

Housing

Ombudsman Service

Guidance on Outcomes

Guidance on Outcomes

Contents

1. Introduction	1
2. Paragraph 52	2
3. Paragraph 53	4
4. Quick Reference Table	7

1. Introduction

This guidance explains the possible outcomes following the investigation of a complaint that is within the Ombudsman’s jurisdiction.

In the context of this guidance ‘investigation’ covers all the circumstances where the Ombudsman must reach a determination of a complaint i.e. the resolution of a complaint by way of our intervention at Triage and Mediation, or a formal investigation at Dispute Resolution.

Determinations are by way of the Ombudsman’s delegated authority. We are impartial; inquisitorial not adversarial, we do not seek to prove either the landlord or resident was right or wrong; there is no tick box or matrix to assist us in our decision making. Rather, we identify what was fair in all the circumstances based on the evidence. For further information on the decision-making process, see the **Investigation Guidance**.

We set out our findings at the end of our investigation, based upon the evidence referred to within the investigation. We consider whether the evidence has established that the landlord was responsible for any maladministration, whether it has taken sufficient action to put things right, and if not, the level of maladministration outstanding. Our findings must be proportionate to the level of service failure identified and established by the evidence.

It is important to note that each defined complaint must have its own determination. It therefore follows that in a case involving two (or more) defined complaints, there will be two (or more) different findings. Our options regarding outcomes of complaints are detailed in the Housing Ombudsman Scheme (the Scheme).

Para 36 of the Scheme states that the Ombudsman “...must determine whether a complaint comes within their jurisdiction under the terms of the Scheme”. For further information on the Ombudsman’s jurisdiction, see the **Jurisdiction Guidance**.

Complaints that are within the Ombudsman's jurisdiction may be determined by way of para 52 or 53 of the Scheme.

2. Paragraph 52

This is the paragraph under which we make findings of no maladministration or maladministration. It states that:

'When investigating, the Ombudsman is concerned to establish whether the member has been responsible for maladministration (which includes findings of service failure, maladministration and severe maladministration). This may include, but not exclusively, circumstances where the member:

- a. failed to comply with any relevant legal obligations;*
- b. failed to comply with any relevant codes of practice;*
- c. failed to apply its own policies and/or procedures;*
- d. delayed unreasonably in dealing with the matter;*
- e. behaved unfairly, unreasonably or incompetently; or*
- f. treated the complainant personally in a heavy-handed, unsympathetic or inappropriate manner'*

It is important to note that we have three findings of maladministration available; service failure, maladministration and severe maladministration. These are, in effect, differing levels of maladministration. The determination must be proportionate to the evidence of maladministration we identify.

No Maladministration

This finding should be made where the landlord has acted in accordance with its obligations, both contractual (lease or tenancy agreement) and relevant policies/procedures. The evidence may demonstrate that there was no failing by the landlord of any sort. If failings are identified, these would be very minor, causing no detriment to the resident as a result of the landlord's actions.

This finding should not be confused with findings under paras 55(b) and (c), where there were more than minor failings, but the landlord subsequently took appropriate action to remedy the complaint and put things right.

Service Failure

Service failure is the lowest level of maladministration and is reserved for minor failings where action is still needed to put things right. We will apply a finding of service failure where we identify a single or very limited number of minor failings in the landlord's service delivery which we determine have had a minimal detrimental impact on the resident.

A landlord's service delivery shall be taken to include provision of services in respect of the substantive issue of complaint, for example, the repairs service, and in respect of complaint handling. This will include consideration of any non-compliance with the Ombudsman's Complaint Handling Code.

A finding of service failure will consider whether there is evidence of failure or failings in the service provided and which the landlord either did not appropriately acknowledge and/or not fully put right. This can include instances where the landlord has made an offer of compensation, but our investigation finds that the offer does not quite reflect the detriment to the resident and/or is not quite proportionate to the failings identified by our investigation. Nor may the remedies reflect good practice in certain circumstances.

The margins of difference between the landlord's final position and the Ombudsman's position will be small. For example, this finding may be indicated by the award of a remedy which is at the very lowest end of the normal range.

'Minor failing/s' often (but not always) include:

- A single limited service failure
- Administrative errors with limited impact on the resident
- Minor delays to complaint handling.

Any finding of service failure must be approved by a Dispute Resolution Manager.

Maladministration

This finding should be made where there was a failure which has adversely affected the resident. The circumstances listed at para 52 (a) to (f) will help you consider whether a finding of maladministration is appropriate. The failure will often (but not always) include:

- The landlord not responding, or its response exacerbating the situation and further undermining the landlord/resident relationship.
- Several independent service failures.
- Service failures accumulating over a period of time.
- The landlord failing to provide a service, put things right, or learn from outcomes.
- The landlord failing to engage with the Ombudsman's investigation.
- The landlord failing to engage with the Ombudsman's Complaint Handling Failure Orders (CHFO), including the pre-CHFO stage and order itself.

There may be evidence that the landlord has:

- failed to acknowledge its failings and/or has made no attempt to put things right,
- acknowledged failings and/or made some attempt to put things right but failed to adequately address the detriment to the resident and/or the offer was not proportionate to the failings identified by our investigation,
- previously received a service failure or maladministration finding from the Ombudsman in relation to the same issues and has not demonstrated sufficient learning in the present case.

