

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202109355*

*Clarion Housing Association Limited*

*26 August 2022*

## **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 response to the residents' reports of drain blockages.

## **Background and summary of events**

### *Background*

2. The residents are shared ownership leaseholders. The lease commenced in August 2020. The residents advise that one resident has muscular dystrophy and mobility issues and is disabled. The property is a new build house which the residents advise had a one year defect period that ran to mid July 2021.
3. The lease provides for the landlord to maintain, renew or alter drainage in, on, or under the premises. The lease provides for the residents to have some repairs obligations, but advises they should not do anything in respect to service media (such as drainage) which may cause interference, damage or adversely affect it.

### *Scope of the investigation*

4. This investigation notes that the residents raised multiple issues in their complaint to the landlord, however their dissatisfaction brought to the Ombudsman was the drains and they confirm they would like the drains to be the main focus of the investigation.
5. This investigation also notes that consideration of matters extends from the residents' first reports, to after the landlord's final complaint response. This is because matters prior to and after the final response are relevant to the assessment of the case; because the landlord's final response provided

commitments on receipt of evidence from the residents; and because both the landlord and the residents have provided information that post-dates the final response.

### *Summary of events*

6. After moving into their new build property, the residents reported a number of issues to the landlord between August and October 2020.
7. The residents subsequently made a complaint on 11 October 2020. They complained that faults were not being logged; were not being dealt with within timeframes; and required excessive chasing. They complained that prior to the property handover, a number of issues were raised, however the landlord had later said there were no active defects for the property. They also complained about issues in relation to a missing window vent cover; water damage as a result of bath pipes not being done up properly; and lack of heating and hot water for three weeks due to a fault with the installation.
8. The residents' account then advises that they experienced drains 'backing up' at the property, and on 16 October 2020 arranged for their own drain contractor to attend. The contractor cleared a blockage with a pressure washer and advised that if a blockage reoccurred, a CCTV survey would be needed. On 17 November 2020, the landlord discussed the complaint with the residents and noted it would reimburse them for the contractor they had arranged. The landlord's records indicate that before arranging their own contractor, the residents had reported the drains to a wrong department and may have received insufficient signposting.
9. The landlord issued a stage one response to the complaint on 27 November 2020:
  - a. It noted the residents had reported drain issues and after no action was taken, they had called their own contractor to clear a blockage. It said a receipt provided for this would be reimbursed.
  - b. It apologised for the inconvenience caused by the issues. It awarded £595 compensation, which it broke down as £350 for the heating and hot water issues; £145 for the drain reimbursement; and £100 for inconvenience, failure to follow process, and time taken to respond to and resolve the complaint. It noted the residents were satisfied with this.
10. On 2 December 2020, the residents then reported their downstairs toilet was backing up, was not flushing properly and was unusable. They emphasised it was not a toilet blockage, and said a drain was full and not running away into the main drain as had occurred before. They supplied a copy of their contractor's October 2020 recommendation for a CCTV survey if blockages reoccurred, and asked the landlord to confirm the action it would take.

11. On 7 December 2020, the landlord referred blockages to the developer, which attended on 8 December 2020 and jetted the drains. The residents' account advises that rubble was cleared from the drains, while the developer's account advises the drains were blocked "by wipes and other products" which it had not been possible to take pictures of. The landlord internally noted that this was the second time in a week that drains were reportedly blocked with wipes, and it was requested for correspondence to be sent to remind residents to only put toilet paper down toilets.
12. On 21 December 2020, the residents reported blockages again and that the toilet was un-flushable; a sink filled with water would not drain; and a drain in the street was full to the top due to blockages, as had occurred before.
13. The information provided advises that by this time, the developer had attended the drains of another property on at least three occasions, where blockages were reportedly due to excessive build-up of wipes and tissues. The landlord initially confused this with the residents' property for this latest report, but it then did clarify that the residents' 'plot' was different to the 'plot' the developer had previously attended multiple times.
14. The landlord's account advises that the developer attended on 22 December 2020 and resolved the blockage. The developer reported this was due to excessive wipes and toilet roll; there was no sign of rubble; and the residents needed to be advised not to use excessive wipes and toilet roll. The residents advised this Service that they 'categorically refute' they use wipes, nappies or any sanitary products; suggest that the evidence may be generic evidence from the estate; and note their own drainage contractors found no evidence of these.
15. On 23 December 2020, the landlord emailed the residents following a call. It noted the drains currently flowed, but a defect had not been raised so it was unclear how the blockages were resolved. It noted it would make enquiries with the developer and respond in the new year. The residents replied the same day:
  - a. They noted that a neighbour had informed them the developer had attended on 22 December 2020. The residents noted they had checked their video doorbell recordings and seen workman inspect the drains at the front of their property; briefly rod the drain at the front of another property; and leave. The residents reiterated they felt the issue had not been adequately addressed and would reoccur, as the issue had occurred three times in four months.
  - b. They noted their own contractors had said "in no uncertain terms that it is not expected or acceptable that drains would block in a new build property like this" and recurrence would need further investigation. The residents stated that as there had been two more incidences of the issue, they would now expect further investigation.

