

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202117830*

*Hammersmith and Fulham Council*

*31 January 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 regarding:
  - a. The landlord's response to the resident's reports of water ingress, damp, and mould in the property.
  - b. Its handling of the associated formal complaint.

## **Background and summary of events**

2. The resident, his partner, and their child live in a flat (the property) within an estate of nine similar blocks. The property is a second floor, one-bedroom flat. The balcony of flat 18 above forms much of the roof of the property. The tenancy began on 14 April 2008. The council is the landlord of the property (the landlord).
3. Although the complaint was made in 2020, the residents have provided evidence to show that they first reported the problems of water ingress to the landlord in 2017. A complaint was made in November 2017 which stated that mould was growing in the living room and water poured down the walls when there was heavy rain. They complained that while two sets of photographs had been taken by the landlord, no one had returned to resolve the issue. The complaint was acknowledged, and an apology given for the length of time the residents had had to wait for the repairs to be completed along with the lack of communications received. The roof continued to leak and an email and photographs were sent to the landlord in June 2020.
4. On 26 October 2020 the residents made a formal complaint. They stated that the leak from the balcony above was unresolved and water was still leaking into their home. The landlord had not kept them informed on what action it was taking and

there had been no response to the email and photographs sent in June 2020 The landlord acknowledged the complaint on the same day. The residents chased a response on 20 November 2020 and again on 16 December 2020.

5. On 8 January 2021, the residents contacted the landlord again. They explained that works that had been undertaken to the balcony had not resolved the problem and water continued to enter their home. They chased a response on 13 January and 3 February 2021.
6. The landlord sent its response to the complaint at stage one of the complaints process on 4 February 2021. It acknowledged that the residents had reported leaks since 2 June 2020 and apologized for the inconvenience. No reference was made to the fact that the residents had reported the problem in 2017. It noted that operatives had attended on several occasions in efforts to trace the source of the leak but that the source was hard to detect and could be coming from multiple points. It had been initially determined that the leak was coming from the balconies of the property above, however, repair works to those balconies had been completed and the residents were still experiencing water ingress. An appointment was made for 9 February 2021 for a survey of the drainpipes to see if this was the cause of the leak. The landlord offered £50 compensation for the inconvenience experienced.
7. The residents were dissatisfied with this response and requested that the complaint be progressed to the next stage. They pointed out that the leak had been a problem for 4 years not just since June 2020. They stated that multiple complaints had been made and operatives attended but never returned. They explained that they could not continue to live in the situation and that they were concerned for the health of their young daughter. They sought increased compensation that reflected the inconvenience that they had experienced. They pointed out that £50 did not even cover the cost of items that they had had to dispose of, due to the mould and wetness. They asked that they be provided with alternative accommodation.
8. An operative attended on 10 February 2021 as promised in the complaint response, but unfortunately, he was from the wrong department and was unable to take matters any further on that day.
9. It is clear that a number of appointments were made to access the balcony and that the landlord experienced access difficulties on occasion.
10. In March 2021 the residents sought the assistance of their MP to help get the landlord to resolve the problem and respond to the complaint. The landlord responded to the MP and confirmed that a works order had been raised and scaffolding would be erected to complete extensive repairs to the roof and gutters. The landlord stated that the resident had agreed to contact the

complaints team once the repair is complete to inspect the damage caused to her home. It anticipated that the works would take around 8 weeks to complete.

11. By June 2021 the residents had heard nothing further in relation to their complaint and they contacted the landlord on 21 June to complain that the leak was still ongoing.
12. The landlord sent its final decision on 24 June 2021. This confirmed that that water ingress was a problem in many properties on the estate and unfortunately there were no temporary measures that could be taken whilst the landlord investigated suitable waterproofing repairs for the balconies and walkways. The landlord gave contact details of the Project Manager who would be the main point of contact for updates regarding the works. Internal works would take place once the external problems were resolved. The landlord acknowledged that the issue had not been addressed in a timely manner. It apologised and offered £150 compensation for the inconvenience. The complaint was then closed. No reference was made to the possibility of a visit from a surveyor to assess damage.
13. This was not however the end of the matter as the problems continued for the residents. They contacted the landlord again on 28 June 2021 asking when works would commence. They explained that the leak was getting worse, and an electrician had visited and advised that the ceiling needed to be taken down and repairs undertaken to the wiring, but this couldn't be done until the leak was fixed. They also expressed their dissatisfaction with the offer of compensation and advised that they were repeatedly ill with colds due to the damp and mould and had asked on several occasions to be moved.
14. The situation continued in much the same vein, with the resident reporting the leak continuing, and that interim measures undertaken by the landlord did not resolve the situation. The landlord has explained that the block needed major works as there were leaks throughout the block. It believed that the asphalt under the tiling was cracked, making it difficult to undertake temporary repairs.
15. On 14 February 2022 the residents confirmed the situation remained the same. They were still living in a property that had suffered from damp and mould since November 2017. There had been numerous mould washes during this period, repairs had been undertaken to the electrics and floor due to damage caused by water ingress and repairs to resolve the issue had not been successful.
16. The landlord's complaint handling was protracted and its communication with the resident was often poor. The residents have explained that the family have found the situation very difficult. They have had to take several days off work to facilitate access, there have been missed appointments and attendance by incorrect operatives as well as lots of repairs that failed to resolve the problem.

