

# Remedies Guidance

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## 1. Overview

When investigating complaints, we carry out a fair and impartial assessment which seeks to resolve the dispute that has been brought to us. As part of the investigation, we will provide fair and proportionate remedies which are appropriate to the circumstances of the individual case, where some level of maladministration has been identified (either service failure, maladministration and severe maladministration). Our remedies are never intended to be punitive and should not be viewed as a punishment for landlord failings.

Our staff exercise their discretion when considering what the most appropriate remedies in a case should be, giving careful consideration to the individual circumstances of that particular case. This guidance cannot cover every individual scenario or circumstance that we will consider. No two cases the Ombudsman investigates are the same, and so the remedies we set out will be different in every case.

This guidance is intended to supplement the **Remedies Policy** and is for use by Housing Ombudsman Service staff, our member landlords, residents and their representatives. This guidance should be read alongside our **Investigations Guidance**, **Outcomes Guidance** and **Insurance Guidance** and the **Public Sector Ombudsmen Principles for Remedy**.

The aims of this guidance are to:

- provide guidance, in line with the Remedies Policy, to be used by Housing Ombudsman Service staff when deciding on appropriate remedies for individual cases which have been investigated by this Service
- ensure that a consistent approach to remedies is taken across the Housing Ombudsman Service, whilst ensuring that officers consider what remedies are appropriate for each case based on their own merits and individual circumstances
- provide information to landlords and residents on the Housing Ombudsman Service's approach to remedies

This guidance is for remedies in cases where the Ombudsman has investigated a complaint and issued a formal determination, which sets out our findings and decision. However, it may also be of use where the parties in a dispute are seeking to resolve a dispute between themselves, without the Ombudsman's intervention.

## 2. Remedies and the Ombudsman's Dispute Resolution Principles (DRPs)

The DRPs were developed from the Ombudsman's experience of resolving disputes, for use by everyone involved in the complaints process. Our approach to providing remedies to cases following investigation is framed by these three principles, as follows:

**Be fair – seeking fair outcomes.** We will treat each case individually and ensure the remedy is fair when considering the specific circumstances of the case by:

- providing a remedy which is appropriate and proportionate to the severity of the maladministration
- taking into account the impact of the action or behaviour of the resident, as well as the landlord

**Put things right.** A remedy must set out the measure(s) that will correct the maladministration. The Ombudsman will consider a range of measures to put things right for the resident.

**Learn from outcomes.** Where possible we add value by looking beyond the circumstances of the individual complaint and considering whether anything can be improved in terms of process and systems.

## 3. What is a remedy?

A remedy is the means by which the Ombudsman ensures that matters are put right after we have investigated a case. We use two types of remedies – orders and recommendations.

### Orders

Orders are made where the investigation has resulted in a finding of some level of maladministration. In these cases, we make orders which set out the remedies that the Ombudsman considers to be appropriate in the circumstances. Our orders clearly specify the actions expected from the parties. Orders can also look beyond the individual resident's circumstances and consider whether anything can be improved in a landlord's wider policies, processes and practices in order to avoid further complaints about the matter investigated.

Whenever it is possible to do so, we will set out orders using the SMART framework:

- Specific** Clear, unambiguous and target a specific area for improvement or correction
- Measurable** Clear parameters in order to know if the action was achieved
- Achievable** Realistic in the circumstances of the case
- Relevant** Consistent with the findings and outcomes of the investigation
- Time-bound** Deadlines and timeframes which specify when the result(s) can be achieved.

Presenting our orders in this way ensures that both parties in a dispute clearly understand what the Ombudsman has said should happen to remedy a complaint and the timeframe in which this should happen.

### Recommendations

Recommendations can be made for any case that has been investigated and determined by the Ombudsman including wider systemic investigations. This means that there are some cases where we may make an overall finding of no maladministration, reasonable redress or resolved with our intervention, but we still consider that there are actions a landlord could take to improve its service and learn from the outcomes of the complaint we have investigated. We will set out our recommendations in such cases as a way of helping the landlord to improve its service to all residents.

