

## Scottish Parliament Region: North East Scotland

### Case 200701713: Hillcrest Housing Association Ltd

#### Summary of Investigation

##### **Category**

Housing associations: Complaints handling

##### **Overview**

The complainant (Mrs C) said that a faulty boiler in her kitchen caused soot damage to her property requiring redecoration and the replacement of blinds and curtains. She complained that her claim for the recovery of expenses incurred as a result of this was dismissed by her landlord, Hillcrest Housing Association (the Association) without adequate investigation. Mrs C also expressed her dissatisfaction with the Association's complaints handling. She complained that some of her letters were not responded to and that she did not receive copies of letters that the Association advised had been sent.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Association failed to adequately investigate damage to Mrs C's property (*partially upheld to the extent that more could have been done to investigate the actual source of Mrs C's soot problem*); and
- (b) the Association's complaints handling was poor (*not upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Association:

- (i) introduce a policy of seeking third party liability determination for all compensation claims where the claimant is claiming amounts that are higher than the insurance policy excess and for all claims that require expert technical opinion; and
- (ii) consider asking their insurers to reinvestigate Mrs C's claim.

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

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mrs C) contacted Hillcrest Housing Association (the Association) in March 2007 to advise that her property had been damaged by sooty deposits which she believed had been left on the walls, blinds and furniture throughout her home by her boiler, which was situated in her kitchen. The damage was inspected by the Association's Maintenance Officer (the Maintenance Officer), who advised Mrs C that she may be entitled to claim back the cost of any redecoration work, should an engineer's report confirm that the boiler was the source of the damage.

2. Mrs C said that, in a subsequent conversation with an employee of the gas maintenance company that the Association used (the Gas Engineer), she was told that the boiler had caused the damage. She was later informed by the Association that the Gas Engineer's report had failed to conclude that the boiler was responsible for the soot damage. As such, the Association did not accept liability for the damage and rejected Mrs C's claim for decoration costs.

3. Mrs C complained to the Association in March 2007. A number of letters were exchanged between her, her local Councillor (the Councillor) and the Association. Mrs C said that she did not receive all of the letters that the Association told her had been sent, and when she requested copies of the missing letters, the Association failed to provide them. Dissatisfied with the lack of progress on her claim, Mrs C brought her complaint to the Ombudsman in September 2007.

4. The "sooty deposits" that Mrs C complained about were described as 'staining' by the Gas Engineer and have been described by other parties as 'dirty' or 'grimy' marks. Throughout this report I have used Mrs C's descriptions of 'soot' or 'sooty deposits' to maintain continuity, however, I acknowledge that doubts have been raised as to whether the marks were actually caused by soot.

5. The complaints from Mrs C which I have investigated are that:

- (a) the Association failed to adequately investigate damage to Mrs C's property; and
- (b) the Association's complaints handling was poor.

## **Investigation**

6. In order to investigate this complaint I have reviewed all of the complaint correspondence between Mrs C and the Association. I also researched best practice guidance and sought supporting evidence from Mrs C and the Association.

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

### **(a) The Association failed to adequately investigate damage to Mrs C's property**

8. Mrs C first became a tenant of the Association in 1998. In December 2006, when cleaning her living room windows, Mrs C noticed black sooty deposits on them. She found similar deposits in January 2007 and then again in February 2007. She told me that, by that time, the inside surfaces of her front and back doors were affected by the soot, as were her upstairs and downstairs bathrooms and the kitchen and living room walls. She said that a friend told her that the problem was similar to her own experiences of a faulty boiler.

9. Mrs C visited the Association on 26 February 2007 to report the problem. The Maintenance Officer inspected the damage and advised Mrs C that a gas engineer would have to investigate the matter and that nothing could be done until their report was received. The Gas Engineer inspected the boiler on 27 February 2007. Mrs C told me that the Gas Engineer immediately shut down the boiler and replaced it the following day.

