

Scottish Parliament Region: South of Scotland

Case 200502366: Dumfries and Galloway Housing Partnership

Summary of Investigation

Category

Housing: Repairs and maintenance

Overview

The complainants (Mr and Mrs C) were unhappy with how Dumfries and Galloway Housing Partnership (DGHP) had dealt with water ingress to their home.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure by DGHP to ensure that Mr and Mrs C's home was wind and watertight, and failure to deal with repairs and redecoration appropriately (*not upheld*); and
- (b) poor communication within and from DGHP, including handling of eviction proceedings and complaint handling (*not upheld*).

Redress and recommendations

The Ombudsman recommends that DGHP:

- (i) review their decision on whether or not to waive the three months rent (see paragraph 27); and
- (ii) inform her of the outcomes of the possible solutions identified to communication problems i.e. how the problems have been resolved (see paragraph 18).

Since the recommendations were drafted, DGHP offered Mr and Mrs C £398 for redecoration costs. In addition, they have provided information to demonstrate that the problems identified in paragraph 18 have been resolved.

Main Investigation Report

Introduction

1. In November 2005 the Ombudsman accepted a complaint from a couple who are referred to in this report as Mr and Mrs C. Mr and Mrs C were unhappy with how the housing association, of which they are tenants, Dumfries and Galloway Housing Partnership (DGHP), had dealt with repairs and redecoration of their home (hereafter referred to as 'the property') following water ingress through the roof. Mr and Mrs C were also unhappy with communication between DGHP departments and from DGHP to them. Mr and Mrs C were of the view that the poor communication resulted in delays to the repair work on the roof and eviction proceedings being started against them on more than one occasion. I deal with the repair work in section (a) of this report, and the communication, including the eviction proceedings and the complaint handling, in section (b).

2. The complaints from Mr C and Mrs C which I have investigated are:
- (a) failure by DGHP to ensure that Mr and Mrs C's home was wind and watertight, and failure to deal with repairs and redecoration appropriately; and
 - (b) poor communication within and from DGHP, including handling of eviction proceedings and complaint handling.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation. Mr C supplied documentary evidence with his initial complaint to the Ombudsman, and supplied further documents and commentary in response to my enquiries. DGHP supplied commentary and documentary evidence, including their complaints procedure, copy records and correspondence, in response to my detailed enquiries. I compared the evidence and accounts provided by both parties and used this to examine how DGHP had dealt with the repair and redecoration to the property, communication issues at DGHP, and how they had dealt with Mr and Mrs C's complaint.

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

(a) Failure by DGHP to ensure that Mr and Mrs C's home was wind and watertight, and failure to deal with repairs and redecoration appropriately

5. On 29 November 2004 Mr C reported a leak in the roof of the property, which he shared with Mrs C and their child, to DGHP. The roof was inspected by staff from Dumfries and Galloway Council (the Council) that night and the following day silicone sealant was applied to the chimney breast and Mr and Mrs C were advised that the problem had been fixed. However, water kept leaking through the roof and, following a further evaluation, Mr and Mrs C were told that it would be fixed by Christmas 2004. The roof was not fixed by Christmas and on 27 January 2005 Mr and Mrs C's Local Councillor wrote to DGHP on their behalf in an attempt to expedite the repair work and to inform DGHP that he had advised Mr and Mrs C to withhold their rent until the matter was resolved. Mr C advised DGHP in the course of his complaint that they had to seek alternative accommodation with relatives on three occasions during bad weather. DGHP then advised Mr and Mrs C that the repairs would be completed on or before 19 February 2005. Repair work commenced on 28 February 2005 and was completed on 2 March 2005. This did not include redecoration to the interior of the property where the water had penetrated, in particular the living room which was described by the Local Councillor as 'essentially uninhabitable'.

6. On 30 March 2005 DGHP's insurer wrote to Mrs C to confirm that DGHP had failed in their duty to Mr and Mrs C and that liability was accepted. The insurer valued damage to the living room carpet, a rug, and a vase, taking into account wear and tear, at £400. Mr and Mrs C accepted this amount, which was sent to them by the insurers as being full and final settlement of their claim.

7. On 28 March 2005 DGHP's Acting Area Housing Manager (Officer 1) wrote to Mr and Mrs C. He acknowledged the inconvenience caused to them over three months by the leaking roof and damage to the living room ceiling. He also apologised for the time taken to repair the problem and offered a one-off payment of £200 for decoration and the inconvenience caused. Mr and Mrs C did not accept this offer as they were of the view that they should be paid more than £200 in compensation, both for damages not covered by the insurance claim (see paragraph 6) including redecoration, and for inconvenience and stress. They also felt that their rent for the three month period should be waived.

