

Housing

Ombudsman Service

REPORT

COMPLAINT 202100382

East Devon District Council

31 January 2022

Our approach

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

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

The complaint

1. This complaint is about the landlord's handling of external repairs to the resident's property, including:
 - a. External painting, rendering and facias.
 - b. Low water pressure and concerns about a leak under the property.
 - c. Soakaway.

Background and summary of events

2. The resident is a secure tenant of the landlord, which is a council. The tenancy commenced on 31 October 2016. The property is a semi-detached bungalow.
3. On 17 June 2020, the landlord emailed the resident following its call with her earlier that day regarding repairs to flaking paint at her property. The landlord said that it had have spoken to the repairs team who had confirmed that a job had been booked in but had since been cancelled due to the COVID19 outbreak as it was not classed as essential work at that time. It advised there would be an external painting programme instigated later that year or early the following year and this job had been added to the list. However it could not, at that time, confirm when the work would be carried out, that it was sorry that the communication from the repairs team and from its contractors had been so poor. That they had been advised that better communication was paramount to ensure tenants were kept informed of any works that were due to be carried out or delays or cancellations that would affect them.
4. On 21 July 2020, a surveyor and a manager visited the resident's property.

5. On 17 August 2020, the resident emailed the landlord to report an unscheduled visit from a contractor that day. The resident said that the contractor seemed confused about why they were there and thought that it was about the gutters. The resident said that the contractor took photos of the flaking paint, which she said she found confusing as another operative had already taken photos when they visited on 7 August 2020. The resident said that she had tried to speak to the repairs team and that she did not know why people kept telling her different things or why she had to explain everything again to every new person she spoke to. The resident also said that:
 - a. That the surveyor and manager, who attended her property on 21 July 2020 had confirmed that the following works were required:
 - i. To repair and decorate the area of damaged render to the gable end of the property.
 - ii. To paint the lean-to at the back of the property
 - b. She was told that the contractor's visit on 7 August 2020 was to repair the render and to strip and paint the lean-to but the operative said that they were only doing patches of the render, that they did not have paint in their van and that they were unable to stand on a ladder unaided. The resident said that the operative checked with their office and advised that there was no other work listed or any further visit booked. That she called the repairs team who said that the contractor should have done the lean-to and that the fascias needed repairs and that when she made a follow up call to the repairs team was told that the lean to was "probably" on "the programme".
 - c. Her water supplier had visited her property on 24 July 2020, and told her that the water flow was unexpectedly low and that they could hear water moving when everything was turned off. She had immediately advised the repairs team, however, she never heard anything and so had to call several times, speaking to different people and "eventually" a plumber attended on 13 August 2020, looked in the airing cupboard and recommended a more thorough investigation.

The resident said that the landlord would understand why she became so upset and confused, she was dyspraxic and had challenges overcoming anxiety, and that she "would really like someone to help (her) with this situation".

6. On 3 September 2020, the resident logged a formal complaint. The resident said that she had just called the repairs team for an update on when the lean-to and paint work on the rendering would be completed, and to ask what to expect following the report by her water supplier of low water pressure and potential leak under her property. The resident said that the repairs team seemed unable to see any report and asked if she had checked the sure stop and other stopcocks. The resident went on to explain that:

- a. The repairs team and surveyor, who had attended her property on 21 July 2020, had made no effort to contact her or keep her informed and that when she called them for updates, she was given no clear answers and no one called her back when she had been told that they would.
 - b. When the contractor's operatives attended they had repeatedly told her that they did not know why they had been asked to attend and that the repairs team then asked her what work had been done.
 - c. She was concerned that the flaking paint might be a danger to the environment, being possibly lead based, and that the landlord had made no attempts to either analyse the paint, offer any help to remove the loose paint or give any advice at all.
 - d. There was a potential leak under the house, her having reported water marks on her carpet over a year previously and that the landlord had known about her water supplier's findings since July 2020. The resident said that the landlord had failed to take any action to address this, provided her with no information and that the landlord's attitude was that she was just making a fuss about nothing.
7. The landlord issued its stage one response on 1 October 2020. The landlord said that it was sorry that the resident had had to contact its officers so often with regards to her concerns. The landlord also said that, whilst its officers had been "incredibly" busy over the summer due to the backlog of works due to the lockdown and whilst some of the resident's repairs may not have been urgent, they understood the resident's concern and frustration. The landlord went on to:
- a. Apologise if it had not been responding to her phone calls, explaining that that was not the level of customer service expected and this would be taken up with the manager of the team concerned.
 - b. Noted that there seemed to be a lack of communication with regards to the contractor which needed to be addressed and that the manager of the repairs team would take this up with them.
 - c. Explain that it did not generally test external paint. However it had attended the property a couple of times to discuss the repairs issues she had reported, and to assess the flaking paint and the condition of the fascias in particular.
 - d. Advise that the fascias were not in a sufficient condition to strip and repair and therefore it would be more practical to replace the existing fascias with UPVC ones, together with the lean to. The pole would be painted. The landlord noted that the resident was not happy with having UPVC fascias but as the owner of the property it had to make a decision based on the most cost effective solution, bearing in mind any long term maintenance costs.

- e. Confirm that the replacement of the facias would be done as reactive work, would likely commence in the next couple of months and as soon as it had a start date for the works it would let the resident know.
 - f. Advise that it was still in the process of investigating the low water pressure, and potential leak under the house, and that once the CCTV survey had been carried out it would be in a better position to resolve the problem.
8. The landlord arranged for a contractor to attend the resident's property on 26 October 2020 to clear a blockage from a downpipe and gulley.
9. On 5 November 2020, the resident emailed the landlord to escalate her complaint. The resident said that the issues she had complained about had not improved and were getting worse. That she had asked two week previously for some clarification but heard nothing and so had been ringing the landlord that week to try and get some information following its contractor discovering that the downpipe water was going straight into the soil with no soakaway.
10. On 17 November 2020, following contact from the resident, the contractor forwarded a copy of their report to both the resident and the landlord regarding their visit to the resident's property on 26 October 2020. The resident has advised this service that she had had to ask the contractor to forward their report as the landlord had advised her that they did not have a copy. The report noted that:
- a. On arrival the gutters had already been cleaned.
 - b. That they had cleaned out the rainwater gully and identified that there was no water flow through the gully.
 - c. They tried to rod downstream but were unable to do so. When they removed some surrounding stones they found that the gully pot did not go anywhere but rather just discharged into the mud 150mm away from the gully.
 - d. Upon inspection it was found that other gullies at the property also went nowhere.
- The report said that:
- e. A "soakaway needs fitting in the garden area and gullies piping into it unless able to connect to main sewer at side of property".
 - f. That the resident had said that she had quite bad damp problems which the operative said was probably coming from this.
 - g. They had attached photos of the cracking to the building and concrete path which would suggest possible subsidence.
11. On 9 December 2020, a CCTV survey of the drainage system was carried out at the resident's property.