- c. They noted the developer's attendance on 8 December 2020 was extremely thorough and had involved extensive rodding, jetting and inspection of all the drains and removal of large rocks and rubble. They noted that given this and the drains being left in good working order, the recurrence two weeks later was indicative of an issue that needed investigation and not a brief rodding.
  - d. They detailed that they experienced difficulties getting hold of the landlord when issues occurred; that the issue was causing distress and inconvenience and causing a disabled person to not have use of toilet facilities on a regular basis; and appealed to the landlord to take ownership and resolve the issue.
16. On 9 January 2021, the residents emailed the landlord to query if the developer had provided feedback. The landlord's records confirm the residents also called the same day. It noted the residents were aware of what was flushable. It noted their contractors had said a CCTV survey would be needed if blockages recurred as there was no obvious reason for the blockage. It noted that one of the residents had limited mobility which meant the downstairs toilet being out of action was detrimental to health.
17. The action taken following this is unclear and on 22 March 2021, the residents reported "a total blockage out the front again" and an intermittent stench of drains downstairs. They stated that once again they were living in 'unsanitary conditions' and a disabled person was unable to use the downstairs toilet. They noted that the issue was not just with their property and the blockage was in the street and affected other houses in their row. They said they were 'desperate' for someone to take responsibility and ownership for the issue. They noted a lack of response to their two previous emails and asked to be referred to the correct person if the inbox they had emailed was not correct (this investigation notes that a centralised email inbox for the landlord appears to have been used throughout). They noted it was difficult to speak to the landlord.
18. On 29 March 2021, the resident complained about the landlord's lack of support and the impact the downstairs toilet issues was having on the residents, one of whom was disabled, along with some other issues. The landlord acknowledged the complaint on 8 April 2021 and advised that it would respond by 6 May 2021.
19. On 13 April 2021, the landlord emailed the developer that it understood the developer had visited the residents and their neighbours, and asked the developer to share their reports and findings about where and what the blockages were.
20. The developer responded that their groundworkers had attended on a number of occasions to various properties and the cause of blockages had been "wet wipes etc being put down the toilets." The developer said that if the landlord specified the properties it had sent defects for about the issue, they could look them up and

see what information they had. The developer noted they had recommended sending letters about what should not be put down toilets.

21. The landlord requested reports for two properties including the residents', and asked the developer to confirm if it had carried out "a full inspection, including cctv if required."
22. The developer responded with two photos that they said showed wet wipes found in the drainage system. The property each of these relate to is unclear.
23. On 2 May 2021, the residents' drain became blocked again and made the downstairs toilet unusable, which was reported to the landlord via email the same day and by phone on 4 May 2021. On 4 May 2021 the landlord submitted a 'defect order' to the developer. The developer responded that they had recently stated they would not attend any more drainage issues as these were due to incorrect products being put down toilets. They noted that it had been agreed the landlord would send its own contractors to attend and if there was proof the issue did not relate to wipes, this would be sent to the developer.
24. On 12 May 2021, the residents' drain was again severely blocked and waste was 'spitting' from a downstairs bathroom sink. The residents were unable to get through to the landlord and other staff, and on speaking to the developer were told the landlord would be informed of the residents' contact. The residents emailed the landlord about the issue and noted that the downstairs toilet was full to the top, which caused issues for the resident who was disabled and had mobility issues. The email asked to landlord to escalate the defect report that had been made on 4 May 2021 for the drainage issues.
25. The residents subsequently arranged for attendance by their own drainage contractor, who this investigation understands carried out a CCTV survey on 13 May 2021 and a further inspection on 2 June 2021.
26. On 19 May 2021 the landlord provided a final response to the complaint raised on 29 March 2021:
  - a. In regards to the drainage, it said it had instructed the developer to attend following the residents' reports, after which the developer had done rodding and a 'survey' on 22 December 2020. The developer had found no fault and only found blockages caused by 'flushable items' which the landlord would write to all residents about. The developer had provided 'photographic evidence' of this, had charged the landlord for the callouts, and would no longer attend the site. The landlord stated that if the residents were able to evidence that a defect caused blockages, the developer would attend to it.
  - b. It apologised for not addressing issues in the right way and for communication failings (in relation to non-drain issues), as well as for delays in its complaint