They report that they have often been ill due to the damp conditions and have concerns for their young daughter. They have been ashamed to have people visit, have had to dispose of belongings damaged by the water and damp. They have asked to be rehoused, but this has not been considered. They do not believe that the £150 compensation offered recognised the inconvenience and distressed caused by the situation that was still ongoing seven months after the landlord's final response.

## **Assessment and findings**

### *Damp and mould*

17. The landlord's tenancy agreement with the resident confirms that it is responsible for maintaining the structure of the property, including the external and internal walls, floors, and ceilings.
18. The landlord must also ensure that the homes it provides meet the Decent Homes Standard. This was updated in 2006 to take account of the Housing Health and Safety Rating System (HHSRS) which lists damp and mould as a potential hazard. According to the Standard, for a home to be considered 'decent' it must:
  - i. Meet the current statutory minimum standard for housing.
  - ii. Be in a reasonable state of repair.
  - iii. Have reasonably modern facilities and services, and
  - iv. Provide a reasonable degree of thermal comfort.
19. The Housing Health and Safety Rating System (the HHSRS) is concerned with avoiding or, at the very least, minimizing potential hazards. Under this rating system the landlord has a responsibility to keep a property free from category one hazards, including damp and mould growth. For damp and mould this means taking preventative measures that could have a significant effect on likelihood and harm outcomes relating to moisture production and ventilation. This may include damp proof courses and ensuring that the external fabric of the building is kept in good repair and that the roof and under floor spaces are well-ventilated.
20. It is not disputed that the residents have been living in a home that has suffered from water ingress whenever there is heavy rain. This has resulted in damp and mould damaging plaster, decorations, and belongings. The landlord has sought to comply with its repairing obligations by investigating the cause of the problem and has taken a number of remedial actions. Unfortunately, these have failed to remedy the problem. As a result, the residents have continued to live with damp, mould, and wet walls for a minimum period of 4 years.

21. Throughout this time there are periods of poor communication from the landlord and the residents have had to frequently chase for a response/update. At one point they had to seek support from their MP before a response was sent. There is also no evidence of any response to their repeated request to be provided with alternative accommodation or any follow up when they raised health concerns caused by the condition of the property.
22. In its complaint response the landlord did recognise that the situation has caused inconvenience to the residents and has offered £150 compensation. This fails to appreciate the length of time that the situation has been in existence, the distress and inconvenience this has caused and the lack of any final solution.
23. The residents have been reporting this problem since 2017. The residents have paid full rent for their property over this period. They were entitled to expect that the property be repaired within a reasonable period. As leaks remained a problem 4 years on it is difficult to conclude that the landlord remedied the problem within a reasonable timescale, even though it was taking steps to try and resolve the issue. This left the residents living an unpleasant and difficult situation and the landlord's offer fails to fully recognise this.
24. It is noted that this is a block wide problem with other residents living in similar conditions. Given the length of time the problem has been outstanding the Ombudsman would expect the landlord to have proactively managed the situation, putting in place a programme of works in place that included assessing the welfare of each of its residents and their homes. This could have included an assessment of any health risk, an assessment of the extent of the damage and assisting with humidifier and running costs, with insurance claims if goods were damaged as well as providing guidance, a compensation formula and helped to identify any household in need of alternative accommodation.
25. This failure to proactively manage the block repairs and keep residents informed also impacted the complaints team ability to keep the residents updated. There is evidence of internal chasing emails trying to establish the current position and plans.
26. It is also noted that the urgency of these emails increased when an MP and the Ombudsman became involved. There was no recognition that the issue was urgent because the landlord's residents were having to live in damp, mouldy, wet homes. Once the landlord was aware that the block required major works it should have set up a mechanism to ensure residents were kept informed and updated with progress of the works and plans.

