

# REPORT

COMPLAINT 201806178

## **Our approach**

*It is the Ombudsman's duty under the Housing Act 1996 to consider a case and to decide what is fair in all of the circumstances. We consider the evidence and look to see if there has been any maladministration, for example whether the landlord has failed to keep to the law, follow proper procedure, follow good practice or behave in a reasonable and competent manner.*

*Both the complainant and the landlord have submitted details to the Service and these have been carefully considered in this investigation. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.*

## **Complaint definition**

The complaint is about the landlord's response to the complainant's reports regarding:

- its proposal to restrict his access to a lift and communal areas near his home;
- his concerns about proposed changes to a fire door system; and
- the landlord's consultation with him about its proposals relating to works and access to these communal areas.

## **Background and Summary of Events**

1. On 13 December 2017, the complainant made a formal complaint to the landlord. He expressed his concerns about proposed works to communal areas in an adjacent building which might restrict access to his home (the property), changes to fire doors in his building (the Block) and that he had not been consulted about these works before they were agreed. After the landlord confirmed that the complaint would be treated as a service request on 22 December 2017, the complainant made a second complaint on 14 January 2018, which was accepted by it as a request to escalate his first complaint for review at stage 2 of its complaints procedure.
2. The complainant clarified his concerns to the landlord on 29 January 2018, and he also raised further concerns about its proposals to restrict his access to a lift in the adjacent building, a shared access, gardens and car parking areas, and the potential impact that changes to the fire door system in the Block would have on him and other general needs residents living there.
3. On 26 February 2018, the landlord gave its complaint response. It explained that it did not uphold any of the elements of the complaint and that:

- when the works were first proposed as part of the landlord's sheltered accommodation regeneration programme, it had not immediately appreciated the impact on general needs residents occupying the second floor of the Block, and apologised if this had led to any confusion;
- it had consulted the residents of its sheltered accommodation on the proposed works, including an on-site presentation, and the complainant had previously been correctly advised that as there was to be no major change to the second floor of the Block, it was not necessary for a separate consultation to take place with residents living there;
- with hindsight, and as a matter of courtesy, general needs residents should have been included in the original consultation, it outlined its work proposals and confirmed it would consult separately with them once building control approval had been received;
- no work would commence until the above consultation had taken place and any amendments required had been incorporated into the proposals;
- general needs residents had dedicated staircase access to the second floor of the Block and after the proposed works would also have fob controlled access to the primary staircase and the main entrance to the Block, but would not be able to access the residential or shared areas within the sheltered accommodation;
- the lift, which was in the curtilage of the building adjacent to the Block, was installed to meet the needs of residents in its sheltered accommodation, was intended for their sole use and would not be accessible to him;
- none of the general needs residents on the second floor of the Block were known to have mobility or disability issues that would require the use of a lift, and if his or their needs had changed they could request that it carried out a housing suitability review;
- the fire doors to the staircase on the second floor of the Block were not to be included in the proposed automated scheme, would be separate from this and would continue to be manually operated or, subject to consultation, a push button system may be installed;
- the proposed automated fire door locks were fire brigade approved and would provide enhanced security for the residents in its sheltered accommodation, it outlined the proposed system and confirmed that since exit routes were not being changed, a revised fire risk assessment was not required;

- the landlord's proposals for upgrading the fire and security protection for residents in its sheltered accommodation were appropriate, and the inconvenience which may be experienced by its general needs residents in the Block did not warrant a review of these proposals;
  - an application for building control approval for the proposed fire door system and subsequent confirmation by the fire brigade was in process, and no work would commence before such approval had been obtained;
  - general needs residents would not be able to use the gate to the adjacent building's car park;
  - work that he had recently been given notice of related to the installation of a CCTV system to enhance the security of all residents and this work was now complete; and
  - it accepted that the mixed tenancy types in the Block and its link with the adjacent building meant that the proposals may have lacked clarity as the emphasis was on its sheltered accommodation residents, but it was not its intention to provide conflicting information or mislead, and it apologised if he felt this was the case.
4. Resident newsletters relating to the Block and the adjacent building (the buildings) show that the landlord was informally consulting residents living in its sheltered accommodation there from August 2016. Additionally, they show that in February 2018, these residents were informed that it was reviewing potential development partners, had awarded preferred bidder status to one on 17 January 2018, and a final decision would be made in *'early 2018'*.
  5. On 29 March 2018, the complainant raised additional issues relating to the proposed works to fire doors on the second floor of the Block, rent and service charges and consultation obligations in his tenancy agreement, and he expressed dissatisfaction with the landlord's above response and asked for a further response.
  6. The landlord responded on 12 April 2018. It confirmed that it would not carry out a further investigation in relation to the issues it had already addressed in its above response of 26 February 2018 and would not enter into further correspondence about them. The landlord also explained that the appropriate notice of the passing of building plans had been obtained and that the additional issues the complainant had raised relating to rent and service charges and its obligations under his tenancy agreement would be dealt with as a second complaint at stage 1 of its complaints procedure.

