances, it would have been reasonable for an explanation to have been provided before the appointment was scheduled.
34. In her complaint escalation request, the resident raised concerns that they were not informed of the appointment on 27 April beforehand. The landlord appropriately acknowledged that the residents had not been notified of the repair when the stage two response was issued. The landlord also apologised for any inconvenience that was caused. This was appropriate in the circumstances.

Concerns about the replacement shower

35. The resident’s concerns about the lower wattage shower have been noted. It is also acknowledged that the concerns are not just in relation to the reduced water pressure; but that owing to the design of the bathtub, they have to stand in an awkward position to ensure that they come into contact with the water.
36. In response to the resident’s concerns, the landlord arranged for an engineer to test the shower. This was appropriate. The engineer’s notes detail that the shower was running as it should be, and therefore there was no outstanding repair issue.
37. While the Ombudsman acknowledges the concerns that have been raised by the resident, and her comments regarding the modernisation process, there is no obligation on the landlord to install showers of a particular wattage. The landlord’s obligation is in relation to maintenance and repairs. As the replacement shower is working, there is no obligation on the landlord to change what has been installed.
38. In response to the complaint, the landlord informed the resident about the steps that could be taken if they wished to replace the shower themselves. This was appropriate in the circumstances.

Handling of the formal complaint

39. The resident raised concerns that they were not informed who the investigating officer would be at stage one of the process – and that as a result, they did not have the opportunity to confirm the main points of the complaint. The landlord explained that the resident had been informed that the complaint had been referred to the Head of Housing – and that it had been subsequently delegated. The landlord explained the reason for this when it issued the stage two response; and it apologised if the complaint had been misunderstood as a result.
40. It is acknowledged that the resident wished to have the opportunity to confirm the basis of her complaint with the investigating officer. However, the landlord's two-stage process ensured that the resident had the opportunity to provide clarification, and to ensure that her main concerns were brought to the landlord's attention during the course of the complaints process.
41. The resident also complained that the landlord did not investigate the accident that her mother had when using the replacement shower. As detailed at the beginning of this report, the Ombudsman cannot make any findings in relation to the incident itself. However, the landlord's response to the resident's concerns was inappropriate. Once the landlord had been informed by the resident that an accident had occurred in the property – and that they believed it to be attributable to one of the landlord's installations – it would have been reasonable for the landlord to have taken steps to provide the resident with information about how to make a personal injury claim through its insurer. The matter could then have been referred to the insurer so that a decision as to liability could be made accordingly. That the landlord did not take such steps was a failing in the circumstances.
42. At the end of the stage two response letter, the landlord informed the resident that she could refer her complaint to the LGSCO if she remained dissatisfied. The resident did subsequently refer her concerns to the LGSCO, who advised her that the complaint fell under the jurisdiction of this Service.
43. It is not clear why the landlord signposted the resident to the LGSCO. Complaints about social housing – specifically where a local authority, or Arms Length Management Organisation, acts in capacity as a landlord – have fallen to the Housing Ombudsman to investigate since 2013. The landlord's shortcoming in this regard did result in the resident expending some time and effort in contacting the LGSCO. However, it is acknowledged that she was promptly referred to this Service once the LGSCO undertook an assessment of the complaint.
44. During the course of the complaint, the resident raised specific queries in relation to what extra precautions and safety measures the landlord was introducing in light of the Covid-19 outbreak. These were not addressed within the stage two response; however, it is noted that landlord staff did discuss the matter with the resident in December 2020. While the landlord has informed the Ombudsman of

the action it took following the resident's concerns about the operative who attended the property on 21 April 2020, it is not clear if this has been relayed to the resident.

Determination (decision)

45. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was:

- a. Service failure in the landlord's handling of the repairs to the shower.
- b. No maladministration in the landlord's response to the concerns raised by the resident about the replacement shower.
- c. Service failure in the landlord's complaint handling.

46. In accordance with paragraph 39 (i) of the Housing Ombudsman Scheme: the resident's complaint about the landlord's response to concerns that were raised about the resident's mother injuring herself when using the replacement shower are not within the Ombudsman's jurisdiction.

Reasons

47. When responding to the resident's report that the shower was broken, it would have been reasonable for the landlord to undertake some further assessment in light of her comments that they were unable to use the bathtub. Such an assessment would have helped the landlord to decide whether the job should be treated as an emergency repair, and expedited accordingly. That the landlord did not take such steps was a failing in the circumstances. The evidence provided to the Ombudsman also demonstrates that the landlord's record keeping in relation to logging repairs could be improved.

48. Once the repair was scheduled, the landlord failed to notify the resident of the appointment in advance. The landlord acknowledged this, and apologised for the inconvenience caused, when responding to the complaint. This was appropriate. However, in the circumstances, it would have been reasonable to provide some explanation as to why the repair was able to go ahead despite Covid-19 restrictions not being lifted.

49. In response to the resident's concerns about the water pressure, the landlord appropriately arranged for an engineer to test the shower. As there was no repair issue resulting in low pressure, the landlord provided the resident with advice about the steps they could take to install a higher wattage shower themselves. This was an appropriate response in the circumstances.

50. When the landlord issued its stage two response, it did not respond appropriately to all of the concerns that the resident had raised. In particular, it did not provide

the resident with more information about what she could do in relation to her mother's fall, it did not signpost the resident to the correct Ombudsman; and it failed to address some of the questions that had been asked in relation to its response to the Covid-19 pandemic.

51. Liability for personal injury is more effectively determined by insurers or the courts.

Orders

52. Within four weeks of the date of this decision, the landlord should:

- a. Pay the resident a total of £200, comprised of:
 - i. £150 for the failings identified in the handling of the shower repair; and
 - ii. £50 for the failings identified in the landlord's handling of the formal complaint.
- b. Write to the resident to apologise for the inconvenience caused by the failings which have been identified by the Ombudsman's investigation.
- c. Write to the resident with details of the action that it took in response to her concerns about the operative who attended the property on 21 April 2020; and her concerns that the appropriate safety precautions were not taken.
- d. Provide the resident with information about making a personal injury claim through its insurer.

Recommendations

53. Within six weeks of the date of this decision, the landlord should:

- a. Take steps to ensure that the information on its website about its complaints process is in accordance with that set out in the Customer Complaints Procedure.
- b. Remind staff of the importance of signposting residents to the correct organisation when responding to complaints; and to ensure that further information about this is provided to staff accordingly.
- c. Review its record keeping in relation to repairs and consider how this may be improved.