

Case 200503246: New Shaws Housing Association Ltd

Summary of Investigation

Category

Housing association: policy; administration

Overview

The complainant (Mr C) raised a number of concerns against New Shaws Housing Association (the Association), regarding the property (the Property) they let to him from August 2004 onwards.

Specific complaints and conclusions

The complaints which have been investigated are that the Association:

- (a) failed to warn Mr C of the presence of asbestos in his flat (*no finding*);
- (b) failed to provide Mr C with a well maintained flat in good order (*not upheld*);
- (c) failed to take action against anti-social neighbours (*not upheld*); and
- (d) let the Property to Mr C when they were aware there was a history of anti-social behaviour and neighbourhood nuisance (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Association consider ways of recording the information and leaflets provided to tenants by their Housing Offices at the point of completing missives and report back to the Ombudsman.

GHA on behalf of the Association has accepted the recommendation and have confirmed the Association will action in it accordingly.

Main Investigation Report

Introduction

1. The Ombudsman received a complaint from Mr C that New Shaws Housing Association (the Association) failed to satisfactorily address a number of concerns he raised about the property (the Property) they let to him on 20 August 2004. Mr C's concerns included allegations that the Association had failed to warn him of the presence of asbestos in his flat and that the flat had not been in a well maintained condition when he took over the tenancy. Mr C also alleged that the Association had not taken action on his complaints about anti-social neighbours and they were aware that anti-social behaviour was prevalent when they let the flat to him. According to Mr C (who worked intermittently abroad), he became aware of the problems with the Property over the course of several months, from August 2004 to January 2005. Mr C stated that, following his complaints to the Association, they sent him 'terse, defensive and patchy responses' which completely failed to address satisfactorily any of the issues within his complaint. Mr C also stated that 'effectively the Association has attempted to cover up several of their mistakes, particularly with regard to the asbestos'. In Mr C's view, due to the problems he experienced living in the Property, this has had a detrimental effect on his health and 'I find being in my flat too hard to bear'.

2. The complaints from Mr C which I have investigated are that the Association:

- (a) failed to warn Mr C of the presence of asbestos in his flat;
- (b) failed to provide Mr C with a well maintained flat in good order;
- (c) failed to take action against anti-social neighbours; and
- (d) let the Property to Mr C when they were aware there was a history of anti-social behaviour and neighbourhood nuisance.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Association. I examined the Association's complaint policy, their current policy and guidance to tenants relating to asbestos and the policy and guidance that was in operation at the time Mr C became a tenant of the Property. I also examined the Association's policy 'Neighbour Relations'. I wrote to the Association and received a reply from Glasgow Housing Association (GHA), as New Shaws Housing Association Ltd manage the housing stock and provide the

services to tenants on behalf of GHA. Thereafter, I conducted telephone interviews with GHA Tenant Participation Manager and received her emailed responses clarifying asbestos related issues.

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

(a) The Association failed to warn Mr C of the presence of asbestos in his flat

5. Mr C commenced the tenancy of the Property on 20 August 2004. Thereafter, following problems with his central heating, Mr C arranged for a friend to oversee the Association's installation of a new central heating system in his home on 12 April 2005. Later that day, when Mr C looked at the installation, he noticed that there appeared to be a sheet of asbestos cement at the rear of an airing cupboard and he was concerned that the drilling of holes, when the heating system was installed, could have disturbed this.

6. According to Mr C, on 13 April 2005 he telephoned the Association to voice his concerns and was told that the heating installation engineers did not do any drilling as the heaters were installed into pre-existing holes in the wall. Mr C said he was also told at this time that there was a presence of asbestos in his flat.

7. On 20 July 2005, Mr C wrote to the Association and alleged that they were wrong in dismissing his concerns about the possibility that an asbestos sheet was disturbed (see paragraph 5) as, in his view, 'Both the heater itself and its switch will have required new drilling onto this potentially asbestos backed wall. For all I know there are now asbestos fibres floating around my flat'.

8. Thereafter, Mr C believed that the Association completely failed in its duty of care by not informing him, on the day his tenancy commenced, of the presence of asbestos in his flat (see paragraph 5) and 'it is an inescapable and undeniable duty of the Association to warn its tenants of the presence of asbestos'. Mr C also stated that no information leaflet about asbestos was contained within the welcome pack he received when he commenced his tenancy (see paragraph 1).

