

# **Guidance on early resolution**

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## Early resolution guidance

The guidance sets out how to approach early resolution and how to work with the parties to promote resolution.

Under the Housing Act 1996 the Housing Ombudsman Scheme must include the powers of the Housing Ombudsman to propose alternative methods of resolving a dispute. This is our unique selling point and makes us more versatile and flexible than many Ombudsman schemes.

Early resolution provides the opportunity for complainants and landlords to maintain an active part in forming solutions to resolve disputes. This is an area of huge potential growth both for the organisation and the individuals involved.

### **The benefits of early resolution**

Early resolution allows complainants and landlords a greater say in shaping the resolution to the complaint. It is a process, facilitated by the Ombudsman, which enables them to reach their own resolution. This resolution is then set out in an Ombudsman's determination meaning that compliance with the agreement can be both monitored and enforced.

The speed of the process is an advantage. Complainants do not have to spend months worrying about the outcome whilst waiting for an investigation.

Engaging in the early resolution process can improve interactions with the landlord. People in dispute tend to adopt rigid positions rather than discussing issues openly. This can lead to misunderstandings due to the length of the communications chain and lack of intimate knowledge of the issues as the case escalates up the complaints process.

It addresses unreasonable claims and expectations. The careful analysis of the dispute can help to put the complaint back into perspective. One of the key skills deployed in early resolution is getting one party to view the complaint from the other's perspective.

It provides an opportunity for any new issues to be considered as part of the resolution whereas the Ombudsman will not be able to formally investigate any matter that did not complete the complaints process.

It provides an opportunity for complainants to tell the landlord the effect of the situation on them which can help diffuse a situation and open the door for the parties to start discussing resolution.

### **Key stages**

- Assessing if case suitable for early resolution
- Initial conversations
- Resolution focussed conversations
- Agreement and determination
- Post early resolution

## Is the case suitable for early resolution?

### Key evidence

Following completion of the internal complaints procedure we can start assessing whether, on the basis of the information we have, the case may be one that is suitable for early resolution.

The information we suggest the complainant prepares at this stage includes collation of the following evidence and information:

- A copy of the occupancy agreement
- A copy of the landlord's final decision letter
- A copy of the Ombudsman's complaint form
- A brief update in relation to any outstanding issues
- Identifies what actions they would like the landlord to undertake to resolve the complaint.

A good starting point is set out in our [evidence guidance](#). (This information will help the designated person understand the complaint and assist them with resolution. If the designated person is unable to resolve the complaint and refers to the Ombudsman, this information will assist us in deciding whether we are able to offer assistance via early resolution.)

### Complaint duly made

When the complaint has been duly made we will contact both the complainant and the landlord advising them that we will now consider how best to resolve the complaint.

If our initial contact with the complainant is once the case is duly made we will request the information listed above.

### Assessment

Our aim is to consider the most effective way of resolving the complaint. We will do this by establishing the outstanding issues and relevant facts, suggesting appropriate solutions based on the available evidence and encouraging the parties to do the same.

We will review the evidence we have on file and assess the facts of the case. We will need to identify the following:

- **The complaint:** Is there a clear, unambiguous shared understanding of the complaint between the parties? Alternatively, are the differences between the parties understanding of events the underlying cause of the ongoing dispute and might early resolution resolve this?
- **Facts of the case:** We need to be familiar with the facts in order to make our assessment. However, the focus of early resolution is to explore outcomes that may resolve the dispute rather than endorsing one version of events.

Disputes that solely concern the facts of a case may not, therefore be suitable for early resolution.

- **Outcome:** Is the outcome sought by the complainant realistic and achievable? How far away is this outcome from the landlord's final response at the end of the complaints process?
- **Outstanding issue:** Is there anything outstanding to resolve? Has the landlord done enough to put things right?
- **The parties:** From what we know of the parties, are both willing, and able, to explore reaching resolution through early resolution? If one party wants to prove the other wrong, then early resolution is unlikely to be the right solution.

