

Housing

Ombudsman Service

Guidance on determinations of complaint handling failure and orders

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Summary

1. The purpose of complaint handling failure determinations and orders is to ensure that a landlord's complaint handling process is accessible, consistent and enables the timely progression of complaints for residents.
2. The revised Housing Ombudsman Scheme allows the Ombudsman to issue a determination of complaint handling failure (a complaint handling failure order) where a landlord is failing to comply with its membership obligations. Examples of where this may happen includes (although is not restricted to):
 - non-compliance with the Complaint Handling Code
 - failure to accept a formal complaint in a timely manner or to exclude a complaint from the complaints process without good reason
 - inaccessible complaints process and procedure or unreasonable restrictions as to how a complaint can be made
 - not managing complaints from residents in accordance with the complaints policy
 - failure to progress a complaint through the complaints procedure
 - failure to respond to a complaint within the set timescales without good reason
 - failure to keep the resident informed and updated
 - failure to notify the resident of the right to refer the complaint to the Ombudsman
 - failure to provide evidence to support investigation by the Ombudsman.
3. This guidance sets out when a complaint handling failure order may be issued, what further action the Ombudsman could take in such circumstances, and the reporting, including publicly, of their use.
4. Where there is evidence of a systemic issue within a landlord's complaint handling this may result in a complaint handling failure order. For example:
 - repeatedly not accepting or responding to complaints from residents
 - repeatedly failing to follow its policy and procedures.
5. A complaint handling failure order may also be issued in relation to failings in an individual case where the Ombudsman has taken reasonable steps to seek engagement from a landlord, but the resident remains unable to progress a complaint.
6. In all cases the Ombudsman will provide a landlord with details of the presenting issue and provide an opportunity for the landlord to rectify this before a complaint handling failure order is made.

Part 1: The basis and purpose of failure orders

7. Member landlords are expected to deal with complaints from residents in accordance with the membership obligations set out in the Scheme and the Complaint Handling Code.

Membership obligations

8. Paragraphs 9-12 of the Housing Ombudsman Scheme set out the membership obligations that landlords must adhere to. These relate to complaint handling throughout the life of the complaint; within a landlord's internal procedure and whilst the Ombudsman is considering the complaint.
9. Paragraph 9 of the Scheme sets out the obligations in relation to a landlord's complaints procedure, publication and adherence to its procedure.

Paragraph 9

As a condition of membership of the Scheme, a member must:

- a. agree to be bound by the terms of the Scheme;*
- b. establish and maintain a complaints procedure in accordance with any good practice recommended by the Ombudsman;*
- c. as part of that procedure, inform residents of their right to bring complaints to the Ombudsman under the Scheme;*
- d. publish its complaints procedure, and where applicable, its membership of the Scheme, and make information about both easily accessible to those entitled to complain on its website and in correspondence with residents;*
- e. manage complaints from residents in accordance with its published procedure or where this is not possible within a reasonable timescale.*

10. Paragraphs 10-11 set out the obligations of landlords to cooperate with the Housing Ombudsman to ensure that disputes are resolved as swiftly and efficiently as possible.

Cooperation with the Ombudsman – supplying evidence

10. The member must provide copies (without charge) of any information requested by the Ombudsman, that is, in the Ombudsman's opinion relevant to the complaint. This may include the following records and documents:

- a. the landlord's policies and procedures;*

- b. any internal files, documents, correspondence, records, accounts or minutes of meetings, in hard copy or electronic form. This includes records relating to similar cases where the Ombudsman needs them to establish consistency of practice.*

11. The member must provide the requested information within a reasonable timescale or allow access for inspection.

Additional co-operation

12. When the Ombudsman gives reasonable notice, the member must (without charge):

- a. allow the Ombudsman to interview the member's staff, board or committee members;*
- b. require a representative to attend any meetings convened by the Ombudsman;*
- c. use its best and reasonable efforts to help the Ombudsman get information from third parties who may know about the complaint or from the member's former members of staff; and*
- d. provide such other reasonable help as the Ombudsman may request.*

Purpose

11. The purpose of these expectations is to:

- improve member landlord's internal complaints processes to assist with the early resolution of disputes
- to increase resident confidence in social housing by enabling easy access to complaints procedures
- establishing appropriate standards of practice that apply consistently across the housing sector
- ensure that residents can access the Housing Ombudsman Service when they remain dissatisfied with their landlord's response to their complaint.

Scope of complaint handling failure orders

12. Where the Ombudsman becomes aware of a landlord that is not dealing with complaints in accordance with the obligations of membership and so not meeting these expectations, the Ombudsman will notify the landlord of those concerns and give it the opportunity to put things right.

13. The Ombudsman will advise the landlord that should the issue continue a complaint handling failure order will be issued. These powers are set out in paragraph 13-15 of the Housing Ombudsman Scheme.