12. The landlord issued its final response on 11 December 2020 in which it said that it was disappointed to learn of the experiences the resident had in respect of her interactions with officers and contractors and that it completely understood why she felt so frustrated. The landlord then went on to:
- a. Acknowledge the impact Covid restrictions had had on its ability to carry out both essential and planned works and that there was a huge back log of work to get through.
 - b. Again offer its apologies and to acknowledge the resident's frustration at the delays she had experienced having repairs completed and the poor customer service she had received.
 - c. Said that its contractor's staff not knowing what jobs they had been sent to her property to complete or what repairs had previously been carried out, and the attitude of some contractors, was concerning and that this would be raised directly with the contractor.
 - d. Advised that the low water pressure had been investigated and it had been unable to find a cause but that it would ask its repairs team to make sure everything had been checked including the sure stop.
 - e. Said that it understood that the resident's initial concerns were with regards to the flaking paint on the fascia and lean-to outside of her home and that she wanted it to be repainted. However on further inspection the surveyor felt that the ongoing maintenance would not be cost effective over time and the over-capping of the soffits and facias and of the lean-to would be more suitable. The landlord provided the resident with a schedule of the works to be carried out, which it said would be reactive, which meant that it would be carried out as soon as it could be arranged.
 - f. Said that, with regards to the CCTV drain survey and soakaway, it would ask the repairs team to confirm what was recommended and then would contact the resident to let her know what further work needed to be carried out.
13. On 15 January 2021, the resident called the landlord to complain that a contractor called her without warning on the morning of 11 January 2021 to attend that day to apply a fungicidal treatment and wash down the external wall ready for decoration, and that on 14 January 2021 there had been a man walking around her and her neighbours garden and they did not know who the man was.
14. On 20 January 2021, the landlord responded to the resident saying that:
- a. The resident had always been given 24 hours' notice of a repair when possible.
 - b. In regards to the appointment that was scheduled and attended on 11 January 2021, its contractor phoned the resident to advise that they could

bring the work forward and start work that day, the resident did not have to accept this if it was inconvenient, however she did. The manager then went on to say “please can you help me understand the issue here”.

- c. It's surveyors had seen the water supplier's report from the previous year and the water supplier needed to replace the PRV (Pressure reducing valve) units.
- d. It had spoken in depth with its conservation team and given that the property was situated in an area of outstanding natural beauty, it would be using wooden fascia's around both the resident's and her neighbours property, and that these would be painted.

The landlord also provided a schedule of the works that were still to take place, including installing new PVC guttering and downpipes, to prepare and treat external rendering for repainting and to prepare and re-paint the lean-to pole which had already been stripped.

15. On 19 April 2021, the resident referred her complaint to the Ombudsman. The resident said that:

- a. She was still waiting for the update with regards to the CCTV drain survey and soakaway, that the landlord had agreed to provide in its final response and the complaints officer had said they would be in touch about in January.
- b. The situation had not only not improved but has become worse, and she was beginning to feel quite intimidated.
- c. The main reason she had to make an official complaint was because of the difficulties she had had, trying to get the landlord to communicate with her. She was sympathetic to the impact of the pandemic but could find no reason for the landlord repeatedly telling her they would be in touch, and then not doing so.

Assessment and findings

Relevant legislation, policies, procedures and agreements.

16. Under Section 11 of the Landlord and Tenant Act 1985, the landlord is obliged to keep in repair the structure and outside of the property. This obligation is confirmed in section 6.1.1 of the tenancy agreement which states that the landlord will keep in repair the structure and exterior of the property including drains, gutters and external pipes.

17. Section 3.1 of the landlord's repairs policy states that the landlord will:

- i. Carry out repairs quickly and in one visit, if possible.
- ii. Arrange appointments to carry out work and inspect at a time to suit the tenant.

- iii. Set a high standard of workmanship for our contractors and staff.
- iv. Listen to any problems that tenants have about repairs and try to put them right.
- v. Have regard to the environmental impact of building products used.

18. The landlord's repairs policy categories two categories of repair:

- a. Emergency repairs – attended within four hours
- b. All other (non-emergency) repairs to be arranged at the convenience of the resident.

Assessment

19. The Ombudsman expects landlords to handle repairs, for which they are responsible, appropriately by completing them in a reasonable time and providing regular communication and updates to the resident about the works.

20. The Ombudsman also expects landlord to:

- a. Have kept of record of its inspection and the works it had agreed to, ideally in the form of a schedule of works, in order to monitor the progress of those works, ensure that these are followed through with, within a reasonable period of time and addressing any issues or delays as they occurred.
- b. Advise the resident of its findings, what actions, if any, it intends to take as a result and to provide the resident with an approximate timescale as to when it envisages those actions to be completed.
- c. Provide residents with regular updates clearly explaining the reasons for delay and the expected date of completion.

