

# **Housing**

Ombudsman Service

## **Report of the Housing Ombudsman's Independent Reviewer of Service Complaints**

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# Introduction

## Background

The Housing Ombudsman's dispute resolution principles are: be fair; put things right; and learn from outcomes. The Ombudsman applies these principles internally to complaints about the service it has provided to its customers as well as externally. The appointment of the Independent Reviewer of Service Complaints is intended to enhance its learning with an independent perspective and demonstrate its transparency through the publication of the reviewer's reports.

## Service complaints during the period

This report covers service complaints closed during the period 1 October 2020 to 31 March 2021. The Ombudsman's approach to service complaints is to uphold them if there is any doubt over the service provided.

During this period:

- The service investigated and closed 130 service complaints at stage 1 and 40 at stage 2
- It upheld or partially upheld 92 service complaints at stage 1 and 26 at stage 2
- The total of service complaints investigated and closed at stage 1 and stage 2 represents 1.6 per cent of the enquiries and complaints brought to it and closed.

## Sample selection

The Ombudsman selects 10 cases for review in each six-monthly period. For this review, the sample was skewed to select four resident complaints upheld at stage 1 or stage 2 in the dispute support part of its process where complaints are going through the landlord's procedure. Capacity issues in this team had affected its ability to consistently meet its service standards during the period and resulted in higher volumes of service complaints, and higher uphold rates, than was usual. The Ombudsman took the opportunity of this Independent Review to learn what more it could do to improve.

# **Analysis of Service Complaints – April 2021**

This report discusses the conclusions drawn from my first review of a sample of complaints raised with HOS about the service which residents and landlords have received from the organisation. I briefly summarise the individual complaints in the second half of this report. This section discusses some common themes I have identified from the sample I have examined which may or may not be worth consideration by HOS management. However, before I enter into any discussion of those themes, it is perhaps important to caveat my conclusions.

There are three reasons to be cautious about what follows. First, my analysis is based on a very small sample of complaints which have been dealt with by HOS. I have only reviewed ten complaints, a tiny proportion of all the cases which HOS has handled during the period. Given the small sample size, any conclusions drawn can only be held very tentatively. Moreover, this is my first report and I am as yet still relatively unfamiliar with the totality of HOS's work. As I see more cases and come to understand the organisation better, I will be able to be more confident about my conclusions.

Second, the cases which I have examined have all been subject to service complaints. By definition, therefore, they are all matters where a resident or landlord has been dissatisfied with the service they received. This inevitably gives a skewed view of the work of the organisation and means that I am more likely to encounter examples of poor service. My conclusions should not therefore be taken as applying to the majority of cases or questioning the quality of most work undertaken.

Finally, I am conscious that the complaints I have reviewed arise from cases dating from the second half of 2020, a period when HOS was facing considerable challenge. Not only did that coincide with the pandemic lockdown, which required a sudden shift from office-based to remote working. It was also a period when the organisation was remodelling itself, with a significant increase in staff to deal with the mismatch between demand and staffing levels. At the time of writing, the pandemic threat appears to be receding and the staffing changes appear to be bedding in. It may be that some of the underlying issues which I will discuss are simply the result of those exceptional pressures.

## **Overall quality of work**

It is important to state at the outset that the sample of complaints I have reviewed gives me little or no cause for concern about the overall quality of work performed. While it is true that a significant proportion of the cases studied did show features which were less than optimal, in most cases these failings were relatively minor (albeit understandably annoying and distressing for those involved). Crucially, none of the cases gave clear indications that the ultimate outcomes of the complaints had been adversely affected: in none of the cases was there any significant evidence that

the ultimate complaints decision would have been different had those errors not occurred.

Moreover, my review of the service complaints process indicated that when individuals do raise issues about the service received, HOS staff are open and fair in their handling of such complaints. I saw no sign of defensiveness or prejudgement in service complaints handling and there was a commendable willingness to acknowledge and apologise for errors made. This is not always present even in Ombudsman schemes and I commend all the staff involved.

That said, there are number of themes which emerge from the cases which may be worth making explicit.