Recommendations can also be used where some level of maladministration has been identified and we have made orders, but the investigation has also highlighted further opportunities for service improvement.

Where appropriate we may use the SMART framework when making recommendations.

While orders are enforceable by the Ombudsman and we will ensure that landlords implement the orders we make, recommendations are not enforceable, whether or not there have been any findings of maladministration.

In cases of maladministration the focus of our remedies should primarily be on making orders to put things right and improve future service delivery. If making a recommendation, we need to assess its relevance and decide whether an appropriate order would be more suitable.

There may be cases where the Ombudsman has a particular interest in the impact of, or the landlord's response to, a recommendation that is made. In these cases, we can exercise our discretion to request that the landlord provides information about any action it has taken in response to the recommendation, but we must be clear on our reasons for this.

#### **4. Landlord's approach to remedies**

The Ombudsman encourages landlords to have their own remedies policy or guidance, as this provides a framework for staff to refer to when considering individual cases. Whilst a landlord may have guidance in place, its staff should nevertheless decide each case on its own merits and consider the use of discretion as appropriate.

When the Ombudsman investigates a case, we may refer to a landlord's own remedies policy and any other relevant guidance when considering whether the steps a landlord took to resolve the complaint were reasonable. However, this Service is not bound by a landlord's own policy when we make orders for remedies – we use our discretion and this guidance to decide what the most appropriate remedy is.

Equally, whilst we have regard to the resident's desired means of resolving their complaint, the final decision as to what remedy is appropriate for a particular case is made by the Ombudsman, rather than the resident or the landlord.

#### **5. Key Considerations for Remedies**

Each case needs to be considered on its own merits and all the circumstances, and our caseworkers use their discretion to decide what the most appropriate remedy is in each individual case. Questions that may help us to decide what is an appropriate remedy to a complaint include (but are not limited to) the following:

- has the resident been adversely affected by the landlord's actions or omissions? If so, how and over what period of time?
- what other impact has there been on the resident, e.g. distress or inconvenience, time and trouble?
- does the resident or their family have any disabilities or vulnerabilities which meant that they were more adversely affected by the landlord's failings?
- were there any other circumstances which meant that the circumstances of the complaint were more detrimental to this particular resident?
- is it possible to restore the resident to the position they would have been in but for the landlord's failure? If not, what remedies are needed to put matters right for the resident?
- can we draw a clear link between the maladministration we have found and the remedy we have identified?
- are there any wider outcomes to the complaint? What could the landlord do to reduce the likelihood of a similar situation arising in the future for other residents?

- what does the resident want the landlord to do to resolve their complaint?
- what remedies, if any, has the landlord offered in its own investigation of the complaint? Did these resolve the complaint satisfactorily?
- what does the landlord's remedies policy say and is it reasonable?
- is there an actual quantifiable financial loss – for example, has the resident incurred costs as a result of what happened, or not received payments that they should have?
- did the resident's actions or inactions, or those of a third party (for example a resident's advocate), contribute to what happened in the case?
- what remedy would be proportionate, appropriate and reasonable in the circumstances of the case?

## 6. Insight hub

When deciding on the appropriate remedy for a case, it is important to be consistent with what has been ordered or recommended previously, both on the type of complaint and for that particular landlord. The Insight Hub (Hoogle > QED > Insight Hub) contains information about orders and recommendations made by complaint type, as well as details of what we have said in previous insight reports and spotlight reports about the subject. It also contains information about individual landlords, including what we have recommended in any special report and what previous engagement we have had with them about Code compliance, as well as the orders and recommendations recently made for that particular landlord. It is important that you review these to ensure that your remedy is consistent, but also to inform whether or not a wider order might be appropriate.