response. It explained that staff changes contributed to issues not being followed through. The Covid-19 pandemic had also impacted matters and led to delays and an increase in enquiries, which had affected its ability to keep customers informed about delays. It advised that it had attempted to manage this via ongoing staff recruitment and installation of a new phone system in April 2021. In recognition of the residents' experience it awarded £175 compensation, which it broke down as £100 for a vent issue and £75 for communication issues, works delays and complaint response delays.

27. The same day, the residents advise the landlord contacted them to inform them that someone would attend that day to clear the drain. The residents advise they informed the landlord that due to its lack of response, they had dealt with the issue privately, but explained a root cause had been found and would forward the report when this was received.
28. On 2 June 2021, the residents emailed the landlord their contractor's reports from visits on 13 May 2021 and the same day. The email stated this was the evidence of drainage faults the landlord had requested in its final response; summarised the issues identified; and attached the contractor's report and a covering letter:
  - a. The residents stated that the root cause of the continued blockages had been identified to be a 'belly' (an abnormal sag in a pipe in which water or sediment can collect) between two manholes, which was holding water. They stated that an insufficient gradient in the pipes between the two manholes, due to poor installation, had been identified as the cause of the belly, for which the drain and internal piping needed to be raised. They summarised a list of issues that had been identified (11 in total) and the recommended action. They asked to be kept informed of the landlord's plan to address these and to be provided details of completed works.
  - b. The contractor's letter stated the drain was being used as it should be and no wipes were found in the system. The letter stated that 'water level holding' in pipework between two manholes was causing waste to accumulate and cause blockages. The letter stated two manholes had invert levels of 724mm and 733mm, that meant there was a 9mm fall over a distance of 2.690m. The letter said this was insufficient and recommended to lift one of the manholes to create a correct gradient. The letter noted an internal stack pipe discharged into the manhole and said this would also need to be lifted. The letter stated the installation was poor and should be rectified by the contractors that had installed the drainage, particularly given the property was under a year old.
  - c. The contractor's report identified a number of additional issues that "may require remedial monitoring" or "might" or "probably require" some form of remedial works, in the form of multiple high pressure wishes; investigations of multiple possible 'bellies;' and multiple resurveys. The report included photographs that showed rubble in the drains.

29. On 7 June 2021, the landlord forwarded the contractor's report to the developer. It noted a defect with the drop causing pooling and blockages and rubble that required clearing. It also noted that there was an insufficient gradient and that the installation was poor. It noted that it was receiving continuous complaints from the residents, and others in the same road, and asked the developer to take urgent action to address the issues. The developer responded that the information had been forwarded to a site team and ground workers to review, and the developer would come back to the landlord after their response.
30. On 14 June 2021, the developer attended and fixed the belly between the two manholes. The residents advise this Service that this involved digging up and replacement of the bellied pipe, which was found to be sagging by 50mm, and advise that there was a lack of 'pea shingle' and a lack of support to the pipe.
31. On 21 June 2021, the landlord emailed the residents. It said the developer had confirmed that works had been completed and that it would reimburse the residents for their drainage contractor costs.
32. The residents advise that around this time, they spoke to a drainage contractor which recommended installation of a steel plate in one of the manholes to help with blockages, and on 30 June 2021 they emailed the landlord:
- a. They stated they believed only one issue had been dealt with by the developer, so they asked the landlord to clarify if it considered the works complete and why. They also asked it to clarify if it was still dealing with the complaint or considered it closed.
  - b. They reported that they had manually unblocked a manhole on three occasions in the two weeks since the developer had attended and fixed the 'belly.' They noted that they were sure the landlord was aware (from its contractor's attendance) of an issue at several of the properties, whereby the short distance from the main bathroom downpipe to a manhole meant that waste travelled at such a speed that it hit the side of the manhole, formed a mass and blocked exit of waste from anywhere in the house.
  - c. They asked the landlord to have an open discussion with them about the matter rather than only dealing with the developer. They noted they could not continue to live under the conditions and were considering self-funding a fix suggested by a drainage contractor to install a stainless steel insert which, although not fixing the faulty installation, may stop the mass forming and blocking the drain. They asked the landlord to confirm they could do this or advise how to obtain permission.
33. On 1 July 2021, there were several emails between the landlord and the developer.

