

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202105375*

*Broxtowe Borough Council*

*17 November 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 complaint is about:
  - a. The landlord's handling of the resident's reports of a range of different repairs, including leaks, damp and mould.
  - b. The landlord's complaint handling.
  - c. The impact the condition of the resident's property had on her family's health.

## **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. Under paragraph 39(i) of the Housing Ombudsman Scheme, the Ombudsman will not consider complaints which "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. The resident explained in her complaint to the landlord that the mould in her property impacted her family's health in multiple ways. Unfortunately, the Ombudsman cannot draw conclusions on the causation of, or liability for, impacts on health and wellbeing. This would be more usually dealt with as a personal injury claim through the courts. The courts can call on medical experts and make legally binding judgements. Nonetheless, consideration has been given to the

general distress and inconvenience which the situation may have caused the resident.

### **Background and summary of events**

5. The resident is a tenant of the landlord.
6. The landlord explained in its stage two complaint response that it inspected the resident's property in June 2019 following her concerns with damp and mould. It carried out work in August 2019 (the nature of the work is unknown). On 18 November 2019 the resident reported a persistent roof leak (this is understood to relate to the damp and mould). On 10 November 2019 the landlord identified it needed to renew the cladding and guttering at the property to resolve the leak. It raised a work order on 22 May 2020. On 2 June 2020 it advised the resident that it would be in contact to arrange an appointment. The actual repair records are vague on what action the landlord specifically took.
7. The landlord's records show the resident reported that her shower was not working properly on 17 September 2020. The landlord attended on 25 September. It is unclear from its records what work was carried out.
8. The landlord's records show the resident reported mould and condensation on 6 October 2020. The landlord attended (it is unclear when) to inspect.
9. On 24 November 2020 the resident emailed the landlord. She said it had attended to inspect her shower and immersion heater, but had not contacted her since (it is unclear when she reported an issue with the immersion heater). She said it had inspected the mould and condensation, and told her it would arrange for the mould to be cleaned. She said it had not contacted her since, and that the mould was spreading. She said her windows were full of condensation which was also causing mould. She said the landlord investigated the leak "a few months back" but it had not contacted her since to say when it would complete the work.
10. The landlord's records show it attended on 30 November 2020 to clean the mould (on the resident's bedroom wall, and windows) and reseal the windows. The resident reported on 11 December that the mould persisted. The landlord attended on 11 February 2021 to inspect again.
11. The resident raised a formal complaint to the landlord on 3 February 2021. She listed the outstanding repairs (the leak, immersion heater, mould, condensation, and shower). She asked the landlord to resolve the leak in her living room. She said the landlord was aware that her shower only gave out cold water. She said her immersion heater would only work when she removed "the 'do not remove' covers to press a button to switch the fuse bit". She said she had "been shocked by the immersion heater twice", and that it was a breach of health and safety.

She reiterated that her windows had condensation which caused mould. She asked to be moved to another property in the same area.

12. The landlord issued its stage one complaint response on 15 February 2021 (it sent it to the resident's sister's address by mistake). It said its records did not show any recent requests for any of the repairs the resident referred to in her complaint. It said its records showed it had booked an inspection for 25 January (it is unclear what for) but did not gain access. It said it would attend to inspect on 25 February. It said it would investigate her concerns and book any necessary repairs. It said it had not upheld her complaint as it had no records of a request for repairs. It concluded by explaining how the resident could escalate her complaint if she remained dissatisfied.
13. The resident emailed the landlord on 18 February 2021 (it is understood that she had not received its stage one response at this point). She asked to be moved to a new home immediately. She said the landlord had not contacted her regarding the leak, immersion heater, shower or windows since her stage one complaint. She said it attended on 11 February to investigate the mould, but had not taken further action. She reiterated that she believed her immersion heater was a safety risk. She explained that the leak in her living room occurred when it rained, and that water would drip down the wall.
14. The resident escalated her complaint on 25 February 2021. She said the repairs in her property remained unresolved. She said the landlord had incorrectly sent its stage one response to her sister. She said it had breached her confidentiality, and demonstrated a poor level of service. She said she was unaware of an appointment arranged for 25 January. She said she called the landlord on 22 February and asked it to confirm what repairs she had reported. She said it seemed "not all of them [had been] logged". She provided a timeline (dating back to February 2018) as evidence that she had previously reported the repairs. She said she wanted to move properties as the repair work required would cause further stress.
15. The landlord issued a stage two complaint response on 21 April 2021. It explained:
  - a. the actions it had taken since the 2019 leak report. It acknowledged it had no record of work being completed to resolve it.
  - b. it inspected the windows on 29 October 2020, and resealed them on 30 November 2020. It said on 11 December 2020 the resident reported mould, and that the windows had condensation. It said it inspected on 8 April 2021. It said it raised a work order to renew the windows, but said it was unable to confirm whether this had been received by its repair team.