## 7. Remedies we will not make

Whilst we have a wide range of discretion to suggest remedies, there are some remedies that we would not provide:

- **Disciplinary action against staff** - We would never tell a landlord that it should take disciplinary action against a member of staff or terminate their employment. Terms and conditions of employment will be set out in a contractual agreement between a landlord and its staff, and it is for a landlord to decide if a matter we have investigated warrants such action, not the Ombudsman.
- **Adverse affect caused to other individual** - We would not propose a remedy that would put matters right for the resident but would adversely affect other individuals or mean that the resident had received preferential treatment compared to others in the same situation. For example, we would not say that a landlord should offer a resident a particular property, where there are other applicants who have a higher priority for that property, as that would be unfair to the other applicants.
- **Loss of wages, annual leave, etc** - In general, we would not propose a remedy of compensation to reimburse a resident for their time off work, loss of

wages or loss of employment whilst repairs are carried out. Whilst such works will inevitably cause some inconvenience to residents, their occupancy agreement will require them to give access for repairs to be carried out as needed, and it would not be fair or reasonable for the Ombudsman to order a landlord to pay a resident reimbursement for loss of earnings for routine appointments. However, there may be circumstances when the Ombudsman decides that it is appropriate to make an order that a landlord pays compensation in recognition of the inconvenience caused, for example where repairs appointments are repeatedly missed or fail to resolve the repair issue.

- **Damages and insurance claims** - We cannot make the same findings that a court would, and we do not operate in the same way a court does. We do not make binding decisions on matters such as negligence, liability or discrimination and we do not make orders of compensation in the way that a court may order a payment of damages. Equally, we do not look at claims the way an insurance provider would, or award financial redress for damage to items which should be covered by insurance.

## 8. Remedies we can make

The remedies that we set out for a case should, as far as possible, put a resident back in the position they would have been in had the maladministration we have identified not occurred. Where this is not possible we will consider whether another remedy, such as financial redress, is appropriate. This section sets out the types of remedies we can make.

### Apology

In some circumstances an apology is all that is required. An apology can be made in writing or in person to the resident and the Ombudsman may specify which is most appropriate. The apology should come from an individual, on behalf of the landlord as a body. The most appropriate form and method of communicating an apology will depend on the circumstances of the case, and this could include verbally or in person. The Ombudsman may order that the apology is given by a senior member of staff on behalf of the landlord, including the chief executive or a director. An apology should:

- be personal and written specifically for the resident, addressing them directly
- should avoid using standard words or phrases that can appear impersonal and lack empathy
- should not give the impression that the apology is being made because the landlord has been told to apologise such as “the Ombudsman told us to apologise”
- acknowledge the maladministration or service failure
- accept responsibility for it
- explain clearly why it happened acknowledging the impact on the resident
- express sincere regret
- explain what is being done to put things right and the appropriate remedy
- use meaningful and active language avoiding words such as ‘if’, ‘but’, ‘however’, and ‘any’ wherever possible as this can shift blame such as “we are sorry for any

faults that you feel may have happened, *but* we were waiting for a response from our contractors”

- include what the organisation has learned from the complaint
- where appropriate, include assurances that the same maladministration should not occur again and set out what steps have been taken to ensure this

### Specific action

We always consider whether there is some practical action which would provide all or part of a suitable remedy. The action identified may require that the landlord:

- performs/does not perform any contractual or other obligations existing between itself and the resident
- exercises/does not exercise any rights existing between itself and the resident
- undertakes/refrains from undertaking works, for example to repair a property
- takes such other reasonable steps to put things right as are within its legal powers, for example, reviews or changes a decision on the service given to an individual or does something else to make things better for the resident in order to recognise the impact of the maladministration

In some cases, we cannot specify exactly what actions should happen and give specific timescales for these, as these actions will depend on further investigation by a landlord or another party. For example, there may have been a dispute about the causes of long-term damp to a property, but the Ombudsman concludes that we cannot definitively say what the cause of that damp is. In such circumstances we would set out a remedy that the landlord should arrange for a further inspection or seek specialist advice within a specified timeframe and then set out a schedule of works needed once it has this second opinion or expert advice.