9. In their response to my enquiries, GHA stated that they maintain a database of information on asbestos-containing-materials in the buildings which they own. During a telephone discussion I conducted with the Tenant Participation Manager seeking clarity about the database, she told me that GHA provide details on their intranet of how their staff and maintenance contractors can access database information regarding asbestos, on a property specific basis. This database was in full operation at the time Mr C's tenancy commenced on 20 August 2004 and it included details of Mr C's tenancy. She also told me that it was standard practice that a GHA housing officer would have advised Mr C (as they do for all new tenants), about the presence of asbestos in his flat at the start of his tenancy. In their reply to me, GHA outlined that at the point of completing missives before a new tenant takes up entry, they also provide general asbestos guidance and contact details should further information be necessary. 'This is routinely issued to all prospective tenants and would have been issued to Mr C when he was signing up for his home.' Furthermore, GHA stated that the practice of issuing the guidance leaflet on asbestos was not new and, indeed, the same approach was adopted by their predecessors, Glasgow City Council.

10. GHA acknowledged that Mr C claimed he had not received this leafleted information. However, they advised 'We also issue a Tenant Handbook to every tenant accepting a new tenancy and we can confirm that this was given to Mr C when he signed up for his house'. In addition, GHA stated that the Tenant Handbook has been refreshed since Mr C took tenancy of the Property, to incorporate asbestos guidance. In my review of the Tenant Handbook Mr C received in August 2004, there was no asbestos guidance or reference made to asbestos. In the revised Tenant Handbook I have seen, there is information and advice regarding asbestos for tenants and occupants.

11. Within their response to my enquiries, GHA also referred to a contractor's work plan, method statement and asbestos procedure which were all agreed for the new heating installation to Mr C's home. GHA stated that there was a physical inspection of Mr C's home prior to work commencing, to ensure there were no unexpected challenges to the completion of the planned work. GHA told me that this would have included the management of any asbestos issue. In this regard, GHA told me that no unexpected challenges were identified. I have seen copies of the relevant procedures and guidance which GHA told me their contractor followed (see Annex 2). I have also received assurances from GHA that no asbestos was disturbed during the heating system works and that,

had this been so, the contractor would have had to then follow the emergency procedures and this did not happen, according to the documents provided (see paragraph 3).

12. GHA advised that, when Mr C raised his concerns that he suspected damage had occurred to an asbestos panel in his home during the works (see paragraph 5), this concern was investigated by the Association who contacted the contractor. Thereafter, the Association advised Mr C that the contractor had correctly complied with all their procedures and also had no knowledge of any hazardous material being disturbed within Mr C's property (see paragraph 11). Furthermore, to offer Mr C additional reassurances, the Association stated they had arranged for their Quality and Maintenance Officer to visit Mr C within his home. They wrote to Mr C on 2 August 2005 and 7 September 2005 to arrange a convenient time for this visit but advised me that Mr C 'failed to permit access for this visit'.

(a) Conclusion

13. In Mr C's view, when he commenced his tenancy, the Association had not warned him of the presence of asbestos in his flat. According to GHA, the Association had followed their correct procedure and advised Mr C of the presence of asbestos in his flat and provided Mr C with their policies and guidance about asbestos related issues within their properties when his tenancy commenced (see paragraph 9).

14. I have carefully considered all the documented evidence as detailed in paragraph 3 and there is no evidence to substantiate Mr C's allegation that the Association failed to warn him of the presence of asbestos in his flat. Neither is there evidence to suggest that the Association did advise him.

15. However, I have seen evidence that the Association followed their complaints policy when Mr C raised his concerns (see paragraph 12). Furthermore, I consider that the Association, in trying to visit Mr C within the Property, had attempted to find a mutually acceptable outcome to Mr C's concerns about asbestos. In my view the Association's actions were reasonable, even though I note that the visits did not take place (see paragraph 12). Furthermore, Mr C stated that his concerns centred on the 'potentially asbestos backed wall' (see paragraph 7). Even though there was a presence of asbestos in the Property, there was an inspection of the Property prior to the works being carried out, in an effort to manage the asbestos issue. I

have taken all these factors into account but the fact remains that I am unable to draw a firm conclusion whether or not Mr C received information that there was a presence of asbestos in the Property. I am unable to make a judgement about a conversation to which there were no independent witnesses (see paragraph 9) and it cannot be proved or disproved if an asbestos guidance leaflet was included within the documents issued to Mr C when he signed up for his flat. In all the circumstances, I am, therefore, unable to make a finding on this aspect of the complaint. However, the Ombudsman is pleased to note that GHA now include asbestos guidance in their updated Tenant Handbook (see paragraph 10)

(a) Recommendation

16. The Ombudsman recommends that the Association consider ways of recording the information and leaflets provided to tenants by their Housing Offices at the point of completing missives and report back to the Ombudsman.

(b) The Association failed to provide Mr C with a well maintained flat in good order

17. Mr C stated that when he moved into the Property on 20 August 2004 he realised that the flat was in a poor condition. Namely, that the kitchen floor looked like it had not been cleaned in twenty years; there were grease spots on the kitchen ceiling; and a wall of dirty fat behind the cooker. There were many loose kitchen tiles and underneath one was a nest of insects. In addition, the replacement toilet was not properly secured and there were streaks of mouldy cheese at the back of a cupboard. Mr C stated that this list was not exhaustive.

