

Guidance on Type 3 Complaint Handling Failure Orders

Contents

Summary	2
Introduction	3
Statutory powers	3
Compliance with the Code	3
Monitoring compliance with the Code	4
1. Type 3a Complaint Handling Failure Orders	5
2. Type 3b Complaint Handling Failure Orders	6
3. Reviews of Complaint Handling Failure Orders.....	7
4. Publication	7

Summary

1. The purpose of Type 3 complaint handling failure orders ('CHFOs') is to ensure that landlords comply with the statutory Complaint Handling Code ('the Code').
2. This guidance sets out when a Type 3 CHFO may be issued, what further action the Ombudsman could take should a landlord not comply with the order and how CHFOs will be reported, including publication. This guidance should be read in conjunction with the Code Compliance Framework.
3. A Type 3a CHFO may be issued where a landlord fails to provide their annual submissions form to demonstrate compliance in scrutiny and oversight of the complaints handling process. Landlords are required to provide their submissions within the following timescales:
 - a. Landlords with more than 1,000 homes are required to submit by 30 June each year.
 - b. Landlords with less than 1,000 homes are required to submit at the point they publish their Tenant Satisfaction Measures, or 12 weeks after their year-end, whichever is sooner.
4. A Type 3b CHFO may also be issued where the Ombudsman has found that there is non-compliance with the Complaint Handling Code. This includes failure to comply in policy, or failure to handle complaints in practice.
5. Landlords have the right to request a review of a CHFO. These will be considered in line with our Reviews policy.
6. The Ombudsman will publish details of all Type 3 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 of Social Housing.
7. The Ombudsman may publish Type 3 CHFOs on an individual basis as a special report. This will detail the issues identified, findings from the assessment, including engagement with the landlord and their residents (as appropriate) and the orders made due to non-compliance with the Code.

Introduction

Statutory powers

The Social Housing (Regulation) Act 2023 (the Act) empowered the Housing Ombudsman to issue a code of practice about the procedures members of the Scheme should have in place for considering complaints.

It also placed a duty on the Ombudsman to monitor compliance with a code of practice that it has issued.

The Ombudsman consulted on the Complaint Handling Code (the Code) and our intended approach to the duty to monitor in late 2023. The statutory Code will take effect from 1 April 2024 and our duty to monitor compliance will commence at the same time.

Paragraphs 9-12 of the Housing Ombudsman Scheme set out the membership obligations to which all landlords must adhere. Paragraph 9b specifies that landlords must establish and maintain a complaints procedure in accordance with the Code.

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.

Compliance with the Code

Where a landlord's policy does not comply with the Code, it must provide a detailed explanation for non-compliance in its self-assessment and the date by which it intends to comply.

Where there are exceptional circumstances which mean a landlord cannot meet specific requirements of Code, for example a small provider does not have a website, the Ombudsman will take a proportionate approach.

In these circumstances, landlords must undertake all reasonable endeavours to deliver the intentions of the Code in an alternative way, for example, if there is no website it should publish information in a public area so that it is easily accessible.

Where a landlord is unable to comply with the Code due to exceptional circumstances, such as a cyber incident, it must inform the Ombudsman of its reasons, provide information to residents who may be affected and publish this on their website. The landlord must provide all parties with a timescale for returning to compliance with the Code and the reasonableness of exemptions to the Code during this period may be assessed by the Ombudsman.

Monitoring compliance with the Code

We will use the duty to monitor compliance to further these aims by supporting better practice and providing opportunities for landlords to demonstrate complaint handling improvements.

The Code Compliance Framework ('the framework') sets out how we will assess whether a landlord has effectively scrutinised itself, whether its complaints policy complies with the Code, and whether it complies with the Code in practice.

The framework also sets how we will engage with landlords should they be identified as non-compliant with the Code to resolve the issues presented. It also explains the learning support we will offer and the powers the Ombudsman may use should landlords fail to act in response to our engagement on compliance with the Code.

