

Case 200500034: West Whitlawburn Housing Co-operative Ltd

Introduction

1. On 7 July 2005 the Ombudsman received a complaint from a woman (referred to in this report as Mrs C) about the decision of West Whitlawburn Housing Co-operative Ltd (the Co-operative) not to pursue further her claim for compensation for damage to her wash hand basin.

Summary

2. Mrs C complained that, in gaining access through her bathroom to install a pipe in a neighbouring property, a contractor acting on behalf of the Co-operative scored her wash hand basin and left her bathroom in a mess. Mrs C complained that the score had been caused by masonry which she said had fallen while the contractor was preparing the hole for the pipe.

3. The complaint from Mrs C which I have investigated concerned the Co-operative's decision not to pursue further her claim for compensation on the grounds that the contractor denied liability for the damage.

4. Following the investigation of all aspects of this complaint I found no evidence of maladministration or service failure on the part of the Co-operative in considering Mrs C's claim for compensation or her complaint. Accordingly, I did not uphold her complaint (see paragraphs 19 to 26).

Investigation and findings of fact

5. I established that the contractor was working on behalf of the Co-operative. As such, the Co-operative were held responsible for the actions of the contractor and had a duty to investigate Mrs C's complaints against the contractor. Section 5(e) of the Scottish Public Services Ombudsman Act allows the Ombudsman to investigate complaints of alleged maladministration or service failure by or on behalf of registered social landlords, of which the Co-operative are one. As a result, in this case, the actions of the contractor acting on behalf of the Co-operative fell within the Ombudsman's remit to investigate.

6. On 10 August 2005, I wrote to the Co-operative setting out the complaint as put by Mrs C and inviting comments on it. In particular, I asked the Co-operative to confirm:

- (a) when the contractor completed the work at Mrs C's property;
- (b) when Mrs C first reported the damage to her wash hand basin and the condition of her bathroom;
- (c) when the Co-operative first inspected the contractor's work and whether the damage to the wash hand basin had been reported at that time;
- (d) whether the Co-operative considered that the wash hand basin needed to be replaced;
- (e) what details the Co-operative's Management Committee had given for refuting liability for any damage.

7. I examined copies of all correspondence between the Co-operative, the contractor and Mrs C and I requested some additional information from the Co-operative in writing in September 2005.

8. Mrs C protected, covered and taped all the sanitary ware in her bathroom, including her wash hand basin, before the Co-operative's contractor arrived. As a result, no inspection of the condition of the wash hand basin by the contractor was possible.

9. The work at Mrs C's property was completed on 21 June 2004. The same day, the Co-operative inspected the work at Mrs C's house. Mrs C was present during that inspection. No damage to Mrs C's wash hand basin was identified or reported during the inspection. However, Mrs C did complain about the mess the workmen had left in her bathroom and the Co-operative arranged for a member of the Co-operative's staff to clean it up. Mrs C confirmed this in her first letter to the Ombudsman's office:

'When the Co-operative staff came to check the job and saw the mess, they

said they would get it cleaned, so one of the [Co-operative] staff came in and cleaned the mess'.

10. On 17 August 2004, eight weeks after completion of the works, Mrs C telephoned the Co-operative to report damage to her wash hand basin. As Mrs C was about to go on holiday, the Co-operative agreed an inspection date of 7 September 2004.

11. The Co-operative's maintenance officer inspected the score to Mrs C's wash hand basin on 7 September 2004 as arranged and agreed to raise the matter with the Co-operative's contractor once Mrs C had provided details of precisely what she was seeking.

12. At the end of October 2004, Mrs C telephoned the Co-operative to say that she could not find a suitable wash hand basin (Mrs C had previously replaced the standard Co-operative fitment). On 8 November 2004, the Co-operative received a letter from Mrs C requesting a complete bathroom suite and on 15 November 2004 Mrs C wrote to the Co-operative setting out her complaint about the damage to the wash hand basin and the mess and claiming compensation for a replacement suite on the grounds that the colour of her old wash hand basin had been discontinued.

13. On 17 November 2004, the Co-operative put Mrs C's claim for compensation to their contractor. The contractor replied on 28 November 2004 denying liability for the damage. In their letter, the contractor stated:

'The plumbers remembered this house because the bath, wash hand basin and toilet were all covered and taped. They did not see any damage to the basin because of this. They also insist that there was nothing unusual ie falling masonry, cement, tools in this flat. The damage may have been caused by other workmen, we do not know'.

