

Case 200501960: Shettleston Housing Association Ltd

Introduction

1. On 18 October 2005 the Ombudsman received a complaint from a woman (referred to in this report as Mrs C) about Shettleston Housing Association (the Housing Association). It concerned the way in which they dealt with her representations about the windows in her flat. She said that although she had been raising concerns about the condition of the windows since 2001, no effective remedial action was taken until the Housing Association eventually replaced them as part of a scheme replacement programme in 2005. She complained that the compensation offer ultimately made by the Housing Association was inadequate.

2. The complaints from Mrs C which I have investigated concerned:

- (a) failure to take effective remedial action on the problem with the windows until 17 February 2005;
- (b) her allegation that the compensation offer ultimately made by the Housing Association was inadequate; and
- (c) failure to deal properly with her complaint.

3. Following the investigation of all aspects of this particular complaint I came to the following conclusions:

- (a) partially upheld, see paragraphs 8 to 19;
- (b) upheld, see paragraphs 20 to 27;
- (c) not upheld, see paragraph 28.

4. In the light of these findings the Ombudsman recommends that the Housing Association apologise to Mrs C and take steps to compensate her in line with the

recommendation in paragraph 27. They should also inform this office when they have implemented this recommendation.

5. The Housing Association have fully accepted the report and the recommendations made. They have made the appropriate payment to Mrs C and are to be commended for this.

Investigation and findings of fact

6. The investigation of this complaint involved obtaining and reading all the relevant documentation, including all the correspondence between Mrs C and the Housing Association and between the Housing Association and Glasgow City Council (the Council). I have also had sight of inspection reports detailing the condition of the windows and the appropriate Abatement Notice. In addition, I considered the terms of the Housing (Scotland) Act 2001 which has relevance in that, under a Scottish Secure Tenancy, a landlord has an obligation to ensure that the property is kept wind and watertight and reasonably fit for human habitation [Section 27 and Schedule 41(1)(b)]. Any associated work requires to be done within a reasonable time [Schedule 4(3)(a) of the Act].

7. On 26 October 2005, I made a written enquiry of the Housing Association. I have set out my findings of fact and conclusions for each head of complaint and, where appropriate, recommendations are given at the end of each section. While I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Both Mrs C and the Housing Association have been given the opportunity to comment on a draft of this report.

(a) Failure to take effective remedial action on the problem with the windows until 17 February 2005

8. Mrs C said that since 2001 she had been complaining about the condition of her windows but that no effective action was taken on these complaints until the Housing Association replaced them as part of a scheme replacement programme in 2005. She said that although it was proposed to fit secondary glazing as a temporary solution in about March 2003, the Council's Department of Public Health and Environment Protection took the view that this would not be adequate. An Abatement Notice concerning the condition of the windows was served on the

Housing Association in the summer of 2003.

9. Meanwhile, in May 2003, Mrs C had appealed the Housing Association's decision to install secondary glazing but this was unsuccessful. Thereafter, as works did not progress until the windows were totally replaced as part of a replacement scheme in February 2005, she made a claim for compensation. However, Mrs C took the view that the Housing Association's decision to restrict this to the period between December 2004 and February 2005 was unreasonable, particularly given the opinion of the Council's Public Health and Environment Protection Department. She appealed the decision in August 2005 but again she was unsuccessful and she alleges that in reaching their decision the Housing Association treated her poorly and failed to take all relevant information into account. She said that, given the view of the Council, the Housing Association were incorrect to conclude that she was largely responsible for the delay in taking action.

10. In September 2005 Mrs C raised a formal complaint about the way in which the matter was handled as in effect, she said, she was called a liar. She complained that the Housing Association failed to deal properly with her complaint of mismanagement and deliberately acted against her. She complained that this had been to the detriment of her health and that she had suffered hardship as a consequence.

11. From the information available to me from both Mrs C and from the Housing Association, it is clear that Mrs C had been making representations and requesting repairs to be done to her windows throughout the period from 2001 to 2003. It is equally clear that some repairs were carried out but, in February 2003, Mrs C raised a formal complaint with the Housing Association saying that despite the repairs her windows were not wind and water tight.

