



Championing better homes and communities

Housing Ombudsman Complaint Handling Code Consultation 2023

**NFA response
21 November 2023**

Introduction

The NFA (National Federation of ALMOs) is the trade body which represents arms-length management organisations across England. All are not-for-profit bodies wholly owned by their parent councils, created to manage council-owned housing and deliver housing-related services.

The NFA represents 20 ALMOs across the country managing around 235,000 local authority-owned properties. They also build and acquire new stock. They deliver housing services for tenants and their wider communities; as such, ALMOs manage the day-to-day complaint handling on behalf of their parent local authorities.

For more information on our submission, please email Lisa Birchall, NFA Lead Policy Officer (lisa.birchall@almos.org.uk)

Summary

Our members are committed to developing positive complaint handling cultures where tenants feel listened to, and where things go wrong, they are quickly put right. They have welcomed the work that the Housing Ombudsman has done over the past few years to support the sector to deliver good services for tenants.

However, our members have raised a number of concerns with the Housing Ombudsman's proposed revisions to the Complaint Handling Code, particularly around the risk of overly bureaucratising the complaints process and reducing the ability for tenants to get their issues resolved quickly. This will lead to further pressure on housing organisations without a real benefit to tenants.

Our members are keen to understand if, and how, these changes have been tested with tenants; and whether they will achieve what tenants have told our members they want when they contact their landlord: their issue sorted and not being 'trapped in a process'.

Members want the Housing Ombudsman to distinguish between landlords that generally deliver a good service but have made a mistake, from those with a poor culture and approach to complaint handling.

We also have concerns about the proposals for monitoring compliance and the risk of confused roles between the Housing Ombudsman and the Regulator of Social Housing that we outline below.

We have gathered together feedback from officers directly involved in the management of complaints to understand how the changes will impact on developing a positive complaints handling culture.

The areas of concern are:

1. Complaint Handling

Quick resolution.

Members are concerned that the proposed changes to the code will make it more difficult for landlords to resolve problems early with tenants, channelling everything into a more formal and bureaucratic process, which is not helpful for tenants, nor will it embed a positive complaint handling a culture.

The code and accompanying Q&A document states that any expression of dissatisfaction 'whether made verbally or in writing' must be acknowledged and logged at stage one of the complaints procedure. We disagree that every expression of dissatisfaction made verbally or in writing is a complaint. Often tenants do not want to make a complaint when they express dissatisfaction, they want a fast resolution to their problem.

There is a real lack of clarity around the description of what constitutes a complaint in the code, and it could be read as any negative interaction between staff and tenants. The resource implication of this is huge and has the potential to significantly impact on the resources that landlords have to effectively resolve complaints.

Channelling every verbal and written expression of dissatisfaction into the complaints process risks removing a landlord's ability to quickly resolve something in agreement with the tenant. This is not practicable, nor is it conducive to building a good relationship between landlords and tenants. It also fails to take into consideration the wishes of tenants who would prefer to resolve something quickly outside of the complaints process. In this case, it is not clear in the Code what the Housing Ombudsman would expect the landlord to do, and it would be good if this was clarified in the code: i.e. that the resident's wishes take precedence¹.

We would like the Housing Ombudsman to keep the wording in the current Code which allows for the quick resolution of chasers on service requests and resolving concerns (namely points 1.4, 4.1 and 1.6). This wording is sufficient to support good landlords to resolve concerns quickly, but stop bad landlords from playing the system.

¹ As stated by Verity Richards of the Housing Ombudsman in the joint Housing Ombudsman/ LGSCO Complaint Handling Code webinar on the 17 October.

Involving tenants in complaint handling

We would like the Housing Ombudsman to recognise that involving tenants in complaint handling, as long as it does not delay the process materially, is good practice and beneficial for both complainants and involved tenants. Members do not want the Code to exclude tenants from the process, so this should be set out explicitly and promoted as good practice.

Timescales

The Housing Ombudsman has reduced the length of time that landlords have to complete a Stage One response from a total of 15 days (5 days to acknowledge and 10 days to respond) to 10 days (to acknowledge and respond). Members have expressed concerns about this reduction in time available. While it won't be needed in every case, in lots of cases members need to obtain further information or make further enquiries which extends the length of time they need to investigate the complaint and the current timeframes allow for this. We are concerned that the reduction will lead to more rushed stage one investigations, more tenant dissatisfaction with responses and escalation to stage two, and ultimately landlords being set up to fail.