34. The landlord noted the residents reported only one of the items had been attended to, meaning drainage issues continued; they did not have working toilets; and had been without them for considerable periods. It noted the residents were being told that blockages were due to flushable items, when the report showed there were issues with the installation that needed to be addressed. It noted that the residents were looking to arrange works themselves that involved fixing a steel insert to stop the mass forming, and would look to claim costs for these if works were not completed in a timely manner. The landlord asked the developer to attend to all the items on the report and confirm with evidence that each item had been completed.
35. The developer responded that ground workers had visited the residents that week and “explained things” to them. The developer said that the ground workers had been asked to answer the questions, but suggested “maybe it would be better” if the ground workers, a site manager and the landlord met on site and discussed the issue together.
36. The landlord noted relevant staff were on leave but said a meeting was not necessary, as the developer needed to carry out the works or provide an alternative schedule that they believed would resolve all the issues on the road.
37. The developer responded that:
- a. a ‘belly’ between manhole one and two had been repaired on 14 June 2021 and inspected a week later to confirm it ran as it should;
  - b. in relation to a finding that the cause of the ‘belly’ was an insufficient gradient between manhole one and two, and it was recommended to raise a drain and internal piping, they said they believed a ‘belly’ on the pipe was caused by ground conditions, crossing over the drains and plant movement;
  - c. high pressure water jetting of the drains would be carried out on 5 July 2021;
  - d. a CCTV survey would be carried out on 7 July 2021, and once this was received, other remedial work would be carried out (the residents subsequently dispute this occurred).
38. On 6 July 2021, the residents emailed the landlord. They stated that as it had not shared full details of what had been completed and how, they assumed it was happy that everything had been done in line with their contractor’s report and recommendations. They stated that if this did not turn out to be the case, they would not be liable for costs to rectify problems or for damage to the property. They noted that the landlord had not responded to their request to consent to a plate being fitted to the manhole to prevent repeated blockages due to the speed in the travel of waste, which they noted had been suggested as a best preventative solution by a contractor the landlord had sent to the residents’ row of properties. The residents advised that they had now instructed the contractor to

carry out this work at a cost of £155 plus VAT to themselves. The residents asked the landlord to let them know if it objected otherwise they would assume it was happy for them to proceed.

39. The residents contacted this Service on 15 July 2021 and noted that in addition to the belly, a jetting had occurred, however they disputed the developer had taken other actions they had said they would and queried if action had been taken to rectify an insufficient gradient. The residents stated desired outcomes were that all outstanding work should be completed; it should be documented in writing what has been done; and if there was a reason why work is not completed in line with the original survey findings, this should be explained in writing.
40. The residents' account advises that later in July 2021, they were visited as part of handover inspections in their road and mentioned the drain issues, to which they received no follow-up. This investigation understands from the landlord's records that this refers to an 'end of defects' inspection on 16 July 2021 by the employer's agent, whose report noted: "Blockage to external drain, water levels are raised in the inspection drains causing the downstairs toilets are being affected." The same day, the landlord contacted the residents to ask for their payment details to reimburse their costs for the drainage survey (£624), which the residents confirm they have received. Later, on 28 July 2021, the landlord emailed the developer and asked for an update on the drains, which it is unclear was responded to based on the evidence available.
41. In September 2021 (at a cost of £185) the residents' drainage contractor subsequently fitted a bespoke metal plate to try to break the fall of tissue into a drain chamber and so reduce blockages. The contractor's report for the works on 16 September 2021 explains that as the WC was being flushed, this caused tissue to eject into the manhole at speed, hit 'redundant slippers' on the opposite side of the chamber wall, build up and block the drain. The contractor stated the manhole was situated very close to the wall, and location at a greater distance from the WC line would reduce the speed of tissue coming into the chamber and allow it to drop into the drain in the correct manner.
42. The residents informed this Service on 21 September 2021 that the manhole chambers manufacturer confirmed the issue was likely caused by a chamber being installed too close to the soil vent pipe, meaning discharge entered the chamber at too high a speed. The residents noted that the manufacturer had recommended installation of a chamber cover to help direct discharge to a main channel rather than upwards, which they had purchased and intended to arrange installation of. The residents advised that while this did not fix the underlying poor installation, it was hoped this would mean they would not have to clean and jet the drain weekly.