8. At Mr and Mrs C's request, DGHP's Director of Operations (Officer 2) reviewed their complaint. This review concluded that DGHP's service delivery failed in respect of the ceiling repair, but that this had previously been identified and an apology offered, and that the compensation offer of £200 was reasonable (see paragraph 7).

9. Mr and Mrs C were not satisfied with the outcome of this review and escalated the matter to the DGHP Complaints Appeal Panel. The Panel met on 25 October 2005 and upheld their complaint that there was a service failure in dealing with the repair. Mr and Mrs C were informed that:

'The Panel regrets that our service was not performed as well as could be expected in this instance and would like to apologise to you. It was agreed that £200 compensation will be paid to you and we will re-instate the decoration in your living room at our expense.'

Mr and Mrs C did not accept the offer of £200 or the offer of redecoration, as they felt that this was still not adequate compensation, and the offer of redecoration was conditional on Mr and Mrs C paying the three months of withheld rent, which they believed should be waived. At this point Mr and Mrs C complained to the Ombudsman.

10. Section 5.3 of the Scottish Secure Tenancy Agreement (SSTA), as signed by Mr and Mrs C, states:

'During the course of your tenancy, we will carry out repairs to keep the house in a condition which is habitable, wind and watertight and in all other respects reasonably fit for human habitation. We will carry out such repairs within a reasonable period of becoming aware, or on being notified by you ...'

(a) Conclusion

11. There is no question that DGHP failed in its duty under the SSTA to Mr and Mrs C, as it is clear from the evidence that the repairs were not completed in reasonable time thus leaving the property exposed to wind and water. However, DGHP acknowledged their service failure, apologised for it and offered compensation at each stage of the complaint process (I will deal with the reasonability or otherwise of the compensation offer, and the complaints handling, in section (b)). Given these actions taken by DGHP, I do not uphold this complaint.

(b) Poor communication within and from DGHP, including handling of eviction proceedings and complaint handling

12. As referred to in paragraph 5, Mr and Mrs C's Local Councillor informed DGHP in his letter of 27 January 2005 that he had previously advised Mr and Mrs C to withhold their rent until the matter was resolved. Mr and Mrs C opened a Post Office account into which they deposited the withheld rent pending completion of the repair work. The withheld rent prompted a rent arrears letter from DGHP. As the repairs were not completed until 2 March 2005, Mr and Mrs C continued to withhold their rent. This prompted another rent arrears letter from DGHP on 1 March 2006 which served them with a Notice of Proceedings for Recovery of Possession and Payment (NOP). The Local Councillor wrote to DHGP on 4 March 2006 to complain about the rent arrears letters. A further rent arrears letter was sent on 15 March 2005, and the Local Councillor complained again to DGHP on 17 March 2005. The Councillor said that he felt Mr and Mrs C were being harassed by DGHP and also pointed out to DGHP that they had recommenced paying their rent as the repairs had been completed. However, Mr and Mrs C continued to withhold the three months rent as their view was that the property was uninhabitable for that period and the rent should be waived. On 21 March 2005 DGHP wrote to Mr and Mrs C with a final reminder advising that if the outstanding rent was not paid, the next communication would be a citation for a Court hearing. In his letter of 28 March 2005 (see paragraph 7) Officer 1 accepted that the NOP should not have been served while the ceiling repair was not complete, and he offered an apology for this. DGHP's Head of Performance and Risk Assessment (Officer 3) wrote to the Councillor on 29 March 2005 advising that they had postponed serving the NOP once Mrs C had advised them that rent was being withheld until the repairs were completed, but that the NOP should have been issued a week later than it was (ie a week after the repairs were completed).

13. Section 9.3 of the SSTA states:

'If we have failed to carry out any of our material obligations under this Agreement, you have a right (in addition to any other legal rights you may have) to withhold your rent until we do comply with our obligations. However, you may only do so if:

- you have told us in writing why you think we have broken this Agreement; AND
- we have not fulfilled our obligations within a reasonable period; AND

- you have made a formal written complaint under our complaints procedure ... ; AND
- you have finished the complaints procedure and you are still dissatisfied; OR
- 3 months have passed since you made the formal written complaint under our complaints procedure.'

