

REPORT

COMPLAINT 201518122

Edward Daffarn

AND

Royal Borough of Kensington and Chelsea

31 March 2017

Report prepared by Lee Chhen

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.

THE COMPLAINT

1. Mr Edward Daffarn is the tenant at 134 Grenfell Tower, Grenfell Road, London W11 1TQ ('the Property'). The Property is owned by the Royal Borough of Kensington and Chelsea ('the Landlord').
2. The Kensington and Chelsea Tenant Management Organisation Limited (TMO) acts on the Landlord's behalf in managing properties. This complaint relates to action taken by the TMO.
3. Mr Daffarn complains about the TMO's actions in sending solicitors' letters warning him of 'forced entry' into the Property in order to carry out works. Mr Daffarn also complains that the TMO has not investigated his complaint fairly.
4. Mr Daffarn seeks an apology from the TMO for its actions.

COMPLAINTS PROCEDURE

5. The Complaints Procedure relevantly states:

Stage one

The first stage is to complain to the Complaints Team. We will tell you within two working days that we have received your complaint...

We will arrange for your complaint to be investigated and you will normally receive a response within 10 working days of the TMO receiving your complaint.

6. The Complaints Procedure also outlines the procedure for investigating Stage 2 and 3 complaints.

SUMMARY OF EVENTS

7. The TMO is obliged to keep in repair and proper working order installations including those for space heating and water heating. In order to do this, the TMO's tenancy agreements oblige tenants to allow entry to any person authorised by the TMO for the purpose of inspection and carrying out necessary works, provided reasonable notice is given (see clause 11 of the tenancy agreement).
8. From about December 2014, the TMO conducted show flats and consultations with its tenants to explain the scope of works required for Greenwell Tower. This included the installation of a Heat Interchange Unit and new radiators and pipework to deliver heating and hot water.
9. The TMO states that on 20 July 2015, it wrote to Mr Daffarn to explain the scope of heating works and asking him to contact its contractor to make an appointment.
10. On 30 July 2015, the contractor and the TMO's Project Manager ('the Project Manager') visited Mr Daffarn in his home to discuss the works inside his home, including the installation of an HIU.
11. The TMO states that its preferred and recommended location for the HIU was in the hallway, but, at Mr Daffarn's request, it agreed to locate the HIU in the living room cupboard. The Landlord states that it agreed to this change on a number of conditions, such as access being granted for five consecutive days. The TMO states that works to the homes that opted for HIUs to be installed in the kitchen or living room locations were programmed at the end of the main work around December 2015.
12. On 22 October 2015, the contractor spoke to Mr Daffarn regarding the heating installation in his home. Mr Daffarn told the contractor that he was on holiday until 24 November 2015. He also said that he had a number of issues that the TMO would have to deal with before he was prepared to allow access for the works. These issues include:
 - a. demanding an apology from the TMO for 'being called a liar' in respect of a previous complaint;
 - b. that the new central heating pipework should be installed under the concrete floor; and
 - c. that he wanted to have a meeting with the Project Manager to *'understand what changes will be made on my home and to take photos prior to works commencing'*.
13. The Landlord states that after Mr Daffarn notified it that he would be on holiday, it offered an alternative commencement date of 24 November 2015,

once Mr Daffarn had returned from his holiday. After Mr Daffarn advised it that 24 November was not suitable, the Landlord states that it rearranged the commencement date again for 2 December.

14. On 29 October 2015, the Project Manager hand delivered a letter to Mr Daffarn's home detailing the alternative appointment of 2 December 2015. The letter also detailed the process of installing the new heating system. The letter made it clear that if tenants did not give access for the installation at the agreed appointment date then 'an injunction will be served'. The letter also enclosed an 'Approval form for heat interface unit installation in kitchen' to be returned to the contractor as soon as possible. The form was to show tenants' agreement to a range of arrangements including that they would give 5 continuous working days' access to their homes for the installation of the new central heating system. Mr Daffarn did not return a copy of this form.
15. On 1 December 2015, the TMO's solicitors ('the Solicitors') sent a letter to Mr Daffarn, which explained that access was required to his home. The letter notes that *'it is the only opportunity [the TMO] can offer to carry out the works' because the contractor would be going off-site in mid-December and if the works were not completed, then [Mr Daffarn] would be left without heating or hot water'*. The letter states that because of this urgency, if access was not given on 2 December then the TMO would apply to the County Court for an injunction requiring him to allow access.
16. Also on 1 December 2015, two members of the heating contractor's team attended Mr Daffarn's home. The TMO states that this was a courtesy visit in light of works commencing the following day. Mr Daffarn told the heating contractor team that he was not aware of the appointment and that he did not allow access on 2 December 2015. The TMO states that Mr Daffarn stipulated a number of conditions to be met before he would give access, including:
 - a. that the pipework would be located under the floor
 - b. that he receive an apology for 'being called a liar' in relation to his previous complaint.
17. The Landlord did not believe those conditions to be acceptable.
18. On 2 December 2015, the day that the works were scheduled for, the heating contractor did not attend Mr Daffarn's property. The TMO states that the contractor did not attend because Mr Daffarn had told them the previous day that he was refusing access. Mr Daffarn emailed the TMO that day. This email constitutes the Stage 1 complaint. Mr Daffarn's complaint included the following:
 - a. that the heating contractor did not attend its appointment, meaning that Mr Daffarn had taken a day off work. Mr Daffarn demanded an apology and compensation for this; and

