

Housing

Ombudsman Service

REPORT

COMPLAINT 202315189

Bury Metropolitan Borough Council

31 January 2025

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint is about:
 - a. The landlord's decision to withdraw and reject the resident's Right to Buy (RTB) application on the basis that the property is exempt, as it is suitable for the elderly.
 - b. The landlord's handling of outstanding repairs. This includes repairs in relation to:
 - i. A roof leak.
 - ii. Damp and mould.
 - iii. The toilet overflow.
 - iv. A crack in the front door.
 - v. An unsafe garden, no drainage (causing floods), and a damaged fence.
 - vi. The boiler not boxed off and insufficient heating.
 - vii. Damaged floor tiles.
 - viii. An unsafe outhouse.
 - ix. A leak through the back door
2. This Service has also investigated the landlord's complaint handling.

Background

3. The resident is a secure tenant of the landlord. The tenancy began on 5 May 2008. The property is a 1 bedroom bungalow. The resident is an older person and the landlord's records show she has COPD.

4. The resident's RTB application was accepted by the landlord on 6 January 2022. RTB is a government scheme that allows secure tenants the opportunity to buy their home at a discount to the full market value. In January 2023 the landlord discovered a disclaimer, signed by the resident during the sign-up process, exempting the property from the RTB on the basis that it was suitable for the elderly. The landlord withdrew its acceptance of the resident's RTB application in a letter dated 24 February 2023. The landlord also treated the letter as a stage 1 complaint response.
5. The resident appealed the landlord's decision and escalated her complaint to stage 2 on 24 March 2023. This was on the basis that her property was not suitable for the elderly. The resident included within the appeal/escalation letter several outstanding repair issues and reasons why the property was unsuitable for her needs in its current state.
6. The landlord sent the resident a stage 2 complaint response on 28 April 2023. It confirmed in a separate email that the complaint included the RTB, outstanding repairs, and the suitability of her home. It said:
 - a. It could arrange an occupational therapy assessment. Once completed, it would make the necessary alterations to ensure the property was suitable for the resident's needs.
 - b. Most of the repairs/issues highlighted had either not been raised previously or would not have been undertaken during the right to buy process. However, it upheld the resident's complaint that the electrical check, following a roof leak, had taken longer than the service standard of 24 hours.
 - c. Due to the property's location, size and design, its assessment was that the property remained particularly suitable for occupation by elderly persons.
7. The resident was dissatisfied with the landlord's response, so referred her complaint to the Ombudsman.

Assessment and findings

Jurisdiction

8. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint, or part of a complaint, will not be investigated.

9. Paragraph 42(j) of the Housing Ombudsman Scheme states the Ombudsman may not consider complaints that “fall properly within the jurisdiction of another Ombudsman, regulator or complaint-handling body”.
10. After carefully considering all the evidence, the landlord’s decision to withdraw and reject the resident’s right to buy application, sits outside of the Ombudsman’s jurisdiction. This is because complaints about the Right to Buy process concern the disposal of land owned by a local authority. The Housing Ombudsman has the power to investigate local authority social landlords only as far as the issues relate to the management or provision of social housing. Any action taken (or not taken) by the landlord in its role as a local authority, rather than its role as a landlord, would not fall within the Ombudsman’s remit. As such, the resident’s complaint falls within the jurisdiction of another Ombudsman and in this case, it would be for the Local Government and Social Care Ombudsman (LGSCO) to determine.
11. We acknowledge that the landlord referred the resident to this Service in its stage 2 response letter, and in so doing was unclear as to the limitations of our remit in relation to RTB. However, the landlord’s communication to the resident did correctly refer her to the First-Tier Tribunal at www.gov.uk/housing-tribunals and explained that an appeal must be made within 56 days of the date of the refusal of the RTB. This route of appeal is specific to the refusal being made as the property is deemed suitable for elderly people.

Scope of investigation

12. It should be noted that the landlord has indicated to this Service that the repairs raised by the resident were only acknowledged within the stage 2 complaint response, and were not subject to the landlord’s complaint process . However, the landlord sent the resident an email with the complaint response attached on 28 April 2023. The email clearly stated that the stage 2 response was in relation to the RTB, outstanding repairs, and the suitability of the resident’s home. The landlord also addressed each point separately in the complaint response and made no distinction between the RTB issues and the repairs. Therefore, due to the content of the landlord’s communication with the resident, this Service has concluded that the repairs were part of its stage 2 response and they have formed part of this investigation.

