

Housing

Ombudsman Service

REPORT

COMPLAINT 202202045

Broxtowe Borough Council

23 May 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:
 - a. The landlord's handling of the resident's reports of multiple repairs, including roof repairs, cladding, leaks, damp and mould.
 - b. The landlord's complaint handling.

Background

2. The resident is a secure tenant. The property is a two bedroom flat on the top floor of the block.
3. According to the landlord's repairs logs, an issue with the roof and loft was first reported in December 2014. While a repair was undertaken within the same month, records show that several further repairs were required over the years that followed, and up until November 2019. This Service has been unable to see that there were any reported issues in 2020.
4. On 19 January 2021 the landlord again became aware of a roof leak. It noted the resident's assertion that rainwater was coming through the ceiling in the children's bedroom and another room opposite. Although works to address this were completed in August 2021, this issue reoccurred on 31 December 2021. This was followed by a complaint from the resident within which she expressed that the issue had been worsening, now impacting several rooms, and she had receive no update. The resident chased the landlord on 12 and 17 January 2022.
5. On 19 January 2022 the resident reported that the roof was leaking. The landlord's records show that the repairs raised for the roof and cladding were not

completed on 19 August 2021. The evidence states that this repair job was abandoned and the landlord decided it needed to be passed to a contractor.

6. In the landlords stage one response dated 18 January 2022, it upheld the resident's complaint and offered £100 in compensation. It informed the resident that following its investigation, it believed the problem stemmed from the cladding. It acknowledged that despite undertaking several repairs, its records showed that within six months the issues returned. It pledged to look at renewing the cladding to the block, once a contractor had been decided.
7. The resident escalated her complaint to stage two on 8 January 2022 stating she had not received the landlord's stage one response until the 26 January 2022. In her escalation she stated that the landlord's response did not provide her with any new information or explain the reasons for delays with the repairs. There was no date for commencement of the repairs or a timeframe and she rejected the landlord's offer of £100 compensation as redress.
8. On 8 February 2022, the landlord sent a letter to the resident where it apologised and informed them that the repair works had been passed to its capital works team to complete. The landlord issued its final response on 11 March 2022 within which, it acknowledged that the resident had experienced a continuous roof leak since 2014 and works undertaken to fix it had been unsuccessful. It noted that scaffolding had been erected at the property and works started to carry out the necessary repairs. In order to recognise this service failure the landlord offered compensation of £1,000 and pledged to carry out decoration work to the rooms affected by the leak.

Post-final response

9. On 12 and 21 April 2022, the resident requested a repairs update from the landlord, stating that no further works had been carried out since 5 April 2022 and the continuing leak problems were causing the loft to disintegrate. On 22 April the landlord pledged to send a detailed summary of completed works to the resident.
10. On 3 May 2022 the landlord inspected the property and found that the repairs had not been completed. The resident remained dissatisfied and logged a complaint to the landlord on 27 June 2022 telling it that the roof had been patched several times but no substantial repair had taken place. Also, that the leak had now spread to four rooms and there continued to be delays for the cladding repairs.

Assessment and findings

Scope

11. Although the landlord has offered compensation from 2014, this Service is unable to investigate the landlord's handling of matters as far back as this. This is because this Service will not investigate complaints which were not brought to the attention of the landlord as a formal complaint within a reasonable period – which is usually within six months of the matter occurring. Whilst communication and repair logs provided by the landlord show historic issues, there is no evidence of the resident raising a formal complaint about the landlord's approach at this time. This investigation will therefore only seek to comment on events from June 2021, six months prior to the resident's stage one complaint.
12. The resident explained in their complaint to the landlord that the damp and mould in the property had impacted both her and her family's health. Unfortunately, this service 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 will be given to the general distress and inconvenience which the situation may have caused the resident and her family.

The landlord's handling of the resident's reports of multiple repairs, including the roof repairs, cladding, leaks, damp and mould.