## Initial conversations

The caseworker should ensure that they have read the information provided and has a clear understanding of the complaint. We will start to think of solutions that may help the parties move towards a resolution. Both parties will be contacted to seek their consent to participating in the early resolution process and their initial views on resolution. The caseworker to consider options that could be suggested to help resolve the outstanding issues.

## Early resolution process

An explanation should be given as to how the process works:

- There will be a series of telephone conversations exploring resolution. The aim is for the complainant and landlord to come up with a solution facilitated by the caseworker.
- The complainant will be asked to discuss the reasons that they are dissatisfied with the landlord's final response, the issues that remain in dispute and what would resolve the complaint for them.
- Mirror conversations will take place with the landlord exploring why it offered what it did, ascertaining its views on the complainant's issues, and whether it is willing to try and resolve the dispute.
- There may then follow a series of telephone conversations further exploring the issues raised. Both parties will be made aware of the other's position and the caseworkers role will be to help both to understand the dispute from the other's view point, and to encourage ways of resolving through problem-solving and full understanding of the issues. Suggestions will be made by the caseworker based upon their knowledge of the Ombudsman's decisions.
- If resolution cannot be reached (and does not seem likely) within two months, then the process will cease and the case will enter formal resolution from its original duly made date.
- Early resolution can be terminated by either party at any time. The case will then progress into formal resolution. Similarly, the caseworker can move the

case into formal resolution at any time if early resolution is proving unsuccessful.

## **Resolution focused conversations**

### **The role of the caseworker**

If the aim of early resolution is for the parties to come up with a solution, what then is our role within this process?

- To guide the discussion – focusing the dialogue on the issues that require resolution.
- To maintain momentum - the caseworker should ensure that the dialogue is managed. There should be no large periods of inaction.
- Clarifying the issues – helping the parties to build a shared understanding through defining and prioritising issues.
- To educate the parties rather than forming a judgement.
- May provide constructive challenge – asking difficult questions to build understanding.
- To make suggestions as to remedies that may help the parties reach an agreement.
- To monitor progress and keep parties up-to-date.
- When agreement reached, to test its workability and formalise this in a determination letter. To ensure both parties are sent a copy.
- If early resolution fails, to consider whether there is sufficient evidence to determine the complaint immediately.

### *Initial conversation*

The aim of our initial conversations is to gather information, particularly in relation to the disputed issues. The caseworker is seeking to gain an overall picture of the dispute to understand the main issues that remain unresolved and where the conflict between the two positions lie.

The caseworker will spend time listening to and building rapport with the parties. Building rapport involves being able to listen, show interest, value feelings and be accepting of the person without being judgemental. It may be beneficial to avoid highlighting any weaknesses in the first conversations but rather to focus on building rapport and allowing each party to develop their thinking as to what they would see as resolution.

### *Active listening*

Complainants and landlords have lived with the issues for some time and may want to talk through their experience. Caseworkers will need to be prepared to listen to what the other person has to say without interrupting or talking over them. It means

hearing what is being said and demonstrating that you have heard. It can mean leaving silences and encouraging the other person to carry on by giving a few gentle prompts. If the caseworker is talking more than the other person, how much are they actually listening? Remember early resolution is about the parties reaching agreements that they can live with and they need to be engaged in the discussion.

The caseworker will always try to accentuate the positive through encouragement and positive language. They must keep each party informed of any movement in position, build on any positive ideas from both landlords and complainants, making suggestions and refining positions.

### *Questions and challenges*

Different types of questions will be effective at different times. When gaining information open questions are the most appropriate i.e. questions that start with:

- How...
- What...
- Why...
- Tell me about ...

'What if' questions can be helpful when exploring possible solutions. The challenge is to be sure that questions are framed without implying criticism.

### *Constructive challenges*

In follow up conversations it may be appropriate to act as 'devil's advocate' to constructively challenge, by asking more difficult questions about the strengths and weaknesses in the party's case. This allows us to address unrealistic expectations of a party and open up discussion. The caseworker can advise the party that they are going to be doing this at the start of the conversation, and that they will be doing the same when they speak to the other party. It may be useful to ask each party to consider 'What's the worst outcome of this issue for you?'