### Landlord's policies, procedures and practices

Our investigation could find that a landlord's policy or procedure does not provide adequate guidance for its staff in a particular area, or that it is ambiguous or provides conflicting or out of date advice. Our investigation may also establish the absence of a policy in relation to the matter raised or finds that the landlord relied on a policy that does not appear to be relevant to the matter raised. Our investigation(s) may also identify that a landlord's policy, procedure or practice may give rise to further complaints about the matter raised. We may set out remedies that require the landlord to make improvements or to undertake a review of its policies, procedures and practices.

Issues to be considered:

#### *What is a policy*

A policy refers to the landlord's policy in place at the time of the complaint in respect of the substantive issue(s) as well as the policies in place for complaint handling. A policy includes any interim or temporary policy in place.

When considering a review of a policy we must also consider where there is no policy in relation to the matter raised or where the landlord is relying on a policy that does not appear to be relevant to the matter.

#### *What is a practice*

A landlord's practice must be linked to the substantive issue of complaint or its complaint handling. A practice could include formal or informal procedures, guiding principles, internal instructions & forms, guidance notes, best practice notes or accepted ways of working which have been identified in the investigation. A practice will also include how a landlord records and uses knowledge and information.



### *How might a policy or practice give rise to further complaints about the matter*

A policy or practice may give rise to further complaints about a matter where our investigation establishes that more than one resident is affected by the matter and/or the matter may affect other properties – e.g. a block or estate or other properties owned or managed by the landlord.

In order to establish whether a policy or practice may give rise to further complaints we may need to seek additional evidence from the landlord to establish whether the maladministration identified is indicative of a recurring issue.

We will use existing knowledge and information about the landlord and/or subject matter from our casework (including systemic and CHFO investigations) together with the knowledge and data we gather from the landlord in order to decide whether there may be further complaints about the matter.

The lack of a policy or practice in relation to the matter raised or where the landlord is relying on a policy or practice that does not appear relevant to the matter may also be an indicator of future service failure and therefore complaints.

### *What is a review?*

An order to conduct a review should be as prescriptive as possible and should clearly set out what adequate evidence of compliance looks like in the circumstances. The review order should be SMART.

An order to review a policy or practice should:

- identify specifically the policy or practice to be reviewed or highlight areas where a policy or practice is absent. Identify when the policy was last reviewed
- be clear on identifying where a policy or practice was used that does not seem relevant or appropriate given the circumstances of the complaint.
- identify the specific areas for improvement or correction in line with the findings and outcomes of the investigation
- identify areas where training/increased knowledge & awareness should be considered as part of the review
- inform the landlord of any best practice guidance it should take into consideration in carrying out the review. E.g. Ombudsman spotlight and best practice reports, the Complaint Handling Code
- consider how we can extend fairness to other residents who may have experienced the same maladministration. Set out what action the landlord can take now to address these potential wider failings
- set out the Ombudsman's expectations around who should carry out the review. Assess whether it should be independent of the service area or landlord
- decide what level of management should conduct and have oversight of the review. E.g. Board/CEO/director/senior manager
- identify what areas of service delivery should be involved in the review, e.g. the repairs team and customer service team

- clearly set out timescales for compliance and relevant associated milestones taking into account any third parties that may be involved
- consider timescales and key milestones where a significant review is being proposed – e.g we may need to set a timescale on agreeing the terms of reference for the proposed review with the landlord
- be clear on what adequate evidence of compliance should look like and what documentation the Ombudsman expects to receive in order to confirm adequate compliance
- consider whether the outcome of the review should to be reported to the landlord’s governing body

### *Similar review orders identified*

We may identify multiple investigations where a similar review order has been identified as one of the appropriate remedies following the investigation.

Where we have already issued a similar review order to the landlord we do not repeat the order. Our assessment and findings should reflect the fact that a similar order has been made in a previous case and that compliance with that order will be monitored via the original order and case. We will set out the details of any wider review order previously made so that the landlord and the resident are clear on what has been ordered to put matters right.

### Landlord training

Our investigation could find that the landlord has appropriate policies and procedures in place, but its staff are not familiar with them or are not applying them correctly. In this case, we may decide that a suitable remedy would be for the landlord to provide additional training for its staff in an identified area.

