

**Guidance on
determinations of
complaint handling
failure and orders**

Published March 2022

Summary

1. The purpose of complaint handling failure determinations and orders (CHFOs) is to ensure that a landlord's complaint handling process is accessible, consistent and enables the timely progression of complaints for residents, in line with the Housing Ombudsman's Complaint Handling Code.
2. This guidance sets out when a CHFO may be issued, what further action the Ombudsman could take in such circumstances, and the reporting, including publication, of those issued.
3. A CHFO may 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 through the landlord's process – this is a Type 1 CHFO.
4. A CHFO may also be issued on an individual case where the landlord has failed to provide information, either at the outset of the investigation or to confirm compliance with our orders, to the Ombudsman as requested – this is a Type 2 CHFO.
5. A Type 3 CHFO may be issued where a landlord fails to comply with its membership obligations under paragraph 9 of the Scheme.
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.
7. The Ombudsman will publish details of CHFOs issued on a quarterly basis, including type, landlord names and whether the order was complied with. This information will also be reported to the Regulator for Social Housing.
8. Failure to take the action specified in a complaint handling failure order could result in the Ombudsman taking further action such as referrals to the landlord's governing body or the Regulator of Social Housing, ordering the landlord to publish details of its failure to comply and/or publishing a special report on the landlord's non-compliance.

Membership obligations

Paragraphs 9-12 of the [Housing Ombudsman Scheme](#) set out the membership obligations to which all landlords must adhere.

The intent of these obligations is:

- to improve member landlord's internal complaints processes to ensure early resolution of disputes;
- to increase resident confidence by enabling access to complaints procedures;
- to establish consistent standards of practice across the housing sector;
- to ensure that residents can access the Housing Ombudsman Service if they remain dissatisfied with their landlord's response to their complaint.

Paragraphs 13-15 of the Scheme set out the power and steps that the Ombudsman can take if a landlord is failing to comply with their membership obligations. One of these steps is to issue, and publish, a CHFO.

Type 1 CHFO – where an individual complaint is not being progressed through the landlord's complaint process

Complaints should be accepted and addressed by landlords and not unreasonably categorised as an enquiry 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'.

If a resident presents an issue to a landlord which qualifies as a complaint, it should be handled as one.

If a resident has trouble progressing their complaint 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 required to resolve the issue within five working days. The Ombudsman will provide one further opportunity giving a further five working days for action, unless there is clear evidence that immediate intervention by the Ombudsman is needed. If the complaint is still not being progressed, the Ombudsman will issue a CHFO with five working days to respond.

Type 2 CHFO – where the landlord has failed to provide information to the Ombudsman as requested

Failure to provide information for the purposes of our investigation delays the resolution of the dispute and causes unnecessary distress and inconvenience to the resident. Landlords are required to provide case information requested by the Ombudsman within 15 working days (or by exception and prior agreement, an

alternative timescale). If the information requested is not provided within the time frame, the Ombudsman will issue a first warning letter giving five working days to provide the information requested. The Ombudsman will provide one further opportunity, in a second warning letter giving a further five working days for action, before issuing a CHFO with five working days to respond.

If the information is still not provided following the CHFO, the investigation will proceed on the evidence available. If the information is later provided as part of the review process the Ombudsman will consider this. However, the Ombudsman will take steps to ensure that residents are not disadvantaged by any late provision of evidence.

The Scheme also requires landlords to provide evidence of their compliance with the Ombudsman's orders on individual cases. The Ombudsman's determination letter will set out the timescales for compliance with orders. If compliance has not been achieved within the timescales set, a reminder will be sent to the landlord requesting evidence of compliance to be provided within 10 working days. Failure to provide evidence of compliance to the Ombudsman following the reminder will result in a CHFO being issued requesting that the landlord provides evidence of compliance within 10 working days.

