

Housing

Ombudsman Service

REPORT

COMPLAINT 202303888

Bury Metropolitan Borough Council

23 September 2024

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:
 - a. The resident's concerns about staff conduct.
 - b. The resident's concerns that it shared information with third parties without her consent.
 - c. The resident's requests for reasonable adjustments.

Background

2. The resident is a secured tenant of the landlord. The tenancy started on 3 March 2020 and the property is 2 bedroom ground floor flat within an extra care scheme. The landlord is a local authority and an arm lengths management organisation (ALMO) managed its extra care scheme up to February 2024, after which the local authority took over the management of the scheme. The Ombudsman will refer to the local authority and the ALMO as 'the landlord' in this report.
3. The landlord has recorded vulnerabilities for the resident. It said the occupational therapist stated that the resident had "complex mental health needs" and her GP said she has been diagnosed with panic disorder with agoraphobia, anxiety disorder, schizotypal personality disorder, obsessional tendencies and intense fear.
4. On 19 January 2021, the resident explained that due to her health conditions, she slept during the day and unannounced visits to her property disrupted her sleep. She suggested for the landlord to let her know in advance when planning to visit her by either sending her an email or pushing a note under her door.

The landlord agreed and said it would inform the relevant people and update its systems to reflect the arrangements.

5. On 14 October 2022, the landlord said that on the advice of the mental health team and the resident's GP, it made a self-guarding referral because of concerns for the resident's welfare and wellbeing. The landlord said that because of the sensitive nature of the referral, it could not share a copy with this Service.
6. On 31 October 2022, the resident made a detailed formal complaint to the landlord. The elements of the complaint relating to this investigation were as follows:
 - a. While she had reasonable adjustments in place in regard to contacting and visiting her, the resident provided examples when those arrangements were not adhered to. The resident asked the landlord to set her intercom to privacy to prevent further disruptions. She also asked for staff to stop using her intercom and provide her with 48 hours' notice for any repairs unless it was an emergency.
 - b. One of the landlord's staff member lacked professional boundaries, respect, compassion and trustworthiness. The resident gave several examples to substantiate her claims. For example:
 - i. The staff member had shared personal information with the resident and offered to provide her with cognitive behaviour therapy.
 - ii. The resident expressed concerns about breach of confidentiality as a result of the landlord sharing an office with a partner agency.
 - iii. The landlord had removed a "stall" in the scheme reception, where residents left donations of food and items for other residents. She said the landlord gave multiple "excuses" as why the residents could no longer use the unused desk for the donations and said to the resident that the staff member said that they "were the new sheriff in town".
 - iv. The landlord provided contradictory information to the resident on several occasions. For example, the landlord told the resident that it could only review CCTV footage when the police made a request after a crime was committed. The resident said that she had then been told this was incorrect.
 - v. The staff contacted the resident's GP to discuss concerns about her mental health without her consent and based on third party information, which the resident believed to be malicious. The resident said she felt "violated and vulnerable".
 - c. The resident believed that the landlord discriminated against her because of her mental health.