### Financial compensation

Broadly this falls into two categories: actual quantifiable financial loss and other financial redress. Factors we may take into account when deciding the overall amount include:

- the duration of any avoidable distress or inconvenience
- the seriousness of any other unfair impact
- actions by the resident or the landlord which either mitigated or contributed to actual financial loss, distress, inconvenience or unfair impact
- our guidance on financial redress at the end of this document
- the impact on the resident’s living arrangements, e.g. where the loss of a bedroom leads to overcrowding in the property
- the level of rent or service charges
- the landlord’s own compensation policies
- the levels of compensation for similar cases paid by other UK Ombudsman schemes

Our compensation calculations are always based on what we consider to be fair in the particular circumstances of the case. We do not limit our discretion by setting limits on the amount of awards that can be made – in other words we do not set minimum and maximum amounts.

In some cases, it is relatively straight-forward to quantify the amount of compensation that would be fair in the circumstances. But many of the cases we deal with are more complex and compensation cannot be easily quantified in this way. We may therefore consider setting out a remedy that involves compensation under a series of different elements, using our discretion to decide how these are set out.

As a starting point, it may be helpful to consider the amount of rent paid by the resident over the course of the period covered by the complaint. Depending on the presenting level of service failure and the impact of the complaint on the resident's use and enjoyment of their property, you may want to consider awarding an amount of compensation equivalent to a full or partial rent refund for the period in question.

We will provide a summary of how we have decided the compensation figure, so that the parties in dispute are clear about the basis on which we have proposed the remedy for that case. See below for further information on financial remedies.

### Other Remedies

Not all the remedies that the Ombudsman can propose fall neatly within one of the categories listed above. Our staff use their discretion to decide on the best remedy for a case and may therefore set out a remedy that does not fall into one of the categories above but is tailored to the individual circumstances of that particular case.

## **9. Financial Remedies**

### Quantifiable financial loss

We consider if there has been an actual, evidenced financial loss incurred as a direct result of the maladministration that the Ombudsman has identified in an investigation. We then consider if the landlord should compensate the resident for all or part of this loss, taking into consideration the specific circumstances of that case.

Circumstances in which we may decide that a landlord should compensate a resident for a quantifiable financial loss could include (but are not limited to):

- where money is due to a resident but has not been paid – for example, rent overpayments or works which a landlord had previously agreed it would pay for
- costs which have been reasonably incurred by a resident, which would not have been necessary if the maladministration the Ombudsman found had not occurred – for example, payments for additional heating when the landlord

has failed to repair this or provide any alternative means of heat; or decorating costs after repairs where 'make good' works have not been adequately complete

**No prior notice to landlord** - Each case is considered on its own merits and the Ombudsman would not order a landlord to pay out of pocket costs incurred by a resident where that landlord has not been given the opportunity to rectify matters first. For example, if a resident decided that a repair was needed, but chose to arrange and pay for their own contractor to do the work rather than reporting it to the landlord first, we would not generally expect a landlord to reimburse the resident. This is because the landlord would not have had an opportunity to inspect the issue and assess for itself if the repairs are needed first.

**Interest on financial losses** - Where a landlord has not paid money due to a resident as a result of an actual financial loss, we may include an interest calculation. However, our staff use their discretion in this area, including taking into consideration the overall package of remedies that we are proposing.

We will not usually consider including interest in the calculation for the remedy unless the period of delay by the landlord was more than six months and the payment itself is more than £1,000. If we do include an amount for interest, we should make this clear within the investigation report and the order. We would generally base the interest calculation on the average retail price index for the period in question, which can be found here: [Inflation and price indices - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/inflation-and-price-indices).

**Additional unforeseen costs** - Residents may incur other costs which we do not include in the remedy, for example where they have chosen to use a solicitor or other professional to help them to pursue their complaint with the landlord. The Ombudsman expects landlords to have a complaints process that is fair and accessible to all, and residents should not need to seek such advice in order to make or progress a complaint. We are therefore unlikely to say that a landlord should reimburse a resident for such fees, unless we consider that there are exceptional circumstances.