43. On 24 September 2021, the landlord contacted the developer after this Service requested information for the investigation. The landlord noted it had no record the developer had confirmed works were completed or of their CCTV report findings, and asked for these to be provided urgently. The landlord separately internally noted that it was not aware of any outstanding issues or communications from the residents that specified their dissatisfaction or resolution they sought. The landlord subsequently chased the developer for a reply and on 13 October 2021, noted that the residents were still having problems and disputed the defects were attended to.
44. On 18 October 2021, the residents advise that the developer's drainage contractors attended and carried out a CCTV survey, which the contractors informed the residents was because there was no record of one. The residents advise that from their video doorbell recording of events, there was sitting water in the pipes which was cleared before the CCTV survey was carried out.
45. On 19 October 2021, the developer emailed some videos to the landlord, which it responded it could not open and clarified it awaited a 'close out report.' On 21 October 2021, the developer offered to provide videos via a different method and said their ground workers had advised that all remediation work was fully complete, everything showed on CCTV cameras, and it was all cleared. The developer noted they had spoken to a member of the landlord's staff in the past and ever since then, there had been no problem with the drains.
46. The residents advise this investigation that in order to prevent blockages, they currently continue to open a manhole and jet waste on a weekly basis. They advise they have not had any contact from the landlord but the developers intermittently contact them to query if the issue is resolved which they have responded to 'no.' They advise the developers visited in March 2022 and that last contact from them was in May 2022. The residents advise the developer have said they were looking at the issue, either digging up drains altogether or making a bespoke drain, and looking into issues related to planning and building control.

### **Assessment and findings**

47. The lease advises that the residents have some repairs responsibilities, however their right to carry out more extensive works is limited. Given they are not the freeholders, they will be ultimately reliant on the landlord to investigate and carry out any structural works where these are evidenced to be necessary, or reliant on the landlord to ensure these are investigated and carried out by the developer.
48. The Ombudsman's spotlight [report](#) on leasehold, shared ownership and new builds complaints was published in September 2020, eight months before the landlord's final response to the complaint. The report recognises that defects may arise in new builds and details that when they do, landlords should effectively

pursue developers on a resident's behalf; ensure there is effective communication between all parties; and be clear how it will respond during and after defects periods.

49. This means that when defects arise at its properties, the landlord should act as an effective intermediary between the developer and the residents, to ensure that issues are appropriately considered and responded to. The landlord should ensure reported repairs are passed on to the developer and responded to in a timely manner; should ensure outcomes from the developer are communicated; and should use information from both the developer and residents to make appropriate and timely decisions.
50. The evidence shows that after the residents made their initial complaint about other defects, they experienced drain blockages and arranged for their own drain contractor to attend. Given the landlord's stage one response acknowledged delays and failings to follow processes in respect to defects, it was positive for the landlord to reimburse the residents' contractor costs in its stage one response.
51. The residents submitted further reports of blockages and their contractor's recommendation for a CCTV survey on 2 December 2020, after which the developer attended six days later; and on 21 December 2020, after which the developer attended the following day. The landlord fulfilled its role to refer the blockages to the developer, however it is not entirely satisfactory it took almost a week for the developer to attend for the first report; not satisfactory there is no evidence the recommendation for a CCTV survey was appropriately considered and discussed by the landlord and developer; and not satisfactory there is no evidence the developer's outcomes were communicated to the residents after the reports. This will have given little reassurance the issue was being taken seriously or being handled effectively and differently to previous defects reports.
52. The residents contacted the landlord in December 2020 and January 2021 after their 21 December 2020 report, to appeal for it to take ownership to help resolve the issue and facilitate further investigation such as a CCTV survey. They raised concern about blockages having occurred three times in four months; raised concern about recurrence on 21 December 2020 so soon after a drain clearance on 8 December 2020; and raised concern about the effect on the disabled resident's usage of the toilet facilities. It is not satisfactory that, before the March 2021 blockages, the landlord does not demonstrate it considered and followed up the residents' concerns, given they provided professional evidence and made reasonable points that recurrence of blockages after a recent drain clearance indicated an issue that merited more investigation. This is particularly given the residents detailed the distress and inconvenience the issue caused and the impact on a disabled resident's use of the downstairs toilet facilities.