12. The Director of the Housing Association replied to Mrs C on 12 February 2003, acknowledging the difficulties with the windows and saying that they were looking to find a solution to the problem. However, he said that it would not be appropriate to replace them given the replacement programme which was due to

begin in about two years' time. He suggested that new seals might be a solution and that a contractor had been asked to explore the situation. In the circumstances, he did not think Mrs C's complaint was justified.

13. In March Mrs C again contacted the Housing Association, saying that she believed that the experiment with the window seals had failed. She said that she wanted her windows replaced and on 28 March 2003 the Housing Association advised that they now proposed to fit secondary glazing as a temporary solution and asked her to consider this. As she remained unhappy, Mrs C requested that the matter be put to an appeal before the Housing Association's Management Committee.

14. A hearing was held on 28 May 2003, when the Housing Association confirmed their commitment to finding a solution but they reiterated their decision to install secondary glazing as long as it did not compromise Health and Safety legislation. In the meantime, Mrs C had contacted the Council and on 31 July 2003 they served an Abatement Notice on the Housing Association to rectify the problem of rain water penetration via the defective windows at Mrs C's home. This Notice required action within 28 days.

15. The Housing Association replied to the Council on 11 September 2003 and sent their proposal to install secondary glazing. They followed up three months later with a reminder letter asking whether this proposal was considered by the Council to be a suitable solution.

16. There does not appear to have been further correspondence between the Council and the Housing Association until 16 March 2004 when the Council wrote saying that, following on from the expiry of the Notice, they had unsuccessfully attempted to instigate the works themselves but had had trouble because of a lack of spare parts. They pointed out that the proposed secondary glazing solution would be inadequate and that the onus was still on the Housing Association to remedy the problem of water penetration. They made reference to the Housing Association's scheme replacement but said that the timescale (within two or three years) was unacceptable. This advice was repeated by the Council on 16 June

2004, when they said that in their view total replacement was the only solution and that they required action. They emphasised that failure to deal with the problem would lead to a report to the Procurator Fiscal.

17. The Housing Association did not deny that there were problems with Mrs C's windows which required their attention. While Mrs C had made representations about this since 2001 she became more persistent in 2003 and began pressing for their replacement. At that stage the Housing Association refused to do so and offered a temporary solution, saying that they intended to replace the windows of all the properties in the scheme where Mrs C lived, probably in the financial year 2004 - 2005. Taking the information available at that time into account, I do not consider that their decision in February 2003 was an unreasonable one.

18. The Housing Association then sought initially to remedy the problem with new seals but after a trial replacement decided that secondary double glazing was a more appropriate solution and Mrs C was advised accordingly on 28 March 2003. As she doubted the efficacy of this approach the complainant made an appeal for the matter to be reconsidered but on 4 June 2003 she was advised that the Housing Association remained committed to the secondary double glazing option. The information available to me confirmed that the Housing Association took Mrs C's representations into account but, nevertheless, considered the temporary approach to be a viable one. Up until this point I take the view that the Housing Association's approach was acceptable as they sought to remedy the problem even although it was not to Mrs C's satisfaction.

19. However, on 31 July 2003 the Council served an Abatement Notice to rectify the problem at Mrs C's home within 28 days and on 1 September 2003 the Housing Association sent their proposals to the authority. As nothing further was heard, the Housing Association sent a reminder on 15 December 2003 asking whether their proposed solution was acceptable. They were informed on 16 March 2004 that secondary glazing was not an acceptable solution and, ultimately, Mrs C's windows were replaced in February 2005. Taking the foregoing into account, it is clear to me that even although they were aware in March 2004 that their proposed solution was unacceptable, the Housing Association failed to take

action as quickly as they could by instructing the work and accordingly I partially uphold this aspect of the complaint.

(b) Her allegation that the compensation offer ultimately made by the Housing Association, was inadequate

20. In August 2004 Mrs C submitted a claim for compensation to the Housing Association. At about the same time the Housing Association made a commitment to have new windows installed in Mrs C's home before the onset of winter (2004 - 2005).

