

**Case 200502596: Glasgow Housing Association Ltd**

**Summary of Investigation**

***Category***

Housing: Repairs and maintenance of housing stock (incl dampness and infestations)

***Overview***

The complainant (Mrs C)'s property was damaged by water ingress and she believed that Glasgow Housing Association (the Association) should compensate her for redecoration costs.

***Specific complaint and conclusion***

The complaint which has been investigated is that Mrs C believed that the Association were responsible for repairing and redecorating damage to her home caused by water ingress (*not upheld*).

***Redress and recommendations***

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. In December 2005 the Ombudsman accepted a complaint from a person who is referred to in this report as Mrs C. Mrs C, a tenant of Glasgow Housing Association (the Association), complained that her property was damaged by water ingress and she believed that the Association should compensate her for redecoration costs.

2. The complaint from Mrs C which I have investigated is that Mrs C believed that the Association were responsible for repairing and redecorating damage to her home caused by water ingress.

### **Investigation**

3. Mrs C was a tenant of the Association living in a flat on the third floor of a high rise block. Mrs C has lived in the flat since 1997. In mid-January 2005, during a period of heavy rainfall, water entered two bedrooms of her flat causing damage to the decoration. Repairs to the exterior of the building were carried out in mid-February 2005. Mrs C filed public liability claims with the Association between January 2005 and August 2005 as she believed that the Association were responsible not just for the repair to the exterior of the building, but also for damage caused to the interior of her flat because of the water ingress. The Association's Loss Adjusters deemed that the Association would have to be proven to be negligent in allowing the water ingress to happen, which the Loss Adjusters did not believe was the case in this instance, and, therefore, Mrs C's claims were repudiated. There was an exchange of letters, telephone conversations, and meetings at the flat but this did not resolve the situation to Mrs C's satisfaction, and she approached the Ombudsman.

4. During the initial consideration of Mrs C's complaint by the Ombudsman, following discussion of the complaint with the Association, it was felt that there was still scope for the Association to try to resolve the situation, and so I wrote to Mrs C in mid-March 2006 advising her of this, and that consequently the file on her complaint had been closed. It was made clear to Mrs C that once the Association had looked again at her complaint, and if she remained dissatisfied, she could come back to the Ombudsman's office.

5. The Association wrote to Mrs C in mid-May 2006 to advise that repairs to the exterior of the building had been carried out in good time, and that the

Association were not liable for the cost of redecorating the interior of the flat. The Association offered Mrs C a goodwill payment of £150 towards her costs. Mrs C was unhappy with this outcome and, therefore, I reopened her complaint file.

6. On request Mrs C sent me copies of correspondence from the Association and from the Association's insurers. I made a written enquiry of the Association and was sent copies of correspondence and records relating to the complaint, a detailed account from the Association of what had happened, as well as a copy of the *Association Repairs and Maintenance Policy*. I refer to these documents in detail below.

7. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Association were given an opportunity to comment on a draft of this report.

**Complaint: Mrs C believed that the Association were responsible for repairing and redecorating damage to her home caused by water ingress**

8. In her written submission to the Ombudsman, Mrs C said that she 'understood the exterior of the building was [the Association's] responsibility (not [Mrs C's])'. Mrs C also said that she could not afford to redecorate as she lived on a state pension and that she had been a council tenant for over 40 years, had always paid rent, rates, poll tax and council tax on time.

9. In response to my enquiries the Association advised that Mrs C had a *Scottish Secure Tenancy Agreement* (SSTA) with the Association. Section 5 of the SSTA on Repairs and Maintenance stated that the Association:

'will carry out repairs or other work necessary to keep the house in a condition which is tenantable, wind and watertight and in all other respects reasonably fit for human habitation.'