External painting, rendering and facias.

21. It is noted that in its response of 17 June 2020, the landlord made reference to an earlier job being raised with regards to the resident's report of flaking paint on the outside of her property. That job is not included in the repair records provided by the landlord and did not form part of this complaint.

22. Nevertheless, following the resident's report on 17 June 2020, the landlord recognised its responsibility for repair and took reasonable steps to investigate the resident's concerns. It did this by carrying out an inspection on 21 July 2020. Whilst this was over a month later, it is acknowledged that this was period of time where landlords were still experiencing the impact of covid lockdown and restrictions, and therefore this was not an unreasonable amount of time for the landlord to respond to what was a non-emergency repair.

23. In correspondence on 17 August 2020, the resident said that when the landlord attended on 21 July 2020 she was told that it would arrange for the damaged render at the gable end of her property to be repaired and decorated, and for the lean-to at the rear to be painted. There is no evidence of the landlord providing the resident with any written confirmation of this, or of what she might expect to happen or when, at that time.
24. When the contractor arrived 7 August 2020, they advised the resident that they were only instructed to patch repair the render. The resident raised her concerns with the landlord, who advised that the contractor should also have carried out works to the lean-to and the facias. However, the repair records provided by the landlord confirm that the job was indeed, as the contractor had advised, only to “hack off render in patch”. There are no further additions to this note nor is there any mention of the contractor being asked to carry out works to either the lean-to or the facias at that time.
25. This was understandably both frustrating and inconvenient for the resident, made more so when she later called the repairs team and was told that the lean-to was “probably” on “the programme”.
26. When the resident logged her formal complaint with the landlord on 3 September 2020, a month later, no further action had been taken in respect of either the rendering, the lean-to pole or the facias. The resident complained that the landlord had failed to keep her informed and that when she called for updates she was given no clear answers and that promised call backs were missed. The lack of clarity with regards to what works the contractors had been asked to do also formed part of the resident’s complaint to the landlord as did her concerns that the paint on the exterior of her building may be lead based and therefore a danger to the environment.
27. In its stage one response on 1 October 2020, the landlord apologised for its poor communication, explained that it did not general test external paint and provided the resident with an update on what work it intended to undertake with regards to the facias and lean to pole but failed to make any reference to the rendering. The landlord said that the work to the facias would be reactive work and would likely commence in the next couple of months.
28. Two months later, on 11 December 2020, the landlord issued its final response in which it confirmed its position with regards to the facias, provided the resident with a schedule of works and advised that the works would be carried out as soon as they could be arranged.
29. A contractor attended the property on 11 January 2021 to apply a fungicidal treatment and wash down the external wall ready for decoration. The resident complained to the landlord that the visit had been unscheduled and the contractor

had called her that morning to say they were on their way. When the landlord responded to the resident on 20 January 2021 its response was that she had always been given 24 hours' notice, that the contractor had called her as they were able to bring the works forward and that she did not have to accept the appointment.

30. With regards to the landlord's comment that the resident had always been given 24 hours' notice, the resident had reported on at least two occasions, on 17 August 2020 and 11 January 2021, that notice had not been given and the landlord has provided no evidence to justify its position nor to refute the validity of the resident's reports.
31. Even if the resident did have the option to decline the appointment on 11 January 2021, when a landlord arranges for works to be carried out it would be reasonable to expect it to advise the resident that the works had been passed to its contractor and that the contractor would be in contact to make an appointment to carry out the works. There is no evidence that the landlord did so in this case.
32. The tone of the landlord's comment in which it asked the resident "please can you help me understand the issue here" was also not particularly helpful, most especially as early as August 2020 the resident had advised the landlord that she was dyspraxic, had challenges overcoming anxiety and said that she would "really like someone to help her". The resident has also advised this service that due to her dyspraxia and other personal experiences she finds it particularly challenging to tell people no and so did not feel able to decline the visit when the contractor called.
33. There are no further records of works being carried out and at the time of writing this report, it is understood that the facias, external painting and works to the lean-to remain outstanding.