The landlord’s handling of outstanding repairs

13. The resident raised concerns relating to the following outstanding repairs in her escalation request/appeal letter to the landlord on 24 March 2023:
 - a. An unsafe garden, no drainage (causing floods), and a damaged fence.
 - b. The boiler not boxed off and insufficient heating.

- c. Damaged floor tiles.
 - d. An unsafe outhouse.
 - e. A leak through the back door
14. In its stage 2 response dated 28 April 2023 the landlord confirmed that it had no record of the above repairs being reported prior to the escalation/appeal request. In response, it said it would arrange for an inspection of the resident's property and it would raise the necessary repairs.
 15. A landlord is not required to carry out repairs until they are informed of the issue by the resident, or another person such as a contractor, or a member of staff. Therefore, as there is no evidence to suggest that the landlord was aware of the outstanding repairs prior to the escalation request, its proposed course of action detailed in its response was reasonable in the circumstances. There is no evidence of service failure in relation to the landlord's handling of the above repairs.

Repairs to cracks in the front door

16. The resident raised concerns relating to cracks in her front door in her escalation request/appeal letter to the landlord on 24 March 2023.
17. In its stage 2 response dated 28 April 2023, the landlord said a joiner had attended the resident's property on 10 March 2021, to assess the condition of the door following a previous report. It said the joiner believed the door to be in working order and, at that time, it did not need to be replaced. The landlord concluded that it was acceptable to wait for a door replacement scheme on the estate. However, it said, as the resident had reported the issue again, it would arrange for the door to be inspected.
18. A landlord is entitled to rely on the opinion of its specialist staff and contractors when making decisions around the necessity of repairs. There is also no evidence to show that the resident had made any further contact with the landlord in relation to the cracks in her door until the date of the escalation/appeal letter. Therefore, as there is no evidence to suggest that the landlord was aware of the outstanding repair prior to the escalation request, it was appropriate of the landlord to treat the resident's report as a service request. There is no evidence of service failure in relation to the landlord's handling of the repairs to cracks in the front door.

Damp and mould

19. The resident raised concerns relating to damp and mould in her property in her escalation request/appeal letter to the landlord on 24 March 2023. She said she

had complained on many occasions, however, the landlord had not taken her reports seriously or addressed the underlying cause.

20. In its stage 2 response dated 28 April 2023, the landlord said the last time the resident had requested a damp inspection was on 10 January 2018. However, the landlord has provided this Service with evidence that shows a damp inspection was carried out on 1 March 2021. All associated works were complete by 17 November 2021.
21. There is no evidence to show that the resident had made any further contact with the landlord in relation to damp and mould since November 2021 until the date of the escalation/appeal letter. Therefore, as there is no evidence to suggest that the landlord was aware of the continuing issues with damp and mould, it was appropriate of the landlord to arrange a further damp inspection in the circumstances.
22. As the evidence shows that this was the third time the resident has reported issues with damp and mould, it would be reasonable for the landlord to consider whether there are any underlying reasons as to why the damp and mould keeps returning. A recommendation has been made in this regard.

Repairs to a roof leak and the toilet overflow

23. The landlord's records show that the resident reported a roof leak to the landlord on 25 May 2022. She also reported a problem with her toilet not flushing properly around the same time, although the exact date of the report is unclear from the evidence provided. This was during the period when the resident's RTB application was active.
24. The landlord responded to the resident's reports on the 25 May 2022 by email and said that it had raised a job for a roofing contractor to attend. It said it had also raised an emergency repair to check the electrics that may have been affected by the leak. It informed the resident that the timeframe for attendance to an emergency repair was 24 hours, and therefore it expected the electrician to attend within that timeframe.
25. The landlord also told the resident that the repair in relation to the toilet not flushing properly was not an emergency. As its policy was to only complete emergency repairs during the RTB process, it said it would not be completing the repair.
26. The resident raised concerns in relation to both the roof leak and toilet overflow within her escalation request/appeal letter to the landlord on 24 March 2023. In its stage 2 response dated 28 April 2023, the landlord confirmed that the roof was repaired on the 25 May 2022. However, due to workload, it undertook the

electrical check the following day and not within the agreed 24 hours. It apologised for the delay.

