Housing Ombudsman Service

A new lease of life

Spotlight on leasehold, shared ownership and new builds: complexity and complaint handling

September 2020

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Foreword

One of the lessons from this extraordinary year is the importance of engagement. We have seen good examples of effective communication by landlords with residents during an exceptionally challenging time.

Those powers to engage are equally necessary in relation to homeowners with social landlords. It is sometimes overlooked that the Housing Ombudsman deals with cases brought by homeowners whose lease is with a member of our Scheme. Around one in five of our decisions follows a complaint from a leaseholder or shared owner.

Issues involving leaseholders have been subject to greater commentary in recent years, including fire safety and cladding where the Ombudsman is now investigating a number of complaints. This report brings together insight from handling almost 2,000 complaints received from leaseholders and shared owners during the last two years. This includes more than 800 formal investigations. For the first time in a report, we have also provided information about individual landlords.

Behind these statistics are the experiences of individual residents. Their stories are powerful. There is the shared owner who waited two years for his staircasing request to be processed. There is a resident who proceeded with preserved Right to Buy to be told she was not entitled as an error had been made on her tenancy. And the new build homeowner where delays to rectifying defects left him with damp and mould in his bathroom for 21 months.

Whilst individual cases, they reveal common issues. It is important to emphasise this report also includes examples where landlords have responded effectively – including a landlord's response to a complaint about the transparency of service charges. Nonetheless, more than half of the cases we investigated during this period required an intervention to put something right, whether the redress was identified by the landlord or by us.

The one area where the sector appears to be consistently getting things wrong is overall complaint handling. There may be a number of reasons for this: cases can be complex with a number of parties involved; there can be a lack of clarity around who is responsible for what, poor recording keeping or ineffective systems; and issues can be exacerbated by staff turnover, lack of communication between internal teams, mergers and stock transfers resulting in a plethora of different lease agreements. This won't necessarily be the case everywhere, but it is a common feature of many of the complaints we have handled.

As a result, complaints often appear to get stuck in landlords' procedures where handling can be poor, with residents experiencing delays and periods of inaction as the impact of the issue on them does not appear to be fully recognised by landlords. This has resulted in a high proportion of maladministration findings at 72% of cases

(including partial maladministration) where complaint handling was part of the complaint. We strongly urge landlords to consider ways to improve lease agreements at the outset. They must also strengthen systems and improve approaches to capturing and sharing knowledge and information across organisations. Together, these actions will enable more timely responses that recognise the impact on these residents. Developing approaches in these areas is something we would encourage sector collaboration on.

Our unique, independent standpoint as an Ombudsman has produced several other learning points to share with the sector. They are practical, common sense lessons. They cover different aspects of the customer's journey, from initial purchase to staircasing, estate works and service charges.

The continued growth of home ownership through social landlords makes it timely to consider what constitutes best practice and this report has been published following requests from landlords for insight. Alongside it we will be organising sector engagement to share our knowledge as widely as possible.

There is learning within this document that is relevant throughout an organisation and we would encourage board members, corporate performance teams, development, operational and complaint handling leads as well as scrutiny panels to read it

Finally, I would like to thank my colleagues who have worked hard to help produce a detailed and thoughtful report.

We would welcome your feedback to inform future reports.

Richard Blakeway
Housing Ombudsman

Our role

The Housing Ombudsman makes the final decision on disputes between residents and member landlords.

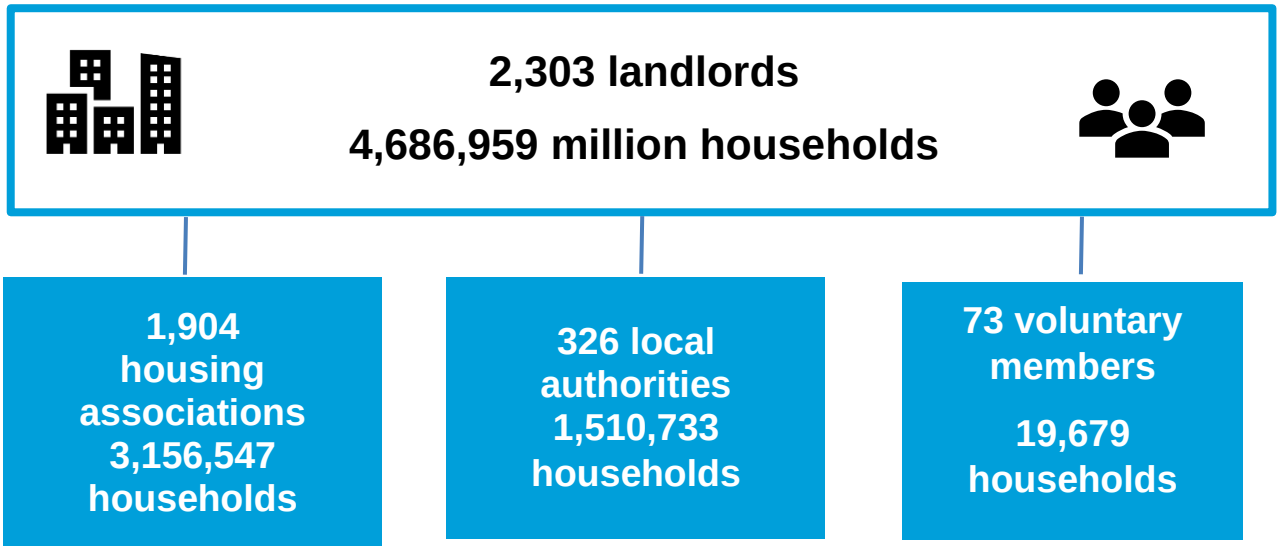
Our decisions are independent, impartial and fair.