Low water pressure and concerns about a leak under the property.

34. In her correspondence to the landlord on 17 August 2020, the resident advised the landlord of a visit from her water supplier on 24 July 2020. The resident has advised this service that this visit was unscheduled. However, there is no evidence of whether this visit was organised by the water supplier themselves or following a request by the landlord. The resident said she was advised that the water supplier told her that the water flow was unexpectedly low, that water could be heard when the system was turned off and that she immediately reported this to the landlord. The resident's report is not recorded in the repair records provided by the landlord.
35. Following further contact from the resident, having had no response from the landlord, a plumber attended the resident's property on 13 August 2020. The

resident said that the plumber looked in the airing cupboard and recommended a more thorough investigation. Again there are no records of either the visit or the plumbers report in the landlord's repair records or in the evidence provided to this service.

36. When the resident logged her formal complaint on 3 September 2020, over two weeks later the landlord had taken no further action with regards to this matter nor is there any evidence of it providing the resident with an update as to what was happening.
37. When the landlord issued its stage one response on 1 October 2020, a further month later, the landlord said that it was still in the process of investigating and that it had arranged a CCTV survey to be carried out following which it would be in a better position to resolve the problem.
38. The CCTV survey of the drainage was then not carried out until 9 December 2020, a further two months later and almost five months after the resident had contacted the landlord about the findings from the water supplier.
39. In the landlord's final response two days later, it said that the repairs team would be asked to contact the resident to confirm what was recommended and what further work needed to be carried out. This was an appropriate response, however, there is no evidence of the repairs team doing so.
40. Following further contact from both the resident and her councillor, on 20 January 2021 the landlord responded to the resident to advise her that the water supplier had to replace a PRV but failed to make any mention of the CCTV drainage survey that had taken place over a month earlier, and for which in its final response the landlord had said the resident would receive an update.
41. Despite the complaints officer again advising the resident on 25 January 2021 that they would chase repairs for an update on the CCTV report, it is understood by this service that the resident is still awaiting that update.

Soakaway

42. On 26 October 2020, a contractor attended the resident's property to clear a blockage from a downpipe and gully. During the visit the contractor identified that a number of gully pots did not lead anywhere and as a result water was discharging into the mud 150mm away from the gully. The contractor advised that a soakaway needed to be fitted and the gullies piped into it. The contractor also reported that this may be the cause of the damp in the property that the resident had advised them of and attached photos of cracking to the building and concrete path which they said could suggest possible subsidence.

43. In her escalation request of 5 November 2020, complained that she had not had an update following the contractors visit. The resident has told this service that when she contacted the landlord she was told that the landlord did not have the report from its contractor and so she contacted the contractor to ask that they forward their report to the landlord, which they did on 17 November 2020. The resident has provided this service with a copy of the contractors report which it emailed to both the landlord and the resident.
44. There is no evidence of what action the landlord took in response to this report and, whilst referred to in its final response, the landlord was unable to provide the resident with any update, saying that it would ask the repair team to confirm what the recommendations were and would then contact her to let her know what further work was needed.
45. On 20 January 2021, the landlord advised the resident that they would be installing new guttering and downpipes but made no reference to the recommendations regarding the soakaway.
46. In its evidence submission the landlord said that “a comment made by one of the contractors on site has led to some misunderstanding and confusion here. He suggested that a soakaway might be a good idea but he was not aware that it would actually not be possible to install a soakaway at this property as regulations state that it must be located at least 5 metres from the wall of a building and at least two and a half metres from the boundary. The rear garden at (the property) is too small for this and so it would not be feasible. Also, the soakaway would, in fact, slope towards the building and so this would defeat its primary purpose”. This has been explained to (the resident) on numerous occasions such that it is not considered necessary at this property, nor could it actually be achieved”.
47. Whilst it may not be possible to install a soakaway, and whilst the landlord may have a reasonable reason as to why that was the case, it has failed to provide any evidence of the steps it took to reach that conclusion, what expert advice it took nor has it provided any evidence to support its claim that the resident had been advised of this on “numerous” occasions.
48. It is understood that the resident is still waiting for an update regarding the soakaway.