Type 3 CHFO – where a landlord fails to comply with its membership obligations

Paragraph 9 places a number of obligations on landlords. These are:

- To agree to be bound by the terms of the Scheme
- To establish and maintain a complaints procedure in accordance with any good practice recommended by the Ombudsman (as set out in the Ombudsman's Complaint Handling Code and self-assessment)
- To inform residents of their right to bring complaints to the Ombudsman
- To publish its complaints procedure and make this information easily accessible to those entitled to complain on its website and in correspondence with residents;

If the Ombudsman has reason to believe that a landlord is not complying with its membership obligations, the Ombudsman will inform the landlord's Chief Executive or equivalent and request further information and/or an explanation for non-compliance to decide on further investigation. Subsequently, should the Ombudsman require remedial action to bring the landlord into compliance with the Code, this will be requested within an appropriate timescale to the issue identified. The Ombudsman will then provide one further opportunity for action before issuing a CHFO with an appropriate timescale. The Ombudsman may also issue a CHFO if no explanation is given for non-compliance, or the explanations given are inadequate.

Reviews

Paragraph 64 of our Scheme provides for reviews of determinations issued and so applies to CHFOs. A review request should be made within five working days of

receipt of the CHFO. The review will be conducted by someone unconnected with the original decision.

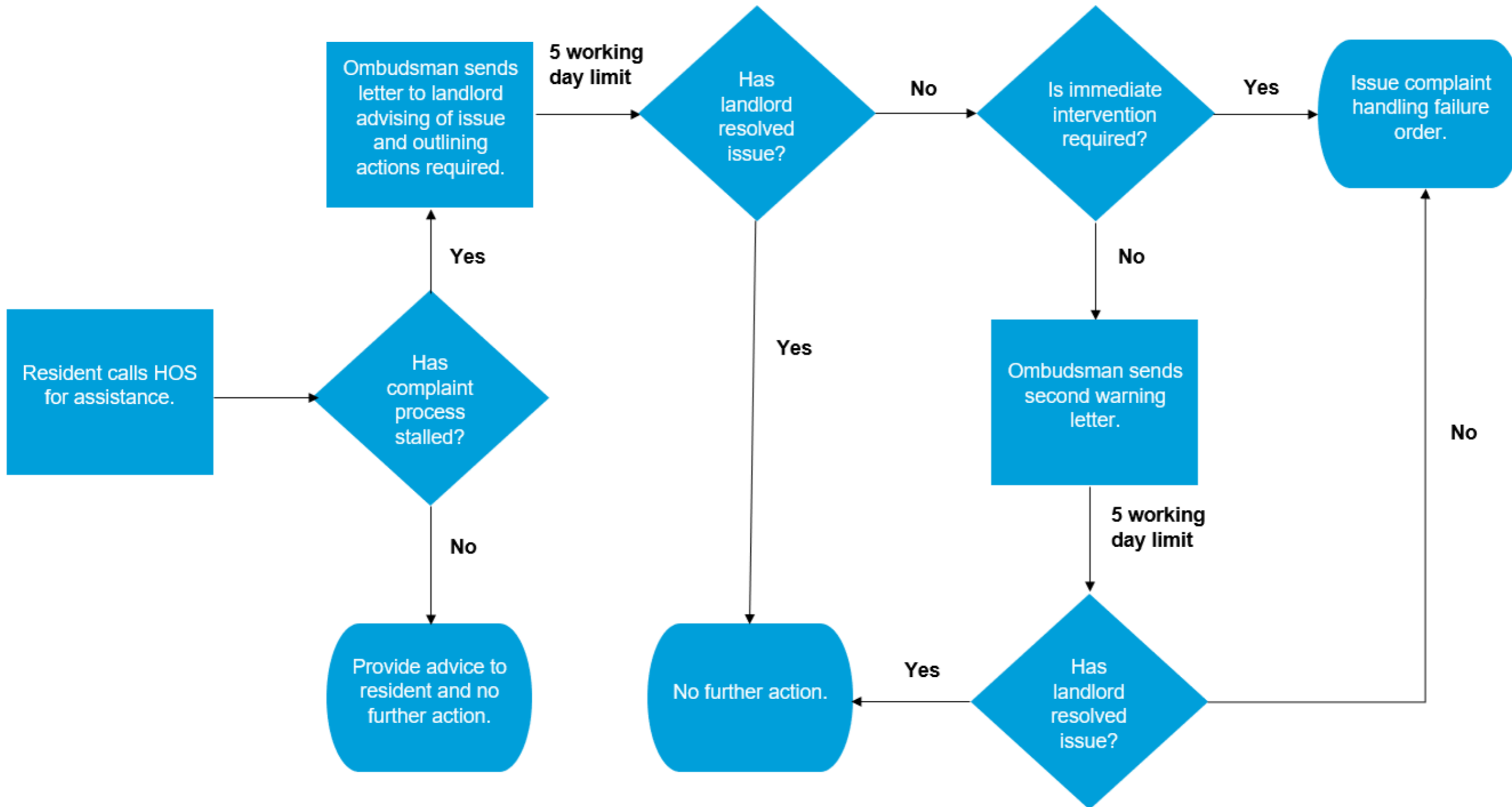
The outcome of the CHFO review process will be to either confirm or withdraw the determination. The outcome will be communicated to all relevant parties and all relevant HOS records and reports will be updated to reflect any changes.

