

# **Guidance on group complaints**

Published on website, January 2020

## Guidance on group complaints

This guidance sets out what the Housing Ombudsman Scheme says about complaints from more than one individual and how staff should manage complaints in these circumstances.

### The Housing Ombudsman Scheme

Paragraph 19 of the [Housing Ombudsman Scheme](#) sets out who can bring a complaint to the Ombudsman, as follows –

*‘The following people can make complaints to the Ombudsman about members:*

- a. a person who is or has been in a landlord/tenant relationship with a member. This includes people who have a lease, tenancy, licence to occupy, service agreement, or other arrangement to occupy premises owned or managed by a member. If the complaint is made by an ex-occupier they must have had a legal relationship with the member at the time that the matter complained of arose;*
- b. an applicant for a property owned or managed by a member;*
- c. a representative of any of the people above who is authorised by them to make a complaint on their behalf;*
- d. a representative of any of the people above who does not have the capacity to authorise a representative to act on their behalf. The Ombudsman must be satisfied that the representative has the legitimate authority to act on the person’s behalf; or*
- e. a person with the legal capacity to make a complaint on behalf of any of the people above who is deceased.’*

The Scheme therefore sets out that the Ombudsman considers complaints from individuals and there is no provision under paragraph 19 for the Service to consider complaints from groups of residents.

However, paragraph 27 of the Scheme states that –

*‘The Ombudsman may accept an individual’s complaint as a test case if its facts equally affect others. The Ombudsman may also accept one complaint from more than one complainant about the same member if the issues and facts are the same, without carrying out multiple investigations.’*

This means that we can accept an individual complaint as a lead case and that any decisions made in connection with it **may** also apply to others in the same circumstances, where the lead complainant is clearly representing named individuals. We will therefore need to satisfy ourselves that the issues in dispute and

facts relating to the complaint are the same for all the residents involved if we are to deal with a case as a group complaint.

## **What is a group complaint?**

Under the Scheme, the Housing Ombudsman Service deals with complaints from individual tenants and leaseholders. However the Service also receives enquiries and complaints from groups of complainants (made up of residents from more than one property).

Examples could include -

- a group of residents who are complaining about the quality and frequency of communal cleaning services in a block of flats;
- a residents' association which is complaining about a landlord's overall management of anti-social behaviour issues on an estate.

The reasons why a group may be seeking to bring a complaint together, rather than on an individual basis, vary. Reasons may include –

- the landlord has been dealing with the matter on a group basis – for example by liaising with a residents' association or with a group of residents who have all been affected by an issue at a block or housing scheme, such as a breakdown of a communal heating system.
- the residents consider that additional weight or priority will be given to their case, as it involves a number of households rather than one individual household.
- some residents may feel cautious about raising a complaint on an individual basis, as they are concerned that they might be penalised or treated differently by their landlord because they have raised a complaint.

If it appears that the individuals involved are raising different issues, or the circumstances vary although the issue may be similar, it may be more appropriate to deal with matters as separate complaints.

### ***Example - complaint about repairs to a lift***

Lengthy delays to repairs to a lift in a block of flats could affect a group of residents, but in different ways or with varying levels of severity depending on their individual circumstances.

Some residents may have limited mobility and not be able to use the stairs as an alternative or have very young children which makes it more difficult to get in and out of their flat when the lift is out of operation. Other residents may experience some inconvenience but only have one flight of stairs to walk up and no other circumstances which make it more difficult for them when the lift is out of service.

If a group of residents therefore brought a complaint about this matter to the Ombudsman, we would need to carefully consider if this should be dealt with as a group complaint. Whilst the facts that led to the complaint would be broadly the same for each resident (the delay in repairs to the lift), it is likely that the adverse affect on individuals within the group would vary.

### **Resident Associations / Resident Groups**

We sometimes receive complaints from residents' associations, or similar representative groups, acting on behalf of a number of residents. For the reasons set out above, we cannot accept a complaint from a residents' association as such a group or organisation cannot bring a complaint to the Ombudsman in its own right.

The residents' association or group will therefore need to be advised that a lead complainant will be required in order to progress matters with this Service.

### **Dealing with group complaints**

There are a number of considerations to take into account when we receive a complaint from a group of residents. These considerations will vary according to the stage of our process that the complaint is at, the matters which are in dispute, how the landlord is dealing with matters, and the assistance that the complainants are seeking from the Ombudsman.

It is important to remember that it is for this Service to decide whether a matter should be dealt with as a group complaint (by accepting an individual complaint as a lead case). Whilst we do take the wishes of the complainants into account, it is the Ombudsman's decision as to whether to accept a matter as a group complaint rather than the group's decision.

### **Enquiries**

All initial enquiries which make reference to a complaint being made on behalf of a group of residents should be advised that the Ombudsman deals with complaints from individual tenants and leaseholders and is not able to accept complaints from groups of residents, collective representations or residents' associations.

They can also be advised that in some cases we may consider one resident's complaint as a lead case for a wider group, where we are satisfied that the facts and circumstance are exactly the same. This means that any decisions that we make for the lead case may also apply to other residents in the same circumstances. In these cases, we would ask for signed confirmation from the other residents to confirm that the lead case is authorised to represent them.

At this point we will be offering basic advice and signposting on making a complaint and using a landlord's complaints procedure, so we do not need to offer any more detailed guidance on how we may deal with such a complaint at this time.