- b. that the TMO was inappropriately using Solicitors' letters to 'attempt to bully and intimidate me'.

The TMO states that following receipt of this email, the heating contractors attended the Property at around 2pm, but there was no reply and the contractor left a card.

19. On 3 December, the TMO acknowledged Mr Daffarn's Stage 1 Complaint email and said it would get back to him.
20. On 4 December 2015, the Solicitors sent a letter to Mr Daffarn confirming an alternative appointment date of 14 December 2015.
21. On 5 December 2015, Mr Daffarn wrote to the TMO's CEO in which he:
 - a. reiterated that that he had not refused access so there was no need for the Solicitors' letter;
 - b. explained that he had already lodged a complaint (through his email on 2 December 2015) about the Solicitors' letter, but instead of dealing with his complaint, he received another Solicitors' letter on 5 December 2015.
 - c. alleged that the Solicitors' letter informed him that he would have *'another forced entry to my property planned for 14 December'*.
22. On 7 December 2015, Mr Daffarn emailed the TMO to complain that he had not received a response to his Stage 1 complaint and requested escalation of his complaint to Stage 2 of the complaints process. The TMO responded that day, stating that Stage 1 complaints are responded to within 10 working days and that his complaint would be answered by 16 December.
23. On 8 December 2015, Mr Daffarn advised the TMO that his MP was assisting him in putting 'an end to the threats'.
24. On 8 December, the TMO sent Mr Daffarn its Stage 1 Response, which addressed Mr Daffarn's concerns and did not uphold his complaint. This responded to Mr Daffarn's complaints, as outlined below under 'the Solicitors' letters'. The Stage 1 Response noted that Mr Daffarn had arranged for a meeting with his MP on 14 December 2015 and proposed to commence the work on 15 December 2015 instead.
25. The Solicitors sent a further letter on 10 December (dated 9 December) to confirm the appointment date of 15 December 2015. On 10 December, the Project Manager and the contractor visited Mr Daffarn to check that he was prepared for the works that were proposed to commence on 15 December 2015.

26. On 10 December 2015, Mr Daffarn requested escalation of his complaint to Stage 2. On 22 December 2015, the TMO emailed Mr Daffarn its Stage 2 Response, which did not uphold his complaint.
27. On 7 January 2016, Mr Daffarn requested escalation of his complaint to Stage 3. In particular, Mr Daffarn wanted the Stage 3 panel to consider:
- why three 'threatening' Solicitors' letters were sent;
 - why the Stage 1 Response included the 'threat of legal action'
28. The TMO sent Mr Daffarn its Stage 3 Panel Response on 22 February 2016, which is several weeks after the target of 20 working days after receiving the complaint, as provided in the Complaints Procedure.
29. Mr Daffarn has been dissatisfied with each of the TMO's Stage 1, 2 and 3 Responses and believes that it 'manipulated the true facts'.

Bullying and harassment claims

30. Mr Daffarn believes that the letters sent by the Solicitors were unnecessary, and in his view constitute bullying and harassment. He states that the letters were intimidating and contained 'totally disproportionate threats'.
31. The TMO states that it had 'no alternative' to send the Solicitors' letters for the following reasons:
- a. it had sent the letters to ensure that it could meet its landlord obligation to provide heating and hot water to Mr Daffarn's home;
 - b. Mr Daffarn had not provided written agreement to the conditions for the works linked to the HIU being located in the cupboard in his living room as requested by the TMO's letter of 29 October;
 - c. there had been delays in agreeing an appointment with Mr Daffarn for carrying out the works;
 - d. the heating contractor was due to complete the works in mid-December and there was limited time for further delay without incurring additional costs;
 - e. it sent similar letters to other households in Grenfell Tower where access had not been agreed to complete these essential works;
 - f. It did not find the 'conditions' that Mr Daffarn stipulated before giving access to be acceptable.
32. Mr Daffarn states that he has never refused access and '*have always worked with [the contractor's] resident liaison officers to facilitate entry*'. Mr Daffarn says that simply wanted a meeting with the Project Manager before the works commenced to discuss some queries he had about the works. Mr Daffarn states that when he was visited by the contractors in late October 2015, he asked the team members if it would be possible to make some changes to minimise the visual impact of the works in the hallway. He states that the

contractors said they could not answer this question and they needed to speak with the Project Manager. Mr Daffarn consequently asked that the contractors contact the Project Manager to arrange a meeting with him to discuss his queries, after which he would be happy for the works to take place. Mr Daffarn noted that he did not hear anything about a meeting with the Project Manager and that *'as a result of the inaction of the [TMO and the contractor] to facilitate a straightforward request to meet with [the Project Manager] I felt under no obligation to have agreed a start date for the works to commence'*.