53. The residents reported further blockages on 22 March 2021 then complained on 29 March 2021. The landlord made requests to the developer in mid-April 2021 for their findings, a full inspection and a CCTV survey, in response to which the developer provided two photos in respect to two properties which they said showed wet wipes previously found in the drainage system. It is not satisfactory there is no evidence of action to resolve this further report or communication to the residents. It is also not satisfactory that the landlord accepted the information provided by the developer in April 2021, as the evidence they provided for the residents' own blockages being caused by wet wipes was limited.
54. The developer attended other properties on multiple occasions and it is not clear attendances were sufficiently separated from investigation of the residents' reports. The residents advise rubble was a cause/part cause of blockages on 8 December 2020, which no photos were taken by the developer to disprove. The developer supplied two photos to support blockages being caused by wet wipes, however this was in response to enquiries about two properties and the developer was not clear which photo related to the residents. The evidence advises that apart from the 8 December 2020 visit where photos were not taken, the developer attended the residents' property on only one other occasion (the 22 December 2020 visit). The landlord had also noted in January 2021 the residents were aware of what was flushable. The outcome of only one visit was therefore being relied upon and it was also assumed the residents were disregarding advice given to them and going against their best interests. Given the above, and that by that time the landlord had been made aware of four blockages and a recommendation for a CCTV survey, it was not reasonable that the landlord accepted the information and did not ensure more was done to investigate the further reports of blockages.
55. The residents reported further blockages on 2, 4 and 12 May 2021, before arranging their own contractor to attend on 13 May 2021, and their account then advises that the landlord contacted them on 19 May 2021 to arrange a drain clearance. The developer said on 4 May 2021 that it had been agreed the landlord would send its own contractors to attend drains. The landlord has noted the developer had carried out three unblocks of wipes at a different 'plot' so the reasoning behind the refusal to attend the residents' plot is not clear. This again suggests issues at other properties were not sufficiently separated from the residents', which should have been challenged if there was no clear reason. It is not satisfactory that there is no evidence of practical actions by the landlord to resolve these further reports until 19 May 2021, two weeks after the developer said it had been agreed the landlord would send its own contractors to attend drains. It is also not satisfactory that there is no evidence it communicated to the residents before they arranged for their own contractor to attend on 13 May 2021.

56. The lack of appropriate response to the residents means it was understandable they had already taken steps to arrange for the drains to be unblocked, and for their own drain survey to be carried out, before the final response. However, the evidence suggests they reasonably should not have needed to given their repeated reports; their supply of a professional recommendation for a CCTV survey since December 2020; and the developer saying in May 2021 that it was agreed the landlord would send its own contractors to attend drains. Although the landlord ensured the developer took reactive action to the reports in December 2020, the survey arranged by the residents in May 2021 represents a failing over a five and a half month period by the landlord to appropriately consider matters and ensure more proactive action was taken.
57. The landlord's final response in May 2021 acknowledged service and communication issues in respect to other defects issues the residents raised, and awarded £75 for these. For the drains it referred to the developer's visit on 22 December 2020, at which it said a 'survey' was done; said the developer provided photographic evidence that blockages were caused by items such as wet wipes; and said if the residents were able to evidence that a defect caused blockages, the developer would attend to it. In light of the issues identified the landlord's response was not satisfactory, as this did not address the extent of failings in the service it had provided to the residents and did not acknowledge it had not responded to their reports in an appropriate way.
58. The landlord did not acknowledge the frequency of blockages and that by the complaint in March 2021, it had received four reports, and by the response, had received six reports. It did not acknowledge and address that in December 2020, the residents had forwarded the recommendation for a CCTV survey and requested further investigation. It did not address events between December 2020 and March 2021 and a lack of response to comments and appeals from the residents in this period. It did not acknowledge reports in March and May 2021, or that it was informed by the developer in May 2021 that it was agreed the landlord's contractor would attend for drain issues. It also did not acknowledge the distress and inconvenience caused by the issue and the impact on the disabled resident's ability to use the toilet.
59. The response gave the developer's photographs and a stated 'survey' unreasonable weight for wet wipes being the cause of blockages, balanced against the residents' six blockages reports by the time of the response. The evidence advises that any photos related to the residents will likely have only related to a single visit (on 22 December 2020), as noted at paragraph 54 of this report. The 'survey' appears to refer to feedback from the developer rather than a survey, as there is no evidence the landlord was provided a formal survey. It was therefore not reasonable that the landlord considered the evidence to be sufficient for its complaint response and that no further action was necessary.