7. On 1 May 2018, the landlord responded to the second complaint, addressed the complainant's concerns relating to rent and service charges and confirmed that it was taking legal advice in relation to lift access and his tenancy agreement. On 14 May 2018, it confirmed that his second complaint would not be escalated further in its complaints procedure, as the proposed works were under review and it would be inappropriate for it to comment further until the review was complete.
8. On 8 June 2018, the landlord confirmed that it had received legal advice that it was entitled to restrict the complainant's access to the lift and offered to carry out an assessment on the suitability of the property if the complainant had a medical need to use a lift. It said that after listening to his concerns and further consultation, it was proceeding with the alterations to the buildings. Additionally, the landlord said that he would not have access to the lift, adjacent building's car park and would be unable to use the communal landings in the sheltered accommodation.
9. Between 12 June and 6 July 2018, the complainant corresponded with the landlord's legal advisor about the legality of the proposed works. They confirmed that it was not obliged to provide him with access to the lift, the proposed works *'would appear to be lawful and proportionate'*, and that residents had been consulted about the proposed works between December 2017 and March 2018 but it would undertake a further consultation exercise with all affected residents. The landlord's legal advisor also confirmed that no changes to the access arrangements to the lift would take place until the landlord had considered the outcome of this further consultation.
10. On 6 and 11 July and 1 August 2018, the complainant repeated his request for his second complaint to be escalated to stage 2 of the landlord's complaints procedure for review and expressed his further dissatisfaction with the responses to his first complaint. On 10 July 2018, and 7 and 10 August 2018, the landlord repeated its decision not to escalate his complaints to the next stages of its complaints procedure and confirmed that it would be inappropriate for it to comment on issues currently subject to legal review. It also confirmed that once an issue had been passed to a member of its legal team, it could no longer be considered through its complaints procedure and that the review following further consultation with residents had not recommended any significant changes to the proposals already approved.
11. The complainant remains dissatisfied with the landlord's responses to his complaints. He considers that he is entitled to continued access to the lift and that the landlord's responses to his complaint were inadequate. The complainant reports that he has health issues which impact on his mobility and that he moved into the property knowing that there was a lift which would help him to access it. The correspondence sent to him by the landlord before he

signed the tenancy agreement shows that the property was referred to as a 2<sup>nd</sup> floor flat with a lift up to the 1<sup>st</sup> floor.

12. It is noted that from updates provided to this Service by the landlord and the complainant, a review of his access to the lift is on-going.

#### Policies, Procedures and Agreements

13. The complainant has been a tenant of the landlord at the property, since 26 March 2012. The tenancy agreement obliges the landlord to consult the complainant about decisions it makes: *'to do with managing or maintaining housing if these decisions are likely to have a major effect on your home or tenancy'* and *'about any proposals for changes to the way in which we manage, maintain, improve ...properties ...or for changes to do with services or facilities'*. The tenancy agreement provides that where changes directly affect the complainant the landlord is obliged to tell him *'about these and give you the chance to tell us what you think about them'* and says, *'we will consider all comments received before making a decision'*.
14. The landlord's Complaints Policy and Procedure confirms that it aims to resolve complaints at the earliest opportunity and provides that where possible, attempts should be made to deal with issues quickly and informally, at the point of service delivery. It has a 3 stage complaints procedure. The Complaints Policy and Procedure confirms: *'the customer has the right to escalate the complaint if they remain dissatisfied'*, and *'if the customer continues to express their dissatisfaction but does not provide specific reasons as to why they are not satisfied by the [landlord's] response, in some circumstances the complaint will not be escalated to the next stage'*.

#### **Assessment and Findings**

##### Scope of the assessment

15. This assessment will determine if the landlord handled the complainant's reports about its proposals to restrict access to a lift and communal areas and make changes to the fire door system, and consultation with him about these proposals in line with its policies and procedures and behaved in a reasonable manner. Importantly, it is not the role of the Ombudsman to make legal decisions about whether the landlord was entitled to restrict access to the lift and other communal areas or whether the fire door system was safe. These are matters more effectively dealt with by the courts or tribunals which have the necessary expertise to determine them, unlike the Ombudsman. The Ombudsman's role is to consider whether the landlord took reasonable steps to address the complaint.