This document should be read in conjunction with other publications including the Code, the Scheme, associated guidance documents and the systemic framework.

1. Type 3a Complaint Handling Failure Orders

Submissions

Landlords that fail to provide their submission form by the relevant date may be issued with a Type 3a CHFO setting a timescale for compliance. The order will be monitored and tracked to ensure completion.

Landlords are responsible for ensuring that their membership obligations are met. This includes providing their submissions within the relevant timescales. To support landlords to submit within the relevant timescale, we will:

- publish the dates for submission on our website;
- issue reminders and updates via our newsletters, or social media content;
- maintain a record of year-end dates for landlords with less than 1,000 homes;
- use annual letters, such as fee notifications, to notify landlords of the dates.

There may be instances where landlords are asked to review their self-assessment against the Code. This may be through orders related to individual investigations by the Ombudsman, or through a duty to monitor assessment.

In any review request, a reasonable timescale will be set, allowing time for governing body oversight. Once the review has been completed, landlords are required to re-submit their updated form to the Ombudsman.

If the form is not re-submitted within this timescale, we may issue a Type 3a CHFO setting a timescale for compliance. If there is non-compliance with the order, we may consider if a referral to the governing body or the Regulator of Social Housing is required.

Evidence provision

When conducting assessments in policy and practice, we may require information from the landlord to determine if the landlord's approach is fair and reasonable, we will make contact and request a response within 15 working days.

If this information is not submitted within the timescale, we may issue a Type 3a CHFO. The CHFO will give landlords a further 5 working days to provide the information requested as an order. If there is non-compliance with the order, we may consider if a referral to the governing body or the Regulator of Social Housing is required.

2. Type 3b Complaint Handling Failure Orders

Assessments

Where any non-compliance with the Code is identified, we may ask for further information; landlords will be required to provide this within 15 working days.

If no further information is required, we will notify the landlord of our findings and set out action(s) required by the landlord to return to compliance. We will ask that this is completed, with evidence provided to the Ombudsman, within a reasonable timescale.

If the landlord fails to meet these timescales, we may issue a Type 3b CHFO. If there is non-compliance with the Order, we may consider if a referral to the governing body or the Regulator of Social Housing is required.

Visits

Where significant concerns remain unrectified, we may visit the landlord to understand what is happening in practice and give the landlord an opportunity to set out the reasons for its performance in more detail.

We will provide the landlord with reasonable notice before arranging a visit. We will set out the reason(s) for the visit, and explain the planned activities. Landlords are expected to provide reasonable help to the Ombudsman in line with paragraph 12 of the Scheme.

If a landlord fails to engage with the Ombudsman when arranging or facilitating a visit, we may issue a Type 3b CHFO. If there is non-compliance with the Order, we may consider if a referral to the governing body or the Regulator of Social Housing is required.

If we find that there is non-compliance in practice following a landlord visit, we may issue a type 3b CHFO setting out what is required to put this right and request that this is completed within a reasonable timescale. If there is non-compliance with the Order, we may consider if a referral to the governing body or the Regulator of Social Housing is required.

3. Reviews of Complaint Handling Failure Orders

Landlords may request a review of a CHFO if:

- there are new facts or evidence that have a bearing on the determination; or
- the landlord challenges the facts and/or evidence on which the Ombudsman relied.

A review request must be submitted within three weeks of receipt of the CHFO and state the basis for review. Any relevant new facts or evidence should be provided as part of the request.

The Ombudsman will reject a review request if it is out of time, or we consider that the grounds for review are not met.

Further information is available in our Reviews Policy.

4. Publication

Each quarter the Ombudsman will publish the total number of CHFOs issued by type, 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. This includes Type 3b CHFOs.

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.

The Ombudsman may publish a report detailing the specifics of a CHFO 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.

Where we publish an individual CHFO, we will give landlords the opportunity to share a learning statement prior to publication. Any publication will also make clear if we have made a referral to their governing body or the Regulator of Social Housing.