

Guidance on addressing the wider public interest in our casework

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Wider orders

Legislative changes

The Social Housing Regulation Act amends Schedule 2, Paragraph 7 of the Housing Act 1996.

Paragraph 7 will now read as follows (new amendments in bold):

Determinations by Housing Ombudsman

7(1) A Housing Ombudsman under an approved scheme shall, in accordance with the scheme, investigate any complaint duly made to him under the scheme, and where he investigates a complaint he shall determine it by reference to what is, in his opinion, fair in all the circumstances of the case.

(2) He may in his determination—

(a) order the member of a scheme against whom the complaint was made to pay compensation to the complainant, and

(b) order that the member or the complainant shall not exercise or require the performance of any of the contractual or other obligations or rights existing between them.

(2A) Sub-paragraph (2B) applies where during an investigation of a complaint against a member of the scheme, a Housing Ombudsman identifies that the member's policies or practices in relation to a matter may give rise to further complaints about that matter.

(2B) The Housing Ombudsman may, in the Ombudsman's determination of the complaint, order the member to review their policy or practice on that matter."

(3) If the member against whom the complaint was made fails to comply with the determination within a reasonable time, the Housing Ombudsman may order him to publish in such manner as the ombudsman sees fit that he has failed to comply with the determination.

(4) Where the member is not a social landlord, the Housing Ombudsman may also order that the member—

(a) be expelled from the scheme, and

(b) publish in such manner as the Housing Ombudsman sees fit that he has been expelled and the reasons for his expulsion.

(5) If a person fails to comply with an order under sub-paragraph (3) or (4)(b), the Housing Ombudsman may take such steps as he thinks appropriate to publish what the member ought to have published and recover from the member the costs of doing so.

(6) A member who is ordered by the Housing Ombudsman to pay compensation or take any other steps has power to do so, except that a member which is also a charity shall not do anything contrary to its trusts.

Scheme changes

To support the introduction of the new legislation the Scheme has been amended to include the following sections in red:

What the Ombudsman can do following investigation

54. The Ombudsman's determination may uphold or reject the complaint and make orders or recommendations, including that the member:

- a. apologise to the complainant;
- b. pay compensation to the complainant;
- c. performs or does not perform any of the contractual or other obligations existing between the member and the complainant;
- d. exercises or does not exercise any of the rights existing between the member and the complainant;
- e. undertakes or refrains from undertaking works;
- f. review their policy or practice in relation to a matter if that policy and practice may give rise to further complaints about that matter;**
- g. takes such other reasonable steps to secure redress within the legal powers of the member.

DR Investigations

The Scheme sets out that a determination will follow an Ombudsman's investigation. The determination will uphold or reject the complaint and will establish whether the member has been responsible for maladministration (which includes findings of service failure, maladministration, and severe maladministration). Para. 54(f) can be used following a DR investigation.

Initially wider orders will be non-delegated, requiring manager approval and sign-off by the Ombudsman to ensure consistency in approach. This will involve checking all relevant logs and liaising with colleagues in DSR and QED to ensure that we are consistent in our approach and to mitigate against the risk of making duplicate orders to the same landlord. We will keep our approach to wider orders under review until we have standardised and embedded our practice.

Paragraph 54.f

The new paragraph gives the Ombudsman the power to order or recommend a landlord to review its policy or practice in relation to a matter if that policy and practice may give rise to further complaints about that matter. 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 further 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 under 54(f) 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.

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| 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 |

An order under paragraph 54.f to review a policy or practice should:

- be exploratory and identify the reasons why the failures occurred and whether other residents or properties have been similarly affected
- aim to provide redress to other residents who have been similarly affected, without the need for them to engage the landlord's complaints procedure. This could include requiring the landlord to review complaints within its ICP over a specific timeframe, e.g. the preceding 6 months
- clearly identify the policy (noting any review date set by the landlord) or practice to be reviewed or highlight areas where a policy or practice is absent
- if necessary, identify 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
- 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. In most cases this should be independent of the service area or landlord. The landlord may opt to commission an independent organisation to carry out the review
- include oversight from the landlord's governing body and member responsible for complaints
- identify what areas of service delivery should be involved in the review, e.g. the repairs team and customer service team
- specify that the terms of reference for the review, including timeframes and milestones, will be agreed between the Ombudsman and 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. This could include the landlord outlining how its governing body will monitor and provide oversight that actions arising from the review have been completed or embedded
- in all cases we would expect the landlord to provide a copy of the report to its governing body and the Ombudsman
- the investigation report should be explicit that the order has been made under paragraph 54.f