18. Mr C also outlined that the central heating had not worked (see paragraph 5).

19. Mr C said he brought all this to the attention of the Association in a fax dated 22 August 2004 and stated that 'the flat should have been subjected to the attention of the Association's dirty squad'.

20. In their response to me, GHA advised that an accompanied viewing was carried out with Mr C prior to him accepting the Property. GHA said that the purpose of this was to establish and mutually agree that their offer of housing was acceptable to Mr C, 'based on the void repair work that would be instructed. [Mr C] agreed to accept the house on this basis and void repair work to the sum of £755 was instructed and completed before he took occupancy'.

21. Furthermore, GHA told me that their records showed that, at the Housing Officer's Post Date of Entry visit on 30 August 2004 and New Tenant Visit on 13 September 2004, the relative forms signed by Mr C at those times confirmed he was satisfied with the Property and he had raised no issues that gave him any cause of concern. I have reviewed these forms and observed that Mr C had signed the forms without adding any comments.

22. GHA concluded that, for the reasons given at paragraphs 20 and 21, they were confident that the Property was in a fit state for occupation and that the documentation they provided confirmed that the agreed works had been completed (see paragraph 3). Furthermore, if Mr C had told them that there was a need for remedial or cleaning work when he inspected the Property or after he moved into the Property, 'GHA would have made every effort to assist'.

23. Within their response to my enquiries, GHA provided a copy of Mr C's fax (see paragraph 19). I have noted that within the fax Mr C referred to the 'disgusting condition of the kitchen' but, thereafter, stated 'this was cleaned by myself and I'm sure was just an isolated incident'.

(b) Conclusion

24. In Mr C's view, when he moved into the Property it was not well maintained or in good order. However, he made an accompanied viewing (see paragraph 20) prior to accepting the tenancy. At that point, he does not appear to have raised any issues of concern. Mr C stated that he had notified the Association in good time of his dissatisfaction about the condition of the Property when he moved in (see paragraph 19). I have given careful consideration to all the documentation I have seen and there is no evidence to suggest that the Association failed to provide Mr C with a well maintained flat when his tenancy commenced (see paragraph 3). I acknowledge that, in Mr C's opinion, the cleanliness of the kitchen was unsatisfactory but he resolved this issue before he complained to the Association and accepted it was a 'one off' (see paragraph 23). Accordingly, having taken these factors into account, I do not uphold this complaint.

(b) Recommendation

25. The Ombudsman has no recommendations to make.

(c) The Association failed to take action against anti-social neighbours

26. Since Mr C commenced his tenancy at the Property on 20 August 2004, he said he had been 'beset above and below by anti-social neighbours', specifically since 22 August 2004. Mr C stated that, on that day, the concierge had contacted the police about noise from the flat below Mr C (Flat 1). Mr C also complained to a Housing Officer of the Association (the Officer) on 22 August 2004 and said he was advised that the perpetrators had been issued with a written warning.

27. Thereafter, according to Mr C, during the following months he had to complain repeatedly to the concierge about the tenants at Flat 1. Mr C kept a noise log and also complained to the Association. During this period, the Officer confirmed to Mr C in writing that the perpetrator had been issued with another written warning (see paragraph 26).

28. Following a further complaint to the Association, Mr C received a letter from the Officer which Mr C considered to suggest that the Association would proceed with eviction proceedings against the tenant(s) of Flat 1. Thereafter, in Mr C's opinion, the noise appeared to have subsided.

29. However, after January 2005, Mr C stated that the situation worsened, due to the occupants of the flat above him (Flat 2) being responsible for 'unimaginable noise levels' and the occupants of Flat 1 having 'started up the same drunken parties which caused me so much distress towards the end of last year'.

30. Mr C complained again to the Association about his neighbours' anti-social behaviour and said, in his view, they were harassing him.

31. In their response to my enquiries, GHA stated that Mr C's complaints were taken seriously and 'each report received was investigated and acted upon'. They explained that Mr C had made three specific complaints of alleged anti-social behaviour concerning two separate neighbours since taking entry of the Property in 2004.

32. GHA also provided me with a factual record of these complaints and the actions they had taken as follows:

- (a) 'faxed complaint from Mr C received 25 August 2004 of loud music playing on 22/8/04. Action – Housing Officer telephoned Mr C to advise action

had been taken against those concerned. Verbal warnings given to tenants involved confirmed in writing'.