14. On 31 January 2005, the Co-operative's director wrote to Mrs C enclosing the contractor's letter dated 28 November 2004 and inviting her to offer any further evidence or to identify a witness to the events which could support her claim. The director confirmed he would forward any additional evidence or witness detail to the contractor. No new evidence or witness statements were provided.

15. However, Mrs C continued to pursue her claim and it is clear from records on the file that the Co-operative's director returned to the contractor.

16. On 21 March 2005, the contractor wrote again to the Co-operative, this time in stronger terms:

'I do not understand why [Mrs C] is adamant that the plumbers caused the damage to the basin when other workmen ie joiners, painters were present in the property at the same time. My plumbers assure me that all care was taken in [Mrs C's] house and as all sanitary ware was covered and taped before they entered the house, no inspection was possible'.

17. On 24 March 2005 the Co-operative's director wrote to Mrs C enclosing the reply from the contractor and advising that the contractor was 'insistent on denying liability'. The director also advised Mrs C that, in line with the Co-operative's procedures and 'in the absence of evidence and/or witnesses' he could not pursue the matter further. The director also advised Mrs C of her further right of appeal to the Co-operative's Management Committee and the Ombudsman.

18. Mrs C appealed to the Management Committee and her claim was considered at the Management Committee meeting on 28 June 2005. On 29 June 2005, the chair of the Management Committee wrote to Mrs C to say that the Committee had refuted liability. The chair of the Management Committee also confirmed Mrs C's right of appeal to the Ombudsman. Mrs C's complaint was received in our office on 7 July 2005.

Conclusions and recommendations

19. Mrs C maintains that the contractor damaged her wash hand basin. The contractor denies any responsibility for the damage. My investigation has not sought to determine who or what caused the damage but to determine whether the Co-operative took all reasonable steps to investigate Mrs C's claims and complaint.

20. There is no doubting Mrs C's strength of feeling in the case. She has pursued her complaint through all stages of the Co-operative's complaints procedure and with our office. I am sure, too, that in allowing access to the Co-operative's

contractor to carry out work to enable a walk-in shower to be installed in her neighbour's property she was put to some trouble and inconvenience. Both Mrs C and the Co-operative agree that there was a mess left in Mrs C's house which a Co-operative staff member cleared up. It is unfortunate that a mess was left – the Co-operative should expect their contractor to clean up after a job and leave a tenant's home in the condition it was found. This is a point I suggest the Co-operative may want to consider reinforcing, given that a mess was left in Mrs C's home.

21. However, I am satisfied that, as soon as Mrs C drew attention to the mess, the Co-operative took immediate action to remedy the problem by authorising a staff member to clean up. The work in Mrs C's home was carried out by a contractor acting on behalf of the Co-operative and it was entirely appropriate that the Co-operative take steps to remedy the problem. Accordingly, I do not uphold this aspect of the complaint.

22. Turning to the matter of the wash hand basin, it is clear there are strong, conflicting opinions and accounts. The score was not reported at the inspection on 21 June 2004 and, indeed, was not reported until some eight weeks after completion of the works. I have considered the question of why it was not reported at inspection. I do not know whether the protective covers which Mrs C had herself applied were removed to allow inspection on that day. If they were, clearly no damage was reported. In her initial letter to our office, Mrs C said her wash hand basin was scored 'because of the masonry they let fall into it'. I consider that, if masonry had fallen into the wash hand basin, I would have expected Mrs C to be keen to see the basin with the protective covering removed and to take the opportunity while Co-operative staff were there inspecting to satisfy herself that all her sanitary ware was undamaged. That does not seem to have happened. I also consider the onus was on Mrs C to report any damage to her wash hand basin promptly to the Co-operative to allow a further inspection to take place. Again, Mrs C does not appear to have done that.

23. On the basis of the information available to me, I am satisfied that, on receiving the report of the damage, the Co-operative took all reasonable steps to inspect, to seek the contractor's response, to invite Mrs C to provide further evidence and/or witnesses and to consider her claim and complaint at Committee.

24. I am also satisfied that, in considering Mrs C's claim, the Management Committee were given full and accurate information and that Mrs C was given an opportunity to speak to Committee members.

25. While I realise Mrs C remains unhappy at the position, I see no evidence of maladministration or service failure on the part of the Co-operative. I am satisfied they have done all they could reasonably be expected to do to examine Mrs C's claim. I am satisfied their decision not to pursue the claim was reached properly, on the basis of full and accurate information and after careful consideration of all relevant facts.

26. I do not uphold Mrs C's complaint.

28 February 2006