60. The residents subsequently supplied their contractor's May 2021 reports that detailed a 'belly' was cause of blockages and needed rectification; detailed a drain needed to be lifted to create a correct gradient; detailed an internal stack pipe that needed to be lifted; and also detailed a number of other recommendations. The residents also subsequently detailed how a short distance from the main bathroom downpipe to a manhole meant that waste travelled at such a speed that it formed a mass and blocked exit of waste from anywhere in the house; and they detailed how they were considering installation of a drain insert to try to stop masses forming and causing blockages, and requested the landlord's permission for this.
61. On receipt of the May 2021 contractor report the landlord highlighted issues to the developer, which rectified the 'belly' and detailed action they were to take in early July 2021. This was appropriate, as the complaint response said that if the residents were able to evidence that a defect caused blockages, the developer would attend to it, and it is important for a landlord to meet such commitments. It was also appropriate that the landlord reimbursed the residents' further contractor costs. However, the Ombudsman would expect to see evidence that the landlord effectively monitored the completion of the works and followed up the effectiveness of these; that it considered matters further when issues were reported to be unresolved; that it addressed the request to install a drain insert; and that it maintained effective communication with the developer and the residents until the residents confirmed issues were resolved.
62. There is no evidence the landlord effectively monitored the works, so when the Ombudsman requested information in September 2021, the landlord was unclear if the works and the CCTV survey were completed. The survey was eventually arranged after this Service's contact and over three months after when the developer said it was scheduled. There is no evidence the landlord ensured there was further appropriate investigation after the residents reported they had unblocked the drains three times since the developer attended for the 'belly,' which advised the issue was unresolved. There is no evidence that appropriate action was taken after blockages were raised to the landlord/its representatives at an 'end of defects' inspection on 16 July 2021, when an effective review would have identified works such as the CCTV survey were outstanding. There is also no evidence that the request in respect to the drain insert was fully addressed. The correspondence between the developer and landlord in October 2021 was contradictory as to whether there was an ongoing issue with the drains after the actions in mid-June 2021 and early July 2021, when a clearer understanding of the status of the issue would have been expected.
63. The landlord did on occasion engage with the developer about matters, however this investigation cannot see this was in a way that ensured effective progress or investigation of matters. This Service recognises that where a third party is

involved, matters may be out of the landlord's hands to some extent, however its overall limited role in matters is not satisfactory. The landlord has not been mindful of its interest in the property and relationship and responsibility to the residents; and its consequent obligations to effectively review information from the residents and the developer, make decisions, and arrange investigations of issues where applicable. The landlord also declined the developer's suggestion in early July 2021 for a meeting on site which, while this Service can understand a desire for the developer to rectify the drain issues, was a missed opportunity for it to work with the developer in resolving matters in a way this Service would have expected to see before the final response, given the residents' reports.

