

Housing

Ombudsman Service

REPORT

COMPLAINT 202125872

Wandle Housing Association Limited

24 April 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 resident complains about how the landlord handled repairs at the property. The repairs include:
 - a. Damp and mould.
 - b. Repairs to the front door.
 - c. Repairs to the ventilation system.
 - d. Repairs to the heating system.
 - e. Windows repairs.
 - f. Electrical repairs.

Background and summary of events

2. The resident is an assured tenant of a two-bedroom ground floor flat (the property).
3. The landlord's repair records evidence that:
 - a. On 23 November 2020, the resident reported that the underfloor heating in the bedroom was not working. The records show a completion date of 27 December 2021, but there are no details of works completed.
 - b. On 6 April 2021, the resident reported that the extractor fans were not working and there was mould in the property. The records include a completion date of 4 May 2021, but there are no details of works completed.

- c. On 14 October 2021, the resident requested an inspection to address the repair to the air vents and the underfloor heating in the bedroom stating this was the coldest room in the property. She said someone had attended but that they only took photos and did not complete any repairs. She reported a build-up of mould affecting her health.
 - d. On 29 November 2021, the resident reported the same issues again. She also said that the windows at the front of the property were not closing and one was hanging off the latch and the room was cold. The records include completion dates of 29 November and 8 December 2021, but there are no details of works carried out.
 - e. On 8 December 2021, the resident reported that two bedroom windows needed the hinges changing. The records include a completion date of 16 December 2021, but there are no details as to works carried out.
 - f. On 16 December 2021, the landlord obtained a quote to overhaul the window in bedroom one and replace the window in bedroom two.
 - g. The repairs to the windows were re-raised in March and April 2022.
4. On 29 December 2021, the resident raised a complaint with the landlord. She said she had been without heating and working air vents for a year and this had caused black mould to grow throughout the property. She said she had reported it numerous times but nothing had been done. She said the landlord had sent out operatives who were not qualified to do the jobs and that they had only taken pictures and left. She informed the landlord that she suffers from chronic asthma that was being made worse by living in damp conditions. The resident complained that every day when she wakes, her bedroom floor was wet due to the amount of condensation on the windows, the front door was mouldy and she was concerned the bathroom ceiling might fall as it was damp and mouldy. She said she wanted to move to a new property.
5. On 30 December 2021, the landlord acknowledged the complaint and said it aimed to respond within ten working days. On 31 December 2021, the landlord informed the resident that its repairs team were experiencing very high demand and were affected by staff absence and it might take up to 20 working days to respond to the complaint.
6. On 21 January 2022, the resident requested the landlord escalate her complaint to Stage two. She said she had not heard anything from the landlord about her complaint. She said the weather was freezing and her property was "even colder" and she had no heating. She also said she had a child who was registered disabled. The resident said there were windows that could fall out of the frame onto her or her child, plug sockets hanging off the walls and the property was not safe. She said she did not want any works completed until an independent assessment took place.

7. On 24 January 2022, the landlord acknowledged the resident's complaint correspondence and apologised for the delay. It agreed to escalate her complaint to stage two since it had not responded previously.
8. On 25 February 2022, the landlord provided a Stage two response to the complaint. The landlord acknowledged that it had identified several outstanding repairs and some new issues during a recent inspection. As a resolution to the complaint, it proposed to:
 - a. Replace the whole front entrance door and frame.
 - b. Appoint a specialist contractor to rectify the faulty ventilation system, which it felt was one of the "root causes of the mould growth". The landlord said that it was confident that once there was adequate extraction of air with a fully working heating system, the mould growth would not return.
 - c. Appoint a specialist contractor to attend to the underfloor heating system. It concluded that although the heating does work in certain areas, some of the controls were faulty or not working and it also wished to show her how to use the system correctly once it was in full working order.
 - d. Replace damaged skirting in the bedroom and seal the edges of the floor in the hallway. It had made an appointment for this on 8 March 2022.
 - e. Carry out a mould wash to the bathroom ceiling and paint it with a mould retardant paint. The landlord acknowledged that the bathroom ceiling had a significant amount of mould growth and made an appointment for 8 March 2022.
 - f. Attend to inspect the windows and, if possible, complete repairs. It acknowledged that a number of windows needed overhauling and some external window sills had come away. It noted an attempt to do this may have taken place previously but reassured the resident that the operative now appointed was experienced and would either carry out repairs or advise how to do so. An appointment was booked for 14 March 2022.
 - g. An electrician would attend on 14 March 2022 to rectify loose, damaged or faulty sockets and the doorbell, which was not working.
9. The landlord acknowledged that the mould growth had caused damage to some of the resident's personal items but it said it did not compensate for this. It said it advises residents to acquire contents insurance to protect against "unforeseen instances".
10. The landlord offered £500 compensation in recognition of the impact of its service failures, which was based on the time it had taken to provide an adequate solution and the impact, inconvenience and distress caused.