### **Response times in Dispute Support**

The first of the themes was one of which HOS management was very aware and which guided the initial selection of complaints which I was asked to examine. In at least half the complaints I have examined, one of the points raised was the failure by HOS staff to respond in a prompt manner to phone calls or – less frequently – emails. In almost all these cases, HOS staff had failed to meet their own service standards in this respect. Some of the complainants described making numerous calls over some weeks without getting any effective response, with call backs being promised and not delivered. This was clearly a source of considerable frustration to many of those involved, including the sole landlord whose service complaint was included in the sample.

As I have said, management was very aware of this issue. At the time in question, the impact of the pandemic on staff health and attendance severely reduced caseworker capacity, with the result that there was a mismatch between the volume of work and the staffing resource to meet it. Under those circumstances, it is scarcely surprising that response times slipped.

These pressures are understandable and there are times in all organisations where it may not be possible to meet the usual service standards. However, if management is aware of that normal response times are likely to be exceeded, and if it is not possible quickly to deploy additional staffing resource (some schemes have pools of temporary or part-time staff whom they can deploy to meet short-term spikes in demand or reductions in capacity) it is important that action is taken to manage the expectations of complainants and respondents. This would normally be done either by proactively informing residents and landlords about the increased risk that the usual service standards may be breached or, in extreme circumstances, by temporarily suspending or extending the normal time standards. Such moves help reduce the likelihood of being required to apologise for poor service later in the day.

*I therefore recommend that HOS develops a policy to respond to temporary periods of excess demand or reduced resources affecting service levels, in order proactively to inform complainants and respondents of the actual response times they are likely to experience.*

## **First tier complaints process in Dispute Support**

Three of the cases examined centred on resident difficulties in obtaining an answer from their landlords to their initial complaints. Almost all Ombudsman schemes require the complaint to be raised at the first tier before being accepted for investigation and I am very familiar with the issues which this causes with complainants, particularly where the first-tier complaint handling is poor. Many schemes have sought to ensure that complainants are not disadvantaged by a lack of responsiveness by placing strict time limits for first tier complaints responses, after which cases can be accepted for investigation even in the absence of a final first tier response.

I am aware that this has been an area which HOS has recently made a priority for attention and that the organisation has issued a Complaints Handling Code to landlords. That Code makes explicit reference to maximum timescales for the completion of each element of the first-tier process, with an assumption that, except in the rare cases where there are three stages to that process or where there are other explicable delays (including a delay in requesting escalation), the process should normally take no more than seven weeks. This is in line with the sorts of timescales I have seen in operation in other sectors. The addition of the eight week “democratic filter” period before the case falls within the Ombudsman’s jurisdiction is perhaps unfortunate but that is an issue which requires legislative change (which I understand is being undertaken through the Draft Building Safety Bill). Nevertheless, it should in most cases be no more than four months between a complaint being raised with a landlord and it, in theory at least, being accepted for investigation by HOS.

I understand that, during the period in question, the Code was new and landlords had been given a period of grace to implement it. I accept that in these circumstances it would not have been appropriate for HOS staff to seek to hold landlords to the timeliness standards set out in the Code. However, the files in these cases do not reveal evidence that HOS was proactively managing the cases to remind landlords of their obligation to minimise delays in dealing the complaints. In two of these cases, and in some of the others I have looked at, it is only after the resident (or, in one case, landlord) had contacted HOS that staff had been encouraged to act. Despite the fact that HOS policy allows a case to be accepted for immediate investigation if the landlord has failed to respond to three reminders to answer a complaint, in one of the cases a fourth reminder had been issued without the file showing any evidence that immediate acceptance had been considered. The delays which eventuated had a direct impact on residents’ positions. In one of the cases, the complainant was still unable to have his issue investigated five months after coming to HOS and in a second, a complaint raised in March was still not being investigated in late January the following year. The third case had been dealt with more swiftly, but at the time of the final service complaint response the resident could still not be fully assured that there would be no additional delay to all of the complaint issues being investigated.

Again, I would stress that this is a small sample on which to base conclusions. It is also the case that one of the three first tier delay cases was handled proactively (albeit there was an error in scope). However, at a point when the organisation was seeking to communicate the importance of high-quality complaints handling to landlords, these cases offered an opportunity for HOS staff to familiarise landlord staff with the Code and the principles behind it, which would have sent a message to the landlords concerned that it is a priority for HOS to achieve a significant improvement in first-tier complaints handling. As the Code is now fully operational, I will return to this issue in my next review and would expect to see more proactive and timely management of the progress of complaints through landlords' processes.