Paragraph 13

Failure to comply with the conditions of membership may result in an Ombudsman's determination of complaint-handling failure and an order to rectify within a given timescale.

14. Steps that can be taken in exercising these powers include:

- the issuing of a complaint handling failure order with actions to rectify the situation
- notifying the landlord's governance body of the concerns
- escalating the matter to an appropriate regulatory body, including the Regulator of Social Housing
- publication of the complaint handling failure order.

Part 2: Issuing failure orders relating to complaints policy

Complaint Handling Code

15. The Ombudsman has developed a Complaint Handling Code to promote consistency and accessibility across landlords' complaints procedures.
16. Landlords are required to meet the requirements in the Code and report to their board or equivalent that their complaints policy is compliant, unless there are exceptional reasons why variance from the Code is necessary to achieve a fair outcome for a resident.
17. If, during an investigation or through the Ombudsman's work to support dispute resolution by landlords, it becomes apparent that a landlord's policy is not compliant with the Code, the Ombudsman will seek an explanation from the landlord's chief executive or equivalent. If the Ombudsman does not receive a satisfactory explanation, or non-compliance is confirmed, the Ombudsman may escalate the issue to the governing body or equivalent, and refer the landlord to the Regulator of Social Housing.

Access to the Ombudsman

18. A complaints policy must inform residents of their right to bring their complaint to the Ombudsman. If this information is not available the Ombudsman will write to the chief executive or equivalent advising of the omission. The letter will advise that the policy should be amended and that the Ombudsman may issue a complaint handling failure order if this is not done.
19. If no response is received from the landlord and/or the policy is not amended a complaint handling failure order will be issued and the Ombudsman will contact

the governing body, and may refer the landlord to the Regulator of Social Housing.

Accessibility to the complaints policy

20. Information for residents on how to access the complaints procedure should be available online. Where the Ombudsman has difficulties in locating a copy of the complaints process online the Ombudsman will write to the landlord and make them aware of the issue.
21. Where the Ombudsman is not satisfied that the process is easily available to residents the Ombudsman will write to the chief executive, setting out the steps required to improve access. If the landlord fails to take action a complaint handling failure order may be issued and the Ombudsman may contact the governing body.

Part 3: Issuing failure orders relating to individual complaints

Accepting and progressing complaints

22. The Ombudsman wants to ensure that complaints are accepted and handled by landlords and not unreasonably categorised as enquiries or feedback. The Complaint Handling Code defines a complaint as:

‘an expression of dissatisfaction, however made, about the standard of service, actions or lack of action by the organisation, its own staff, or those acting on its behalf, affecting an individual resident or group of residents’.

23. If a resident presents an issue to a landlord which qualifies it as a complaint, it should be handled on this basis.
24. Where residents experience difficulties and delays in getting a response from their landlord or in escalating a complaint to the next stage, and the Ombudsman is satisfied that the complaints process has stalled, the Ombudsman will write to the landlord advising it of the problem and set out the action it needs to take to resolve the issue.
25. The Ombudsman will generally provide a minimum of three opportunities for a landlord to contact the resident and progress the complaint over the course of a complaint. At each contact the Ombudsman will set out how a landlord should respond to the escalation request and the time frame for response. If a landlord fails to engage and the Ombudsman is satisfied that the complaints procedure has stalled the Ombudsman may issue a complaint handling failure order and instruct the landlord to issue a response to the complaint, or may accept the case for investigation.

Evidence requests

26. Landlords are required to provide information requested by the Ombudsman within 15 working days or an individually agreed reasonable timescale.
27. The landlord must provide the requested information. Failure to provide evidence delays the resolution of the dispute for the resident and causes unnecessary distress and inconvenience.
28. If the evidence is not provided within this time frame (or other time frame agreed by exception) a complaint handling failure order will be issued. The investigation will proceed on the basis that the evidence does not exist and/or that the resident's evidence is accurate and reliable in this area.
29. If the evidence is later provided as part of the review process the Ombudsman will consider it and this may result in a change to the findings. However, the Ombudsman will take steps to ensure that residents are not disadvantaged by any late provision of evidence. Any order for compensation will remain in place, although the reason for the order may be altered to reflect the complaint handling failure.

Investigation

30. Issues that come to light as part of a formal investigation will be dealt with by a finding of maladministration and are not considered here.
31. If a complaint handling failure order has been issued while the complaint was in the landlord's procedure, the Ombudsman will consider this as part of the investigation along with the landlord's response when assessing all the circumstances of the case. This may lead to a finding of maladministration.

Part 4: Reporting complaint handling failures

32. Paragraphs 14-15 outline the basis for the Ombudsman to report on complaint handling failure orders issued.

Paragraph 14

The Ombudsman may report a member's complaint handling failure to any appropriate regulatory agency and/or the board, committee, panel or senior officer of the member along with any related details as the Ombudsman sees fit.