10. The Maintenance Officer's findings were recorded in a file note, dated 1 March 2007. He noted that he inspected Mrs C's property with her present, and that the inspection had been carried out bearing in mind Mrs C's belief that the soot damage had been caused by her boiler. The Maintenance Officer stated that all rooms were inspected. Discolouration was found on papered and painted surfaces. Mrs C demonstrated wiping a damp cloth along the bathroom wallpaper, which resulted in the cloth becoming 'grimy and dirty'. The Maintenance Officer told Mrs C that, if it was established that the boiler was the sole cause of the soot damage, then he would be prepared to organise a painter and decorator to rectify the problem. He emphasised that, in the first instance, the boiler would have to be inspected and a report provided by the

Gas Engineer. The Maintenance Officer also recorded that he told Mrs C that if her boiler was not the cause of the problem, he would be 'stumped' as to why her décor had become so dirty after one year (Mrs C had redecorated her whole house one year earlier). Mrs C and the Maintenance Officer appear to have entered into a general discussion about insurance claims. Mrs C noted that she had had to discard curtains and blinds due to the soot damage. The Maintenance Officer asked that she provide him with a list of any discarded items and advised that he would make further enquiries with the Association's Risk and Compliance Manager (Manager 1). He emphasised again that no action could be taken until the Gas Engineer's report was submitted.

11. On 5 March 2007, Mrs C wrote to Manager 1, giving details of the damage to her property. She explained that the soot had affected all walls and ceilings, which would have to be redecorated, curtains, carpets, rugs and clothing, which needed to be cleaned and blinds, which would have to be replaced. Mrs C invited Manager 1 to visit her property to examine the damage for himself, however, he later declined to do so, as the Maintenance Officer had already visited the property and reported his findings.

12. Manager 1 replied to Mrs C's letter on 8 March 2007. He asked that she provide further details of the damage to support her claim, but also advised that she should pursue the matter through her home insurance providers. Mrs C told me that her home insurance would not consider the claim, as her policy did not cover décor. Furthermore, the insurance company considered that, as the boiler was the Association's responsibility, the matter should be pursued through their insurers. Mrs C responded to Manager 1's letter on 11 March 2007, providing further detail of the damage and explaining her position as regards her insurance cover.

13. Mrs C said that she had frequent contact with the Maintenance Officer over the following weeks. She told me that he led her to believe that the cost of redecorating her property would be covered by the Association and that she should begin to think about which wallpaper she would like. During a conversation with the Maintenance Officer on 22 March 2007, she asked when the decorator would be starting work on her property. She was told that the Association were still awaiting receipt of the Gas Engineer's report.

14. When commenting on a draft copy of this report, the Association told me that they hold records of only one conversation between Mrs C and the

Maintenance Officer during this period. The Maintenance Officer specifically refutes the suggestion that he invited Mrs C to begin sourcing wallpaper or suggesting that the Association would cover the cost of her redecoration works.

15. On 27 March 2007, Mrs C telephoned the Gas Engineer directly. She said that she was told that they had sent an email to the Association's Contracts Manager (Manager 2) on 20 March 2007 confirming that her boiler had been leaking soot. Mrs C visited the Association the following day to discuss the Gas Engineer's report. The Maintenance Officer informed her that the Gas Engineer's report had been received on 27 March 2007 and that the Association would not be taking any action to redecorate Mrs C's property, as the report had concluded that the boiler had been corroded but not that it had been responsible for the sooty deposits.

16. Mrs C accused the Association of lying to her regarding the Gas Engineer's report, as she had been told that it had been emailed to the Association on 20 March 2007 and that it had concluded that the boiler was responsible for the soot damage in her property. The Association responded that there was no record of the email to Manager 2, which she described, being received within their offices. They advised her that their decision not to decorate, or cover the cost of decorating, her property was based on the Gas Engineer's report, which stated that the Gas Engineer found 'what he considered to be normal heat staining around the boiler associated with convection currents in a kitchen environment ... We could not say with certainty that the staining was associated with leakage from the boiler'. In response to Mrs C's complaint, in a letter dated 28 March 2007, the Association concluded that '... in the light of this, we would deny liability that the soot damage was caused by the boiler, and are not willing to uphold your claim'. Following receipt of this letter, Mrs C began work to redecorate her home.

