

## Investigation guidance

This guidance is aimed at residents with complaints that have:

- completed the landlord's complaints procedure and part or all of the complaint is still unresolved, and
- either eight weeks have passed or the complaint has been referred by a designated person, and
- either the complaint was not resolved through our early resolution investigation procedure or early resolution was not attempted (e.g. because of objections by the parties or because the complaint was complex).

### **Paragraph 25 – Housing Ombudsman Scheme**

***The Ombudsman must investigate any complaint duly made to him and not withdrawn, and may investigate any complaint duly made but withdrawn.***

The Ombudsman has a duty to investigate a complaint that is 'duly made' unless it has already been resolved via our [early resolution investigation process](#).

### **Paragraph 43**

**The Ombudsman will determine complaints by what is, in his opinion, fair in all the circumstances of the case.**

When determining complaints, the Ombudsman will assess whether the actions taken by the member landlord were fair in all the circumstances of the particular case. This duty is delegated to the caseworker conducting the investigation, who will act in accordance with the Scheme.

### **Inquisitorial approach**

Ombudsman services are promoted, amongst other things, as an alternative system of justice to the court; but they are not a substitute or surrogate court. While the courts are concerned with the legality of an action or decision, the Ombudsman is not empowered to determine whether the law has been breached.

The Ombudsman takes an inquisitorial, rather than an adversarial approach to investigations.

<b>Inquisitorial</b>	<b>Adversarial</b>
<i>Decision maker performing an examining role</i>	<i>Parties in a dispute have responsibility for finding and presenting evidence</i>
Gets to the truth through investigation and examination of all evidence	Gets to the truth through open competition between the two sides (in criminal cases by disproving the prosecution)
Decision maker is involved in collecting and preparing evidence and decides which witness evidence is needed	The parties decide what evidence they want to use and which witnesses to call
Precedent rarely applies – decision maker is free to make decisions on the basis of evidence and statute	Previous decisions of higher courts are binding (precedent)
The role of advocates is passive and decision maker is active (seeking evidence until they can make a decision)	The role of advocates is active and the judge is passive (referee as to process)
Decision maker plays an active role in questioning the parties directly	The Judge is neutral and reserves comment until all evidence from both parties is heard
Limited rules on admissibility of evidence – up to decision maker to decide the value of evidence	Strict rules of admissibility of evidence – relating to prejudice or reliability
Decision maker can request evidence that may be unfavourable	Parties only provide evidence favourable to their argument
Case management relies on the decision maker	Case management relies on advocates
Decision maker can exchange views with the parties at any stage – and can promote discussion to dispose of the case	Judge can't exchange views with the parties before all evidence is heard so there is little opportunity for initiative in disposing of cases

The Ombudsman's investigation is not limited to considering complaints where a legal issue has arisen, nor solely to the information raised in the complaint that was submitted. We have a duty to consider what is fair in **all the circumstances of the case**.

During the investigation process caseworkers may need to request further information from the parties in order to address the key issues. The Scheme sets out the obligation of the Ombudsman's members to provide information:

### **Paragraph 49**

***The Ombudsman may ask a member to provide information that is, in the Ombudsman's opinion, relevant to the complainant. The member must provide copies (without charge) or allow examination of the following records and documents:***

- a) the landlord's policies and procedures;***
- b) any internal files, documents, correspondence, records, accounts or minutes of meetings, in hard copy or electronic form. This includes records relating to similar cases where the Ombudsman needs them to establish consistency of practice.***

### **The purpose of the investigation**

***What the Ombudsman's investigation seeks to establish***

### **Paragraph 42**

***When investigating, the Ombudsman is concerned to establish whether the member has been responsible for maladministration (which includes a finding of service failure) which 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 procedures***
- d) delayed unreasonably in delaying the matter;***
- e) behaved unfairly, unreasonably, negligently or incompetently, or***
- f) treated the complainant personally in a heavy-handed, unsympathetic or inappropriate manner.***

The investigation report and determination letter will set out the key information and evidence relied on to reach our decision, any orders or recommendations we are making and is a formal record of the investigation. Our investigations will set out the nature of the complaint and the allegations made, it will also inform the complainant of the landlord's case in reply.

It is sent to landlords, complainants and/or their representatives, and to the relevant designated person (if any).

Our determinations are also a means of sharing any learning from the complaint, including good practice.