- (b) 'Complaint received from Mr C on 4 October 2004 noise nuisance and anti-social behaviour. Action – Complaint investigated, written warnings issued. Neighbour relations form completed to record further incidents about the same tenant. Tenant advised that our Neighbour Relation Team could become involved. Reply sent to Mr C dated 7 October 2004'.
- (c) 'Letter from Mr C received 17 October 2004. Reply sent 18 October 2004'.
- (d) 'Letter from Citizens Advice on behalf of Mr C dated 8 June 2005. Reply sent dated 13 June 2005'.

33. GHA advised that, thereafter, Mr C made a formal complaint to the Association on 20 July 2005 about his concerns (see paragraph 1) and the Community Housing Manager responded to this on 25 July 2005. However, Mr C remained dissatisfied with this reply and on 15 August 2005, his complaint was passed to the Association's Management Committee. On 7 September 2005 the Community Housing Manager advised Mr C that the first available date for the next full Management Committee meeting to consider his complaint would be on 25 October 2005 and Mr C should contact their offices if he wished to attend. GHA stated that Mr C did not contact the Association or attend the Hearing. Thereafter, the Association received a letter from Mr C dated 6 December 2005 expressing his concern that the Hearing had gone ahead without him. The Association replied on 9 December 2005 and advised that as Mr C had not replied to the Association's letter of 7 September 2005 his complaint had, therefore, been considered in his absence. Thereafter, a decision had been taken and his complaint was not upheld. No further correspondence was received from Mr C until an emailed complaint was received from him about his neighbour in Flat 2 on 28 June 2006. GHA replied to Mr C's complaint on 28 June 2006 and detailed the action they had taken about this matter.

(c) Conclusion

34. In Mr C's view, the Association failed to act on his allegations of anti-social behaviour (see paragraphs 27, 28 and 30). I have considered carefully all the information available to me and I do not agree. In my view, GHA have investigated his complaints and correctly followed their Neighbour Relations Policy to ensure that they have dealt appropriately with his concerns. Furthermore, I consider that the Association's responses to Mr C were clear and reasonable and demonstrated that the Association had taken action about his

complaints (see paragraphs 32 and 33). Although I do not dispute that in Mr C's view he feels that the behaviour of his neighbours was unacceptable, I can find no evidence to substantiate Mr C's complaint that the Association and GHA have failed to act on the complains he made. I am also satisfied that GHA took appropriate action in response to the complaints recorded of anti-social behaviour. Taking all these factors into account, I do not uphold this complaint.

(c) Recommendation

35. The Ombudsman has no recommendations to make.

(d) The Association let the Property to Mr C when they were aware there was a history of anti-social behaviour and neighbourhood nuisance

36. Mr C believed the Association had taken advantage his desire to move from his previous address and they put him under pressure to accept sub-standard accommodation (see paragraph 1). Mr C also stated that 'on speaking to members of the concierge, it is apparent that my anti-social neighbours were known to the Association as problem neighbours'.

37. In Mr C's view, the Association failed in its duty of care towards him, as they had placed him in a flat where they must have known he would be subjected to harassment and victimisation.

38. In their reply to my enquiries, GHA stated that, prior to Mr C taking up the tenancy of the Property, there were no on-going complaints or history of complaints, regarding the neighbours concerned.

39. In this regard, GHA has offered assurances that the Association will continue to support Mr C with any concerns he may have regarding his tenancy with them.

(d) Conclusion

40. Mr C alleged that the Association let the Property to him aware of the prevalence of anti-social behaviour and neighbourhood nuisance. I have considered carefully and reviewed all the documentation about this complaint, but I have not seen any evidence to support Mr C's view. Accordingly, for these reasons, I do not uphold this complaint.

(d) Recommendation

41. The Ombudsman has no recommendations to make.

42. GHA on behalf of the Association has accepted the recommendation and have confirmed the Association will act on in it accordingly. The Ombudsman asks that the Association notify her when the recommendation has been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Association	New Shaws Housing Association Ltd, who manage the housing stock and provide the services on behalf of Glasgow Housing Association
The Property	Mr C's home, which he rents from the Association
GHA	Glasgow Housing Association
Flat 1	The property below Mr C
The Officer	A Housing Officer of the Association
Flat 2	The property above Mr C

List of legislation and policies considered

Glasgow Housing Association Tenant Checklist Sign up Package

Glasgow Housing Association Being Safe In and Around Your Home

Glasgow Housing Association Managing Asbestos 2004

Glasgow Housing Association Managing Asbestos 2004 Building Services

Glasgow Housing Association Asbestos Policy for GHA Properties 2003 for review 2006

Asbestos Information and Advice to Tenants and Occupants September 2003

Health and Safety Issues– Storage Heating Installations

Glasgow Housing Association Asbestos In Your Home What Should You Do?
A Guide For Residents

Glasgow Housing Association Neighbour Relations Policy (updated
10 October 2005)