17. Over the following months, Mrs C pursued her complaint, enlisting the help of the Councillor, her MSP (the MSP) and Citizen's Advice and Rights Fife (CARF), all of whom wrote to the Association on various occasions. In each case, the Association reiterated their position and drew the correspondent's attention to the above quote from the Gas Engineer's report. The Councillor met with the Maintenance Officer and another member of the Association's staff on 12 April 2007. During the meeting, the Councillor raised concerns over the handling of Mrs C's claim. He noted that the boiler had been immediately shut down by the Gas Engineer following his inspection and that no new sooty

deposits were found following this. This, the Councillor surmised, suggested that there was an obvious fault with the appliance. In a subsequent letter to Manager 1, the Councillor noted that his meeting on 12 April 2007 had not progressed the matter and that the staff present were not authorised to take any action. He was advised that Mrs C's only option was to appeal the Association's decision through their head office.

18. Mrs C wrote a letter of appeal to the Association on 21 April 2007. She reiterated her claim for redecoration work, and asked a number of specific questions about the handling of her claim. Specifically, she asked: what caused the dirt, if not the boiler; why had the Association not investigated the true cause of the dirt; why had the problem ceased since the boiler was replaced, if the boiler was not the problem; and why were the Association allowing her to remain in a soot-damaged house? In her appeal letter, Mrs C also noted that she had visited her GP, who was concerned about the stress that the situation was causing her and the health implications of living in the property in its current state.

19. The Association's Director of Asset Management (the Director) replied to Mrs C's appeal on 26 April 2007, advising that he had reviewed her complaint and the previous correspondence relating to it. His response did not address the specific questions raised by Mrs C, but reiterated the Association's position of denied liability based on the Gas Engineer's report. The Director again referred Mrs C to her insurers.

20. On 30 May 2007, Glenrothes Area Resident's Federation (GARF) wrote to the Association on Mrs C's behalf. They pointed out that the boiler was part of the static fixings of her property and questioned whether Mrs C could be accountable for damage caused by its malfunction, as it was the Association's responsibility as landlord to maintain the appliance. In their response to this letter, dated 6 June 2007, the Association again reiterated their position and explained that the onus was on Mrs C to prove that the soot had been caused by the boiler.

21. The MSP wrote to the Association on her behalf on 17 August 2007. In her letter, she noted that the Gas Engineer's report had concluded '... we could not say with certainty that the staining was associated with leakage from the boiler'. The MSP suggested that, equally, the Association could not conclude, with certainty, that the staining was not associated with leakage from the boiler.

She asked the Association to consider offering Mrs C an ex-gratia payment without admitting liability with a view to closing the matter. The Association explained to the MSP that there had been no causal link established between the soot damage and the boiler, however, as a gesture of good will, offered an ex-gratia payment of £75.00. Mrs C did not find this to be acceptable and brought her complaint to the Ombudsman.

22. As part of my investigation into this complaint, I obtained a copy of the Gas Engineer's report. This was sent to the Association in a brief email on 27 March 2007. The full report read:

'Potterton Linx 2 Boiler approximately 15 years old, original complaint from tenant concerned staining in the kitchen which had spread out into hall/living room at high level. Our engineer found what he considered to be normal heat staining around the boiler associated with convection currents in a kitchen environment. The tenant was adamant that the boiler was the source of the staining, however, we could not say with certainty that the staining was associated with leakage from the boiler. The only way to determine this with any degree of certainty was to split the flue. The flue was showing signs of corrosion from water ingress at the inner and outer edges and the fan was corroded and seized. If we had split the flue we would have been unable to reinstate the flue and would have had to order a new one to replace it, unfortunately the part is no longer available. Faced with this we had no choice but to recommend the replacement of the boiler which was confirmed with [Contracts Officer with the Association (the Contracts Officer)] on 27/02/07.'