13. Section 11 of the Landlord and Tenant Act 1985 places an obligation on a landlord to maintain the structure and exterior of a property. In accordance with this obligation the landlord was required to investigate the resident's reports of a leak into the property and to put right any issues it identified which were its responsibility.
14. With regards to leaks, mould and damp within a property, the landlord's repairs handbook makes clear that it is the landlord's responsibility for rectifying such issues. This Service would however expect in the first instance for the landlord to carry out inspections of leaks, damp and mould reported in order to understand the cause and decide on an appropriate course of action. Despite the resident first reporting the repairs on 18 January 2021, the landlord did not carry out a pre-inspection to consider the cause of the problems, until 25 February 2021. On 19 January 2021, the landlord had stated that the job would not be treated as an emergency and that it will call the resident to inform them that it will try and deal with the repairs 'as soon as able'. The delay in the landlord taking action led to distress and inconvenience for the resident.
15. The landlord failed to proactively update the resident on the schedule for works or the current situation. These delays caused significant time and trouble for the resident in that she had to chase up the landlord multiple times over several months for updates. The landlord's internal emails show that they were having trouble arranging for scaffolding to be put up to allow the works to commence.

The chaser email the landlord sent though was some months after the original request made in February for the scaffolding. Also, in any case, in such instances this Service would expect the landlord to keep the resident informed that there would be delays to the works, which it did not do.

16. The landlord's records show that in August 2021, after receiving several reports that the leak issue remained ongoing, some works were completed. It is unclear whether this fully resolved the issue at this time, however this Service can see that by 21 December 2021, the landlord noted that the resident was again experiencing an issue and that further works were required. The resident asserted that this was adversely affecting the living conditions for her and her child.
17. On 31 December 2021 the landlord in its internal communication acknowledged the residents persistent leak problem and enquired about renewing the cladding for the block. It inspected the property on 5 January 2022 however failed to update the resident on the outcome of this inspection, resulting in the resident having to chase the landlord for an outcome on 12 January 2022.
18. The records show that the landlord did attempt to do works. On 13 and 19 January 2022, the landlord attended the property but it was unable to gain access. Under the terms of the tenancy agreement, the resident had to provide access to a landlord so that it could carry out the necessary inspections and repairs. Although, on 17 January 2022 the resident called chasing an update, stating that the leak was worsening, the landlord had taken proportionate action prior to this to remedy the situation.
19. On 8 February 2022, the landlord wrote to the resident, apologised and stated that the repairs works would now be passed to its capital works department to carry out. It also stated that it had been having problems with its scaffold contractor due to sickness, but believed that the scaffolding was now up so the works would begin. It was appropriate and reasonable that the landlord apologised for its failings and updated the resident on why there was delays and when the works would commence. However, on 9 February 2022 the resident called the landlord, and informed it that the scaffolding was put up but in the wrong area. The landlord despite acknowledging internally that it should call her back, failed to do so, leading to more frustration for the resident.
20. On 10 February 2022 the resident emailed the landlord and informed it of further issues that had arisen. The resident attached photographs of the damage to the property due to leaks, damp and mould. The resident also confirmed to the landlord that they required repairs to their extractor fans, however this was not carried out by the landlord.

21. On 16 February 2022 the sub-contractor emailed the landlord the pricing for the scaffolding only and was instructed by the landlord to proceed. The landlord missed an opportunity at this time to update the resident and reassure her that the works would be progressing. On 21 February 2022, the resident emailed the landlord requesting when the rest of the scaffolding would go up. The landlord apologised in its response email for the delay and stated that it will be completed on Friday of that week. However, the resident had needed to chase the landlord repeatedly for an update, leading to considerable time and trouble spent for her.
22. It is evident that throughout this period when the repairs were first reported, there were significant delays to carrying out the works and significant delays in the landlord's communication with the resident. This caused an extended period of distress and inconvenience to the resident as well as causing her time and trouble in having to chase up responses from the landlord. It was appropriate therefore that the landlord has apologised for the delays with the repairs and that it reassured her of what actions it was taking to fix the leak.
23. The landlord upheld the complaint at its stage one and offered compensation of £100 for the damage caused by the most recent leak to the residents property. The landlord acknowledged in its final stage complaint response on 11 March 2022 that the resident did not receive the appropriate level of service due to the length of time it took to fix the leak and failings of its previous repairs. It recognised that it should have identified a solution to the faulty cladding much sooner within the period of 2014 to 2022 and offered compensation covering this period of £1000.
24. The landlord has told this Service that they have used both the HOS remedies guidance and a past determination in calculating the £1000, total compensation offered as redress. Its stage two response suggests, however, that it based its compensation on a yearly calculation, offering £100 for each year from 2014 to 2022, and an additional £100 for the inconvenience caused.
25. This Service's published '*Remedies Guidance*', which includes guidance on compensation amounts offered, recognises compensation awards of £100 - £600 as reflective of "*considerable service failure or maladministration, but there may be no permanent impact on the complainant*" with examples of this including where a resident has had to repeatedly chase a landlord, failure over a considerable period of time and serious failures which have been recognised and resolved by the landlord. This Service is also able to consider aggravating factors, which in this case, include the fact that there were children in the property and the resident's and her children's physical and mental health.
26. Although it was appropriate that the landlord has offered an amount of compensation to remedy its maladministration, this Service would not consider this amount to be reasonable redress because it does not take into account the