When to include a 54.f wider order in an investigation report

Wider orders typically involve a significant undertaking for landlords to demonstrate compliance. As with our paragraph 49 investigations, our aim is to target wider orders at the most appropriate cases and landlords. To ensure we maximise the impact of our powers under paragraph 54.f, the following factors should be considered in deciding whether it would be proportionate to include a wider order (note, not all factors necessarily need to be present):

- Do the findings of the investigation and proposed orders justify oversight from the landlord's governing body? If not, we should not include a wider order under paragraph 54.f
- What is the likelihood that other residents and/or properties will be affected by the identified failings? If, on the balance of probabilities, the landlord's policy or practice could give rise to complaints from other individuals, it might be appropriate to include a wider order taking account of the other points in this list
- Is there a clear deficiency in the landlord's policy that, without intervention from the Ombudsman, would likely have adverse impact on other residents?
- What is the level of detriment to the resident making the complaint? What is the likely level of detriment to others affected by the landlord's failures? If both are significant, we are more likely to include a wider order. When considering the level of detriment, we should be mindful of the accumulative impact of the

events, missed opportunities to put things right, any vulnerabilities present in the household and the length of time the matter has been ongoing or unresolved

- Following our assessment and investigation of the facts, do we know the cause of the landlord's failures, the actions required to put things right and minimise a repeat in the future? If so, we are less likely to include a wider order. It would generally be appropriate for a wider order to include a root cause analysis to establish why the failures happened
- The complexity of the case and number of service areas involved – the higher the complexity and more teams or contractors involved in the matter, the more likely we are to include a wider order
- Is the landlord subject to a paragraph 49 investigation? If so, it would not be appropriate to issue a wider order
- Does the issue relate to complaint handling policy? If so, please refer to the section 'Interface between wider orders and duty to monitor 'below

Similar review orders identified

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

Where we have already issued a similar wider 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 order previously made so that the landlord and the resident are clear on what has been ordered to put matters right.

Where a wider order review is already in progress following an earlier investigation, we should include an order for the landlord to incorporate the learning from the current case in the ongoing wider order review. This must be recorded as set out below.

Where a significant period of time has elapsed since the original wider order was made (around one year and onwards), and similar service failures are representing, a further wider order can be considered. This should be discussed with the DRM.

Compliance

Managers are responsible for monitoring compliance with wider orders and ensuring that adequate evidence of compliance has been achieved. This includes ensuring that the wider orders log has been updated with the most recent action on a case.

Orders that are linked to an ongoing individual or group systemic investigation, best practice guidance or a 'duty to monitor' case may be passed to QED in order to monitor and achieve adequate compliance. Work is ongoing to develop the approach to systemic investigations, best practice and 'duty to monitor' and further details will be shared when available. Queries about interim measures should be directed to Heads of Service in DR and QED.

Wider orders compliance is monitored and chased in the same way as normal orders.

Reporting & recording

Two new dropdowns have been set up on WorkPro in the Order and Recommendations section: 'Wider Order – Policy Review' and 'Wider Order – Practice Review'. WorkPro's functionality is currently limited in the information that can be recorded and how we access data to ensure we are being consistent in the wider orders we make.

To remedy this, the wider orders tracker has been set up on SharePoint to fully record wider orders. The list can be filtered and is searchable by landlord, wider order type, case categories and key issues.

Caseworkers making wider orders are responsible for recording the type of wider order in WorkPro. They are also responsible for entering the initial details of the wider order on the tracker (from case reference to details of wider order).

Dispute Resolution Managers (DRMs) are responsible for adding additional information to the tracker (from approved by DRM/Head of Service onwards) about

how they have ensured the quality of the order being made, how compliance will be achieved and whether compliance has been achieved by the landlord.

The Quality Team will conduct regular reconciliation exercises to ensure all wider orders on WorkPro are on the tracker, and vice versa. The team will also carry out spot quality assurance checks during this exercise. Any issues will be fed back to the relevant DRM or Head of Service as appropriate.