### **Personalisation of prose style responding to service complaints**

I have now reviewed some 15 or so responses to service complaints, together with a number of investigation reports and other correspondence. In the main, these pieces of writing are accurate and comprehensive. Any comments I make here should not be taken as indicative of any profound issues with the manner in which staff communicate.

That said, I am somewhat surprised to see comparatively little variation in style in the written communications I have reviewed. It is clear from the files that there is a range of literacy abilities on the part of the complainants, together with a considerable variation in their emotional investment in their complaints. Given this, I would expect to see some attempts by HOS staff, where necessary, to simplify their style (e.g. by the use of simpler words or shorter sentences) or to adopt a more emotionally-orientated tone. One service complaint report, for example, used the phrase "democratic filter", a technical formulation which is unlikely to be easily understood without explanation or contextual information. The written material contains other, similar instances of the use of language which is perhaps not as simple and accessible as it might be.

This issue bleeds into a broader question of personalisation and adaptation generally. For organisations such as Ombudsman schemes, where it is central to success to be able to manage tens of thousands of cases quickly and efficiently every year, personalisation is extremely tricky to achieve. Given this, the fact that a significant proportion of complainants – and particularly repeat complainants – have pronounced individual needs which require adaptation, there is always going to be a tension between efficiency and individualisation at the heart of scheme management. Successful management of this tension is essential both in avoiding service complaints and, more important, ensuring that the service to individuals is tailored to meet their needs. This is an area which I will continue to review regularly in these reports.

### **Advance sight of determinations in Dispute Resolution**

Two of the service complaints centred on the fact that the complainants had not had sight of the determination in advance. It may well be that these were less complaints

about service than complaints about the result. In both cases, the determination was reviewed and both cases the service complaint process ran parallel with the decision review process. While this may be correct, it risks confusion and added work. In particular, it may be that increasing the number of draft determinations shared in advance would reduce the number of reviews requested.

It is, of course, for HOS to determine its own process. However, I am aware that many other Ombudsman services do provide an opportunities for both parties to see and comment on a draft determination before it is finalised. This is for three reasons:

- A more iterative process helps to manage the expectations of the parties more effectively, preparing them for the likely outcome;
- Sharing a draft allows both parties to challenge evidence submitted by the other side and to point out any factual inaccuracies before a decision is made, thereby reducing the likelihood of decisions being based on inaccurate information;
- Linked to the above, since the principles of justice require the sharing of evidence on which decisions are based in advance of judgement, a process of allowing the parties to review and challenge evidence before a decision is made reduces the risk of successful legal challenge.

From what I have seen, there is no obstacle in principle to sharing draft decisions in advance; indeed, in one case, it was agreed that the draft review decision would be discussed with the complainant before it was finalised. In my view, where a complainant (or a landlord) has asked for sight of the draft decision in advance, this should be provided. However, these cases raise a question in my mind as to whether a routine sharing of drafts in advance (or at the very least, the routine offering of the choice to see a draft) may be something which might repay consideration by management. That said, I am well aware that introducing the routine sharing of draft decisions would have a significant impact on staff workloads and, potentially, completion targets. The advantages of sharing drafts would need to be balanced with the requirement to run a cost-efficient organisation and give complainants a timely response.

*I therefore recommend that consideration be given to introducing a policy of routine sharing of draft decisions in advance; or, in the alternative, a policy of routinely offering the sharing of such drafts.*

# **Service Complaints Case Summary**

## **Case No 202012289**

The primary issues in this case involved allegations of antisocial behaviour made by a previous landlord. Although there were some issues with the resident's new landlord, the resident did not want to involve HOS in those at this point. Since the issues with the former landlord were some years ago, it was highly likely that they would be out of jurisdiction (as indeed they were decided to have been). The file indicates that the resident was warned of this, but it is not clear whether or not he fully appreciated that this would be the likely result. While it is difficult to tell from the file whether the case was actually out of jurisdiction (the resident had claimed that he had tried to raise the issues while still a tenant but I cannot see the detail of the landlord's response), a delay of four years in raising a complaint with HOS would have made that outcome almost inevitable.