Reporting complaint handling failures

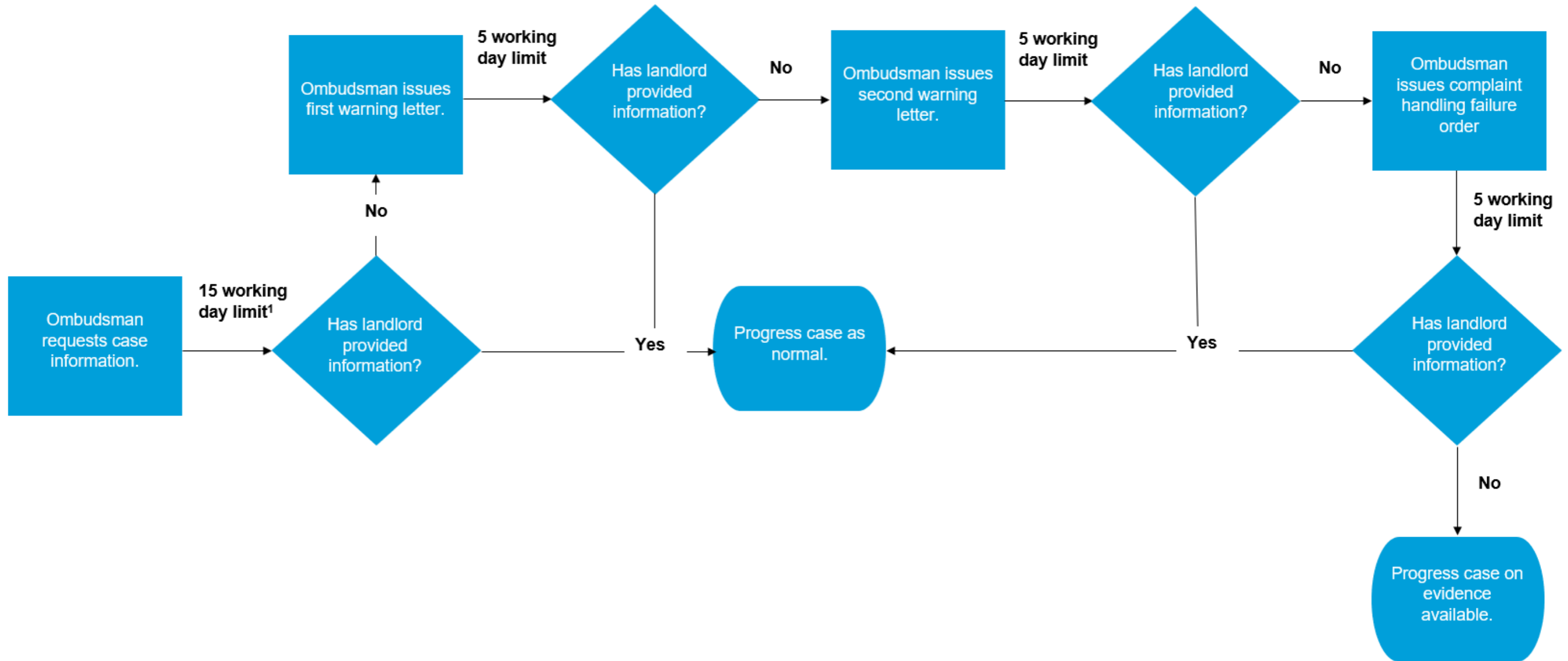
Each quarter the Ombudsman will publish the total number of CHFOs issued by type outside of the review period, the names of the landlords and whether the order was complied with or not. This will also be shared with the Regulator of Social Housing. The number of CHFOs issued against a landlord will form part of our annual individual landlord performance reports and will be available on our website.

