

Case 200602445: Ark Housing Association Ltd

Summary of Investigation

Category

Housing Associations: Complaints handling

Overview

The complainants (Mr and Mrs C) were tenants of Ark Housing Association (the Association). They complained that their property sustained damage and that the surrounding area was excessively disrupted by renovation work being carried out, by the Association, on the neighbouring apartments. Whilst the Association took action to repair the damage caused by the works, Mr and Mrs C complained that the repairs were not completed in good time and that they were required to remain in a property that was unsuitable for their habitation.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Association failed to carry out remedial work to Mr and Mrs C's property in good time following damage caused by their contractors (*upheld*); and
- (b) the Association's communication was poor (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Association:

- (i) refund 10% of Mr and Mrs C's rent payments over the 14 month period, where external remedial works remained outstanding, between March 2007 and May 2008;
- (ii) apologise to Mr and Mrs C for the disruption and inconvenience caused by the reconfiguration works neighbouring their home; and
- (iii) review Mr and Mrs C's case with a view to identifying any procedures that could be improved to avoid similar problems for other tenants in the future.

The Association have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. Mr and Mrs C moved in to their property, as tenants of Ark Housing Association (the Association), in February 1999. The adjacent property, also managed by the Association, was used as housing for individuals with learning difficulties. In May 2006, the Association started work to reconfigure the facility. Workmen contracted by the Association (the Contractors) carried out the work, which involved improvements to the building and the construction of an extension. As the work was carried out, scaffolding, heavy machinery and a Portakabin were positioned on, and adjacent to, Mr and Mrs C's premises.

2. Damage was caused to the interior of Mr and Mrs C's property by workmen working on the connecting wall. Over the course of the works, they were also disrupted by noise, 'colourful' language, a lack of privacy, and damage to the exterior surroundings of their property. Mr and Mrs C complained to the Association's Development Officer (the Officer) on a number of occasions. They were eventually invited to present their concerns to the Association's Management Committee (the Committee). The Officer and the Committee accepted that the Association were responsible for damage caused to Mr and Mrs C's property and it was agreed that they would be compensated financially, and action taken to repair the damage.

3. Mr and Mrs C said that the work that the Association agreed to carry out on their property was not completed and that the neighbouring reconfiguration work continued to disrupt their lives. They pursued the matter with the Association but no further action was taken. They, therefore, brought their complaint to the Ombudsman in December 2007.

4. The complaints from Mr and Mrs C which I have investigated are that:

- (a) the Association failed to carry out remedial work to Mr and Mrs C's property in good time following damage caused by the Contractors; and
- (b) the Association's communication was poor.

Investigation

5. In order to investigate this complaint, I reviewed the correspondence between Mr and Mrs C and the Association. I also interviewed Mr and Mrs C by telephone and sought additional supporting evidence from the Association. 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 the Association were given an opportunity to comment on a draft of this report.

**(a) The Association failed to carry out remedial work to Mr and Mrs C's property in good time following damage caused by the Contractors; and
(b) The Association's communication was poor**

6. Mr and Mrs C moved into their property, as tenants of the Association, in February 1999. The adjacent property, also managed by the Association, was used as housing for individuals with learning difficulties. In May 2006, the Association started work to convert the adjacent property into six self contained apartments for residents with varying degrees of disability. This required the construction of an extension to the rear of the property, as well as extensive reconfiguration of the internal layout of the property.

7. In their complaint to the Ombudsman, Mr and Mrs C said that, around the time the work began, they were informed, by the Association, of a 'minor inconvenience'. They said that, in reality, the Contractors took over the car parking area to the rear of their property. Five Portakabins and a temporary toilet were set up there and scaffolding erected at the front of the property. Diggers and dumper trucks were parked in Mr and Mrs C's front garden, leaving them feeling 'hemmed in' by the works. Mrs C has mobility problems, due to a historic back problem, and spends a considerable amount of time inside her home. She said that she was disturbed by frequent loud banging, sawing and drilling. She also complained about the workmen's language and a lack of privacy. She found the situation to be extremely stressful and detrimental to her health. Mr and Mrs C kept their blinds closed at all times as workmen were continually walking past their windows and vans were parked on the pavement outside their home. Mr and Mrs C asked the Contractors to move the temporary toilet from beside their back fence. It was relocated outside their kitchen window.

8. The documentation that I have been provided with includes a letter from the Officer to Mr and Mrs C, dated 4 August 2006, explaining that any damage done to their property would be made good by the Contractors by the end of the contract. The letter clarifies that this would cover 'such events as damaged lawns or broken fences or any structural damage done by the contractor to your house'. The letter also confirmed that the Association would be arranging for a new fence and gate to be constructed in order to protect Mr and Mrs C's front garden.