As the service complaint response properly sets out, the service thereafter was patchy. Although what seems to have been the correct result was reached, there were two occasions when the complainant could have expected quick call-backs where this did not happen. In the first case, the delay took place over Christmas, where some delays may have been expected. In the second, when the file notes "escalated call-back", it was still six days before a call was made. That was properly acknowledged by the complaint response and an apology was made.

## **Case No 202009653**

The real issue here was the resident's difficulties in securing a response from his landlord to his attempts to complain to them. He first contacted HOS in August 2020. However, as the service complaint accepted, his attempts to engage HOS did not bear fruit until the end of September and there were a number of occasions thereafter where his (numerous) calls and emails to HOS went unanswered. The service complaint reply quite properly acknowledged and apologised for what was clearly a breach of HOS's service standards, reasonably putting them in the context of the workload and staffing issues experienced by the organisation. However, at the time of the service complaint, he had still not received an answer from the landlord or been able to have the substantive issues which lay behind it accepted for investigation by HOS.

## **Case No 202013555**

This is clearly a very difficult case, with a resident who contacts HOS repeatedly and whose behaviour is not always easy to manage. Moreover, reading the written material on the file, it is clear that the volume and tone of her communications makes it difficult both to understand what issues really matter to her and to contain the scope of the issues under consideration. However, along with general allegations of



bias and dismissive behaviour, the service complaint raised by this individual included the failure to return calls within reasonable timeframes and the fact that her case was dealt with by a number of different HOS staff.

In the circumstances, the approach taken by the service complaint handlers appears entirely reasonable and professional. The service complaint response addresses the issues squarely and acknowledges the failures to return calls to the resident within the periods required. While that response does not appear to have satisfied the resident, I am of the view that it was as an entirely reasonable one.

#### **Case No 202000874**

The issues here are very simple. The resident, who is disabled, contacted HOS to complain about her landlord's refusal to replace her rear door with a new patio or French window to give her easier access to the garden. HOS investigated and issued a determination in the landlord's favour. The resident complained that she had not been given a chance to discuss the determination in advance.

The service complaints process dealt with the matter quickly and clearly, with the letter of explanation and apology being entirely appropriate.

#### **Case No 202000043**

The service complaint issue in this case was that the resident was not told that the individual to whom he spoke during his initial contact period was not his caseworker. That complaint was fully upheld by the service complaints team, who issued a full apology. In the event, the file indicates that the resident was not disadvantaged by the initial confusion, with the case proceeding to determination in the usual manner.

The service complaint letter was entirely appropriate (albeit with one or two minor typos which could perhaps have been corrected). The only area for criticism here is that the matter only came to light by an audit of cases dealt with by HOS in the past year, which revealed that the service complaint had not been responded to. Nevertheless, the error was picked up and an appropriate apology made.

#### **Case No 202000682**

The service issue related to a comment made by a HOS member of staff during a phone call that the complainant should have "used [her] common sense" to send through a copy of the tenancy agreement. The complaint response was entirely appropriate in its handling of this matter, apologising for it and placing this apology in the context of the complainant's personal circumstances. In addition, it is clear that the staff member who had made the comment had also directly apologised to the complainant, albeit this apology was not perhaps as fulsome as it may have been.

### **Case No 202016021**

In this case, the service complaint was raised by the landlord rather than the resident. There were a number of issues: the failure to link separate cases for ease of handling; the failure to respond to a number of emails and phone calls; the use of incorrect email addresses and what I would characterise as being perceived as a generally unhelpful and combative approach. This proliferation of issues raised in the service complaint mirrors the proliferation of core issues raised by the resident about the landlord.

The file shows that the service complaint was properly investigated and considered, with each element being weighed and replied to with appropriate judgement and, where required (the use of incorrect email addresses and the failure to return messages), acknowledgement of service failings. To that extent, the response cannot be faulted. However, the result is a somewhat confusing and ill-structured reply where the – entirely laudable – elements of apology get lost. Nevertheless, the overall outcome was reasonable and fair.