From time to time the Ombudsman may publish a report detailing the specifics of a complaint handling failure case or group of cases to highlight the impact of the failure on the resolution of the dispute and delays and/or distress caused to residents and to encourage learning across the sector.

Type 1 Complaint Handling Failure Order Process Map

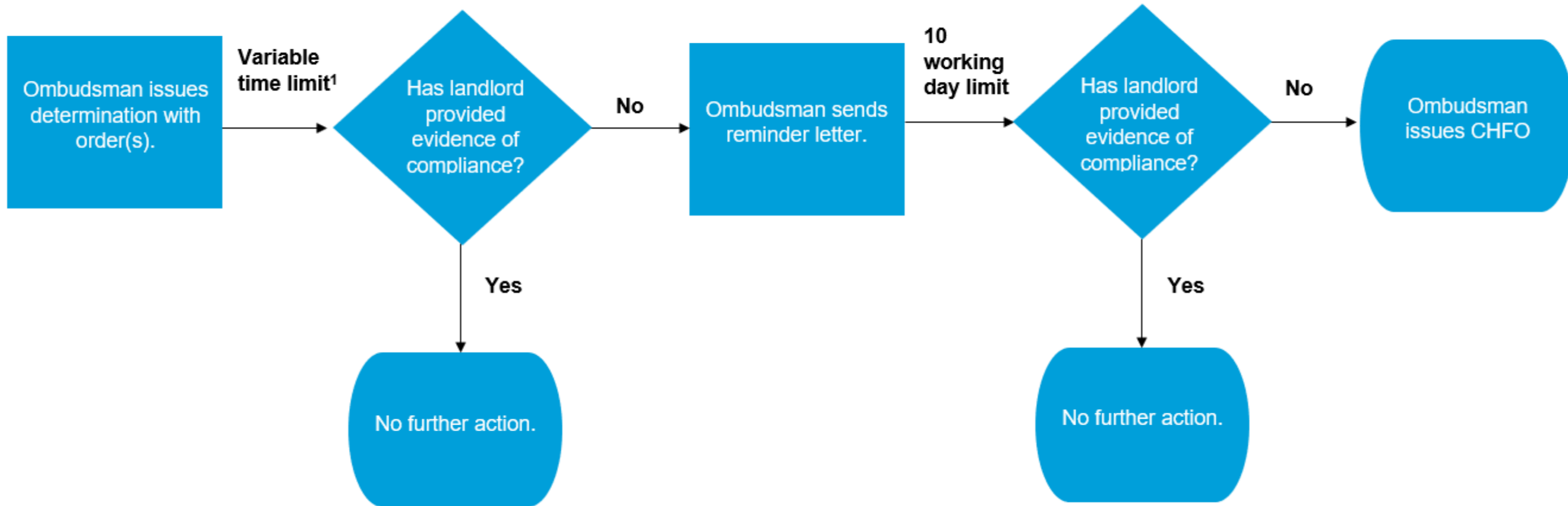


Type 2a Complaint Handling Failure Order Process Map



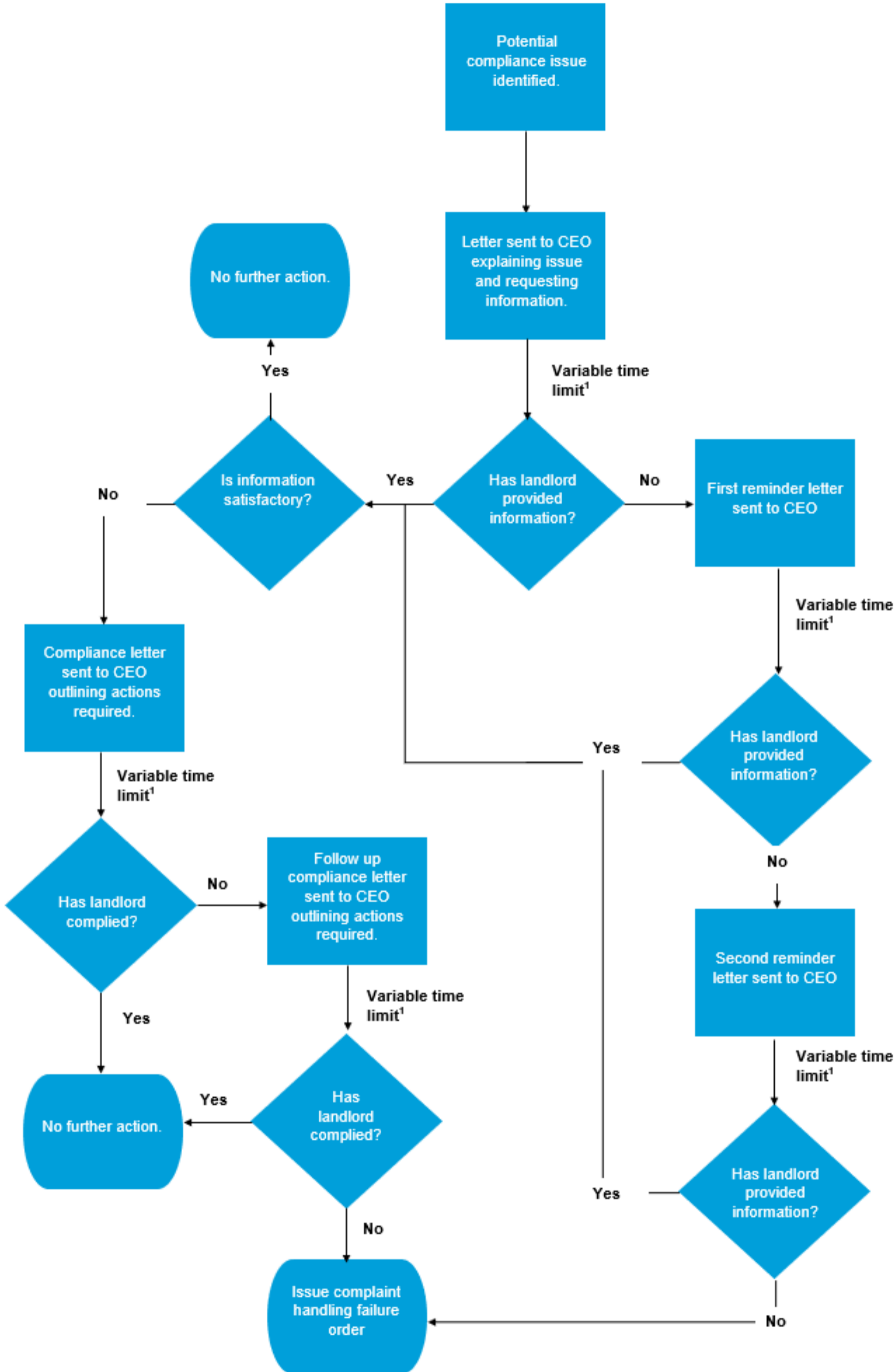
1 – By exception and with prior agreement, the 15 working day time limit for providing information can be extended.

Type 2b Complaint Handling Failure Order Process Map



1 – The time limits for compliance with orders following determinations is set by the adjudicator who made the determination and will vary case to case.

Type 3 Complaint Handling Failure Order – Process Map



1 – The time limit for compliance is set by the Systemic Adjudicator and will vary depending on the level of action required by the landlord to rectify the issue.
 2 – Some cases may warrant the issuing of a CHFO and initiating an investigation.