23. In addition to the Gas Engineer's report, I was also provided with a copy of an internal email from the Contract's Officer to the Director and the Maintenance Officer. The email offers a technical opinion on the Gas Engineer's report and states:

'Having perused all reports etc I see no reason why we should be held to account regarding the decoration of this dwelling.

[The Gas Engineer] found no adverse staining to the walls/ceilings outwith the flue area. As both the original and the new boiler are room sealed appliances and the flue arrangement would be a short pipe through the wall beside the boiler, if there had been a leakage of fumes/soot, these would have been Carbon Monoxide and the alarm would have been

triggered. This is a fatal gas and we have a carbon monoxide detector in place to give extra safety to our tenants.

I am told by [the Maintenance Officer] that the tenant is a smoker? Based on past experience when inspecting properties, this has an effect on any decoration and quite badly.'

24. I asked the Association what their procedure is for investigating claims of property damage and why Mrs C's claim was not passed to their insurers for consideration. They explained that, at the time of Mrs C's complaint, they had no formal procedure for investigating claims of property damage. Although the Association have since issued guidance to their staff on how to deal with such situations, each case should be treated on its own merits, and relevant enquiries made. The Association explained that it is up to the complainant to prove their case. The Association normally liaise with their insurers on larger scale claims. In Mrs C's case, the claim was deemed to be below the Association's insurance policy excess of £250.00 and their insurers were, therefore, not notified. Furthermore, this case also involved the Gas Engineer as the Association's gas appliance servicing contractor. In cases where liability can be attributed to the Gas Engineer, the matter would be passed on to them for resolution. As no liability was attributable on this occasion, the matter was not passed on to the Gas Engineer.

25. In her complaint to the Ombudsman, Mrs C provided receipts for work that she had to carry out on her home. These totalled £1,903.63. I, therefore, asked the Association how they reached the decision that her claim would amount to less than £250.00. They explained that the amounts detailed by Mrs C were, in their opinion, excessive and that the Maintenance Officer, having inspected the damage, valued the required work at a much lower sum. The Maintenance Officer's report, completed after inspecting Mrs C's property, does not detail any projected repair costs. However, Mrs C told me that, at the time of inspecting her property, the Maintenance Officer advised her that he estimated the cost of redecorating her property at between £800.00 and £1,600.00. She felt that this proved that the Association had prior knowledge of the cost of decoration before deciding not to submit an insurance claim. The Association confirmed to me that the figure of £800.00 was discussed with Mrs C, but that it was provided as a rough guide to the cost of painting a similarly sized space, rather than being intended as a quote for the work that would be required. They further explained that receipts or invoices for remedial



work would only be sought in cases where it can be determined that the Association were liable for the damage caused. In this case, as they were deemed not to be liable, it was unnecessary to obtain details of potential costs incurred by Mrs C.

26. I asked the Association what investigations they had carried out to establish the 'true' cause of the soot damage in Mrs C's property. They said that, as this was a claim for compensation, the matter was considered in terms of liability only. Having received the Gas Engineer's report, which they felt indicated that the boiler was not responsible for the soot damage, they considered it appropriate to refuse Mrs C's claim. The Maintenance Officer was of the opinion that, whilst there was some staining present in Mrs C's home, it was not immediately noticeable, and it was generally accepted within the Association that the damage could have been caused by Mrs C smoking. Again the Association stated that the onus was on Mrs C to prove a direct link between the soot damage and the boiler. They explained that she had at no time asked to inspect the boiler nor asked any technical questions to support her claim.