64. The distress and inconvenience detailed by the residents, the issues identified by their contractor, and the solutions the residents said they would explore (which should not have been necessary given the new age of the property), should have prompted the landlord to ensure there was significantly more focus on the issues and the residents than there has been. The vulnerability of one resident and impact on them should also have acted as a prompt to ensure there was sufficient focus on the issues. It is not satisfactory that the landlord has not done more to ensure investigation of the issues, their impact and why solutions such as drain inserts were being explored, and that it simply accepted the developer's comments that the 'belly' was caused by ground conditions, crossing over the drains and plant movement. It is not satisfactory that it has not ensured more consideration was given to findings about poor drain installation, and the information that blockages were caused by the speed that waste travelled due to the short distance from a main downpipe to a manhole, which then resulted in masses forming.
65. The blockages at the property will have caused much distress and inconvenience to the residents. The residents' continued weekly manual clearance of a drain will cause ongoing distress and inconvenience. The blockages will have caused additional distress and inconvenience to one of the residents who is disabled and will be particularly affected by the impact on the ability to use toilet facilities. The residents will have been caused concern and worry at moving into a new home to experience the issue and to be informed by their contractors that there may be fundamental issues with the drain installation, which could affect future saleability of the property. The residents will have been caused distress and frustration by the ongoing lack of effective support and communication; the lack of assurance that the issue has been effectively and robustly investigated; and the lack of assurance that steps were being taken to achieve a permanent, lasting solution to any issues there are with the drain installation, by those most appropriate to do so. The assumption in the final response that, five months after blockages were attributed to wet wipes, the residents were still disregarding advice given to them and going against their best interests is therefore not at all satisfactory.

66. In light of all the evidence, from the timeframe of the complaint to the present, the Ombudsman is not satisfied that the landlord has reasonably met its commitments in its complaint response; ensured there has been an appropriate response to the drain issue; or appropriately acknowledged the impact of the issue and its handling on the residents. Nor is it satisfactory or reasonable that the residents continue to manually clear their drain to prevent blockages due to the lack of appropriate acknowledgement and support. The unsatisfactory handling of matters since December 2020 and cumulative impact on the residents means this Service considers it appropriate to make a finding of severe maladministration and to make a number of orders and recommendations.

### **Determination (decision)**

67. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was severe maladministration in the landlord's response to the residents' reports of drain blockages.

### **Reasons**

68. The landlord did not ensure all the residents' blockage reports were responded to in an appropriate or timely manner. It did not ensure vulnerabilities, professional recommendations for a CCTV survey and reports of issues with the drain installation were appropriately and robustly considered. It did not effectively monitor the completion and effectiveness of the works or maintain effective communication with the developer and the residents until the issues were confirmed to be resolved.

### **Orders and recommendations**

#### *Orders*

69. The landlord to apologise to the residents for the issues identified in this report, in line with the approach detailed on page 10 of this Service's remedies [guidance](#).

70. In addition to the £595 and £175 offered in previous responses, the landlord to pay the residents £1,685 which comprises:

- a. £1,500 in recognition of the distress and inconvenience caused to them.
- b. £185 to reimburse their costs to install a drain insert.

71. The landlord should provide evidence of compliance with the above within four weeks of this decision.

72. The landlord to take steps to investigate the drain installation and the cause of blockages at the property. As part of this, the landlord should:

- a. discuss the issue with the residents and review the steps they currently take to mitigate it.
- b. discuss with the developer the issue, their reported investigation of the issue in March and May 2022, and the nature and status of any solutions being explored.
- c. arrange its own full independent survey and use the findings to inform its approach.
- d. review reports from properties on the same development and consider whether further action is required in respect to these.

73. The landlord should then write to the residents to set out its position; the options, solutions and support it can provide to the residents, where applicable; and the current status and estimated timeframe for any solutions being explored where applicable.

74. The landlord should carry out a review of the case and current processes in respect to reports of issues and defects at its new build properties, to identify any areas for learning and service improvement. In particular, it should consider the processes in place to ensure:

- a. that individual reports about issues at new builds are logged and monitored.
- b. that formal defects are logged and monitored.
- c. that all information and frequency of reports from residents are considered by developers.
- d. that evidence from developers is effectively assessed against all information and frequency of reports from residents, when making decisions about further actions.
- e. that actions such as site visits or arrangement of its own independent surveys are considered, based on available information or in order for informed decisions to be made about further actions.

75. The landlord should provide evidence of compliance with the above within eight weeks of this decision.

### *Recommendations*

76. The landlord to:

- a. consider implementation of a defects policy which formally sets out guidance for its staff on how defects at new build properties are handled, including in circumstances where a resident has a recorded vulnerability, and in circumstances where more than one resident reports similar issues or issues that appear to be linked

- b. consider its staff training needs for handing of defects at new build properties and the above circumstances.

77. The landlord to ensure that its records reflect the resident vulnerability at the property.