14. DGHP received legal advice on 12 April 2005 in relation to situations where tenants withhold rent. In that advice, it was stated that:

'It may ... be appropriate for the Partnership to make clear in its policies dealing with the commencement of legal proceedings against tenants that, prior to doing so, the Partnership should check that the reasons for non-payment of rent is not linked to a complaint that the Partnership is in breach of its own tenancy obligations. It should be a relatively easy matter to check this as long as the tenant has complied with the requirements of the Tenancy Agreement, as the matter would have been the subject of a formal complaint.'

15. Officer 1 wrote to Mr and Mrs C on 20 April 2005 and advised that the full rent for the three months was due as the repairs had been completed. In his letter of 23 May 2005 on the review of the complaint (see paragraph 8), Officer 2 said he believed that DGHP should have offered Mr and Mrs C and their child 'temporary decant accommodation' but that he could find no evidence that such an offer was made. He also noted that there was a two-week rent free period during the time of the repair. In carrying out the review, Officer 2 asked his staff to review the situation regarding the withheld rent/rent arrears as well as the repair. He received a detailed report which he used to compile his response to Mr and Mrs C.

16. Officer 1 wrote to Mr and Mrs C on 7 June 2005 about the withheld rent, saying that although Mr and Mrs C believed they had good cause to not pay the outstanding amount, DGHP did not agree given that the repair had been completed and a compensation offer made and, therefore, they regarded their rent account as being in arrears. The letter made clear that failure to co-operate could lead to legal action and loss of their tenancy.

17. The Council wrote to Mr and Mrs C on 21 July 2005 to advise that DGHP had informed them that they intended to ask the court for permission to evict them from the property because of rent owed. This was followed on

12 August 2005 by a Summons in an Action for Recovery of Possessions of Heritable Property which was scheduled for 14 October 2005. The Local Councillor wrote to DGHP on 24 August 2005, following discussions with DGHP's Company Secretary (Officer 4), with his concern that Mr and Mrs C were being pursued for the withheld rent while they were still engaged in the complaints process. He also said that Mrs C was in a poor state of health while expecting her second child, and that the stress of this process was exacerbating her condition. Officer 4 wrote to the Local Councillor on 29 August 2005 to advise that:

'the notice for recovery of proceedings ... would appear to prejudice any consideration by the panel. I agree that this is an unsatisfactory position and therefore a letter is being issued from the local office to the tenants today confirming that the proceedings are suspended.'

A letter was sent the following day to Mr and Mrs C apologising if the letter of 12 August 2005 upset them and reassuring them 'that no action will be taken against you in relation to your rent account'.

18. As part of the investigation into the complaint, DGHP compiled a report on service failure at the property. This outlined the background to the situation, and listed the events and key dates in terms of the repairs and the withheld rent. It went on to identify three service failures relating to the repairs and one relating to the rent, and four possible solutions were recommended to prevent re-occurrence:

'1. Combined Operations [at the Council] should have informed DGHP they were not sure the problem had been resolved. Better communications between Combined Operations and DGHP may have helped. The resumption of weekly meeting should assist.

2. Once the work had gone to [the contractors] there was a 2 week wait before we received the cost of the work involved and subsequently issued a line. This could have been averted if we gave the go ahead to do the work before getting a price. Can/should this be allowed in such cases?

3. There was a further delay because [the contractors] were already busy with storm damage works. Could another contractor have been used?

4. Housing Officer should have waited until all repairs completed before serving NOP. Suggest guidance for Housing Officers added to Arrears Procedure on how to deal with this type of dispute ...'

19. Mr and Mrs C's Member of the Scottish Parliament (MSP) wrote to DGHP's Chief Executive on 1 September 2005 with his strong view that the three months rent should be written off by DGHP given the condition of the property during that time. As noted in paragraph 9, the Complaints Appeal Panel met on 25 October 2005, at which the accounts of DGHP staff were heard, as well as Mr and Mrs C who were accompanied by Mr C's father and their MSP. The minuted outcomes of the Panel were as advised to Mr and Mrs C (see paragraph 9) as well as:

'Staff did not recognise the urgency of the repair.

Staff failed to recognise a qualifying repair.

Change of Area Manager did not help the situation.

NOP was issued while tenant was withholding rent.

Better communication required by repairs staff.'

20. In response to my enquiries, Mr C told me that he did get the property redecorated, but it not was carried out by DGHP contractors or paid for by DGHP because of the stipulation in the Complaints Appeal Panel decision letter (see paragraph 9) that he and Mrs C paid the withheld rent.