**Losses for personal belongings** - Residents often tell us that they are seeking reimbursement for loss or damage to personal belongings. For example, a resident may state that their clothing and furniture has been damaged as a result of a landlord's failure to address a long-term damp problem in their home. In some cases, such a claim may have already been considered by a landlord's insurers, and that may mean that the Ombudsman would not consider the claim for financial reimbursement again. That is because we do not have jurisdiction over a landlord's insurers.

We may however take into consideration any evidence that was not available to or considered by the landlord's insurers at the time that the claim was considered when setting out our remedy to a complaint. In such cases, if we have found some level of maladministration, we may order a landlord to pay compensation as reimbursement of actual costs or in recognition of the resulting distress and inconvenience caused to the resident, depending on the circumstances of that particular case.

**Insurance claims** - An insurer determining an insurance claim has a narrower focus than a landlord's complaint investigation and is concerned solely with negligence and liability. In some cases, it will be appropriate for a landlord to direct a resident to make an insurance claim rather than pursue all or part of their concerns as a formal complaint. For further information on the circumstances where this might be appropriate, see our **Guidance on Complaints Involving Insurance Issues**.

Whilst we do not have jurisdiction over a landlord's insurers, we can comment on the way a landlord has communicated with the resident around the matter of an insurance claim, or managed the progress of that claim. We can, therefore, order a landlord to help a resident make an insurance claim or provide further information in that regard.

#### Unquantifiable financial loss

Sometimes it is apparent that there has been a significant financial loss to the resident as a result of the landlord's maladministration, but it is not always possible to quantify this. Whilst it is generally reasonable to ask a resident to provide evidence of the costs they have incurred, there may be occasions where no such evidence is available.

Where we are satisfied that, on the balance of probabilities, a resident has incurred costs but has not been able to evidence this and it is not possible to provide a reasonable estimate, we may say that a landlord should pay an amount in recognition of the fact that the resident has incurred costs that would not have arisen had the maladministration not occurred.

#### Other financial redress

We may order a landlord to pay compensation in cases where there has been avoidable inconvenience, distress, detriment, or other unfair impact of the maladministration that we have found. We recognise that the impact of a landlord's actions or inactions cannot simply be remedied by a financial payment, but we may order a landlord to make a payment in recognition of that impact and to acknowledge how the resident has been affected.

This is a relevant consideration when we find a resident has experienced an emotional impact as a result of a landlord's mishandling. Consideration is appropriate even if a resident has been compensated for actual, quantifiable financial loss, and the landlord has taken action to return the resident to the position in which they would have been had it not been for the service failure. We will take into consideration what the resident has told us about how they felt as a result of the situation that led to their complaint and, depending on the nature of the case, this could involve frustration, annoyance, embarrassment, worry, loss of confidence, disappointment, anger, shock and upset.

Our remedies in such cases may fall under the following headings. Whilst we do not consider whether a resident should be compensated against each and every

heading, we decide the most appropriate way to recognise the adverse affect on the resident and we then set out our reasons for this.

### *Distress and inconvenience*

Residents will often describe how they have been affected by the situation that has led to their complaint, for example in terms of the impact on their family life, use of their home, impact on their employment, or on their health and emotional wellbeing. Some residents will set this within the context of their mental and/or physical health and explain how a landlord's actions or inactions have affected them or exacerbated existing health conditions.

The Ombudsman may set out a remedy that recognises the overall distress and inconvenience caused to a complaint by a particular service failure by a landlord. Distress can include:

- stress, anxiety, worry, frustration, and uncertainty
- raised expectations – where a landlord's actions or inactions resulted in a resident reasonably believing that something would, or would not, happen
- inconvenience
- a strong sense of having been treated differently to others for no apparent reason
- problems caused by delays in a landlord resolving matters or poor complaint handling

When assessing the impact of the distress we take into account:

- the severity of the situation
- the length of time involved
- any disabilities or particular vulnerabilities of the resident
- any other relevant factors

The amount of compensation we decide upon does not reflect a definitive loss, as we are not able to quantify this, but it is a recognition of the overall distress and inconvenience caused to the resident by the particular circumstances of the complaint.