11. The landlord's records indicate that its operatives attended to window repairs on 14 March 2022. The contractor's notes indicate that the work completed was: "three windows eased and adjusted, sill refixed in place'. The operatives noted the need for the following further work: 'one window tilt and turn mechanisms broken, new job raised'. Glazing contractors attended on 18 May 2022. The notes state that the resident was rude to the contractors and shouted at them. The glazing work was left unfinished. The landlord acknowledges that it did not take any action to follow up following receipt of this report from the contractors.
12. The landlord has also provided notes relating to an appointment for 8 March 2022 which related to the proposed mould wash to the bathroom ceiling and other affected areas in the property. The landlord's notes state that the resident did not want the operative to carry out any works and requested to speak to a particular staff member. The notes state that the resident declined the mould wash and that she was requesting repairs outside of the "repairs remit". The repairs remained outstanding. These works have a completion date of 8 March 2022 in the repair records.
13. The landlord's repair records indicate a specialist contractor attended on 11 March 2022 to service the ventilation system. The contractor's report confirms that they identified that 'the ventilation system has a fan fault, the fan needs replaced [sic], the manufacturer will not sell us the part. I think you [the landlord] will need to contact them directly as they will need to send their own engineer.' The landlord has acknowledged that it failed to follow up on the further actions recommended in the contractor's report. The repairs records also note a completion date for 14 March 2022 for the repairs to the electric sockets and doorbell.
14. The resident has informed the Ombudsman that damage has been caused to personal belongings such as clothing, beds and sofas, due to the condensation and mould, most of which had to be thrown away. She states that to date the only repairs which are complete are the electrical repairs to the plug sockets and the door replacement. While a repair to the heating was attempted by changing the thermostat, this made the problem worse and at present she only has heating in the hallway. She describes having no heating for two years. She believes that the flooring in the property now needs to be replaced as it is lifting and mouldy underneath. The resident has provided photographs of lifting flooring and mouldy shoes and furniture.
15. In relation to the repair appointments where the landlord's records state the resident refused repairs, the resident states that the contractor who attended to look at the windows was rude and did not want to do the repair himself and he ended up leaving without doing any works. In relation to the mould wash in the bathroom, the resident was not satisfied that the landlord wanted to

complete this without addressing the root cause of the damp and mould so she refused this work.

16. The resident states that there are some issues with the new front door, including that it is mouldy. She also considers that her health has been affected by the conditions in the property in that she suffers from asthma and nasal polyps and is frequently ill with chest infections. Further that it has affected her mental health. She states that she recently reported a leak to the boiler but the landlord did not respond.
17. The landlord's records show that its contractors attended on 30 March 2022 and found that an immersion circulator had failed and two of the underfloor heating controls were defective. The landlord states that it ordered a circulator and an underfloor heating control and arranged a further appointment for 20 April 2022, but no access was provided. No evidence has been provided to confirm this. The landlord acknowledges that it did not follow up with the resident to try to book a further heating appointment after 20 April 2022.

Assessment and findings

Landlord obligations and policies

18. Under section 11 of the landlord and tenant Act 1985, there is an implied term in the tenancy agreement that the landlord will (in summary):
 - a. Keep in repair the structure and exterior of the property;
 - b. Keep in repair and proper working order the installations in the property for the supply of water, gas and electricity and for sanitation; and
 - c. Keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.
19. Once the landlord has notice of a repair, they should carry out the repair within a reasonable time (this is set out in case law).
20. Under the Homes (Fitness for Human Habitation) Act 2018, there is an implied term in the tenancy agreement that the property is fit for human habitation when the tenancy is granted and for the duration of the tenancy.
21. In determining whether a property unfit for human habitation under the Act, the key question is whether a property is "not reasonably suitable for occupation in that condition" because of various factors, which include repairs, freedom from damp and ventilation.
22. The landlord's Repairs policy states that:

- a. Its service standard is to complete works for emergency repairs within 24 hours. Emergency repairs include issues such as a complete loss of heating in the winter where no alternate heat source is available, insecure external doors and unsafe electrical lighting or other fittings. It states that it will upscale jobs to immediate response and for emergency heating and hot water loss during the winter, the period is four hours.
 - b. Appointed repairs which are not emergency have a service standard of 28 days unless it is treated as urgent, then it will upscale the work to be done in 7 days.
23. The policy also states that the landlord will consider increasing the priority of repairs for tenants with a disability.
24. In terms of insurance claims, the landlord's Repairs policy states that "Claims for damage to tenants or other third-party possessions will only be considered where there is a clear legal liability or where [it] could have reasonably foreseen the need for repair and failed to take action. In other circumstances it is the responsibility of the tenant to make a claim under their home contents insurance."
25. The landlord's Complaints policy states that it may offer discretionary compensation following a complaint. Factors considered when deciding this include the duration of the service failure, the severity of the situation, the cumulative impact on the customer and any particular circumstances or vulnerabilities.

Repairs

26. There is evidence that the landlord was aware of problems with the underfloor heating in the bedroom from 23 November 2020. Whether the landlord appropriately addressed the issue at that stage is unclear since the records include a completion date but the resident re-raised the issue in October 2021. It is clear from the evidence available in this case that the completion dates set out in the landlord's repair records cannot be relied upon as confirmation that the repair was resolved, since several of the repairs that were outstanding at the time of the final complaint response and, according to the resident, still are to date, have completion dates recorded. However, it is also noted that there is no evidence of the resident chasing up this repair between November 2020 and October 2021, therefore it is possible it was addressed in a reasonable time following this first report.
27. It is clear however that the landlord was aware that there was no heating in the bedroom from October 2021. While it was not a total loss of heating in the property and therefore not necessarily an emergency, it should still have been addressed within a reasonable period and ideally as an urgent repair. There is

no evidence of the landlord attending to this issue prior to issuing its final complaint response of 22 February 2022, therefore there was a significant delay by the landlord at this stage.

28. While the landlord did appropriately agree to address this repair when responding to the complaint, the landlord has not provided any evidence that it has satisfactorily repaired the heating system since then. The resident acknowledges that contractors did attend on one occasion, however she states that the problem worsened as a result. The Ombudsman has given the landlord an opportunity to evidence that repairs have taken place more recently but it has not done so. Therefore, on balance, the Ombudsman is satisfied that the heating system has not been in full working order for a period of approximately 16 months. According to the resident, initially the bedroom was affected, but since the landlord attempted a repair (it is unclear when), the property has been without heating other than in the hallway. The landlord has not evidenced otherwise.
29. The landlord was made aware in April 2021 that there was an issue with the extractor fans and mould. She reported it again in October 2021 and complained about it in December 2021. While the landlord appropriately agreed to address this repair when responding to the complaint, the landlord has not provided any evidence that it arranged a specialist contractor to attend and address this. Given that the landlord itself identified this as one of the root causes of mould in the property, this is a significant failing. This was reported in April 2021 and, on balance, the Ombudsman is satisfied that it has not been satisfactorily repaired since that date, a period of almost two years.
30. Both of these two repairs were identified as the cause of the mould in the property and therefore they should have been addressed as a matter of urgency. The landlord has failed to complete these repairs in accordance with its policy and failed to complete them within a reasonable time in accordance with its legal obligations. Particularly given that the resident had informed the landlord that she suffered from asthma, that her health was affected due to the damp and mould, and that there was a vulnerable child in the property, this was a serious failing by the landlord. While the Ombudsman cannot establish liability or calculate damages for damage to health (this would be for a court to establish through a personal injury claim), the Ombudsman does take into account a resident's particular circumstances including health conditions when assessing the landlord's handling of repairs and other complaints and considering appropriate compensation.
31. In relation to the window repairs, the resident raised these with the landlord at the end of November 2021. There was a failed attempt to repair them but they were outstanding at the time of the final complaint response in February 2022. There was therefore a delay by the landlord in addressing this repair since it

did not do so within the timescales set out in its policy. It appropriately agreed to address this when responding to the complaint and an appointment was made for 14 March 2022, which was reasonable.