### Proposal to restrict access to a lift and communal areas

16. The landlord aimed to respond to the complaint on 13 December 2017, about its proposals to restrict the complainant's access to a lift and other communal areas in the buildings, by complying with its Complaints Policy and Procedure to respond to complaints at the earliest opportunity. It did so by responding to the complaint on 22 December 2017 and treating it as a service request. The landlord acted appropriately in doing so. This is because its actions were consistent with its aims in its Complaints Policy and Procedure to try to deal with issues informally at the point of service delivery, so that they could be resolved as quickly as possible.
17. The landlord then accepted the complaint as a request for escalation to stage 2 of its Complaints Policy and Procedure after a further complaint from the complainant on 14 January 2018. He gave additional details about his concerns, including a restriction on his access to a lift, shared car parks and gardens on 29 January 2018. The landlord gave its complaint response on 26 February 2018. It responded to the issues raised by the complainant and told him that the lift would not be accessible to him because it was intended for the sole use of residents in the sheltered accommodation on the floors below. Additionally, the landlord explained that it was not aware that the complainant or any other second floor resident had mobility or disability issues that would require the use of a lift, and if his or their needs had changed they could request that it carried out a housing suitability review.
18. The above actions by the landlord were a reasonable response to the complaint. This is because it responded to the concerns the complainant had raised and provided a clear and concise explanation of its proposals. It also recognised that its proposal to restrict access to the lift may have had a negative impact on the complainant and other general needs residents and took suitable steps to address this by offering to carry out housing suitability reviews where these were required.
19. The complainant expressed his dissatisfaction with the above response on 29 March 2018, and the landlord confirmed on 12 April 2018, that it would not carry out a further investigation of the issues it had already addressed in its response of 26 February 2018. It further confirmed on 1 May 2018, that it was taking legal advice in relation to lift access and his tenancy agreement. On 8 June 2018, the landlord confirmed that, after obtaining legal advice and listening to his concerns, it had decided to proceed with its proposed works and that he would not have access to the lift. The landlord repeated its offer to carry out an assessment on the suitability of the property for the complainant, if he had a medical need to use a lift.

20. The complainant thereafter liaised directly with the landlord's legal advisor who confirmed to him that the landlord was not obliged to provide him with access to the lift. He expressed further dissatisfaction with its complaint response, and on 10 July 2018, and 7 and 10 August 2018, the landlord repeated its decision not to escalate his complaint to the next stage of its Complaints Procedure, confirmed that it would be inappropriate for it to comment on issues currently subject to legal review, and told him he would be advised of the outcome of the review once it was complete and a decision had been reached.
21. The landlord acted appropriately in responding to the complainant's request for his complaint to be escalated for further review under its Complaints Procedure. This is because although its Complaints Policy and Procedure provided him with a right to escalate the complaint if he remained dissatisfied with the landlord's response, it was entitled to decline his requests. I acknowledge that the Complaints Policy and Procedure confirms that escalation to the next stage of the procedure can be refused where specific reasons are not provided by the complainant, and that he did provide the reasons for his escalation requests to the landlord. However, it was reasonable for the landlord to decline his requests to escalate the complaint where it had based its decisions on legal advice provided in the light of his concerns. This is because it was appropriate that it relied on the expert findings of its legal advisor who had considered the issues and advised it that it was not obliged to provide him with access to the lift. Further, it was reasonable for it not to comment again on the issues that were subject to a further legal review and to wait until this review had been completed.

#### Proposed changes to the fire door system

22. The complainant raised concerns with the landlord about its proposals relating to fire doors in the buildings on 13 December 2017 and 14 January 2018, provided further details of his concerns and outlined the potential impact that proposed changes would have on him and other general needs residents living there on 29 January 2018. It addressed these concerns in its complaint response on 26 February 2018. The landlord explained that fire doors to the staircase on the second floor of the Block giving access to the property were not to be included in its proposals for an automated fire door system and explained the proposed system and the steps it had taken to ensure that this system met building control and fire brigade requirements. It also said that no relevant work would take place until these approvals had been obtained and confirmed that the proposed system was appropriate for the protection of its sheltered accommodation residents and did not require review.
23. On 29 March 2018, the complainant again raised issues relating to the proposed works to the fire doors on the second floors of the Block, and on 12 April 2018, the landlord confirmed that these issues had already been



addressed in its complaint response on 26 February 2018. It also confirmed that it had received building control plan approval.