### *Caseworker opinion*

Throughout the discussions caseworkers are likely to be asked for their opinion. Where possible the caseworker should remind the parties that their role is to get the parties to reach their own conclusions, so what is most important is what the parties think is the worst/best case scenario. Where a party is seeking to convince the caseworker, we can explain that it is convincing the other party that is the issue. The parties need to look for settlement positions that they can live with which will be acceptable to the other side. It is important to return the discussion to this point.

However, the caseworker should be prepared to help find solutions. So if the caseworker has a suggestion that may help the parties this can be put forward. This should not be pushed but can form a range of options for the parties to discuss and decide upon. It is appropriate to provide suggestions. The caseworker may wish to direct parties to the case studies on the website, refer to their own knowledge of

outcomes, or to give an indication of the proportion of cases where a finding of no maladministration/maladministration has been made.

### *Summarising and reframing*

Summarising can be a useful method of:

- Checking your understanding
- Demonstrating that the caseworker has heard what was said
- Focusing the conversation on the key issues
- Allowing the parties to change/clarify what they have said
- Reframing disorganised statements
- Changing the direction of a conversation
- Buying time

Caseworkers should make sure that the party is in agreement before moving on.

### *Outstanding issues*

It can be helpful to check whether new issues have arisen since the complaint completed the complaints procedure. This may provide some leverage to get the parties to engage. For example, if a new repair issue exists, an appointment for inspection could be included in the resolution discussions with the landlord.

### *Seeing the dispute from the other's viewpoint*

Getting one party to view the complaint from the other party's perspective can be useful. For example, getting a landlord to understand how the actions/omissions affected the complainant can enable the landlord to see the issue in a different light and that the complainant's position may not be as unreasonable as first assumed. It can help to open the door to settlement conversations.

### *Factors that may help focus the discussions*

Early resolution can involve consideration of different factors including:

- Whether a policy or procedure has been fairly applied
- Whether the landlord has complied with its legal obligations
- Whether outstanding repairs are needed
- Formulation of an ASB action plan
- A communication problem or misunderstanding that can be resolved through explanation or discussion
- Whether an apology or compensation payment is needed.

When agreement is reached this should be shared with both parties to ensure that they agree. The terms of the agreement should then be set out in a determination letter and sent to both parties.

### **Workpro**

Workpro should be completed. On the DR2 Workflow page - DR2 Local Resolution/Early Resolution - the caseworker will need to complete the 'Intervention

Identification' section. The caseworker should indicate whether early resolution has been attempted. Further guidance on this can be found on Workpro. If the case has been resolved at early resolution, the date of determination should also be added.

The DR2 Categorisation page should also be completed to record the outcome of our intervention. The caseworker should first ensure that the relevant case categorisation(s) has been added. The Intervention tab will then need completing. Select the relevant intervention from the group 'Assistance to resolve the dispute' and record the outcome as 'Facilitated Resolution.'

Finally, the agreement that has been reached should also be recorded as a recommendation under the Orders and Recommendations tab.

## Agreement

### Paragraph 32(b):

***'At any time the Ombudsman may suspend or stop his investigation of a complaint if the member makes redress to the complainant which, in the Ombudsman's opinion, resolves the complaint satisfactorily.'***

We issue early resolution determinations under paragraph 32(b) of the Scheme. This means that before we set out the agreement into a determination, the caseworker must consider whether the agreement reached provides redress to the complainant which resolves the complaint satisfactorily. In the majority of cases if the complainant is happy with the outcome then this is likely to satisfy the Ombudsman. However, this should be at the forefront of the caseworker's mind when facilitating the discussion.

## Example letter

Dear landlord

Thank you for the information you provided to us in relation to Mr X's complaint about the landlord. I set out the Ombudsman's determination of this complaint, which has been resolved in our early resolution process.