detrimental impact that the delays in repair works and responses have caused the resident and her child. Also, in the Ombudsman's opinion, it does not go far enough to recognise the time and trouble the resident has experienced in continuously chasing the landlord.

Post final response

27. On 4 April 2022 the resident emailed for an update on the roof repairs and on 5 April confirmed that the contractors had started works. The landlord responded to the residents emails on 5 April 2022 stating that it will be meeting with its contractor on 6 April 2022 and will update the resident after that. On 12 April 2022 the resident emailed the landlord for an update and informed it that there had been no further works carried out since 5 April 2022. On 21 April the resident emailed again chasing an update on repairs.
28. The subsequent evidence seen by this Service has demonstrated that the landlord had not learned from its past mistakes. Its responses to the resident were still unreasonably delayed. Although on 22 April 2022 the landlord apologised and pledged to send a detailed summary of the completed works, this Service has seen no evidence from the landlord that this was done.
29. In summary, the landlord was required to carry out the repairs/works it was notified of, within a reasonable period of time, in accordance with the terms of the tenancy agreement and in law. However, despite the two occasions where there was no access, the landlord failed in its obligations to do this and to compound matters did not update the resident despite being repeatedly chased. This Service understands that the resident has now moved out of the property.

Complaints handling

30. On 31 December 2021 the resident made the stage one complaint over the phone. She informed the landlord that the leak had worsened and spread to all the rooms in the property. The landlord's complaint policy notes that it will respond to acknowledge receipt of a complaint within five days at stage one and provide a response within 10 working days. Also that where it is not possible to meet these timeframes the landlord would contact the resident with an estimated date of response which would not exceed 10 working days without good reason.
31. The landlord sent its response to the complaint on 18 January 2022 which the resident stated she did not receive until 26 January 2022. In both cases, this was contrary to the timescale set out in the landlord's policy. This Service notes that the landlord missed an opportunity to do advise the resident that the response would be delayed when she chased it for updates on the repairs during that period.

32. On 28 January 2022 the resident escalated the complaint to stage two. The landlord's complaint policy notes that a written response will be sent to the resident with an outcome of its investigation within 20 days. Also that where it is not possible to meet these timeframes the landlord would contact the resident with an estimated date of response which would not exceed 10 working days without good reason.
33. The landlord acknowledged both the complaint and amendments the resident made to it on 1 February 2022 in a timely manner. On 8 February 2022 the landlord wrote to the resident to apologise and inform her that the repairs works would be passed to its capital works department to carry out. On 25 February 2022 the landlord emailed the resident to apologise for the delay in the complaint response, and informed her that the new response deadline was 11 March 2022. It was reasonable that as the response was taking more time to put together, due to awaiting further information from one of its teams, the landlord brought this to the resident's attention. In the Ombudsman's view, however, the landlord should not have waited for the deadline to elapse before seeking to extend the timescale for response. This was inappropriate.

Determination

34. In accordance with paragraph 52 of the Scheme, there was maladministration in the landlord's handling of the residents reports for repairs.
35. In accordance with paragraph 52 of the Scheme, there was service failure in the landlord's handling of the complaints.

Orders

36. In addition to the £1,000 already awarded by the landlord, it should also pay the resident £700 compensation, comprised of the following:
- a. £600 to recognise the delays in scheduling the works, the communication failures, and for the lack of information provided to the resident.
 - b. £100 to recognise the landlord's poor complaint handling.
37. The landlord to confirm compliance with the above orders within 28 calendar days of the date of this determination.

Recommendations

38. The landlord should consider putting together a compensation policy document to enable it to effectively and consistently calculate awards where redress is due.

39. The landlord should keep clear records on the disrepair log so that there's a clear distinction between the landlord's internal communications and communication with the resident.
40. The landlord should carry out staff training for the complaint handling team to ensure that complaints are dealt with in line with its complaints policy.