7. The landlord logged the resident's complaint on 1 November 2022 and provided a detailed stage 1 response to the resident's complaint on 14 November 2022. It was as follows:
 - a. The landlord instructed staff to only disturb the resident in an emergency and to ask any visitors to make contact directly with the resident to arrange a suitable time to visit her.
 - b. It provided the email and phone number of its repair service for the resident to arrange appointments convenient to her. It confirmed that staff would no longer oversee repairs in her property and suggested for the resident to organise for a friend, neighbour or family member to arrange access and oversee the work on her behalf.
 - c. It provided the resident with guidance on using her intercom.
 - d. It said that it would not take disciplinary actions against its staff for making the safeguarding referral, as they acted in accordance with its safeguarding policy.
 - e. It assured the resident that it was not its intention to make the resident feel that was discriminating against her due to her mental health. It reiterated that it spoke to her GP because of concerns for her wellbeing.
 - f. It removed the residents' "stall" from the reception area as it presented a fire risk.
 - g. It had a sharing information agreement with its partner agency, which meant they could share data relating to the residents living at the scheme.
 - h. It confirmed that it could only review the CCTV footage following a crime report and request from the police.
 - i. It found no evidence that its staff discriminated against the resident.
 - j. It did not uphold the resident's complaint.
8. On the 28 November 2022, the resident requested an escalation of her complaint. She reiterated the issues she raised in her stage 1 complaint. She remained dissatisfied with the landlord's investigation into her complaint and disagreed with the conclusions it reached and the explanations it provided.
9. The landlord provided its stage 2 response to the resident's complaint on 12 December 2022. It reiterated the findings, conclusions and offers it made in its stage 1 response and added the following:
 - a. It acknowledged that in the past there had been instance when staff and 3rd parties did not always adhere to the agreed adjustments and it apologised for this. It said it was unaware of any recent breach of the adjustments. It

also confirmed that it had arranged for someone to visit her home to look at silencing the intercom.

- b. It reassured the resident that no confidentiality was breached when it made the safeguarding referral and found no evidence of discrimination against the resident on ground of her mental health.
 - c. It did not uphold the resident's complaint.
- 10. Between December 2023 and April 2024, the resident and the landlord had further conversations about the resident's reasonable adjustments. The landlord informed the resident that due to fire safety and its sterile policy, she needed to remove the paper notice she had sellotaped to her door. The landlord recommended that the resident used a do not disturb (DND) door handle sign. The resident expressed her concerns that people would either remove the sign or not notice it and said she disagreed with the sterile policy.
 - 11. On the 1 March 2024, the resident made a new formal complaint to the landlord. She said the landlord informed her that the only choice available to her was to use a door handle DND sign to prevent being disturbed and she was dissatisfied with this.
 - 12. The landlord provided its stage 1 response to the resident's complaint on 11 March 2024. In addition to the resident's complaint about the DND sign. It acknowledged that the resident bought a door handled sign, which she said someone stole. It offered to supply the residents with new fireproof DND signs.
 - 13. The resident requested an escalation of her complaint to stage 2 on 7 April 2024. She said that while she was willing to try the DND sign bought by the landlord, she would prefer using the sellotaped notice on the door.
 - 14. The landlord provided its stage 2 response to the resident's complaint on 26 April 2024. It reiterated the outcome of its findings from its stage 1 response. It also suggested using a sliding DNS sign as an alternative to the door handle DND sign, if the resident's sign went missing. It did not uphold her complaint.
 - 15. The resident informed this Service she remained dissatisfied with the landlord's responses to her complaints. She said that as a resolution she wanted the landlord to acknowledge it had discriminated against her and replace the staff member she had complained about.

Assessment and findings

Scope of the investigation

- 16. The resident has raised concerns of discrimination on the ground of her mental health. It is outside the Ombudsman's remit to establish whether the actions, or

inaction, of the landlord's staff amounted to discrimination, as it is not possible for us to assess an individual's motives. Furthermore, allegations of discrimination are legal issues better suited to a court of law to decide. Nevertheless, the Ombudsman can assess whether the landlord's overall communication with, and responses to, the resident were appropriate, fair, and reasonable.

17. It is also important to highlight that the Ombudsman is an impartial service which can only base its decisions on the evidence provided. Where there are conflicting accounts, the Ombudsman cannot conclude that there was failure by the landlord or require it to take action to put right this failure. However, in some circumstances, the Ombudsman may draw an adverse inference due to the lack of documentary evidence.

Staff conduct.