9. Upon returning from a two-week break at the beginning of September 2006, Mr and Mrs C discovered that a hole had been knocked through their hall wall. A letter from the Officer was waiting for them, explaining that the Association would repair the damage. It also explained that the problem had highlighted that the wall separating the two properties was not sufficiently wide and that further work would be required to make it conform to sound and fire regulations. This letter was followed by a more detailed letter, dated 4 September 2006, which explained that the two properties at one time had interconnecting doors. This had not been known prior to the start of the reconfiguration work. The Officer stated 'As your landlord we are duty bound to carry out these works and make good the repairs only in decorative terms (ie match up as best possible). Because of the inconvenience caused to you we may be prepared to stretch this to painting the immediate wall affected'.

10. The Officer sent a further letter to Mr and Mrs C, dated 12 September 2006. The letter referred to a meeting with Mr and Mrs C on that day and notes that it was agreed that the Association would build up the separating wall within the following eight working days. When dry it would be plastered. Decoration work could be carried out in October 2006, when the plaster was dry, or in November 2006 when painters would be on site to work on the neighbouring property. Mr and Mrs C were also given the option of carrying out the work themselves, funded by decoration vouchers that the Association would provide. The letter records that it was agreed during the meeting that work would be carried out on the exterior of Mr and Mrs C's property whilst the Contractors were on site working on the neighbouring property. This would avoid further disruption at a later date. A slab path was to be laid from Mr and Mrs C's front door to the pavement, and additional timber protection was to be added to the existing scaffolding to increase safety.

11. On 14 September 2006, the Officer visited Mr and Mrs C's home and met with their local councillor (the Councillor). The Association provided me with a copy of a letter, dated 19 September 2006, from the Officer to Mr and Mrs C, which referred to the discussions that were held during that meeting. The Officer noted that the work to improve the separating wall had now been completed. He stated that the Contractors would introduce a temporary slab path and additional scaffolding as previously agreed and that these would be removed and the front garden reinstated at the end of the reconfiguration works.

The scaffolding was due to be removed by the end of November 2006 and the reconfiguration works completed by the end of December 2006.

12. The Officer noted that, during the meeting, he had offered to arrange for Mr and Mrs C to be decanted to another property for the remainder of the reconfiguration works, but that this offer was declined. Mrs C proposed vacating her home and visiting her son, daily, whilst the work was ongoing. This was considered to be beneficial for her health and the Officer offered to seek additional support for Mrs C from the community psychiatric nurse. The letter reiterated previous assurances that remedial work would be carried out on Mr and Mrs C's property prior to the completion of the reconfiguration works. Mr and Mrs C were advised that, if they wished to do so, they could pursue compensation for the inconvenience caused by the works by writing a formal complaint to the Association. The Officer said that he would visit the site weekly and requested that Mr and Mrs C contacted him immediately should they change their minds about decanting.

13. Mr and Mrs C submitted a formal complaint to the Association. I have not been provided with a copy of their complaint letter, however, their concerns were reiterated in a letter from a Councillor (the Councillor) to the Association's Chief Executive (the Chief Executive), dated 2 October 2006. The Councillor, having visited Mr and Mrs C at their home, expressed his shock at the conditions that they were living in. He considered that they should have been decanted at an early stage. The Councillor acknowledged the assurances that the Officer had given Mr and Mrs C regarding work that would be carried out on their home, but noted his concern over the Association's general handling of Mr and Mrs C's situation and the detrimental impact that it was having on Mrs C's health. He informed the Association that a change in circumstances had meant that Mrs C was now unable to visit her son on a daily basis and that the community psychiatric nurse had also expressed concern about the impact the neighbouring works were having on her health.

14. In his letter to the Association the Councillor presented a list of maintenance issues that Mr and Mrs C had identified as requiring attention. The list, which itemised pre-existing maintenance issues as well as those caused by the neighbouring reconfiguration works, was as follows:

- (i) Living room
 - a. Draughty windows – not wind or water tight
- (ii) Hall

- b. New cracks appeared in electricity cupboard after works began next door.
- c. Light switch (at top and bottom of stair) for stair light inoperative.
- d. Front door warped with both water and snail penetration evident.
- e. 2 unknown blanked sockets at foot of stairwell – possibly relating to previous communal alarm system.
- (iii) Bathroom
 - f. Hole behind radiator pipe down into kitchen.
- (iv) Back bedroom
 - g. Dampness resulting from water ingress at bottom right of window
- (v) Kitchen
 - h. Sink comes away from wall
 - i. Large hole in wall under window (result of old tumble dryer vent)
 - j Back door warped and water/snails able to enter
 - k. Plaster required around door window and at side of door into hall
 - l. Crack in wall above sink
 - m. Cupboard door fell off and caused injury while another has broken handle
 - n. All sealant around worktops requires replacement
- (vi) External windows
 - o. Cracked plaster at kitchen windowsill
 - p. Sealant coming away from kitchen window and door
 - q. Area near rear lounge, back bedroom and bathroom windows show cracked brickwork with missing sealant.