24. The landlord acted reasonably in responding to the complainant's reports regarding its proposed fire door system. This is because it addressed the concerns he raised in relation to the potential impact of these proposals on him and other residents and provided assurances about external approval to address his concerns about the safety of its proposals.

Landlord's consultation about its proposals for works and access to communal areas

25. The complainant raised concerns with the landlord about a lack of consultation with him and other general needs residents about its proposals for the buildings on 13 December 2017 and 14 and 29 January 2018. On 26 February 2018, the landlord responded to his concerns. It accepted that it had not consulted general needs residents on its proposals, on the basis that there were to be no major changes to the second floor of the buildings, and it recognised that it should have done so as a matter of courtesy and apologised for this. Further, the landlord confirmed that it would thereafter consult with general needs residents, no work would commence until this consultation had taken place and that its intention was not to provide conflicting information or mislead. It apologised if the complainant felt that this was the case.
26. The resident newsletters distributed by the landlord show that it was informally consulting residents living in its sheltered accommodation from August 2016. The landlord's legal advisor confirmed to the complainant on 22 June 2018, that it did have a statutory duty to consult with all secure tenants about its proposals, consultation had taken place between December 2017 and March 2018 and the landlord would undertake a further consultation exercise with all affected residents. On 10 July 2018, the landlord confirmed that its review, after further consultation with residents, had not recommended any significant changes to the proposals already approved.
27. The landlord was obliged under the tenancy agreement to consult with the complainant about decisions relating to the management or maintenance of the property if these were likely to have had a major effect on the property or his tenancy and give him an opportunity to comment on them. It began to informally consult with sheltered accommodation residents living in the buildings from approximately August 2016, but it delayed consulting the complainant until approximately December 2017, approximately 16 months later, which was not appropriate. However, when the landlord acknowledged on 26 February 2018, that it should have consulted general needs residents, it apologised to the complainant and took suitable steps to put this right.

28. The landlord carried out further consultation, confirmed to the complainant that no works would commence until the consultation had finished, acknowledged to him via its legal advisor on 22 June 2018, that it did have an obligation to consult him and confirmed the outcome of this consultation on 10 July 2018. This was a reasonable and proportionate response to address the inconvenience caused to the complainant by the approximately 16 months delay before he was consulted by the landlord on its proposals.

## **Determinations**

### Proposal to restrict access to a lift and communal areas

After carefully considering all the evidence I confirm that, in accordance with paragraph 42 of the Scheme, there was no maladministration by the landlord in respect of the complaint about its response to the complainant's reports regarding its proposals to restrict his access to a lift and communal areas.

### Proposed changes to the fire door system

After carefully considering all the evidence I confirm that, in accordance with paragraph 42 of the Scheme, there was no maladministration by the landlord in respect of the complaint about its response to the complainant's reports regarding changes to a fire door system.

### Landlord's consultation about its proposals for works and access to communal areas

After carefully considering all the evidence I confirm that, in accordance with paragraph 42 of the Scheme, there was no maladministration by the landlord in respect of the complaint about its response to the complainant's reports regarding its consultation with him about proposed works and access to communal areas.

## **Reasons**

### Proposal to restrict access to a lift and communal areas

The landlord acted reasonably in responding to the complaint about its proposal to restrict the complainant's access to a lift and other communal areas of the buildings. This is because it addressed his concerns, in line with its Complaints Policy and Procedure and provided clear explanations for its proposed actions. The landlord also recognised the potential impact on the complainant of its proposal to restrict his access to the lift and took appropriate steps to address this, by offering to carry out a housing review to enable it to assess the suitability of the property for his needs. It also appropriately declined his requests to escalate his complaint, as it was entitled to rely on the legal advice it had received where there was no evidence to the contrary.

Proposed changes to the fire door system

The landlord acted appropriately in responding to the complaint about its proposal to make changes to the fire door system in the Block. This is because it addressed the concerns the complainant raised in its complaint responses and provided assurances to address his concerns about the safety of its proposals.

Landlord's consultation about its proposals for works and access to communal areas

The landlord acted reasonably in responding to the complaint about its consultation about its proposals relating to communal areas of the buildings. Although it initially delayed consulting with the complainant about its proposals for approximately 16 months, it took appropriate steps to put this right, which was proportionate to address the inconvenience he experienced by the delay.