### Complaint

Mr X's complaint was about the landlord's actions following a loss of heating and hot water at the property, and in particular about the level of compensation it offered in response to the complaint.

### Determination

Paragraph 32(b) of the Housing Ombudsman Scheme states that –

***'At any time the Ombudsman may suspend or stop his investigation of a complaint if the member makes redress to the complainant which, in the Ombudsman's opinion, resolves the complaint satisfactorily.'***

In this case I am satisfied that the landlord has made redress to Mr X which resolves the complaint satisfactorily, following our intervention.

### **Intervention**

In summary, the complaint that Mr X brought to the Ombudsman was about the landlord's actions following a loss of heating and hot water at his home.

In its response at the final stage of its complaints procedure the landlord apologised for the length of time that it had taken to identify the fault and carry out the necessary repairs after it was first reported that there was no heating or hot water. The landlord said that an initial misdiagnosis of the fault and then a delay in getting parts fitted by its engineers had resulted in the repair needed taking longer than expected to be completed.

In its response to the complaint, it offered Mr X £25 in recognition of the distress caused and £31.50 towards the cost of running the temporary heaters that had been provided. Its total offer was therefore £56.50.

Mr X did not accept that the amount of compensation offered was sufficient, taking into account the distress and inconvenience caused and proposed an offer in the region of £80 in recognition of the distress caused.

Under the Ombudsman's early resolution process, this service works with the parties to explore the issues in dispute in a complaint, identify the matters that remain outstanding and try to assist the parties to reach an agreed settlement. Where the parties can reach an agreement, there is no requirement for the Ombudsman to carry out a detailed and often lengthy investigation. The Ombudsman also considers that a resolution that is agreed in this way between the parties can assist in improving the existing relationship between a landlord and its resident.

The landlord reviewed its position and agreed that it would increase its offer of compensation in recognition of the stress and inconvenience caused to £50. This amount was in line with its Right to Repair scheme. That meant that the total offer of compensation was increased to £81.50, (£50 in recognition of the stress and inconvenience caused to him and £31.50 towards the cost of running the temporary heaters). This was acceptable to Mr X who confirmed that he would accept the landlord's revised offer of £81.50 as a resolution to this complaint.

In summary, therefore, the outstanding issue in dispute in this case was the matter of compensation. Following the Ombudsman's intervention and further consideration of the issues raised, the landlord agreed to offer Mr X £81.50 and he accepted this offer as a resolution to the complaint. I am therefore satisfied that the landlord has made redress to Mr X which resolves this complaint satisfactorily, following our intervention.

### **Next steps**

The landlord should now ensure that it makes the agreed payment of £81.50 to Mr X within X weeks of the date of this letter. I would be grateful if you could let me know when this payment has been made, as I will then close this case.

However, please note that if this letter does not reflect your understanding of the terms of the settlement reached you may seek a review. Please notify us within the next three weeks if you wish to seek a review.

## **Agreement not reached**

Initial discussions and fact finding may establish that the dispute cannot be resolved between the parties in which case we will prepare the case for determination.

The caseworker should advise the parties that based on the discussion so far it is our view that it will not be possible to resolve the complaint by agreement and they now need to wait for the Ombudsman to issue a determination based on the information provided by both parties. The caseworker should have gained sufficient knowledge and understanding of the case to request any further evidence that may assist the investigation.

The caseworker should consider whether it is possible for them to determine the complaint based upon the knowledge gained during the early resolution investigation. This will be appropriate where the caseworker has completed a full assessment of the evidence as part of the early resolution investigation, or where only a small amount of clarification is needed.

Please ensure that complainants are advised that the investigation will be confined to the matters that completed the complaints procedure and may not extend to all issues discussed in the settlement negotiations. Early resolution is part of the Ombudsman's process rather than the landlord's complaints process. Therefore, what is discussed in early resolution stays in early resolution. Caseworkers will need to manage complainants' expectations in this regard.

In all cases the caseworker should ensure that a record of the early resolution investigation and discussions is on the casefile so that the caseworker is aware of the discussions and outcomes.