15. The Councillor suggested that the Association, as a matter of urgency, offer Mr and Mrs C the option of decanting to a more suitable property or hotel, redecorate and make good all of the above maintenance issues and compensate Mr and Mrs C to the sum of the rent for the period of the reconfiguration works.

16. During my investigation, the Association provided me with copies of correspondence that they had sent to Mr and Mrs C. Within the documents was a letter from the Chief Executive, dated 10 October 2006. This letter was written in response to Mr and Mrs C's formal complaint. In it, the Chief Executive detailed the maintenance work that the Association proposed to carry out on Mr and Mrs C's property. They agreed to the following:

- (i) Supply and fit a new kitchen
- (ii) Make good repairs to the kitchen

- (iii) Redecorate the kitchen
- (iv) Provide new floor covering to kitchen
- (v) Repair the bathroom floor at radiator
- (vi) Repair lighting and switch problems in hall and to front door
- (vii) Strip walls in the hallway, make good any decorative repairs caused by the adjacent works, then line with paper and pain
- (viii) Provide new draught seals and weather bars to front and rear doors

17. Again, the letter proposed that the above remedial work be carried out toward the end of the reconfiguration project. The Chief Executive acknowledged that the reconfiguration work had been significantly more disruptive than had been anticipated and committed to ensuring that Mr and Mrs C were as comfortable as possible in their home whilst the remaining work was completed. It remained their preference not to be decanted.

18. In acknowledgement of the inconvenience that they had experienced, the letter included an offer of a retrospective discount of 25% of their rent charges over a six month period, with a further £250.00 'cash gift'. Mr C told me that he and Mrs C did not receive the Chief Executive's letter of 10 October 2006 and were, therefore, unaware of the 'cash gift' that was offered. He explained that the proposed settlement would have been declined, as it did not reflect the level of disruption that they had encountered whilst the reconfiguration work was being carried out. Mr C told me that he and Mrs C had been asked to present their complaint before the Committee in March 2007. Mr C explained that they attended a Committee hearing and presented their complaint. Mr and Mrs C had video evidence of the problems at their home, however, malfunctioning equipment meant that the Committee were unable to view this at the hearing. The hearing resulted in Mr and Mrs C being awarded a full refund of ten months' rent (£2,626.00) plus a further £2,626.00 as a good will gesture. They were also told that property of theirs that had been damaged would be 'put right'.

19. Although I have not been provided with written details, I understand that the Association also agreed to carry out work on the exterior of Mr and Mrs C's property at the end of the reconfiguration works. Their front garden, including its surrounding fences, was to be put back to its original state. The external walls were to be pebble-dashed and repainted and the gutters were to be cleaned.

20. Mr and Mrs C accepted the compensation offered by the Committee, on the understanding that the agreed work would be completed. However, at the time of bringing their complaint to this office, in December 2007, they advised me that the work remained incomplete. They, therefore, considered the matter to be unresolved and the compensation paid to be inadequate.

21. Upon receiving Mr and Mrs C's complaint, I contacted the Association to enquire as to the status of the reconfiguration works and to establish whether it remained their intention to 'make good' the damage at Mr and Mrs C's home. The Association confirmed to me that remedial work to address the damage, caused by the reconfiguration works, to the interior of Mr and Mrs C's home had been completed at the end of September 2006. All other internal works that were due to be carried out on Mr and Mrs C's home were successfully completed following the Committee's decision in March 2007. The work to be done on the property's exterior, however, remained incomplete. The Contractors were responsible for the reparation of any damage that they caused, however, they declined to fulfil their obligations in this respect. The Chief Executive explained to me that the Contractors had been approached in January 2007 to provide a quote for the external works, but had failed to do so. The Association continued to request a quote from them, as they wished to avoid the delays that would be caused by putting the work out to tender. However, by August 2007, they still had not received a quote from the Contractors and they, therefore, instigated the tendering process.