27. The Scottish Federation of Housing Associations (SFHA) provide advice and good practice guidance to housing associations in Scotland. I sought their advice when considering this complaint, as I wanted to establish whether any good practice guidance existed for the investigation of property damage claims and whether they felt that the Association's actions were reasonable when investigating Mrs C's claim. The SFHA advised me that there is no formal guidance to housing associations on this subject. We agreed that the Association had fulfilled their obligations as landlord by replacing the faulty boiler and ensuring that Mrs C had a working boiler installed in her home. As landlords, the Association are obliged to ensure that gas appliances undergo and annual safety inspection. An undated letter was sent to Mrs C advising that an annual inspection would be carried out on her boiler on 3 April 2007.

28. The SFHA considered whether or not it was reasonable for the Association to have a policy that required the tenant to prove the Association's liability for damage caused before any compensation could be paid. The SFHA said that there was no good practice guidance on this. Their position would be that it is acceptable for the Association to adopt a policy of their choosing, as long as they are able to satisfy themselves that they have fulfilled their responsibilities as landlord. The SFHA suggested, however, that it may be prudent for housing

associations to have a third party carry out independent inspections of appliances or damaged property, as this would provide an impartial view. They acknowledged, however, that in Mrs C's case, the Association's decision was based on the report of their contractor and that they had deemed this to be sufficient evidence upon which to base a decision. Overall, the SFHA were satisfied with the approach that the Association had taken.

29. The SFHA also noted that Mrs C had an obligation, as tenant of the Association, to notify them at the earliest opportunity of the problem with her boiler. If the boiler was the source of the problem, then this would minimise the damage caused.

30. I spoke to Mrs C during the course of my investigation into her complaint. She told me that she was not a smoker and that any visitors to her home smoked outside. She explained that she had redecorated her property four times since moving in, in 1998, and that the most recent occasion had been around December 2005. She first found traces of the soot damage in December 2006. Her boiler was changed in February 2007. At the time of my most recent conversation with Mrs C, in November 2008, no new sooty deposits had been found. Mrs C provided me with photographic evidence of the damage and told me that she had left some of the damaged areas untouched so that evidence remained, should any inspections of the damage be deemed necessary. I reviewed the photographs that she provided. Discolouration and a black 'film' was evident on ceilings, walls and sockets.

*(a) Conclusion*

31. I am satisfied that the Association acted efficiently when contacted by Mrs C about her boiler. An inspection by a qualified engineer was quickly arranged and her claims of soot being diffused by the boiler investigated. As her landlord, the Association are obliged to ensure that Mrs C has a boiler that is properly maintained. Evidence within the complaint file suggests that a routine annual inspection of the boiler would have been carried out on 3 April 2007. By this time the new boiler was in place, however, the timing of the annual inspection suggests that 11 months had passed since the old boiler was inspected. There is little more that one could reasonably expect the Association to do to prevent a potential malfunction of Mrs C's boiler.

32. Mrs C had a responsibility as tenant to notify the Association of any problems with the appliances in her home at the earliest opportunity. I

acknowledge that the sooty deposits were first noted by her in December 2006 and were reported in February 2007. I accept Mrs C's description of the events. Evidently she did not make an immediate connection between the staining and her boiler and I am satisfied that she fulfilled her obligations, as tenant, by contacting the Association as soon as this was identified as a possible source of the problem.

33. Mrs C noted that the Gas Engineer immediately shut down her boiler following his inspection on 27 February 2007 and that he replaced it with a new one the following day. She suggested that this proved that the boiler was faulty. I do not make the connection between the boiler being replaced and a dangerous fault being identified by the Gas Engineer. His report explains that, in order to investigate claims of soot being diffused by the boiler, the flue had to be split. Due to the age of the appliance, spare parts were not available and, once split, the flue could not be replaced. It was this that instigated a full replacement of the boiler, rather than the discovery of a significant fault with the appliance. I acknowledge that the flue was found to have malfunctioned, however, in the Gas Engineer's professional opinion, this could not be directly linked to the soot damage highlighted by Mrs C. It is clear that the Gas Engineer specifically carried out his investigation with Mrs C's opinion as to the source of the soot in mind. However, he concluded that the staining visible to him was not abnormal.