### *Complaint handling*

27. A complaint was made on 26 October 2020 notifying the landlord that the roof repair remained outstanding from November 2017. The residents chased a response on four occasions before the landlord issued its response at stage one of the complaints procedure on 4 February 2021. This was significantly outside of the timescale set out in the landlord's Complaints Procedure which states that a full written reply should be sent within fifteen working days and the Ombudsman's Complaint Handling Code which requires a response to be sent within ten working days.
28. Although an apology was given to the resident there is no evidence that the landlord learnt from its mistake as its stage two response was similarly delayed and required the involvement of the resident's MP before a final response was issued. The landlord responded promptly to the MP and promised a survey to assess damage once the works were completed, however, there is no evidence that this was offered to the resident.
29. The residents requested the complaint be escalated on 9 February 2021 and the final response was sent on 24 June 2021. Again, this was outside the landlord's policy commitments which state that a full written reply should be sent within 20 working days, mirroring the Ombudsman's Complaint Handling Code which requires the same.
30. The landlord's final letter recognises that the complaint was not progressed in a timely manner. It offered £150 for inconvenience "taking into consideration everything that has happened." This does not adequately recognise the difficulties the resident experienced in getting complaint responses and updates on repairs from the landlord and the inconvenience and distress caused by the landlord's failure to adequately repair the roof.

### *Conclusion*

31. The Ombudsman considers it appropriate to require the landlord to make a further payment of compensation for distress and inconvenience which recognises the impact on the resident, including that full rent was still charged for a property that was in need of repair for a period of approximately four years.
32. The Ombudsman has not been provided with the rent level that was charged at the time of this matter. When considering the amount of compensation that should be paid to the resident, the Ombudsman has therefore referred to the annual statistical data return that Registered Providers (including this landlord) submit to the Regulator of Social Housing. Data published from these returns includes average rents. The relevant table for the area that the residents lived in records the average local authority rent for a one bed property in 2021/22 as

being between £120.01-£131.36 per week. Social housing of the same size, in the same street and postcode area are listed on Homeswapper (a website where social residents can register their homes for mutual exchange) with rents between £109 - £150 per week.

33. In the circumstances, the Ombudsman considers it reasonable to require the landlord to pay the resident a further £4,680 compensation. This figure has been calculated on the basis of £30 per week for a period of 3 years. The starting point for this calculation reflects the date when the resident could reasonably have expected works to have been completed and/or a programme of works put in place (12 months after it was initially reported). The figure (£30 per week) has been based on the damage caused to the living conditions by the continued failure to repair. This recognises that whilst no one room was fully uninhabitable, all rooms in the property were affected and the property could not be used in full. For example, furniture could not be placed against walls without damage occurring, neither could curtains or blinds be used without risk of damage. The property suffered from damp, mould and damage caused by rain penetration over a lengthy period. The figure acknowledges that the property was not in a reasonable condition and is considered to be a fair and reasonable amount of compensation for the period under investigation, taking all of the circumstances into account.

#### **Determination (decision)**

34. In accordance with paragraph 54 of the Housing Ombudsman Scheme, I make the following findings:
- a. There was severe maladministration by the landlord in its response to the resident's complaints of water ingress damp and mould in the property.
  - b. There was maladministration by the landlord in its complaint handling.

#### *Reasons*

35. The landlord's offer of redress does not fully recognise the impact of the delays that finding a solution caused for the residents. The residents lived with water pouring down their walls in heavy rain and subsequent mould and damp for approximately four years. This entailed providing access for numerous maintenance appointments to photograph, treat mould, and deal with damage caused by the leaks, but failed to resolve the problem. There were significant periods where the residents had to chase for updates and responses and a number of issues raised by the residents were not addressed. The landlord's complaint handling was significantly delayed at each stage. The landlord's offer of £150 does not provide adequate redress for these failings. There is also no evidence of any plan to proactively monitor and prevent the problems from reoccurring for the residents or their neighbours.

## Orders

36. That the landlord pays the additional sum of £4930 in compensation to the resident. This will bring the total compensation payable to **£5080** (including the £150 offered at stage 2) which comprises:
  - a. £30 per week for 3 years for the distress and inconvenience caused by the leaks and the conditions in the home, totalling £4680.
  - b. £250 for complaint handling failures.
37. That the chief executive apologises in person to the resident for the failings in this matter.
38. That the landlord inspect other properties in the block and the other blocks on the estate and set out, if it has not done so already, a detailed action plan to address the issues and communicating effectively with residents.
39. That the landlord confirms to the resident and this Service the current position in relation to the block and any ongoing works along with a timetable for completion.
40. The landlord should confirm its compliance with the orders in this case to this Service within **four calendar weeks** of the date of this report.

## Recommendations

41. That the landlord reviews its current approach to damp and mould, including its approach to diagnosing; actions to remedy; effective communications and aftercare, including monitoring.