22. The Officer wrote to Mr and Mrs C on 20 September 2007 to explain that he had clearance to instruct another contractor to complete the work. The Officer noted that this could be a slow process and that it was unlikely that a contractor would be appointed before November 2007. He said that he would let Mr and Mrs C know when the new contractor had been found.

23. Mr and Mrs C told me that they did not hear anything more from the Association following the Officer's letter of 20 September 2007. I spoke with Mrs C on 15 February 2008 and she expressed her disappointment at being 'ignored' by the Association. She believed that, as the work had been completed on the adjoining property by that time, the Association would not be returning to rectify the damage to the exterior of their home. As the documentation that I had seen suggested the Association accepted that they were responsible for this work, I considered it appropriate to establish the Association's intentions before going any further.

24. I contacted the Chief Executive on 20 February 2008. She told me that, due to the small scale of the work involved and the high demand for building contractors, generally, at the time of Mr and Mrs C's complaint, the Association were unable to find a contractor who was willing to take on the remedial work. The timing and scale of the contract was considered to be of insufficient interest. The Association had put the work out to tender, as advised by the Officer in September 2007, however, had had no interest. They had, therefore, decided to approach contractors directly to get the work done. The Chief Executive explained that the Association were very actively working to resolve the situation, but that she was unable to confirm a timescale for completion at that time. I subsequently received a letter from the Chief Executive, dated 10 March 2008, explaining that three different contractors had been approached and that the successful bidder would be appointed on 14 March 2008, with a view to the work starting in April 2008. The Chief Executive acknowledged the delay in the appointment of a contractor and expressed her regret at the length of time it had taken for the work to be carried out.

25. The Association wrote to Mr and Mrs C on 22 April 2008 to confirm that a contractor had been appointed and that the remedial work would commence on 12 May 2008. Mr C subsequently confirmed to me that the work had been completed to a satisfactory standard but that he and Mrs C remained dissatisfied with the Association's handling of the reconfiguration work and the subsequent tendering process for the work on their home.

26. Although I am unable to investigate matters relating to the tendering process, when investigating this complaint, I asked the Association to explain their tendering procedures to me so that I could understand the context of the information that they provided me with. They provided me with a copy of their Tendering and Procurement Policy (the Policy), which provides guidance to Association staff on how to tender for any externally provided services.

27. The Policy details what action should be taken when quotations are received from contractors and sets a minimum level of two separate quotations to be received before any contract can be awarded (the minimum number of quotations increases as the value of the contract increases). The Policy does not provide guidance on the procedure to be followed in cases where fewer than the minimum number of quotations are received.

(a) Conclusion

28. The evidence that I have seen indicates that the reconfiguration works neighbouring Mr and Mrs C's property had a significant impact on their home life. Their home would appear to have been very much part of the 'building site', with their gardens being used for equipment storage, parking and as a thoroughfare for the workmen. The work itself impacted on their property, causing internal and external damage. The Association evidently accepted, at an early stage, that the reconfiguration work was more extensive, and more problematic for Mr and Mrs C, than initially expected. I was pleased to note, from the correspondence that I was provided with, that the Association did not dispute Mr and Mrs C's description of the disruption, that they acknowledged the impact that the works were having on Mrs C's health and that they agreed to rectify the damage caused by the reconfiguration works. I commend the Association for their openness in this regard.

29. Whilst the Association were quick to accept that Mr and Mrs C's home required remedial work and that this should be the Association's responsibility, I was concerned by the length of time taken to complete the agreed work. I consider it reasonable for the Association to have taken the initial decision to complete the remedial work upon completion of the neighbouring reconfiguration project. It was also appropriate for them to offer Mr and Mrs C alternative accommodation until the reconfiguration works were completed, however, I accept that this was not Mr and Mrs C's preference. At the time of their being offered decantation, the works were expected to be completed within one month and Mr and Mrs C's property fully restored within two. The works, however, carried on considerably longer than initially anticipated and Mr and Mrs C continued to be inconvenienced for approximately four more months. A period of two years passed between the beginning of the reconfiguration works until the completion of remedial work to the exterior of Mr and Mrs C's home. I accept entirely Mr and Mrs C's description of their living conditions during this period and find this to be an unacceptable length of time.

30. The remedial works on the interior of Mr and Mrs C's home were initially delayed by the overrunning of the reconfiguration project. In light of the disruption caused during the project, Mr and Mrs C were compensated with a ten month refund of their rent, totalling £2,626.00. They accepted this and I consider that this financial settlement, along with the completion of the internal work, was an appropriate acknowledgement of the problems that they had encountered.