Paragraph 15

The Ombudsman may publish the fact and circumstances of a member's complaint-handling determinations, naming the member in the Ombudsman's annual report or elsewhere. This may include details of any voluntary member who withdraws from the Scheme

33. Where the Ombudsman has issued a complaint handling failure order but has not receive a satisfactory response from a landlord the matter may be referred to the appropriate regulatory body, including the Regulator of Social Housing as indicative of a potential systemic issue affecting all residents. Before taking this action the Ombudsman must be satisfied that there is a repeated pattern of behaviour which frustrates the complaints process and a lack of engagement/action by the landlord to resolve the issue.
34. Each quarter the Ombudsman will publish the total number of complaint handling failure orders issued, the names of the landlords and reasons for the orders and will share this information with the Regulator of Social Housing.
35. The number of complaint handling failure orders issued against a landlord will form part of the Ombudsman's annual landlord performance reports and will be available on the Ombudsman's website.
36. In addition, from time to time the Ombudsman may wish to publish a report detailing the specifics of landlord complaint handling failures where this would help highlight the impact of the failure on the resolution of the dispute and delays and/or distress caused to residents.

Annexes

Example 1 – complaint handling failure order – dispute resolution

Dear landlord

Complaint ref – Determination - Complaint handling failure

In accordance with paragraph 13 of the Housing Ombudsman Scheme a determination of complaint handling failure has been made.

Reasons

The obligations of membership are set out in paragraph 9 of the Housing Ombudsman Scheme and include the following:

A member must

- *establish and maintain a complaints procedure in accordance with any good practice recommended by the Ombudsman;*
- *manage complaints from residents in accordance with its published procedure or where this is not possible within a reasonable timescale.*

In this instance the landlord has failed to comply with the Ombudsman's Complaint Handling Code and has not managed Mr F's complaint within a reasonable timescale resulting in unnecessary delay and inconvenience.

Details

Mr F contacted you on 25 March 2020 setting out that he was dissatisfied with the response to his complaint issued at stage one of the complaints process which is dated 20 March 2020.

Mr F contacted this Service as he received no response to his request. We contacted you and requested that the matter be escalated on the following dates:

- 14 April 2020 – email sent to (email address)
- 1 May 2020 – email sent to (email address)
- 26 May 2020 – email sent to (email address)

We received acknowledgements for each of our emails but Mr F is still waiting for his complaint to be escalated.

Paragraph 3.17 of the Code sets out the time frames for responses to complaints and states that a response at stage two of the complaints procedure should be sent within '*20 working days from request to escalate – If this is not possible an*

explanation and a date when the stage two response will be received. This should not exceed a further 10 working days.'

The landlord's response is significantly outside of these timescales.

Action required

The Ombudsman has concluded that the complaints process has been exhausted. We will now accept this case for investigation.

Please provide the following information to the Ombudsman by (*date*):

- copies of all complaint correspondence including correspondence from Mr F
- copy of Mr F's tenancy agreement
- copies of repairs records relating to the boiler repair including any inspection reports
- copy of your repairs policy.

Please note that details of all complaint handling failure orders will be published on our website and form part of our regular information sharing with the Regulator of Social Housing.

To find out how we use your personal data together with your rights under the Data Protection Act 2018 go to www.housing-ombudsman.org.uk/about-us/your-data/

Yours sincerely

Example 2 – complaint handling failure order – complaint policy

Dear Board/Governing body

Complaints Policy - Determination - Complaint handling failure

In accordance with paragraph 13 of the Housing Ombudsman Scheme a determination of complaint handling failure has been made due to non-compliance with the obligations of membership set out in the Housing Ombudsman Scheme.

Reasons

The obligations of membership are set out in paragraph 9c of the Housing Ombudsman Scheme and include the following:

A member must:

- *as part of (its complaints) procedure, inform residents of their right to bring complaints to the Ombudsman under the Scheme.*

Details

The Ombudsman has reviewed (landlord) complaints procedure both online and the policy provided in the following cases (xxxxxxxxxx).

The policy does not meet the membership obligation detailed above as it fails to inform residents of their right to bring a complaint to the Ombudsman. In addition *case ref* indicated that the final letter sent to residents also omits details of the right to refer the matter to the Ombudsman.

Letters detailing this omission and requesting rectification were sent to (name of CEO) on (dates). To date we have received no response.

We are now issuing a complaint handling failure order and set out the action required below.

Action required

- The landlord is required to review its complaints policy and complete the self-assessment exercise to assure compliance with the Complaint Handling Code.

The review should be completed within six weeks of the date of this letter and a copy of the completed self-assessment checklist and any supporting evidence should be provided by (date).

Please note that failure to take this action is likely to result in a referral to the Regulator of Social Housing. Details of all complaint handling failure orders will be

published on our website and form part of our regular reporting to the Regulator of Social Housing.

To find out how we use your personal data together with your rights under the Data Protection Act 2018 go to www.housing-ombudsman.org.uk/about-us/your-data/

Yours sincerely