If the emphasis is on responding and resolving at Stage One of the process – with Stage Two not being a more thorough and detailed investigation – the Housing Ombudsman should give more time for the Stage One process to allow for this. While the extension time can be used, members feel that this will drive the wrong behaviour in the sector.

Uphold/not uphold.

Members disagree with the Housing Ombudsman's decision to make organisations either uphold or not uphold a complaint. We think it is useful and important to keep the ability for a partial upholding of a complaint. It is helpful in complex cases and acknowledges that not every case is black and white, and is helpful for both landlords and tenants. A complaint will usually have a number of elements and it is important for complainants to have clear information from their landlord about what is being upheld or not, and it provides additional clarity when moving from Stage One to Stage Two. It also provides landlords with a truer picture of what is happening within their complaints data.

Equality Act 2010 provisions

The revised code has a shift in language around the Equality Act 2010 provisions from *responding* to reasonable adjustment requests to *anticipating* the needs and reasonable adjustments of individuals. It would be good for the Housing Ombudsman to provide further information on what it considers good practice to look like in this area.

Explaining reasons for stage two consideration

It is made very clear in the revised code that individuals should not be required to explain their reasons for requesting Stage 2 consideration. However, this will make it very difficult for landlords to manage spurious, malicious or multiple complaints, leading to more Stage 2 complaints which will have resource implications.

6.14 and 6.16 of the revised code are also difficult to reconcile: individuals must not be required to explain their reasons for a Stage 2 request, but the landlord must set out their understanding of any outstanding issues. It would be more supportive if the Code allowed for requests to include setting out the reasons for escalation requests to assist organisations to understand what the outstanding issues are in the first instance.

2. Monitoring Compliance

Parallel regulation.

The NFA is concerned that the Housing Ombudsman is setting up a parallel regulation regime to that being put in place by the Regulator of Social Housing. We know that tenants and landlords have been facing significant delays in receiving a response from the Housing Ombudsman, and we would prefer it to focus its resources on making sure tenants get a quick response on their individual complaints rather than duplicating the work of the Regulator.

The Housing Ombudsman has a memorandum of understanding with the Regulator and should discharge its duty to monitor compliance to the Regulator as part of this. The Regulator could review the Complaint Handling and Service Improvement Report, self-assessment and TSM data as part of their wider regulation remit and flag up concerns with the Housing Ombudsman, which could then trigger an investigation.

The Housing Ombudsman currently produces a number of excellent resources for the sector to use, such as the Spotlight reports. However, these are best practice reports and self-assessment against them should not be mandatory. The Regulator of Social Housing regulates the sector according to principles of co-regulation and minimal interference. As long as landlords achieve the outcomes set out in the Consumer Standards, the Regulator does not mandate how these outcomes are achieved. In order for consistency, the Housing Ombudsman should be following the same approach.

Interface between Housing Ombudsman and Building Safety Regulator

We have concerns about the interface between the Housing Ombudsman and the Building Safety Regulator, particularly around the definition of complaint/safety concerns, and how the Housing Ombudsman will work with the Building Safety Regulator to triage complaints.

The Building Safety Regulator is currently developing guidance which defines complaints in high rise accommodation as: 'any concern a resident may have about building safety risks or the performance of an accountable person.' This does not match the definition that the Housing Ombudsman mandates. We would like a much more joined-up approach between the Housing Ombudsman and the Building Safety Regulator that is focused on making sure residents can raise immediate concerns with the safety of their building through the BSR which can be quickly investigated and sorted. This should not prevent them from escalating complaints to the Housing Ombudsman for investigation.

It is not clear that tenants will know what to do when their case falls within the remits of both the Housing Ombudsman and the Building Safety Regulator, and tenants should just have one process of escalation that they need to follow. Otherwise, we risk an over-complicated system that means issues are not escalated, particularly for those landlords that are not following best practice.

Timescales for being compliant

Our members have confirmed that they will not be able to set up system changes and undertake a self-assessment against the revised code until it has been published. There should be sufficient time after the response to the consultation for members to make sure they are compliant: a minimum of six months from publication of the new code. This means that landlords are not submitting their self-assessments at the same time as the first set of TSM data to the Regulator of Social Housing in April 2024.

As there are many complaints with the Housing Ombudsman going back in time, we would also like it confirmed that those complaints will be judged according to the policies and procedures that the landlord had in place at the time and not according to the provisions of the new Complaint Handling Code.

We have provided summary responses to the consultation questions below.

1. Are the provisions in the Code sufficient to increase awareness and improve access to landlords' complaints processes? Yes/No

No.