34. The Gas Engineer's report only refers to staining around the boiler itself and makes no mention of the sooty deposits throughout Mrs C's house.

35. I am unable to comment constructively on conversations that took place between Mrs C, the Gas Engineer and the Association. What records I have seen do, however, suggest that Mrs C was advised from an early stage that any decision over the payment of decoration expenses would be dependent on the conclusions of the Gas Engineer's report. Whilst I acknowledge Mrs C's assertion that she was led to believe that redecoration would be organised by the Association, it is apparent that she decided to commence work on her property prior to the Gas Engineer's report being released. Given the Maintenance Officer's report following initial inspection of her property (noting that he would be 'stumped' as to another cause of the damage), I accept that there may have been a general assumption that the boiler was responsible for the soot damage and that the Association would be liable for the cost of any remedial work. However, again, I consider the Association to have acted

reasonably by making Mrs C aware that work would only be carried out by them should the Gas Engineer's report highlight a fault with the boiler.

36. As no formal guidance exists as to how a housing association should investigate complaints of property damage, I accept that the Association can adopt the policy of their choice. I also accept that each individual case will be different and that, accordingly, the Association did not have a formal process for their staff to follow. In Mrs C's case, the boiler was maintained routinely and replaced as required following the investigation into the reported soot damage. A qualified engineer was asked to investigate her claim that a fault with the boiler directly led to her property being damaged. As the purpose of Mrs C's complaint was to recover the cost of redecoration as a result of damage which she believed was caused by the Association, I find it reasonable for the Association to initially establish their liability. Based on the Gas Engineer's report, the Association decided that liability had not been proven, and that no compensation would be payable to cover Mrs C's decoration costs. The report, as noted by the MSP, does not go as far as to say that the soot damage was not caused by the boiler. However, as this is a dispute over liability, the Association's position was that the complainant should establish fault. In order for Mrs C to change this decision, she would have to provide evidence that the boiler had caused the soot damage.

37. I was concerned by certain aspects of the Association's approach. Essentially this was a dispute between two parties over liability for costs incurred for the reparation of Mrs C's property. The Association's consideration concentrated solely on Mrs C's boiler and whether it had caused damage to her property, which they would be liable for. The matter was not approached in terms of establishing the actual cause of the damage and whether the Association were liable. Furthermore, despite disagreement from Mrs C, the Association decided that the cost of repairs would amount to less than £250.00 and that, therefore, the matter should not be referred to their insurers. They assessed their liability in-house and refused Mrs C's claim. In effect, however, Mrs C was making a claim for damage totalling around £1,900.00.

38. I agree with the SFHA that liability should be established by an independent, third, party. I acknowledge that, in this case, it was the independent report carried out by the Gas Engineer that was used to establish liability, however, it was the Association that interpreted this information and made the ultimate decision. In the interests of impartiality, I would consider it

prudent for the Association to enlist a third party, such as their insurers, to investigate and decide on all issues of liability. It may also have been wise for them to enlist the services of a third party to establish the claim's value, given Mrs C's disagreement with the cost of redecorating her home.

39. In order to challenge the Association's decision, Mrs C was required to prove that the boiler was faulty. The Association noted that Mrs C had at no time sought technical information about the boiler, or asked to inspect it. Investigations of this nature would require a certain amount of technical knowledge and I consider it unreasonable for the Association to assume this of their tenants. Furthermore, it would not be reasonable to expect tenants to incur the expense of commissioning professional tests. Again, the use of an independent third party to investigate and establish liability, in all cases, could minimise the potential for disputes.