### **Case No 202012282**

The issues in this service complaint relate to failures to respond to contacts and a failure on the part of the caseworker to inform the landlord of all the aspects of the complaint. This latter issue resulted from inadequate record keeping. The fact that only part of the complaint had been raised with the landlord led to the landlord's first tier complaint response not addressing a key issue, which meant that there was a delay in that aspect of the complaint falling within the Ombudsman's jurisdiction.

These issues were properly investigated and apologised for in the stage one response. This in turn elicited a request for a stage two review, which again dealt with the matters properly. In particular, the evidence that the author had approached the case de novo and had reviewed the entire file rather than relying on the analysis done as part of the stage one process added hugely to the sense that the complaint had been taken seriously. Overall, the service complaint handling in this case appears to be entirely reasonable.

### **Case No 202001053**

This is another case in which the service complaint issues appear to be strongly linked with the complainant's disappointment with the casework decision. Indeed, the stage one service complaint response states explicitly that some of the issues raised amounted to a request for a review of that decision and the stage two response reiterates that message. Part of the service complaint also centres on the fact that the findings of the casework decision were not discussed with the resident before it was issued. The remaining elements of the service complaint relate to the allegation that the caseworker put the phone down on the resident and the fact that

when the resident had spoken to a member of HOS staff to whom he had spoken some weeks before, that staff member had not remembered the case. In relation to the former, the response(s) made it clear that there was no evidence of the incident complained of happening and put the latter incident fully in context. I am content that these responses were entirely appropriate.

### **Case No 202009662**

The substance of this complaint was delay: the delay in getting an answer from the landlord to her complaint and the delay in HOS in acting on her case. There was also a further delay in investigating the service complaint itself. Having contacted HOS in March 2020 about a complaint she had raised with the landlord, the complainant was told that the landlord was in the process of replying. However, it was left largely to the complainant during the following months to chase progress, with HOS staff only seemingly acting in response to contacts from her (and then some contacts went unanswered). In all, four chasing contacts were sent by HOS staff until the complainant was finally told in late August that an answer to her original complaint had been sent at the end of the previous February (i.e. before her first contact with HOS). Thereafter, the landlord refused to respond to her further on the basis that the complaint had been answered.

HOS's failures to respond in a timely fashion to her were acknowledged in both the stage one and stage two service complaint responses, as was the fact that after the landlord had failed to respond to the third HOS prompt, consideration should have been given to an immediate acceptance of the complaint for investigation. However, I note that at the end of the second stage of the HOS service complaints procedure (late January 2021), the complainant had still not had the reassurance that her case would be accepted for investigation. Instead, the letter merely stated that: "I have, therefore, asked the manager of the relevant team to make contact with your landlord as a matter of urgency and to provide an update to you at the same time."

**Adam Sampson, Independent Reviewer**

**May 2021**

## Management responses

Recommendation	Management response
<p><i>I recommend that HOS develops a policy to respond to temporary periods of excess demand or reduced resources affecting service levels, in order proactively to inform complainants and respondents of the actual response times they are likely to experience.</i></p>	<p>We had already amended our pre-recorded phone line message to acknowledge that we are currently facing high demand and may not be able to respond within our usual timescales and manage customer expectations. We are also building up a bank of different messages to use for different circumstances.</p> <p>We will develop a policy to cover dealing with periods of excess demand or reduced resources that will affect service delivery by 30 June 2021.</p> <p>Owner: Director of Dispute Support and Resolution.</p>
<p><i>I recommend that consideration be given to introducing a policy of routine sharing of draft decisions in advance; or, in the alternative, a policy of routinely offering the sharing of such drafts.</i></p>	<p>We recognise that residents and landlords need to be able to challenge our decisions and our Scheme provides for a review process following determination to enables this. We also share our draft decisions in advance where this is requested.</p> <p>We are happy to consider a switch to sharing drafts in advance of decision, but this will need to be informed by a full understanding of the implications including the impact on internal resources and determination time scales.</p> <p>We will undertake research into the resource and time impacts of sharing decisions in advance by 31 December 2021 and recommend whether a new policy should be adopted.</p> <p>Owner: Director of Dispute Support and Resolution.</p>