Severe Maladministration

This is reserved for the most serious failings. There must be evidence of a single significant failure in service or a series of significant failures in service which have had a seriously detrimental impact on the resident. Where multiple findings of maladministration have been found on separate points of complaint, the cumulative effect of this may result in an overall finding of severe maladministration to reflect the impact of the multiple complaints. For example, this might occur if there has been poor handling of substantive issues plus poor handling of the formal complaint.

What constitutes a 'seriously detrimental impact':

- Depends on the specific circumstances of the case.
- May be influenced by pre-existing vulnerabilities.
- May be influenced by the level of distress, disruption or inconvenience.
- May be indicated by the award of a remedy which is calculated above the normal range.

'Significant service failures' often (but not always) include:

- The failures listed under maladministration above.
- Disregard for the landlord's policies, legislation and/or good practice.
- The issue remained unresolved for an unreasonable and/or excessive period which was disproportionate to the complaint raised
- The landlord intentionally or negligently denying the resident's legal rights.
- Issue remains unresolved at point of investigation
- Substantial/arbitrary compensation payment made at a late stage in the process
- LL not clear on role/responsibility (e.g. managing agent or freeholder) or not taken action within its gift

A list of previous severe maladministration cases can be found on the **Quality Hoople page** and on the published cases on our website.

Any finding of severe maladministration must be approved by the Ombudsman and the determination must be sent to the Chief Executive or similar officer in the landlord. The Regulator of Social Housing will also be informed of the finding.

For further information on the Orders to make for any of these findings (including specific guidance for when a finding of severe maladministration is made), see the **Remedies Guidance**.

3. Paragraph 53

Para 53 of the Scheme provides that the Ombudsman "*may determine the investigation of a complaint immediately if satisfied that:*

- a. *The complaint is no longer within the Ombudsman's jurisdiction;*

- b. *The member has offered redress to the resident prior to investigation which, in the Ombudsman's opinion, resolves the complaint satisfactorily. This will result in a finding of 'reasonable redress'; or*
- c. *The member has made an offer of redress following the Ombudsman's intervention which, in the Ombudsman's opinion, resolves the complaint satisfactorily. This will result in a finding of 'resolved with intervention'."*

Para 53(a) - Outside Jurisdiction

This finding relates to jurisdictional issues which arise after the complaint has been duly made to the Ombudsman, as distinct from all other jurisdictional paragraphs of the Scheme which apply before the complaint is duly made.

Para 53(a) will generally apply where legal proceedings are commenced after the Ombudsman's duly made date. This should not be confused with para 42(f) of the Scheme which relates to legal proceedings which pre-date our duly made date. For further information on the Ombudsman's jurisdiction, see the **Jurisdiction Guidance**.

Para 53(b) – Reasonable Redress

This finding should be made where there is evidence of some level of maladministration but the landlord has identified and acknowledged this prior to the Ombudsman's formal investigation and has, on its own initiative, taken steps and/or made an offer of compensation, that puts things right. This is not to be confused with, or used instead of, no maladministration.

The following are some factors to take into account when considering if an offer is reasonable:

- Redress for any failings
- Restoring a resident's position
- An apology
- An explanation for what happened
- A mistake corrected
- Compensation at an appropriate level
- A change in the way a person or organisation behaves
- A promise that a person or organisation will/will not do something.

You should be able to apply the 'but for' test – The Ombudsman would have made a finding of some level of maladministration but for the steps taken by the landlord to put things right. However, there are circumstances where this finding would not be appropriate, including:

- the substantive issue remains outstanding – regardless of the level of redress offered or the extent of future actions agreed, the substantive issue must have been resolved before we can say that the landlord has adequately addressed the issue.

- where an offer of redress is awarded late in a protracted process – it is not in the spirit of our DRPs or the Complaint Handling Code for a landlord to make an (often substantial/disproportionate) offer of redress at the end of a long process with the effect that the Ombudsman will not consider the matter further.

This finding should not be confused with para 53(c), where the landlord did not adequately resolve the complaint on its own initiative, but with the Ombudsman's intervention.

Para 53(c) – Resolved with Intervention

This finding should be made where the parties have agreed to enter into mediation and, with the Ombudsman's intervention, reached an agreed outcome which resolves the complaint satisfactorily, by way of remedial action and/or compensation.

See above for possible redress by the landlord.