Learning orders

Paragraph 54.g

Where we decide it would not be proportionate to include a *wider order* alongside orders for individual redress, there may be compelling reasons for the Ombudsman to order a landlord to take “such other reasonable steps to secure redress within the legal powers of the member” under paragraph 54.g. This can be used to support the landlord to learn from the case. This would be appropriate where there were significant failings in the landlord’s handling of the issues but limited evidence of wider weaknesses or limitations in its policy or practice.

Orders and recommendations under paragraph 54.g would not typically require full oversight by the landlord’s governing body, an expectation for the landlord to identify other residents who may have been similarly affected or involve an independent review. However, they may include presentation to the senior/executive leadership team of a senior manager review of the identified poor practice or policy, staff training or self-assessments against our spotlight reports, for example.

The investigation report should be explicit when making orders or recommendations under paragraph 54.g.

Ordering a senior management review of the case

It would generally be appropriate to order a senior management case review under paragraph 54.g where:

- we identify significant service failures in a single case and reach a finding of severe maladministration
- targeted intervention is required

- there is a lack of evidence of the landlord learning from complaints including self-assessments against Spotlight reports
- potential training or resource improvements could be identified
- oversight of learning is required at a senior level.

Self-assessments against our Spotlight reports

In some circumstances, it may be appropriate to order a self-assessment against a Spotlight report under paragraph 54.g where we identify general concerns about the handling of the substantive issue, but no targeted intervention has been identified and the level of detriment caused to the resident was not significant to merit a case review. It is unlikely we would order landlords who are subject to further investigations under paragraph 49 to self-assess against published Spotlights in an individual case, as this typically forms part of the special report.

The Ombudsman may identify through its systemic work concerns about the landlord's handling of issues relevant to a Spotlight report and order a self-assessment against it. This could happen through non-delegated casework or communication via your manager.

Other orders under 54.g

Set out below are some further examples of when we might make orders under paragraph 54.g for targeted intervention (the list is not exhaustive):

- specific changes to a policy or guidance where important criteria are missing e.g. where risk assessments are absent from ASB policies or guidance
- identifying other residents who are likely to have been affected by the identified failures e.g. where gas boilers have been deemed "at risk" by a contractor who was unable to gain access to a communal area
- specific training for landlord employees e.g. on equality and human rights, reasonable adjustments
- implementing specific procedures e.g. a process for monitoring or tracking complaints through the landlord's ICP where there have been failures in providing responses; or an appropriate handover procedure for when

employees are on long-term leave, leave the organisation or move into different roles

Referring landlords to our Spotlight reports

Landlords are encouraged to self-assess against the Ombudsman's Spotlight reports following publication. We want landlords to engage with our recommendations in these reports but avoid asking landlords to self-assess multiple times against them.

Where there is evidence the landlord handled issues outside the practice outlined in the Spotlight report, we should include a section after the assessment directing the landlord to consider the findings and recommendations of the relevant Spotlight report. This is instead of a formal order under paragraph 54.g to self-assess against it.

Insight hub - consistency in orders

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 and Development > 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 a wider order might be appropriate.

Interface between wider orders and duty to monitor

The process for handling complaints in DR will remain largely unchanged, including in those cases where we find complaint handling failures and are minded to issue wider orders. The duty to monitor will be the primary vehicle for securing *policy change* in complaint handling across the sector. This will largely negate the need to issue wider orders specifically on complaint handling policy.

The use of wider orders in complaint handling will be limited to providing redress to the individual or others similarly affected, staff training and policies linked to

complaint handling, such as unacceptable users, customer contact/communication and reasonable adjustments.

Where an investigation identifies failure in complaint handling policy, we will note in the investigation report that this will be referred to our duty to monitor team. In these circumstances, a Code Compliance Log must be recorded, to ensure that the team can make an assessment and intervene where required.

Approval

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05/04/2024	MS	2	<ul style="list-style-type: none"> revised following three-month review of approach to wider orders template paragraphs updated Wider Orders non-delegated Wider Orders to include board oversight factors to consider for 54(f) and (g) referencing Spotlight reports

			<ul style="list-style-type: none">• interface between wider orders and duty to monitor• name change to “guidance on addressing the wider public interest in our casework”
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