18. The Ombudsman expects landlords to treat all residents fairly with dignity and respect, to be tolerant and understanding. We acknowledge that since October 2022, the resident raised concerns with the landlord about the conduct of one of its staff members. She said that the staff member lacked respect, compassion and trustworthiness, however, the Ombudsman is unable to determine if this was the case. Nevertheless, we can assess whether the landlord's overall communication with, and responses to the resident's concerns were appropriate, fair and reasonable.
19. The resident provided several examples that one of the staff member lacked respect and compassion. For example, she believed that the staff's motivation for removing a "stall", where residents left donations, was to assert their authority. The landlord explained in its responses to the resident's complaint that it removed the "stall" as it presented a fire risk and there were no volunteers to mind it. It also explained that the staff member had not made the decision by themselves and after it reviewed the proposal for the stall, it concluded there was also a lack of need for it at the scheme. Whilst, the Ombudsman understands that the resident disagrees with the landlord, those were reasonable explanations by the landlord. Its actions were also in keeping with its fire safety policy to adopt a clear communal area approach in all internal communal areas.
20. The resident also felt that one of the staff member could not be trusted because they had provided incorrect information to the resident on the procedures for accessing the scheme CCTV footage. The Ombudsman understands that access to CCTV footage can be complex as it often contains other individuals' data. The Information Commissioner's Office says that "you should only disclose the footage if you have the other people's consent to do so, or if it's reasonable to do so without their consent". It is not unusual for landlords to only

share CCTV footage on requests from the police. While landlords offer security and protection to residents, they must respect their privacy in line with General Data Protection Regulation (GDPR). No evidence was seen that the landlord's staff provided incorrect information to the resident or tried to mislead her. The landlord also confirmed to the resident in its responses to her complaint that its staff had correctly advised the resident on its procedures to access CCTV.

21. The resident reported her concerns in regard to the landlord's staff member's professional boundaries. She said that the staff member shared personal information with her and offered to provide her with cognitive behaviour therapy. The Ombudsman understands that the resident disputed that the staff member could not recall the events. While we cannot determine who was right or wrong, the evidence shows that the landlord took reasonable steps to investigate the allegations. However, in the absence of evidence, it was unable to determine what happened.
22. Additionally, the resident questioned whether the landlord could effectively maintain confidentiality because it shares an office with its partner agency, which provides additional services to the residents at the scheme. The landlord explained that it has an information sharing agreement with its partner, which allows them to share information when needed. It also said that when it requires to have a private conversation with a resident, it uses a separate room to ensure they have privacy. Those were reasonable explanations by the landlord, which provided reassurance to the resident that it was committed to deliver its services in keeping with GDPR.
23. The Ombudsman expects landlords to treat all residents fairly with dignity and respect, to be tolerant and understanding. The evidence shows that the landlord investigated the resident's concerns, it spoke to the resident, to the staff member and also reviewed its records. The landlord explained to the resident in its complaints responses that it had found no evidence to substantiate her claim of staff misconduct. It concluded that its staff had acted in a professional manner towards her. Those were reasonable and proportionate actions for the landlord to take whilst investigating the conduct of its staff.
24. The Ombudsman understands that when a landlord and a resident are having challenging conversations or disagree on an outcome, it can make the resident feels as if the landlord is not believing them or is being disrespectful towards them. However, in this case, the Ombudsman reviewed the landlord's records and its complaint responses. Following a thorough review of the evidence provided, the Ombudsman found no evidence to suggest that the landlord's conduct towards the resident was poor or unreasonable. Based on the evidence provided, the landlord's actions and contacts with the resident appears to be polite, professional, empathetic, fair and reasonable.

25. After considering the evidence of the case, the Ombudsman determines there was no maladministration in the landlord's handling of the resident's reports concerning staff conduct.

Sharing information with third parties.