32. The parties dispute the facts as to why this appointment was unsuccessful and there is not sufficient evidence for the Ombudsman to establish exactly what occurred during that appointment. However, it is of concern that following this failed appointment there is no evidence of the landlord making any further attempts to complete the repair or contact the resident about this. Even if the resident had led to the March 2022 appointment being unsuccessful, the landlord should have made a further attempt to re-engage with her to try and resolve the dispute and address the repairs, which it was legally obliged to complete. As a result, the window repairs have been outstanding for approximately 14 months.
33. In relation to the bathroom mould wash, the landlord acknowledged when responding to the complaint that the bathroom ceiling had a significant amount of mould growth. The landlord should therefore have addressed this as a matter of urgency, particularly given the vulnerabilities of the resident and her child. This was first reported that there was mould in the property in April 2021. She reported it again in October 2021. An appointment was offered for 8 March 2022. The resident admits that she refused the mould treatment as she wanted the landlord to address the cause of the mould rather than just treat it.
34. It was appropriate for the landlord to arrange a mould wash and treatment in the circumstances and it was unfortunate that the resident refused this. However, in the situation where the landlord had failed to offer any appointments to address the heating and ventilation issues, the resident's frustration is understandable since the landlord hadn't offered appointments to address the defects which it said were causing the mould. While it was appropriate that the landlord attempted the mould wash, it should have done more following the resident's refusal to engage with her as to why she had done so. This might have led to it addressing the outstanding repairs to the heating and ventilation. As it failed to do so, the repairs remain outstanding to date, a year further on, and the landlord has not provided any evidence of it making further attempts to address the issues.
35. The property has therefore been affected by mould for almost two years which is unacceptable and a significant failing by the landlord. The resident also raised concerns about the safety of the bathroom ceiling and there is no evidence of the landlord addressing this concern, which should have been treated as an emergency repair.

36. In relation to the issues with the front door and the electrical repairs, these were identified during the complaints process, and the resident has confirmed that these were addressed by the landlord following this, which was appropriate. However, it is noted that the resident had referred to safety concerns in relation to the plug sockets, therefore this should have been inspected as an urgent repair, and therefore there was also some delay in the landlord addressing this.

Conclusion

37. The Ombudsman's Dispute Resolution Principles are:

- a. Be fair – treat people fairly and follow fair processes
- b. Put things right
- c. Learn from outcomes

38. When responding to the complaint, the landlord took some appropriate action in that it inspected the property, agreed to arrange repairs, and offered some compensation for the previous delays. However, the landlord has not evidenced that it has followed through and completed those repairs therefore it has not put right its failings. Neither has it indicated any learning in terms of identifying what went wrong and how it would prevent a reoccurrence, which the Ombudsman would expect to see.

39. Given the length of the time the resident has lived at the property with substantial disrepair, the distress and inconvenience caused by living without fully functioning heating and in a property affected by damp and mould, and the resident and her child's vulnerabilities, the compensation offered by the landlord is not proportionate to address the impact on the resident. The landlord did not have sufficient regard of the resident's human rights in relation to adequate housing.

40. The Ombudsman has made an order of compensation, set out below, taking in to account the specific circumstances of this complaint, the resident's rent payments, and the Ombudsman's own Remedies Guidance. The Order takes into account that the resident's current rent is £235.95. The property comprises two bedrooms, bathroom, living room and kitchen.

41. The heating in the property has not been fully functioning since at least October 2021. The ventilation system has not been fully functioning since April 2021. As a result, the property has been affected by damp and mould in the bathroom (and possibly other rooms) since April 2021. The window repairs have been outstanding since November 2021. There is a dispute as to why the appointments for the mould wash and windows did not go ahead in March and May 2022, and the Ombudsman accepts the landlord is not solely

responsible for this since the resident acknowledges refusing the mould wash. However, even taking this into account, the Ombudsman considers the landlord should pay 10% of the rent to address the impact on the bathroom for a period of 15 months. In addition, the Ombudsman considers the landlord should pay an additional 25% of the rent to address the impact of the rest of the property of the insufficient heating and ventilation and defective windows for a period of 15 months. This is a period of 62 weeks and compensation of £5,120.12.