33. The TMO appears to not have arranged for the meeting with the Project Manager in part because it considered Mr Daffarn had sufficient opportunity to discuss matters with the TMO and its contractor, including:
- a. the opportunity to see show flats on December 2014 and January 2015;
 - b. consultations after the show flats;
 - c. Mr Daffarn's meeting with the Project Manager on 30 July 2015; and
 - d. an hour long conversation with the contractor on 1 December 2015.

As a result of these consultations, the TMO believes that *'the scope of works had been described to [Mr Daffarn] in detail and is consistent with what has been on display in the show flat and with the work carried out in other flats in Grenfell Tower'*.¹

34. Mr Daffarn complained that Stage 1 Response contained another 'threat' of legal action. The TMO contends that this was not a 'threat' but was summarising events so far. The Stage 1 Response relevantly states that:
- If you do not give access on 15th December, we will proceed to apply to the County Court without delay for an injunction requiring you to allow access for these works and will seek the costs of that process from you. I would urge you to allow access on this date to commence these works. If you have any specific questions relating to the work, or want [the contractor] to visit your home in advance to explain them, please contact...*

The contractor not keeping its appointment on 2 December 2015

35. Mr Daffarn considers that *'the action of the [TMO] to threaten me with a solicitors letter and then not bother to turn up to undertake the works lies at the heart of my complaint as I found this behaviour by the TMO to be threatening and abusive'*. Mr Daffarn states that this situation caused him to wake up at 6am on the morning of 2 December 'in fear and anticipation of what would happen at 8.00 am' when the contractor was due to start work. He further states that he did not have time to get legal advice after receiving the Solicitors' letter the previous day.

¹ Stage 1 Response.

36. The TMO disputes that this course of action was abusive or in any way unreasonable. It states that it was reasonable for the contractor to not attend as Mr Daffarn had advised its staff that he was not prepared to give them access on 2 December 2015. However, the contractor's staff did attend that day after Mr Daffarn had emailed the TMO to complain that no one had attended although no one appeared to be home by then.

ASSESSMENT

37. The Ombudsman finds that there was **no maladministration** by the TMO by sending the Solicitors' letters. Mr Daffarn's tenancy agreement is explicit in obliging him to permit access to authorised persons for the purpose of inspection and carrying out necessary work, provided that reasonable notice is given. Reasonable notice of the works was given in this case, with Mr Daffarn being aware of the works taking place for over a year and being in negotiations with the TMO as to the commencement date of the works since about October 2015.
38. Mr Daffarn states that he did not refuse access and only wanted to discuss the works with the Project Manager before agreeing to a commencement date. He advised the contractors of this in October, before he went on holiday. It is unclear from the evidence whether the Landlord was aware of this request from Mr Daffarn. The TMO did not make any arrangements with Mr Daffarn in the time between him making this request and his receipt of the Solicitors' first letter on 1 December 2015. If the Landlord was aware that Mr Daffarn wanted another meeting with the Project Manager, the Ombudsman notes that it would have been courteous to Mr Daffarn to have communicated with him its decision to not arrange such a meeting in this intervening time, and could have reduced his stress and alarm at receiving the first Solicitors' letter.
39. Overall, however, the Ombudsman finds that the TMO acted reasonably. It rearranged the commencement date for the works twice to accommodate Mr Daffarn. Its reasons for needing to send the Solicitors' letters are credible. It was reasonable for the TMO to send these letters in order to fulfil its landlords' obligations, given the urgency of the works being done and the delays from not being able to reach agreement with Mr Daffarn as to the commencement date.
40. The Ombudsman does not consider the language used in the Solicitors' letters to be disproportionate or unreasonable. The letters stated that the TMO would apply for an injunction if Mr Daffarn did not give access, but the letters urged Mr Daffarn to give access so that this court action was not necessary.

41. The Ombudsman finds that there was **no maladministration** by the TMO in its handling of his complaint. The TMO has generally been timely and followed its Complaints Procedure. Its investigation was fair and its Responses did not distort the facts as Mr Daffarn claims. Although its Stage 3 Response appears to have been issued outside of the timescales in the Complaints Procedure, the Ombudsman does not find that this amounts of service failure.