4. Quick Reference Table

NM	No Maladministration	LL	Landlord
SF	Service Failure	Recs	Recommendations
M	Maladministration	HOS	Housing Ombudsman Service
SM	Severe Maladministration	RSH	Regulator for Social Housing

Determination	The evidence demonstrates that...	Should not be used when...	Orders and Recommendations	Additional Comments
Para 52 No Maladministration	<p>The LL acted in accordance with its obligations, both contractual (lease or tenancy agreement) and relevant policies/procedures.</p> <p>There was no failing of any sort, <i>or</i></p> <p>Where there were failings, these were very minor, causing no detriment to the resident.</p>	<p>There were more than very minor failings by the LL but these were then remedied by the LL (paras 53(b) or (c)).</p> <p>There were more than very minor failings by the LL and further action is necessary to put things right for the resident (para 52, SF, M or SM).</p>	<p>No Orders can be made as no major errors to rectify.</p> <p>Recs can be made to improve the LL's service going forward and avoid similar complaints arising.</p>	<p>Consider managing resident expectations around LL obligations and the role of HOS.</p>
Para 52 Service Failure	<p>There was minor failure by the LL in the service it provided and it did not appropriately acknowledge these and/or fully put them right.</p> <p>The LL may have made an offer of action/compensation but it does not quite reflect the detriment to the resident and/or is not quite proportionate to the failings identified by our investigation.</p>	<p>No further action is required to put things right for the resident (para 52, NM).</p> <p>There was no attempt by the LL to acknowledge failings or put things right (para 52, M or SM).</p> <p>There is a moderate gap between what the LL offered to put things right and what we decide is necessary to put things right (para 52, M or SM).</p>	<p>Orders and Recs should be made.</p> <p>Compensation Orders (or increases in LL compensation awards) are likely to be at the lowest end of the lowest award banding.</p>	<p>Be clear that SF is still a level of maladministration, and explain why this level has been assessed as appropriate in the circumstances of the case.</p> <p>These findings must be approved by a Dispute Resolution Manager.</p>

<p>Para 52 Maladministration</p>	<p>There was a failure which adversely affected the resident.</p> <p>The LL has failed to acknowledge its failings and/or has made no attempt to put things right. <i>Or</i></p> <p>The LL has acknowledged failings and/or made some attempt to put things right but failed to address the detriment to the resident and/or the offer was not proportionate to the failings identified by our investigation.</p>	<p>The LL acknowledged failings and attempted to put things right and its offer was very close to that deemed appropriate by HOS (para 52, SF).</p> <p>There were serious failings by the LL which resulted in a seriously detrimental impact on the resident and significant/high-level action is needed to put things right (para 52, SM).</p>	<p>Orders and Recs should be made.</p>	<p>Consider explaining why this level of maladministration was assessed as appropriate, rather than SF or SM.</p>
<p>Para 52 Severe maladministration</p>	<p>There have been serious failings by the LL.</p> <p>There was a single significant failure in service or a series of significant failures which have had a seriously detrimental impact on the resident.</p> <p>The LL's response to the failures (if any) exacerbated the situation and further undermined the landlord/resident relationship.</p> <p>The LL repeatedly failed to provide the same service which had a seriously detrimental impact on the resident; demonstrating a failure to provide a service, put things right and learn from outcomes.</p>	<p>There was a failure or failings by the landlord which adversely affected the resident, but there is limited evidence of a seriously detrimental impact on the resident (para 52, M).</p> <p>The landlord's failings are not so serious as to warrant involvement at an Executive Level or by the RSH (para 52, M).</p>	<p>Orders and Recs should be made.</p> <p>Orders should reflect the seriousness of the finding.</p> <p>Compensation Orders (or increases in LL compensation awards) in or exceeding the highest remedies banding may indicate a finding of SM.</p> <p>For further information on the Orders to make when a finding of severe maladministration is made, see the Remedies Guidance.</p>	<p>These findings must be approved by the Ombudsman or the Director of Dispute Support and Resolution.</p> <p>The RSH may be informed of the finding if considered appropriate by the Ombudsman or Director.</p> <p>The determination letter and investigation report must be sent to the landlord's Chief Executive or similar senior officer.</p>

	The failures accumulated over a significant period of time (however this will not necessarily be the case as a single significant service failure may be sufficient).			
Para 53(b) Reasonable Redress	<p>There was some level of maladministration but the LL identified and acknowledged this prior to HOS' formal investigation, and on its own initiative. It has taken steps, and/or made an offer of compensation, that puts things right.</p> <p>The 'but for' test can be applied.</p>	<p>There was no failing of any sort, <i>or</i> Where there were failings, these were very minor, causing no detriment to the resident (para 52, NM).</p> <p>HOS intervention was required for the LL to acknowledge its failings and offer appropriate redress (para 53(c)).</p>	<p>No Orders can be made as no additional action is being ordered to put things right for the resident.</p> <p>Recs can be made and should be considered where the remedy offered by the LL has not yet been provided to the resident.</p> <p>It may be appropriate to state that the determination is made on the understanding that the remedy is re-offered to the resident.</p>	<p>Consider explaining that HOS would have found some level of maladministration but for the remedy offered by the LL.</p> <p>Recognise the impact of the failing on the resident but explain why the LL has done enough to remedy it.</p>
Para 53(c) Resolved with intervention	The parties have agreed to enter into mediation and, with the Ombudsman's intervention, reached an agreed outcome which resolves the complaint satisfactorily, by way of remedial action and/or compensation.	The LL had adequately identified and offered redress for its failings prior to HOS' intervention on its own initiative (para 53(b)).	<p>No Orders can be made as no additional action is being ordered to put things right for the resident.</p> <p>Recs should be made to confirm the actions agreed between the LL and resident.</p>	