21. DGHP told me that they apologised to Mr and Mrs C for the error in raising court action at the early stage of the complaint (see paragraph 12) which was due to poor communication. They also advised that the withheld rent, which DGHP regarded as rent arrears, had been cleared and that Mr and Mrs C moved to a different DGHP property on 20 November 2006. I understand that Mr and Mrs C have subsequently moved to third property in the area since that time.

22. DGHP also told me that the acknowledged a lack of communication between Maintenance Officers and Housing Officers when dealing with the issue of the repair in the initial stages, but that after this error Housing Officers kept good communication with other sections. In relation to the calculation of the £200 compensation, DGHP explained that it was checked against a compensation policy from another housing association which used a scale of compensation amounts based on time delay and loss of amenities. This

checking showed that DGHP's calculations and those based on the other housing association's policy were comparable.

23. One other issue was that Mrs C had recently married Mr C and changed her name, although she was recorded by DGHP under her maiden name. Despite having informed DGHP of the name change on 7 January 2005, Mrs C continued to receive mail from DGHP in her maiden name until late March 2005. The Local Councillor raised this issue with DGHP in his letter of 17 March 2005.

(b) Conclusion

24. As noted in paragraphs 18 and 19, communication at DGHP and between DGHP and partner organisations in relation the roof repair work was poor. A practical demonstration of this poor communication was the delay to the repairs. However, as noted in paragraph 22, communication improved in the later stages of dealing with the repair. In addition, in the process of dealing with Mr and Mrs C's complaint, DGHP acknowledged fault and apologised for it.

25. In relation to dealing with the withheld rent and the eviction process, paragraphs 12, 17, 18, 19 and 21 show that there were errors in the timing of issuing letters and the NOP given that a complaint was ongoing about the roof repairs. However, as with the roof repairs, in the process of dealing with Mr and Mrs C's complaint, DGHP acknowledged fault and apologised for it. It is also important to note that, given DGHP's stated position on rent arrears (see paragraph 16), it does not seem unreasonable that DHGP pursued this course of action, notwithstanding the timing issues. In relation to letters being sent to Mrs C in her maiden name, this was regrettable but was corrected shortly after representations from the Local Councillor in March 2005.

26. In terms of how the complaints process was applied, the evidence demonstrates that DGHP followed each stage of the complaints procedure correctly, from the initial complaint, the review, and the final hearing by the Complaints Appeal Panel.

27. The amount of compensation offered by DGHP, £200, seems reasonable given explanation provided by them in relation to the comparison with another housing association's compensation scheme (see paragraph 22). This is bolstered when added to the Complaints Appeals Panels offer of redecorating the living room (see paragraph 9). According to DGHP, the withheld rent has

now been paid by Mr and Mrs C. In terms of whether or not the three months rent should be reimbursed, the Ombudsman cannot direct DGHP take such action, however, it might be reasonable for DGHP to review its decision on this given the circumstances of the repair work, the condition of the house for the three month period, Officer 2's statement regarding temporary decant accommodation (see paragraph 15), and representations from the Local Councillor and MSP.

28. Having considered the evidence in relation to communication and complaints handling, and taking into account that DGHP acknowledged fault and apologised where appropriate, and made a reasonable offer of compensation, I do not uphold this complaint.

(b) Recommendations

29. Although the complaint has not been upheld, the Ombudsman recommends that DGHP:

- (i) review their decision on whether or not to waive the three months rent (see paragraph 27) and
- (ii) inform her of the outcomes of the possible solutions identified to communication problems, ie how the problems have been resolved (see paragraph 18).

30. Since the recommendations were drafted, DGHP offered Mr and Mrs C £398 for redecoration costs. In addition, they have provided information to demonstrate that the problems identified in paragraph 18 have been resolved.

19 December 2007

Explanation of abbreviations used

Mr and Mrs C	The complainants
DGHP	Dumfries and Galloway Housing Partnership
The property	Mr and Mrs C's home
The Council	Dumfries and Galloway Council
Officer 1	An Acting Area Housing Manager at DGHP
Officer 2	DGHP's Director of Operations
SSTA	Scottish Secure Tenancy Agreement
NOP	Notice of Proceedings for Recovery and of Possession and Payment
Officer 3	DGHP's Head of Performance and Risk Assessment
Officer 4	DGHP's Company Secretary
MSP	Member of the Scottish Parliament