Conclusion

49. Whilst the landlord acknowledged its responsibility to repair, it is understood that the repairs still remain outstanding. The landlord failed to provide the resident with regular communication or updates with regards to those repairs resulting in

unnecessary time, trouble and distress to the resident particularly given her vulnerabilities.

50. It is good practice for a landlord to maintain accurate, contemporaneous records on reports it receives, and its actions in response. This will enable it to not only effectively fulfil its obligations as a landlord and manage any issues raised by its residents but also to properly investigate and respond to complaints accurately, comprehensively and fairly.
51. The landlord failed to evidence that it kept appropriate records of its inspections or the works it had agreed to. This not only resulted in issues with the landlord ensuring that it progressed works in a timely manner but also with it ensuring that it effectively addressed any delays or problems as they occurred and being able to efficiently and effectively response to any questions or concerns raised by the resident.
52. The complaints process was an opportunity for the landlord to acknowledge its failures and to set out the actions it has already taken, or intends to take, to put things right. Putting things right being the first step to repairing and rebuilding the landlord and resident relationship.
53. In its complaints responses the landlord apologised and acknowledged the resident's frustration at the delays she had experienced having repairs completed and the poor customer service she had received. The landlord said that it would be addressed directly with the repairs team. The landlord also acknowledged that there seemed to be a lack of communication with regards to the contractor, an issue with its contractor's staff not knowing what jobs they had been sent to her property to complete and that this would be raise directly with the contractor.
54. Whilst it was appropriate for the landlord to acknowledge and apologise to the resident for its failures, it is concerning that despite the landlord providing the resident with a similar apology in its response to the resident on 17 June 2020 those failures continued to re-occur throughout the period considered in this report.
55. To remedy this, the landlord is ordered to pay the resident £350 compensation the distress, inconvenience and upset caused and to take a number of specific actions related to the failures identified in this report.

Determination (decision)

56. In accordance with paragraph 54 of the Housing Ombudsman Scheme there was maladministration by the landlord in respect of its handling of external repairs to the resident's property.

Reasons

57. Whilst the landlord acknowledged its responsibility to repair, it failed to keep appropriate records of its inspection and the works it had agreed to, to ensure that these are followed through with, within a reasonable period of time and to provide the resident with regular updates with regards to those repairs. These failures resulting in unnecessary time, trouble and distress to the resident.
58. At the time of this report, works were still outstanding and the resident had yet to be provided with the updates she had requested with regards to the CCTV survey of the drainage system and the soakaway.
59. There was also poor communication by the repairs team and its contractors which the landlord acknowledged and said that it would address in June 2020 but which had not improved by the time of the landlord's final response in December 2020, six months later.

Orders and recommendations

60. That within 28 days of the date of this determination the landlord is to:
- a. Pay the resident £350 compensation for the failures identified in this report.
 - b. Provide the resident with a written update:
 - i. On the works to the facias, external painting and works to the lean-to and an approximate timescale as to when it envisages those works to be completed.
 - ii. With regards to the CCTV survey of the drainage system, what the survey found and an explanation of what actions the landlord has or intends to take as a result, if any.
 - c. Provide the resident with a written explanation of its decision not to install a soakaway, this is to include evidence of the steps it took to reach that conclusion and what expert advice it relied on when making that decision.
 - d. Provide the resident and this service with an update as to what actions and improvements have been put in place to improve the level of customer service and communication provided by its repairs team.
 - e. Confirm that it has complied with all of the above orders.