42. In addition to this, the landlord's response in relation to the resident's complaint of damage to her belongings was unfair and it was not in accordance with the landlord's own policy. The policy states that such claims will only be considered where there is "clear legal liability or where [it] could have reasonably foreseen the need for repair and failed to take action". When responding to the complaint, the landlord acknowledged that it had delayed in completing repairs and therefore it should have considered the resident's claim. Given the length of time that has passed since the issues were first raised, the Ombudsman acknowledges that there may be limited evidence of the damaged items at that stage, however, the Ombudsman has made an Order to address this issue as far as is possible at this stage.
43. The landlord also failed to address the resident's request to move from the property. It should have responded to this part of the complaint advising her of the options available in respect of this.
44. Finally, the Ombudsman is also concerned about the landlord's record keeping, since the repair records provided do not include any details of what happened at the appointments and it is evident that the completion dates in the records do not correspond with when the repairs were actually completed. The Ombudsman expects landlords to keep sufficiently detailed records of repair attempts and of when repairs are completed. It is essential for the landlord to keep track of repairs for which it is responsible, to ensure it meets its repairing obligations. The Ombudsman has therefore made an additional finding and Order in relation to this particular issue.

Determination (decision)

45. In accordance with section 52 of the Scheme, there was severe maladministration in respect of how the landlord handled the resident's reports of repairs in the property including to the heating system, the ventilation and damp and mould.

The Ombudsman has also made an additional finding that:

46. In accordance with section 52 of the Scheme, there was service failure in respect of the landlord's record keeping in respect of the repairs.

Reasons

47. The landlord failed to complete the required repairs to the heating system, the ventilation system and to address damp and mould in the property in accordance with its policy and legal obligations. The resident and her child suffered significant distress and inconvenience as a result, living in the property without fully functioning heating and while the property was affected by damp and mould. There were also delays in the landlord addressing the repairs to the windows. The landlord has not been able to provide evidence of satisfactorily addressing these repairs, more than two years on from when the first report of heating problems was reported.

48. The limited evidence available makes it difficult to confirm exactly how long the property was affected by the various repairs. However, it is clear that the property has been affected by mould, particularly in the bathroom, for nearly two years. The heating system has not been in full working order for at least 16 months. The ventilation system has not been in full working order for nearly two years. Some windows have been defective for 14 months.

49. The evidence provided by the landlord in respect of the repairs reported and completed at the property are incomplete. There is very little detail as to the outcome of appointments and the completion dates listed in the records are not all accurate. Finally, the landlord's response to the resident's request for compensation for damaged belongings was unfair and not in accordance with its policy.

Orders

50. Within 28 days of the date of this report, the landlord must:

- a. Pay the resident a total of £6,620.12 (this is inclusive of the offer of £500 previously made) comprising:
 - i. £5,120.12 in recognition of the impact on the property and the resulting distress and inconvenience caused by the landlord's failure to complete the repairs in a timely manner.
 - ii. £500 as an additional remedy to the distress and inconvenience caused to the resident and her family in respect of their particular vulnerabilities and the landlord's failure to take these into account.

- iii. £1,000 as a remedy to the loss of opportunity for the resident to have made an insurance claim or be offered appropriate compensation for her belongings damaged by damp and mould.
- b. Provide the resident with a written apology from its Chief Executive for the failings identified in this report.
- c. Offer to meet with the resident to discuss her complaint and provide the parties with an opportunity to rebuild the landlord-tenant relationship. As part of this, the landlord should ask if the resident still wishes to move from the property and if she does, it should provide advice as to her options in relation to this.
- d. Arrange for a qualified surveyor to attend the property and confirm whether there are any outstanding repairs for which the landlord is responsible. The resident should be given an opportunity to communicate with the surveyor to set out her concerns before the inspection is completed. If repairs are identified, a schedule of works and proposed dates should be provided to the resident and the Ombudsman within eight weeks of the date of this report.
- e. Arrange for a specialist contractor to inspect the ventilation system.
- f. Liaise with the manufacturer of the ventilation system to ensure that the ventilation system is either repaired or replaced.
- g. Carry out a review of the handling of the repairs and the landlord's record-keeping practices in respect of repairs, to determine what action the landlord should take to prevent a reoccurrence of the failings identified. As part of this, the landlord should review the Ombudsman's Damp and mould Spotlight report of October 2021 and ensure its staff responding to damp and mould reports are aware of it. The landlord should also consider what has gone wrong to cause the lack of follow up in completing the repairs it agreed to do as part of the complaint, as well as the steps it needs to take to ensure that it is keeping full and accurate records of repairs reported and how it addresses them. The landlord should provide a copy of the review to the Ombudsman with any proposals within eight weeks of the date of this report.
- h. The landlord should confirm its compliance of the above orders, with the Ombudsman.