26. In October 2022, the landlord said it became concerned for the resident's welfare and made a safeguarding referral. The resident reported that the landlord spoke to her GP and made the referral without her consent. This was upsetting for the resident who does not consider herself unwell or a risk to others. She also believes that the landlord made the referral based on malicious information provided by a third party. This contributed to her feelings that the landlord had discriminated against her on the ground of her mental health. The Ombudsman agrees with the resident that the landlord is not qualified to determine whether she suffers from an illness. However, we also recognise that in keeping with its safeguarding policy, the landlord is expected to report any concerns of safeguarding to the relevant agency.
27. Section 42 of the Care Act 2014 outlines how local councils should approach adult safeguarding referrals. It states that getting consent from the subject is preferable, but also that any concerns about safeguarding are discussed directly with the individual. However, the landlord's safeguarding policy also states that under the UK GDPR and Data Protection Act 2018, landlords may share information without consent if, in their judgement, there is a lawful basis to do so, such as where safety may be at risk. In such circumstances, they would need to base their judgement on the facts of the case.
28. In this case, the landlord had concerns for the resident's welfare and risks she might present to others. The resident said that her GP informed her that a third party reported that they feared the resident presented a risk to them and might assault them. However, the resident disputed this and said that the landlord should have been aware that the allegations made may have been malicious. She said her relationship with the person who made the allegations had broken down. The evidence seen did not show that the landlord was aware of that fact prior to discussing their concerns with other agencies and making the safeguarding referral. However, the landlord has a duty to investigate, refer and signpost any concerns that it received.
29. In its stage 1 and stage 2 response to the resident's complaint, the landlord said it followed its safeguarding procedures. The evidence shows that the landlord sought advice from the community mental health team and the resident's GP prior to making the referral, and both agencies knew the resident. It is unclear what information the landlord shared and what advice either agency provided to the landlord. However, it contacted professionals that were experts and best placed to provide advice on the resident's health and risks she

might present to herself or others. This would have enabled the landlord to make an informed decision on what to do next. In this case and after considering the nature of the allegations made and concerns raised, the Ombudsman finds that the actions of the landlord were reasonable. The landlord's actions were in keeping with its safeguarding policy to make enquiries with the relevant people and make a judgment based on the information it had.

30. Whilst the Ombudsman recognises that the resident disputed that she presented a risk to others, we cannot determine whether the allegations were founded. Nevertheless, the landlord's actions were in keeping with its safeguarding policy to share information without consent when risks of harm to others were identified. The Ombudsman recognises that after discussing the circumstances of her case with the resident, the landlord agreed that it would discuss any future concerns in regard to her wellbeing with her.
31. In summary, the landlord shared information with her GP and the CMHT without the resident's consent. Additionally, it did not discuss its concerns about the resident's wellbeing with her and did not seek her consent prior to making the safeguarding referral. However, the landlord provided a reasonable explanation for its actions, which were in keeping with its safeguarding policy and its duties under the Care Act 2014. The Ombudsman recognises that the landlord acted in the resident's and others' best interests when it discussed its concerns with other agencies and made a safeguarding referral. It showed that it was concerned for her welfare, the welfare of others and acted accordingly. Therefore, after considering the fact of the case, the Ombudsman determines there was no maladministration by the landlord in relation to this element of the resident's complaint.

Reasonable adjustments.

32. The Equality Act 2010 states that landlords have a duty to make reasonable adjustments where its working practices put a disabled resident at a substantial disadvantage in comparison with residents who are not disabled.
33. In this case, it is not disputed that the resident is disabled and requires reasonable adjustments to support her living at the scheme. Since January 2021, she has made several requests to the landlord to adjust how it contacts her to help her manage her wellbeing. She explained that due to her mental health, she often has to sleep during the day and any disruption to her sleep has a significant impact on her. The evidence shows that between January 2021 and April 2024, the landlord agreed and reviewed several reasonable adjustments to how it would contact the resident during the day. Those were reasonable actions by the landlord, which were in keeping with its reasonable

adjustments policy to listen to a resident's request and provide reasonable adjustments for residents who require them.