### **Local resolution cases**

At this stage, the Ombudsman's focus will generally be on assisting complainants to use and progress their concerns through their landlord's own complaints procedure.

You may therefore have very limited information to assess whether the matter is best dealt with as a group complaint. Considerations here may include –

- on the face of it, are the group seeking to raise exactly the same issues?
- alternatively, are the issues similar but may be better dealt with as individual complaints?
- how is the landlord dealing with the matter - on a group basis or individually?

If you consider that it should be dealt with as a group complaint during the local resolution process, you should –

- advise the lead complainant that we will use them as a point of contact; that we will only discuss the complaint with the lead complainant; and they will be responsible for updating any other members of the group; and
- advise the landlord that we are using the lead complainant as the point of contact.

You may **not** need to get confirmation of the names and addresses of all individuals or their signatures at this stage. However, depending on the case, it may be appropriate to advise the lead complainant that we will require this information if the complaint is later duly made to the Ombudsman. You should also be aware that the landlord may ask for details of which residents are involved, in which case you will need to ensure that we have the necessary permissions from the individuals involved to share this information.

### **Duly made cases**

At this point a decision will need to be made as to how we will be progressing the case (in terms of whether it is suitable for early resolution, any jurisdictional considerations or formal investigation). A decision will also need to be taken as to whether the case should be determined as a group complaint or whether the dispute is actually about individual complainants' issues which are being presented as a group complaint.

Where we accept an individual complaint as a lead case, and the complaint has been duly made, we will ask for signatures and confirmation of names and addresses of the other individuals affected, so that we can ensure that we are acting in accordance with the requirements of the Scheme.

Considerations that need to be taken into account when deciding whether to treat a duly made case as a group complaint may include –

- is the complaint about the same issue for everyone and does it appear that the Ombudsman can consider the same facts and evidence in order to address the concerns of all the individuals involved?
- how has the landlord treated the matter - has it dealt with it as a group complaint or has it been dealing with individual complainants throughout its own complaints procedure?

- are we satisfied that the lead complainant has the agreement of the other residents involved to represent them and liaise with the Ombudsman on their behalf?

If you are satisfied that a duly made case should be dealt with as a group complaint, you will need to –

- ensure that we have a list of names and addresses of all residents involved and a statement signed by them confirming that they have authorised the lead complainant to act on their behalf in pursuing the complaint with the Housing Ombudsman Service;
- advise the lead complainant that the Ombudsman will be using them as a single point of contact; that they will be responsible for communicating the Ombudsman’s updates and determinations to other residents; and that we will only discuss the complaint and related matters with the lead complainant themselves; and
- ensure that the landlord has been advised that we will be treating the matter as a group complaint with an identified lead complainant.

If the group seeks to change the lead complainant at any point after providing the list of names, addresses and signatures, we will need to ask for a new statement and list of signatures from those involved to confirm that they have authorised the new lead complainant to act on their behalf. This is to ensure that we are satisfied that the members of the group have authorised the new lead complainant to act on their behalf as a lead complainant.

## **Remedies**

If the complaint is either resolved through the early resolution process or determined following a formal investigation, any orders and recommendations will need to clearly specify whether they are in relation to the lead complainant alone or for all the residents involved in the group.

For example, the lead complainant may have incurred significant time and trouble in raising and pursuing the complaint, and this may result in an order of compensation for that individual alone. However other orders and recommendations may apply to all residents involved – for example an order of compensation to recognise the overall distress and inconvenience caused by a repeated failure of a communal heating system.

## **Systemic issues**

The Systemic Issues Policy sets out that -

*‘A systemic issue arises due to issues inherent in the overall landlord organisation, rather than a specific, individual, isolated event.’*

Paragraph 23 of the Policy states that -

*‘Indicators of a systemic issue may include any of the following [...] an issue where we have good reason to believe there is a significant problem.’*

It is possible therefore that an issue which affects a number of residents could be considered to be systemic. This will depend on the nature of the issue being complained about, the extent of any adverse impact on the complainants involved in any group complaint and the potential impact on other residents who are not party to the complaint.

If you think that a group complaint may involve a potential systemic issue or issues, you should refer to the Systemic Issues Policy for further guidance.

## **Data protection considerations**

All staff should be mindful of data protection considerations and GDPR requirements when dealing with group complaints.

### ***Local Resolution***

Whilst we may not need to ask for signatures and confirmation of names and addresses of the other individuals involved when we are assisting with a case at local resolution stage, care should be taken to ensure that we only communicate with the lead complainant.

### ***Duly Made***

If we are satisfied that a duly made case should be treated as a group complaint, with an individual complaint as a lead case, we will need to ensure that we have express permission from the other individuals involved for the lead complainant to progress matters with the Ombudsman.

We will therefore for ask for a list of names, addresses and a statement signed by the named individuals confirming that they have authorised the lead complainant to act on their behalf in pursuing the complaint with the Housing Ombudsman Service.

This information must be scanned and kept on WorkPro.

## **Recording on WorkPro**

Ensure the contact details of the lead complainant are recorded in full particularly the post code.

You should always carry out a post code check on WorkPro to ensure that there are no other open cases about the same matter set up for individuals who are involved in the group complaint, or duplicate cases held on the system.

If you are satisfied that a complaint should be dealt with as a group complaint, the lead case should be recorded under ‘Complainant Details’. Other individuals should be recorded as joint complainants, once we have their names, addresses and signatures.