40. Mrs C told me that her property was redecorated in December 2005, the sooty deposits began to show in December 2006. Her boiler was replaced in February 2007 and, as of November 2008, the problem had not reoccurred. It is not for me to investigate or speculate as to the cause of the sooty deposits in Mrs C's home. It is, however, interesting that the soot problem appears to have ended upon replacement of the boiler. Whilst I accept the Association's decision to approach Mrs C's claim as a matter of liability, I consider that, as her landlord, they could have carried out investigations congruent to the liability consideration to establish the true cause of the soot damage. Given the length of time that has passed and the fact that Mrs C has retained evidence of the original damage, the Association may wish to consider the merits of reopening investigations into the cause of the problem to ensure that there is no ongoing issue with Mrs C's property.

41. I consider it unwise for the Association to make the final decision as to liability in-house, and consider their policy in this regard to be weighted against their tenants. I also consider that more could have been done to establish the true cause of Mrs C's soot problem. Generally, however, I find the Association's approach of establishing liability, in claims for financial compensation following damage to property, to be reasonable and acknowledge the fact that there is no formal guidance available to advise housing associations how to approach such issues. In all the circumstances, I partially uphold this complaint.

*(a) Recommendations*

42. The Ombudsman recommends that the Association introduce a policy of seeking third party liability determination for all compensation claims where the claimant is claiming amounts that are higher than the insurance policy excess and for all claims that require expert technical opinion

43. The true cause of Mrs C's soot problem was not investigated and I note that she has retained evidence to allow this. In light of my comments in paragraph 39 of this report, the Ombudsman also recommends that the Association consider asking their insurers to reinvestigate Mrs C's claim.

**(b) The Association's complaints handling was poor**

44. In her complaint to the Ombudsman, Mrs C expressed her disappointment with the responses that she received from the Association when corresponding about her claim.

45. Mrs C first raised her complaint formally with the Association via their complaints form on 27 March 2007. Manager 1 wrote to Mrs C the following day, in response to a previous letter, detailing the extent of the damage to her home and the nature of her claim. In his letter, Manager 1 noted that he had received the Gas Engineer's report and that the Association denied liability for the damage as a result of its content. Manager 1 quoted from the Gas Engineer's report, which stated:

'... We could not state with certainty that the staining was associated with leakage from the boiler.'

46. Manager 1 wrote to Mrs C again on 30 March 2007 to acknowledge receipt of her formal complaint form.

47. On 29 March 2007, CARF wrote to the Association on Mrs C's behalf, restating her complaint and asking what action the Association would be taking. Manager 1 replied to this letter on 16 April 2007, again quoting the above excerpt from the Gas Engineer's report.

48. On 16 April 2007, the Councillor wrote to the Association. This was a detailed letter, explaining the background to Mrs C's complaint and requesting financial assistance with the cost of redecoration. Manager 1 replied to the Councillor on 25 April 2007, answering each of the points that she raised and again reiterating the Gas Engineer's findings.

49. The Director wrote to Mrs C on 26 April 2007 in response to her formal complaint. This letter also replied to a subsequent letter that Mrs C submitted, appealing the decision not to redecorate her home. The Director's response was brief and again quoted the same excerpt from the Gas Engineer's report.

50. GARF wrote to the Association on Mrs C's behalf on 30 May 2007. They noted that the boiler was the Association's responsibility, as landlord, and suggested that Mrs C be compensated for damage to her property caused by the boiler's malfunction. GARF also stated that, whilst they understood that letters had been sent to the Association by the Councillor and Mrs C on 14 April and 21 April 2007 respectively, no responses had been received. The Association responded on 6 June 2007 explaining that it had not been demonstrated that the boiler caused any damage to Mrs C's property. They also noted that responses had been sent to the letters in question, detailing the relevant dates.

51. The Councillor wrote to the Association again on 15 June 2007, asking that Mrs C's complaint be reinvestigated now that the replacement boiler had had time to 'settle in'. She suggested that a further investigation would be able to prove or disprove Mrs C's assertion that the previous boiler had caused the soot damage. Manager 1 replied on 28 June 2007, stating that the Association had 'looked into the matter again' but that there was no change in their position. He reiterated that the Association were satisfied with the position they had taken and that it was up to Mrs C to prove that the boiler had been the source of the sooty deposits.