### *Time and trouble*

The Ombudsman recognises that any resident pursuing a complaint with their landlord will incur a certain amount of time, trouble and minor costs (such as phone calls). We would not usually order a landlord to compensate residents for their time and trouble in making a complaint in these circumstances.

However, a remedy of financial compensation may be appropriate if the Ombudsman finds that the time and trouble incurred by the resident in seeking to resolve their complaint was significantly more than would be reasonably expected due to a landlord's poor complaint handling. For example, we may find that a landlord had unreasonably failed to progress or escalate a complaint on repeated occasions, failed to respond to reasonable contacts from the resident or demonstrated overall

poor complaint handling. We consider the overall and cumulative adverse affect on the resident, and we may make a remedy that recognises the impact on the resident of the time and trouble they have incurred in pursuing their complaint.

## 10. Guidance on Calculating Financial Redress

The Remedies Policy does not set out minimum or maximum compensation levels for cases and, as this guidance sets out, caseworkers are expected to use a high level of discretion when considering individual cases to decide what is fair in all the circumstances of that particular situation. Similarly, the policy does not provide suggested bands or ranges of compensation depending on the severity of the complaint.

Annex A provides guidance on the suggested ranges of compensation levels that caseworkers may take into consideration when deciding whether an order of compensation should be made to recognise a particular adverse affect and impact on a resident. This is not a prescriptive list and should never be treated as such – in particular it is important that our staff consider the cumulative impact of a landlord's failures in a case.

### **Resident's actions and circumstances - mitigating/aggravating factors**

#### Mitigating factors

We also consider any extent to which the resident's actions might have contributed to the situation in which they found themselves, in other words whether they exacerbated or failed to minimise the impact. Equally, the resident may have been proactive in seeking to minimise the impact of the situation on them. All these factors may mitigate or minimise the level of award ('mitigating factors').

Examples of when the resident's own actions mitigate the extent of the compensation being considered might include:

- failure to communicate clearly with landlord
- failure to bring individual matters to landlord's attention within reasonable timeframe
- refusing help to make coherent complaint
- failing to respond to contact from landlord
- repeatedly refusing to allow landlord access to inspect the property and assess the extent of works needed (where relevant)
- pursuing a complaint in an unreasonable or excessive way

#### Aggravating factors

Our awards should also recognise the fact that the emotional impact experienced by an individual resident is unique to them. Not all residents will experience the same emotional impact in response to the same instance of maladministration. This might be due to their particular circumstances, or as a result of a vulnerability ('aggravating

factors'). Consideration of any aggravating factors could justify an increased award to reflect the specific impact on the resident.

The Ombudsman recognises that some of our residents' circumstances mean that they are more affected by landlords' actions or inactions than others. As set out earlier, we cannot assess the extent to which a landlord's maladministration has contributed to or exacerbated a resident's physical and/or mental health, and we therefore cannot directly quantify this. However, wherever appropriate, we will seek to recognise these circumstances in the remedies we set out.

Examples of aggravating factors might include:

- resident's mental health condition (for example mishandling of ASB aggravates existing condition)
- resident with young children (for example an extended period in temporary accommodation as a result of repair delays causes significant inconvenience and upset)
- resident's disability (for example the daily impact of emergency decant as result of failure to comply with repairing obligations)
- resident with responsibility for dependent with disability (for example delayed repair response could have disproportionate impact)
- any previous history of mishandling by the landlord of the resident's tenancy

The above lists are not exhaustive, and complaints may include elements from more than one category.

There may be occasions where the nature of the failures places the complaint within one range, but the number and duration of the failures cause an impact which justifies a higher amount of compensation. In summary, deciding the compensation that should be paid in an individual case will be a judgement based on the individual elements of maladministration, the number of failings, and any aggravating/mitigating factors.