Mrs C reported dampness in her flat in mid-January 2005 and a Building Inspector visited the flat two weeks later to assess the problem, within the 20 days specified in the *Association Repairs and Maintenance Policy* for dampness repairs. The Inspector re-categorised the problem as water ingress which required work to the external wall. The repair was carried out two and a half weeks later, within the 30 days specified in the *Association Repairs and Maintenance Policy* for major fabric/environmental works. The Association also sent a painter to treat an area of interior wall with an anti-fungal agent, however,

he was unable to gain access. Information provided by the Association stated that Mrs C accepted that the repair was carried out without delay.

10. After the water ingress happened Mrs C submitted two public liability claims to the Association's insurers for the cost of redecorating two bedrooms in her flat. In May 2005 the insurers wrote to Mrs C to advise that they considered the water ingress had been due to the weather conditions in January 2005 and not due to any negligence on the part of the Association. The insurers rejected Mrs C's claims and recommended that she claim against the Association's Home Contents Insurance policy. Mrs C did submit a claim against the Association Home Contents Insurance but was advised by the Association in August 2005 that external water penetration was not covered by the Home Contents Insurance.

11. After Mrs C approached the Ombudsman, our office contacted the Association in mid-March 2006 asking them to try to resolve the situation. At the end of March 2006 a Loss Adjuster working on behalf of the Association visited Mrs C's flat to assess the nature and extent of damage and to take a view on liability in relation to Mrs C's public liability claim. Mrs C informed the Loss Adjuster that she had spent £150 on redecorating one bedroom, and that it would cost approximately £200 to redecorate the second bedroom. The Loss Adjuster's report to the Association stated that he did not concur with Mrs C's view that the Association were responsible for this cost. The Loss Adjuster went on to say that:

'Unless the tenant is able to demonstrate that [the Association] were aware of the relevant defect, which allowed the ingress of rainwater, prior to the incident and had taken no steps to repair the defect, then we do not consider that [the Association] are liable for the damage caused. We tried to explain this point to [Mrs C], however, she refused to accept our opinion.'

In addition, a report by the Association's Insurance Section in mid-March 2006 stated that:

'it would appear that this problem had not been apparent prior to [Mrs C's] reporting it ... Although the Association has a responsibility to maintain its stock and ensure that they are wind and watertight, this kind of wear and tear is not something that they could reasonably have foreseen.'

12. The Association's insurers wrote to Mrs C in mid-May 2006 to confirm the

Loss Adjuster's view and inform Mrs C that they would not be accepting her public liability claim as there was no evidence that the Association had been negligent. The Association advised her that they thought that her best options were to speak to the Citizens Advice Bureau or to seek legal advice. However, following the Ombudsman's initial consideration of Mrs C's complaint and advice from the Loss Adjuster, the Association offered Mrs C an exceptional goodwill payment of £150 towards her redecoration costs as they recognised that this had been a difficult time for her due to her personal circumstances. In conversation with me Mrs C was adamant that she would not accept the £150 and would take the matter to court if necessary.

### *Conclusion*

13. Mrs C is correct that the Association are responsible for the exterior of the building. It is clear from the evidence that the Association met that responsibility by repairing the exterior of the building once Mrs C had notified them that there was a problem. The Association met the relevant timescales for carrying out assessment and repair of that problem as set out in the *Association Repairs and Maintenance Policy*. It is also clear that, although Mrs C does not accept it, the Association are not liable for the damage caused to the decoration of the bedrooms in Mrs C's home as there is no evidence of negligence on the part of the Association in relation to the January 2005 water ingress. While it is unfortunate that Mrs C is unable to make a successful claim against her house contents insurance for the redecoration costs, that in itself is not a reason to uphold Mrs C's complaint. The Association took Mrs C's complaint seriously and have made her an offer of £150 as a goodwill gesture, even although they are not liable. Mrs C appears to regard this as an inadequate settlement from the Association, rather than a goodwill gesture. While I understand Mrs C's anger and distress at the situation, I do not uphold her complaint.

23 May 2007

**Explanation of abbreviations used**

Mrs C

The complainant

The Association

Glasgow Housing Association Ltd

**List of legislation and policies considered**

Scottish Secure Tenancy Agreement

Association Repairs and Maintenance Policy