52. On 17 August 2007, the MSP wrote to the Association on her behalf. She surmised that whilst the Gas Engineer had concluded that they 'could not state with certainty that the staining was associated with leakage from the boiler', they presumably also could not state with certainty that it wasn't associated with the boiler. She appealed to the Association to reconsider their position and offer Mrs C some form of ex-gratia payment, without admitting liability. In response to this letter, the Director wrote to the MSP on 5 September 2007, restating their position but offering an ex-gratia payment of £75.00 to Mrs C, whilst not admitting liability for the soot damage. Mrs C did not find this amount to be acceptable and brought her complaint to the Ombudsman without formally rejecting the offer of compensation.

53. The Association has a clear complaints policy. Complaints will be accepted via the complaints form, written correspondence, email or by telephone or in person. An acknowledgement letter will be sent to the complainant within five working days, with a full response following within 14 working days of receipt of the complaint. If the complainant is not satisfied with the response that they receive from the Association, they are then invited to write to the relevant departmental director. The departmental director will review the complaint and respond within 14 working days. If the matter remains unresolved, the complainant can take their complaint to the Committee of Management Complaints Appeal Panel (the Committee). This would result in an appeal hearing.

54. Mrs C brought her complaint to the Ombudsman before the matter could be considered by the Committee. Upon receipt of her complaint, this office contacted the Association, who consented to the matter being considered by the Ombudsman, as they were satisfied that their position had been properly communicated during earlier correspondence with Mrs C and other parties and that it would not change.

*(b) Conclusion*

55. Prior to submitting her formal complaint on 27 March 2007, Mrs C had written to the Association with evidence in support of her claim for redecoration expenses. Following her formal complaint, there was a short overlap in correspondence with the Association responding to points raised as part of Mrs C's claim, which may have appeared as responses to the formal complaint. This was brought back in line by the Director's letter of 26 April 2007, which responded to both matters.

56. Mrs C complained that the Association did not respond to her letter of 21 April 2007, or the Councillor's letter of 14 April 2007. The Association were able to provide evidence of responses to these letters, and whilst I am unable to verify whether or not they were sent, or received, looking at the correspondence as a whole, I am satisfied that the Association responded timeously to a range of correspondence from a number of correspondents. All of the letters that I have been provided with received a formal response from the Association.

57. Whilst I am satisfied that all of the correspondence sent to the Association was addressed, I noted that the majority of the responses were almost identical. These were brief replies to the points being raised, restating the Association's



decision regarding liability and quoting the excerpt from the Gas Engineer's report, as detailed in paragraph 15 of this report. This is clearly a reflection of the Association's confidence in their position and the fact that they had nothing further to add. It may, however, have helped resolve the matter, or progressed the complaint sooner, if a fuller explanation of the reasoning behind the Association's decision had been given.

58. Whilst more information could have been provided, each response was consistent, timely and factual. I, therefore, do not uphold this complaint.

*(b) Recommendations*

59. The Ombudsman has no recommendations to make.

60. The Association have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Association notify him when the recommendations have been accepted.

**Explanation of abbreviations used**

Mrs C	The complainant
The Association	Hillcrest Housing Association
The Maintenance Officer	A Maintenance Officer with the Association
The Gas Engineer	An engineering company contracted by the Association
The Councillor	Mrs C's local Councillor
Manager 1	The Association's Risk and Compliance Manager
Manager 2	The Association's Contracts Manager
The MSP	Mrs C's MSP
CARF	Citizen's Advice and Rights Fife
The Director	The Association's Director of Asset Management
GARF	Glenrothes Area Resident's Federation
The Contracts Officer	A Contracts Officer with the Association
SFHA	The Scottish Federation of Housing Associations
The Committee	The Association's Committee of Management Complaints Appeals Panel