34. The Ombudsman acknowledges that it can be difficult to get reasonable adjustments right the first time and it is important to review their effectiveness with residents. In this case, the resident agreed to inform the landlord when she would retire to bed in the day, so that it could refrain from knocking her door and ringing her intercom. The landlord also agreed to provide her with 24 hour notice prior to any repairs, so that she could stay elsewhere and remain undisturbed during the day. It had also agreed an arrangement for one of its staff to provide access and oversee repairs to her property. Those were reasonable actions from their landlord, which were in keeping with its reasonable adjustments policy.
35. However, the resident reported in October 2022 and November 2022, that whilst the adjustments had been successful, there were also times when staff, visitors and contractors did not follow them. The evidence shows that the landlord discussed and reviewed the adjustments with the resident. It apologised and provided a reasonable explanation for a time when it did not lock a patio door after a contractor attended the property. It acknowledged that at time, the resident was disturbed during the day and proposed new adjustments to prevent this from reoccurring. This was reasonable from the landlord, it showed that it was committed to adjusting its practice to meet the resident's needs when possible. This was in keeping with what we would expect landlords to do in such circumstances.
36. The Ombudsman acknowledges that the resident was dissatisfied with some of the reasonable adjustments offered. For example, she did not think it was fair that the landlord would no longer provide a staff to oversee the repairs in her property when she stayed elsewhere. The Ombudsman understands the resident's request, especially as one of the landlord staff agreed to do this previously to help the resident. However, the evidence shows that the landlord provided a reasonable explanation as to why this practice was not a suitable arrangement.
37. Additionally, it also provided contact details for the resident to arrange her own appointments for repairs at a time suitable to her. The evidence seen did not show that the resident required support to report or organise repairs for her property. Therefore, it was reasonable for the landlord to provide the means for the resident to manage her own repairs, this was also in keeping with the spirit of extra care and independent living.
38. Between December 2022 and April 2024, the resident and the landlord continued to discuss reasonable adjustments. Whilst they did not always agree on the effectiveness of adjustments in place or proposed by each other, the

evidence shows that they were both committed to find a solution which worked for both of them.

39. For example, the resident did not agree that a sellotaped “Do not disturb” notice on her door was an issue. The evidence shows that the landlord sought advice from its expert prior to making its decision. Whilst the resident may not agree with the outcome, the landlord is entitled to rely on the advice of its experts. This is especially important in regard to health and safety and fire risks in a communal block. The landlord then made its position clear to the resident and explained that the DND notice was not in keeping with its fire safety policy and sterile environment policy. Those actions were reasonable from the landlord, it shows that whilst it was committed to adjust its practice to meet the resident’s needs, it was also committed to keeping her safe.
40. The Ombudsman recognises that the resident had tried alternative options such as using a DND door handle sign. She explained that when she previously used a DND door handle, someone stole the sign. It is therefore understandable that she had doubt on how effective the arrangement would be and concerned about the cost to replace the sign. The evidence shows that in April 2024, the landlord offered to supply new fireproof DND signs for the resident and agreed to monitor and review the situation. Those were reasonable actions from the landlord which were in keeping with its reasonable adjustments policy to monitor and review the effectiveness of the adjustments in place.
41. After considering the evidence of the case, the Ombudsman determines that there was no maladministration by the landlord in its handling of the resident’s request for reasonable adjustments. Whilst there were times when the adjustments did not work, the evidence shows that the landlord took reasonable steps to investigate what happened. It also showed that it listened to the resident, reviewed the effectiveness of the adjustments in place and modified them when reasonable to do so. The landlord conducted itself in accordance with its reasonable adjustment’s policy and showed its commitment to meet the resident’s needs.

Determination

42. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was no maladministration by the landlord in respect of its response to the resident’s concerns about staff conduct.
43. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was no maladministration by the landlord in respect of its response to the resident’s concerns that it shared information with third parties without her consent.

44. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was no maladministration by the landlord in respect of its response to the resident's requests for reasonable adjustments.