As outlined above we are concerned that the changes to the Code will improve access to landlords' complaints processes, but risk overly bureaucratising processes and take away the ability of good landlords to quickly resolve issues. As a result, it will stretch already stretched resources and lead to poorer outcomes for tenants (see above summary).

2. Are the provisions of the Code sufficient to extend fairness through consistent complaint handling?

No. We feel that the Housing Ombudsman has taken elements out of the existing code that reflected the flexibility landlords need to deliver a fair, quick and outcomes-focused process (see above summary).

3. Do the provisions of the Code increase landlords' transparency and accountability to their residents?

No. We feel that the Housing Ombudsman risks making it harder for good landlords to quickly resolve issues and maintain a positive relationship with tenants. Members have also engaged with their tenants to understand their views on the changes and they feel that the voice of tenants has not been heard in developing the new code.

4. Do the provisions of the code help to embed a positive complaint handling culture

No. As outlined above, we have concerns about whether the code will make it harder to have a positive complaint handling culture. We need the flexibility within the code for good landlords to be able to quickly resolve issues and for tenants not to be channelled into a bureaucratic process in those cases where they just want quick resolution. This will allow the Housing Ombudsman to focus resources on investigating individual complaints and providing a speedy resolution, and managing poor performing landlords.

6. Are our plans to align submissions with Tenant Satisfaction Measure returns an effective approach?

As outlined above, we are generally concerned that the Housing Ombudsman is setting up a parallel regulation regime to that being put in place by the Regulator of Social Housing, and we consider that the Housing Ombudsman should discharge its duties to the Regulator.

However, if this does not happen, members have also made it clear that they will require a period of time to become compliant with the new requirements, a minimum of six months from publication of the new Code.

7. Do our plans to use the complaint performance and service improvement report provide a suitable baseline for HOS to monitor compliance across the sector?

The NFA is concerned that the Housing Ombudsman is setting up a parallel regulation regime to that being put in place by the Regulator of Social Housing. We know that tenants and landlords have been facing significant delays in receiving a response from the Housing Ombudsman, and we would prefer it to focus its resources on making sure tenants get a quick response on their individual complaints rather than duplicating the work of the Regulator.

The Housing Ombudsman has a memorandum of understanding with the Regulator and should discharge its duty to monitor compliance to the Regulator as part of this. The Regulator could review the Complaint Handling and Service Improvement Report, self-assessment and TSM data as part of their wider regulation remit and flag up concerns with the Housing Ombudsman, which could then trigger an investigation.

8. Is our proposed prioritisation of Code compliance assessments, in the event of demand exceeding capacity, fair and reasonable?

As outlined above, we propose that the Housing Ombudsman discharges its duty to monitor compliance to the Regulator of Social Housing through its memorandum of understanding to prevent dual regulation.

9. Do you have any other relevant comments you would like us to consider?

- a) We would like the Housing Ombudsman to maintain the wording from point 1.5 of the current code: 'Survey feedback may not necessarily need to be treated as a complaint...' and add to the proposed wording on point 1.5 of the new code. Members are concerned that any dissatisfaction in surveys would need to automatically be logged as a complaint, which would make it difficult to continue to do these surveys. This is clearly not what the Housing Ombudsman is intending, but would be good to clarify in the code.
- b) Members have requested clarification on the acknowledgement stage of the process and what constitutes acknowledgement. In the FAQs for the Tenant Satisfaction Measures it states that 'for email or telephone complaints, for example, providers' processes may ensure that the acknowledgement/logging of complaint is effectively instantaneous and

hence timescales for logging a complaint do not need to be tracked specifically." Can it be confirmed that a system acknowledgement, for example, will suffice as an acknowledgement, rather than a written letter of acknowledgement setting out the issues, outcomes and response date?

Considering the Housing Ombudsman's plan to use the TSM data, it would be good to make sure the definitions and understanding the Regulator of Social Housing is using align with those of the Housing Ombudsman, and are clearly set out for members to follow.

- c) The Code states that organisations must not refuse to escalate a complaint through all stages unless they have a valid reason to do so. Will further guidance be provided on what is – or is not – an acceptable exclusion? We would like point 6.12 to refer back to point 5.9 and Section 2 to make it clear that landlords can decide not to escalate a stage 2 complaint if they have a valid reason to do so.
- d) The current code has useful provisions around managing tenant expectations which we would like retained. We are concerned that the new code will raise expectations that neither landlords nor the Housing Ombudsman can meet. Members have expressed the concern that this will lead to housing providers which are already stretched with reducing resources but generally good services, being inundated, whereas the Housing Ombudsman should be able to focus on those with poor performance and complaints handling culture.