27. It is unclear from the evidence provided exactly how long the resident had to wait for the electrician to attend over and above the 24 hour service standard. Although the landlord has confirmed that the electrician attended the following day. Therefore, as the landlord did not act in accordance with the timeframe of 24 hours for emergency repairs, its actions were inappropriate in the circumstances.
28. In relation to the toilet overflow, it said it had no record of the report of the repair. It said it could only assume that was because there was an active RTB application and the repair was not classed as an emergency repair. However, it said it had now raised the repair.
29. The landlord's website says that once it receives a RTB application, only emergency repairs will be carried out. The landlord's position was that it was no longer required to carry out certain repairs and maintenance, as the valuation of the property was based on its condition at the date of valuation. However, the landlord was still required to comply with its statutory repairing obligations and carry out the repairs included under s11 Landlord and Tenant Act 1985, until the purchase completed.
30. Under s11 of the Landlord and Tenant Act 1985 a landlord is required to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences). Therefore, the landlord was under an obligation to repair the resident's toilet, even though there was an active RTB application in place. As the landlord did not do this, and it took the landlord around 12 months to log the repair, it failed to comply with its statutory repairing obligations. Its actions were therefore inappropriate in the circumstances.
31. In summary, it was appropriate of the landlord to treat the repairs reported within the escalation/appeal letter in the manner it set out in its response where it had no prior, or recent knowledge of the necessary repairs. There was a slight delay in an electrician attending to complete an electrical check following the roof leak. However, the landlord failed to comply with its statutory repairing obligations when it refused to complete repairs to the resident's toilet/toilet overflow. As a result of these failings, the Ombudsman finds that there was maladministration in the landlord's handling of outstanding repairs.

Complaint handling

32. The landlord operates a 2 stage complaints process. At the time of this complaint the landlord's complaints policy said it would respond to both stage 1

and stage 2 complaints within 10 working days. This has since been updated and is now in line with the Housing Ombudsman's Complaint Handling Code.

33. It is unclear from the evidence provided when the resident raised a stage 1 complaint. Therefore, it has not been possible to make an assessment as to whether the timeframe of the stage 1 response was in line with the landlord's service standard of 10 working days. However, the landlord sent the resident a letter on 24 February 2023, which appears to be both a stage 1 complaint response and a RTB withdrawal letter.
34. The resident escalated her complaint to stage 2 within her RTB appeal letter on 24 March 2023. She also raised several repairs issues within her escalation/appeal letter. The landlord acknowledged the resident's stage 2 complaint on 18 April 2023.
35. The landlord sent the resident a stage 2 complaint response on 28 April 2023. This was 23 working days from the date of escalation. Although this was outside of the timeframe set within the landlord's complaint policy of 10 working days, it was only just outside of the timeframe of 20 working days set within the Housing Ombudsman's Complaint Handling Code (April 2022) (the Code).
36. However, the evidence shows that the landlord included the resident's additional complaints of outstanding repairs within its stage 2 response, even though the stage 1 response had already been issued. The Code states at 5.7 "where resident's raise additional complaints during the investigation, these should be incorporated into the stage 1 response if they are relevant and the stage 1 response has not been issued. Where the stage 1 response has been issued, or it would unreasonably delay the response, the complaint should be logged as a new complaint". Therefore, by addressing all of the issues raised by the resident as part of its stage 2 response, the landlord's actions were inappropriate, and not in line with the Code.
37. In summary, there was a slight delay in the landlord providing the resident with a stage 2 response. However, the landlord failed to comply with the Code when it addressed the resident's complaint regarding repairs at stage 2, rather than raising a new complaint. As a result of these failings, the Ombudsman finds that there was service failure by the landlord in this case.

Determination

38. In accordance with paragraph 42(j) of the Housing Ombudsman Scheme, the resident's complaint about the landlord's decision to withdraw and reject the resident's Right to Buy (RTB) application on the basis that the property is exempt as it is suitable for the elderly, is outside of the Ombudsman's jurisdiction.

39. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration by the landlord in its handling of outstanding repairs.
40. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was service failure by the landlord in its complaint handling.

Orders and recommendations

Orders

41. Within four weeks from the date of the report, the landlord must:
 - a. Apologise to the resident, in writing, for the failings identified in this report.
 - b. Pay the resident total compensation of £200 made up of:
 - i. £150 in recognition of the distress and inconvenience caused by the landlord's handling of outstanding repairs.
 - ii. £50 in recognition of the distress and inconvenience caused by the landlord's handling of the resident's complaint.
 - c. If it has not done so already, complete the repair to the resident's toilet/overflow.
42. The landlord should reply to this Service with evidence of compliance with these orders within the timescales set out above.

Recommendations

43. The landlord should consider whether there are any underlying factors that are contributing to the reoccurrence of damp and mould within the resident's property. It should also consider whether it can implement any long term solutions to prevent the reoccurrence going forward, particularly given the resident's health issues.
44. The landlord should reply to this Service within four weeks of the date of this report to advise of its intentions in regard to the above recommendation.