- c. the resident reported on 17 September 2020 that her shower only gave out cold water. It said it inspected on 25 September, but had no record to say the issue had been rectified.
  - d. the resident reported an issue with her immersion heater on 24 November 2020. It acknowledged it had no record of arranging an appointment to investigate.
16. The landlord acknowledged that the resident had not received an appropriate level of service, and apologised. It said it would contact her with dates for follow up work. It said it would attend to inspect her shower and immersion heater. It said it had reminded its staff of the necessity of recording and booking repair requests in a timely manner. It offered her £350 compensation in recognition of the service she had received. It concluded by explaining how she could refer her complaint to this Service if she remained dissatisfied.
17. The landlord emailed the resident on 28 May 2021. It confirmed that it had completed work to the immersion heater, shower, and for the mould and windows. It said it would complete the roof leak repair in June 2021. It said the works were not sufficient enough to warrant an offer of a home transfer.
18. The landlord advised this Service on 6 August 2021 that repair work to resolve the leak would be completed within 7-10 days. It is unknown whether this happened or not.

## **Assessment and findings**

### *Handling of the repairs*

19. The landlord's tenancy handbook says it will complete emergency repairs within one working day, and will prioritise all other repairs accordingly. The usual timeframe for non-emergency/urgent general reactive repairs across the social landlord sector is around 28 days.
20. The landlord has not provided evidence of a separate compensation policy for this investigation. However, its complaints policy states that it can consider compensation for certain complaints. It does not provide any further detail or guidance.
21. The resident reported mould and condensation on 6 October 2020. The landlord inspected (date unknown), then reattended on 30 November 2020 to clean the mould, and reseal the windows. The resident reported that the issue persisted on 11 December 2020, and the landlord reattended on 11 February 2021 to inspect. The landlord explained in its stage two response that it carried out another inspection on 8 April 2021, and raised a work order to replace the windows. It

advised the resident on 28 May 2021 that it had completed work for the mould and windows.

22. The landlord did attend to inspect, and carry out work to resolve the resident's concerns with mould. However, it delayed doing so. It failed to act in line with the generally accepted timeframe of 28 days for non-emergency repairs. No explanation for these delays were provided to the resident, and there is no evidence that the landlord provided updates to the resident, which basic good practice would have called for it to do.
23. The landlord acknowledged in its stage two complaint response that the resident had reported a persistent roof leak in November 2019, and that it identified a resolution in November 2019. It advised her in June 2020 that it would be in contact to arrange an appointment to resolve the leak. No evidence has been provided for this investigation to show the landlord contacted the resident, or took any action on the leak until its stage two complaint response in April 2021. During this period, the resident reported that the leak was ongoing. The landlord confirmed with this Service that it would complete the work to resolve the leak in August 2021. Nonetheless, despite it taking steps to resolve the leak, there was still an unreasonable delay over a considerable amount of time. It took six months to raise a work order, and a subsequent 15 months to begin repair work. These were significant delays which the landlord failed to justify or explain.
24. The landlord attended on 25 September 2020 in response to the resident's report (from 17 September) that her shower was not working correctly. The resident advised the landlord on 24 November that she was waiting for it to contact her regarding the issue. She told it three times in February 2021 that the issue persisted. The landlord confirmed with the resident that it had completed work in May 2021. Eight months after her first report. Although the landlord initially attended within a reasonable timeframe, there was a significant and unreasonable delay in it arranging follow up work, despite the resident chasing it.
25. The landlord acknowledged that the resident had reported problems with her immersion heater in November 2020, and that it had not subsequently taken any action to resolve it, despite her explaining her concerns about it posing a health and safety risk. It took action after her complaint, resolving the repair in May 2021, six months after it was reported, and obviously outside the landlord's repair timeframes, and with no updates to the resident.
26. The landlord did not respond to the resident's request to be rehoused until after the end of its complaints process. That was poor service, and is addressed below. Nonetheless, home transfers such as the resident was seeking are usually a matter of last resort in extreme circumstances, such as domestic or antisocial behaviour-related violence. Major repair work can sometimes be grounds for a management transfer, but only when the work is so extensive that a property

becomes wholly uninhabitable for a lengthy period of time. There is no evidence of such circumstances in this case, and so the landlord's decision not to offer a home transfer was reasonable.