31. The external repairs were delayed significantly by the Contractors' failure to put right the damage that had been caused during their time on site. Alternative contractors had to be sourced as a result. Prior to this, the Contractors were given eight months to provide a quote for the work. I consider this to be excessive. Whilst, as I noted in paragraph 27 of this report, I am unable to investigate the tendering process, I appreciate the importance of the Association following the correct tendering procedures before beginning remedial work on Mr and Mrs C's property. From Mr and Mrs C's perspective, however, they were pursuing a complaint about an unsatisfactory situation, which had to be resolved. The Association did not dispute that the situation was unacceptable, and both parties concurred that the matter would be resolved by completion of the remedial work. Mr and Mrs C had no option but to wait until the tendering procedure had been completed. As the procedure does not allow for the prioritisation of contracts in order to quickly resolve a situation such as this, or the progression of cases where no tenders have been received, the tendering procedure took considerably longer than anticipated by the Officer in his letter of 20 September 2007. The Association may wish to consider whether any amendments could be made to their tendering procedure to minimise such delays and to progress cases, such as Mr and Mrs C's, that are stalled by the normal procedure.

32. I accept that the delays to the completion of remedial works on Mr and Mrs C's home were caused by the Contractors reneging on their contractual obligations and by the subsequent, necessary, tendering process. The Association are, however, responsible for their contractors and for the reconfiguration project as a whole. In this respect I consider that they failed to ensure that the damage caused to Mr and Mrs C's property, as a result of the reconfiguration works, was rectified in a timely manner. I, therefore, uphold this complaint.

(a) Recommendations

33. In March 2007 the Association compensated Mr and Mrs C with a full refund of their rent for the ten month period that they had been inconvenienced to that date. All internal remedial works were completed at that time, leaving the external disruption for a further 14 months. Whilst Mr and Mrs C continued to be inconvenienced, I acknowledge that all internal works had been completed and that the level of disruption would have been significantly lower during this 14 month period.

34. The Ombudsman recommends that the Association:
- (i) refund 10% of Mr and Mrs C's rent payments over the 14 month period, where external remedial works remained outstanding between March 2007 and May 2008;
 - (ii) apologise to Mr and Mrs C for the disruption and inconvenience caused by the reconfiguration works neighbouring their home; and
 - (iii) review Mr and Mrs C's case with a view to identifying any procedures that could be improved to avoid similar problems for other tenants in the future.

(b) Conclusion

35. As I mentioned in paragraph 29 of this report, I was impressed by the Association's openness in their communications with Mr and Mrs C. At an early stage, they accepted responsibility for the damage to their home and agreed that it would be put right by the Contractors. The evidence that I have seen indicates that the Officer maintained regular contact with Mr and Mrs C via written correspondence and on-site meetings with them and the Councillor throughout the early stages of the reconfiguration works. The Officer set out clearly the Association's acceptance of responsibility for the remedial works, what work would be carried out and timescales for its completion. I was satisfied with the frequency and means of communication in relation to the reparation of internal damage to Mr and Mrs C's home and the handling of their formal complaint against the Association.

36. The Association clearly explained to Mr and Mrs C the circumstances that led to the external remedial works being delayed, and the need to appoint a replacement contractor. In his letter of 20 September 2007, the Officer explained that the tendering process to do this would take around three months. He said that he would contact Mr and Mrs C again once the new contractor had been appointed. Delays to the tendering procedure meant that it took significantly longer than three months to appoint a new contractor. In the meantime, Mr and Mrs C were not contacted by the Association.

37. I consider that it would have been courteous of the Association to provide some form of update to Mr and Mrs C during the tendering process to reassure them that the matter was still being attended to. Instead, Mr and Mrs C were left feeling ignored. Given the problems that they had encountered throughout the reconfiguration works and the regular communication that they had had with the Association whilst resolving their complaints, I was disappointed to learn

that the same level of communication did not continue until the completion of the remedial works. On balance, however, I am satisfied that the Association were generally proactive in their communications and that they were taking action to find a satisfactory resolution to this situation. I found the period without communication to be excessive, but that it was not indicative of the Association's normal approach to tenant communication, as demonstrated in earlier dealings with Mr and Mrs C. With this in mind, I do not uphold this complaint.

(b) Recommendations

38. The Ombudsman has no further recommendations to make.

Explanation of abbreviations used

Mr and Mrs C	The complainants
The Association	Ark Housing Association
The Contractors	A building contracting firm, contracted by the Association
The Officer	A Development Officer working for the Association
The Committee	The Association's Management Committee
The Councillor	Mr and Mrs C's local councillor
The Chief Executive	The Association's Chief executive
The Policy	The Association's Tendering and procurement Policy