### **Explaining our compensation calculations**

As set out above, our calculation of compensation amounts can take into account many different factors and considerations, as well as the cumulative impact of a landlord's failures in a case. We will set out in our decisions what aspects of a complaint we have ordered compensation for, and our determination will clearly set out how we have reached a decision on a case. However, we would not usually break our overall awards of compensation down to expressly state the mitigating and aggravating factors that we have taken into account.

### **Group Complaints**

The Scheme sets out that the Ombudsman considers complaints from individuals and does not deal with collective or group representations. However, para 26 of the Scheme sets out that the Ombudsman can accept an individual complaint as a lead case, so that any decisions made in connection with it may - in certain circumstances and where the lead resident is clearly representing named individuals - also apply to



others in the same circumstances. In such cases, we may set out that any remedies we identify apply to others in the same circumstances.

For more information on group complaints, see the **Guidance on Group Complaints**.

## 11. Payments of compensation and arrears

Some landlords will wish to offset any payment of compensation against a resident's rent or service charge arrears. This approach will often be set out in a landlord's compensation policy.

However, it is the Ombudsman's position that compensation awarded by this Service should be treated separately from any existing financial arrangements between the landlord and resident and should not be offset against arrears. This applies regardless of whether the landlord's compensation policy allows it to do this and it is particularly the case where:

- the arrears are in dispute
- the arrears are the subject of the complaint
- the landlord is legally obliged to make the payment, such as a statutory Home Loss or Disturbance payment
- it would not be fair to do so – for example where a landlord's maladministration resulted in the arrears in the first place
- the resident has incurred additional 'out of pocket' expenses as a direct result of the landlord's actions or inactions – for example where a property requires major repairs to make it habitable and the resident incurred out of pocket expenses by having to pay for hotel accommodation as a direct result of a landlord not arranging the works needed or not offering them alternative accommodation whilst works were done

## 12. Local authorities who have issued section 114 notice (bankruptcy)

If a local authority expects its expenditure to exceed income for a year it must issue a 114 notice, declaring itself effectively bankrupt. After issuing the notice the local authority may not incur new spending from its general fund.

This does not affect orders made by the Ombudsman. Compensation we order a landlord to pay comes from a separate fund (the Housing Revenue Account). We will calculate and enforce orders as normal.

The Ombudsman may make more than one finding when determining a case. The table below reflects the financial remedy for each finding rather than the total amount for the case.

Level of redress	Likely associated finding	Impact on resident	Circumstances
£50 to £100	Service failure	Minimal Short duration May not have significantly affected the overall outcome for the resident Might include distress and inconvenience, time and trouble, disappointment, loss of confidence, and delays in getting matters resolved.	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.  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.
£100 to £600	Maladministration	No permanent impact	There was a failure which adversely affected the resident.  The LL has failed to acknowledge its failings and/or has made no attempt to put things right. <i>Or</i> 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.
£600 to £1,000	Maladministration/ Severe maladministration	Significant impact Physical and/or emotional impact	There was a failure which had a significant impact on the resident.  The circumstances for maladministration apply and the redress needed to put things right is substantial <i>Or</i> The circumstances for severe maladministration apply but the redress needed to put things right is at the lower end of that scale.

£1,000 +	Severe maladministration	Severe long-term impact	<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>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).</p>
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## Approval

Version number	4
Approved by	Justin Crittall (Director of Dispute Resolution) and Kathryn Eyre (Director of QED)
Approval date	17/04/24
Effective from	17/04/24
Date of next review	17/04/25
Policy owner	Dispute Resolution
Policy author	J Ryans
Consultation	No
Equality Impact Assessment	No
Date Protection Assessment	No

## Version Control

Date	Author	Version	Details of review
18/09/23	J Ryans	2	Changes to incorporate wider orders. Minor amendments to apology section.
19/12/23	T Beatham (Quality Lead)	3	Add section for section 114 (bankruptcy notices)
17/04/24	M Smart	4	Amendments to apologies section