27. In the landlord's stage two complaint response it offered the resident £350 compensation. As previously explained, the landlord has not provided a compensation policy for this investigation. It is therefore impossible to determine how it calculated this figure, especially given that it did not explain or break down its offer in its stage two complaint response.

28. Although the landlord took reasonable steps to remedy its shortcomings by apologising, and offering the resident compensation, the amount offered was disproportionately low when considering there were significant delays for multiple repair issues (particularly in relation to the leak), and no explanation for these delays, or updates to the resident in the intervening period. The landlord also said in its stage two response that in light of the resident's complaint, it had reminded its staff of the importance of booking and recording repair requests in a timely manner. Whilst this was a reasonable attempt to demonstrate learning from the complaint, the landlord did not provide evidence of how it intended to reduce the likelihood of such service failings from reoccurring. Ultimately, the landlord's remedies did not proportionately reflect the scale of the adverse impact, frustration, or inconvenience that will have been experienced by the resident, or the length of time some of the repairs took to be completed.

### *Complaint handling*

29. The landlord sent its stage one complaint response to the resident's sister's home address. Although the resident and her sister have the same surname and lived on the same block, it was still a failing by the landlord. That was compounded by the landlord failing to acknowledge, or apologise for its error once the resident made it aware of what had happened. It appears that the landlord's confusion about the resident's identity may be why its stage two complaint response was noticeably more comprehensive than its stage one, which could not find that the resident had reported any repairs.

30. The resident requested to move properties in her stage one complaint on 3 February 2021. She reiterated her request on 18, and 25 February. No evidence has been provided for this investigation to show the landlord acknowledged, or responded to her request until May 2021 (after it completed its complaints procedure). The Ombudsman's Complaint Handling Code sets out that landlords are expected to consider all information and evidence carefully before issuing their response. The Code also explains that "landlords should manage residents' expectations from the outset, being clear where a desired outcome is unreasonable or unrealistic".

31. In this case, as the landlord failed to respond to the resident's request to move homes in its responses, it consequently failed to address her complaint in its entirety, or manage her expectations about the likelihood of a move. This, coupled with its failure to acknowledge the error with its stage one response, constitutes a service failure in the landlord's complaint handling.

### **Determination (decision)**

32. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was maladministration in respect of the landlord's handling of the resident's reports of a wide range of repairs, including leaks, damp and mould.

33. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was service failure in respect of the landlord's complaint handling.

### **Reasons**

34. Although the landlord took steps to remedy its shortcomings for its failings in handling the resident's repairs, its offer of compensation was insufficient given the circumstances. It also failed to address each aspect of her complaint.

### **Orders and recommendations**

35. The landlord is ordered to:

- a. pay the resident £375 for the inconvenience and delay experienced as a result of the failings identified in its handling of the resident's repair reports.
- b. pay the resident £125 for the frustration experienced as a result of the service failure identified with the landlord's complaint handling.
- c. These payments are in addition to the compensation offered by the landlord during its complaints process, which it should now also pay if it has not already done so.

36. These payments should be made within four weeks of the date of this report. The landlord should update this Service when the payment has been made

37. The landlord is also ordered to review the circumstances of this complaint and the failings found in this investigation. The review should incorporate a report and action plan on both what it has done to improve its repair services (including its repairs record keeping), and what it will do to ensure the resident's experiences are not repeated. This review should be in line with the Code's guidance that:

“a landlord [should] learn from the issues that arise for residents and to take steps to improve the services it provides and its internal processes. Landlords should have a system in place to look at the complaints received, their outcome and proposed changes as part of its reporting and planning process. Landlords



should proactively use learning from complaints to revise policies and procedures, to train staff and contractors and to improve communication and record-keeping.”

38. This review should be completed and shared with the resident and this Service within 10 weeks from the date of this report.