21. Mrs C's windows were replaced in February 2005 when the Housing Association brought forward their scheme for window replacement and Mrs C again made a claim for compensation. On 10 May 2005 she was offered £250 in respect of the period between December 2004 and February 2005 (ie, for the difference in the time by which the Housing Association had undertaken to have the windows repaired and the time of the actual replacement). On 12 May 2005, this offer was increased to £300. On her behalf, Mrs C's solicitors disputed the amount being offered but they were advised that the offer had been made because the Housing Association had been unable to adhere to their undertaking to remedy the problem before the onset of winter in late 2004. They said that the compensation reflected a payment of around £3.00 per day or £250, which was later increased to £300. The Housing Association again emphasised that at no time had they disputed that there was a problem with the windows and they had endeavoured to remedy the problem. They claimed that Mrs C's unwillingness to accept secondary glazing as a temporary solution led to an impasse whereby a temporary solution was 'neither necessary or desirable' and the Housing Association had, therefore, proposed to install new windows.

22. As the complainant remained unhappy with the compensation offered she again pursued the matter to appeal and a hearing was held on 25 August 2005. The appeal decision was given to Mrs C by letter of 31 August 2005 which maintained the offer of £300. Amongst other things, the Appeal Committee noted that the difficulties the complainant experienced with the windows 'could be to some extent regarded as the result of your own refusal to allow the Housing

Association to implement its temporary solution' (referring to Mrs C's reluctance to accept that secondary glazing would provide temporary respite to her problem).

23. However, as outlined above, the Council served an Abatement Notice with regard to the windows requiring the Housing Association to deal with the 'nuisance' and in September 2003 the Housing Association replied, enclosing details of their proposed remedy. It appears to me that from this point there was little urgency in the matter as the Council were only reminded about their lack of reply in December 2003 and nothing further was heard from either party until March 2004 when the Council advised the Housing Association that secondary glazing would be an inadequate solution.

24. From the above, it is evident that, from March 2004, the Housing Association were fully aware that their proposed approach to the problem was unacceptable. The Council then wrote in June 2004 threatening to report the situation to the Procurator Fiscal in the absence of a remedy. However, it was not until later that year (after August) that the Housing Association determined their new approach which was to install new windows before the onset of winter. They failed to do so and in mid February 2005 the scheme replacement was brought forward and the windows were finally replaced.

25. While Mrs C submitted a claim for compensation the Housing Association was only prepared to consider this from the point when they failed to adhere to their undertaking to replace the windows before winter. They say that to some degree Mrs C's difficulties were of her own making because she disputed their temporary solution of installing double glazing. However, I find this difficult to accept, particularly as there was little urgency between the Housing Association and the Council to move matters forward between September 2003 and March 2004.

26. Furthermore, by March 2004 the Housing Association were in no doubt that their proposed solution was unacceptable in terms of the Abatement Notice but they only considered compensation to Mrs C for the conditions with which she had to cope from December 2004. This is not acceptable and I uphold this aspect of the complaint.

27. The Ombudsman recommends that the compensation offered to the complainant should, therefore, be recalculated on the basis already applied back to 16 March 2004, that is, £3.00 per day from 16 March 2004 until 17 February 2005 (total £1,014).

(c) Failure to deal properly with her complaint

28. On 29 September 2005 Mrs C raised a formal complaint with the Housing Association about the way in which the matter was handled as in effect, she said, she was called a liar. She said that the Housing Association failed to deal properly with her complaint of mismanagement and deliberately acted against her. While there is no doubt that it took some time to remedy the problem with the windows, I have seen no evidence from the correspondence that the Housing Association considered that Mrs C was not being truthful. On the contrary, they have never disputed that there was a problem which required attention although there was disagreement about a solution. Mrs C said that the Housing Association deliberately acted against her but the correspondence does not bear this out. For these reasons I do not uphold this aspect of the complaint.

Further action

29. The Ombudsman recommends that the Housing Association apologises to Mrs C for the shortcomings that have been identified and takes steps to compensate her in line with the recommendation in paragraph 27. They should also inform this office when they have implemented this recommendation.

25 April 2006

Explanation of abbreviations used

Mrs C	The complainant
the Housing Association	Shettleston Housing Association
the Council	Glasgow City Council