Our service is free to the 4.7 million households eligible to use it.

Our role is set out in the Housing Act 1996 and the Housing Ombudsman Scheme approved by the Secretary of State.

Membership of the Scheme is compulsory for social landlords (primarily housing associations who are or have been registered with the Regulator of Social Housing) and local authority landlords. Additionally, some private landlords are voluntary members.

Membership as at 31 March 2020



We can consider complaints from:

- a person who has a lease, tenancy, licence to occupy, service agreement or other arrangement to occupy premises owned or managed by a landlord who is a member of the Housing Ombudsman Scheme (paragraph 25a)
- an ex-occupier if they had a legal relationship with the member at the time that the matter complained of arose (paragraph 25a)
- an applicant for a property owned or managed by a member (paragraph 25b).

This means that as well as considering complaints from tenants, we can also consider complaints from leaseholders and shared owners. The only category of homeowners who are not eligible to bring a complaint to the Ombudsman where their landlord is a member are those who own the freehold of their home.

Key data

Leasehold and shared ownership stock holdings

There are currently 4.3 million leasehold homes in the UK, 69% of which are flats[1]. Those that are owned or managed by a housing association or council are required to be a member of the Housing Ombudsman Scheme.

In 2018-19, private registered providers' stock totalled nearly 3 million homes. Of this:

- 6% was low cost home ownership - including shared ownership below 100% ownership
- 5% was social leasehold - including shared ownership homes that had stair-cased to 100%
- 2% was let as non-social leasehold - showing a 17% increase over the previous year.

For the same period, local authority stock totalled nearly 1.8 million homes. We calculate 6% of this was leasehold or shared ownership based on Housing Ombudsman membership returns and data published by the Ministry of Housing, Communities and Local Government.

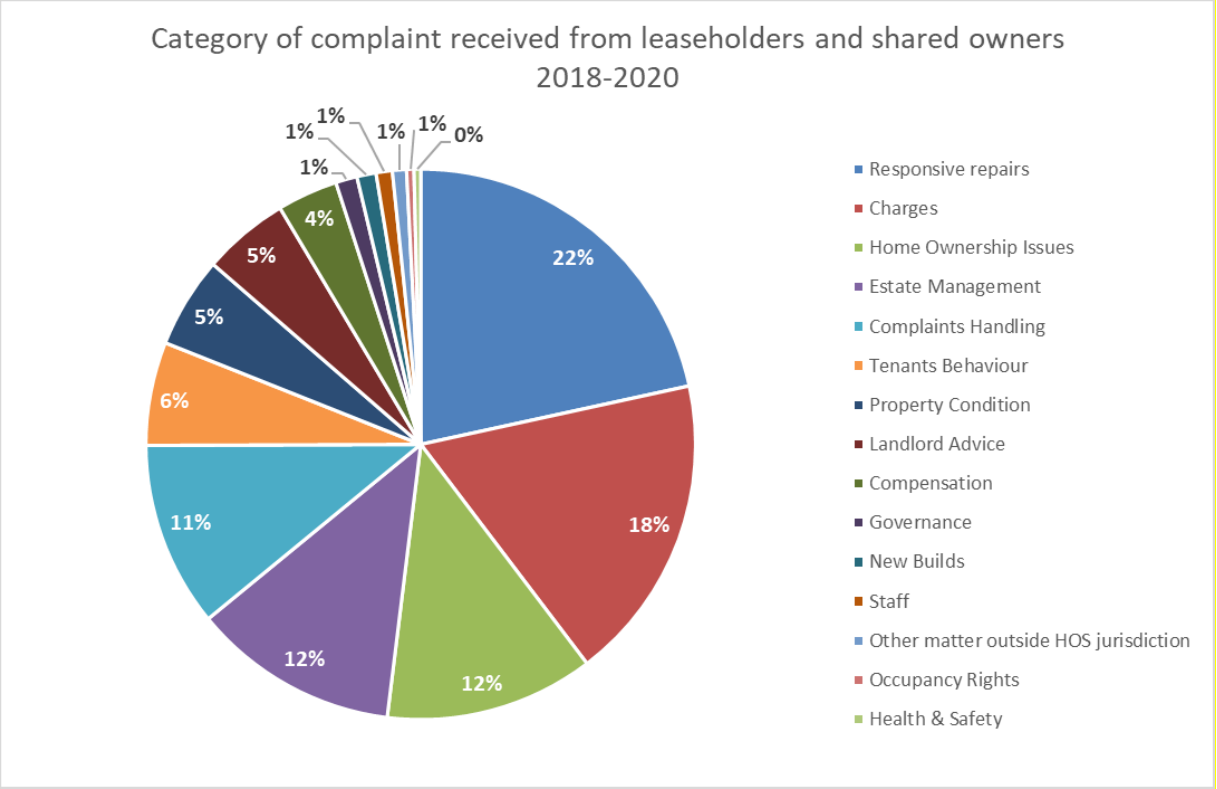
Complaint volumes

This report is based on complaints handled by the Housing Ombudsman during the 2018-19 and 2019-20 financial years. Over this period the service:

- received 1,959 complaints from leaseholders and shared owners. This amounts to 6% of the overall number of complaints that we received
- investigated 812 formal complaints - about one in five investigations of all investigations in the period
- made 1,292 findings (or determination outcomes) across the 812 formal investigations. N.B. a case can have more than one finding and one finding can result in more than one order
- found maladministration or partial maladministration in 39% of the investigations over this period
- found maladministration or partial maladministration in 72% of the 215 cases involving complaint handling
- made 923 orders and recommendations
- ordered compensation to be paid as part of 68% of our remedies.

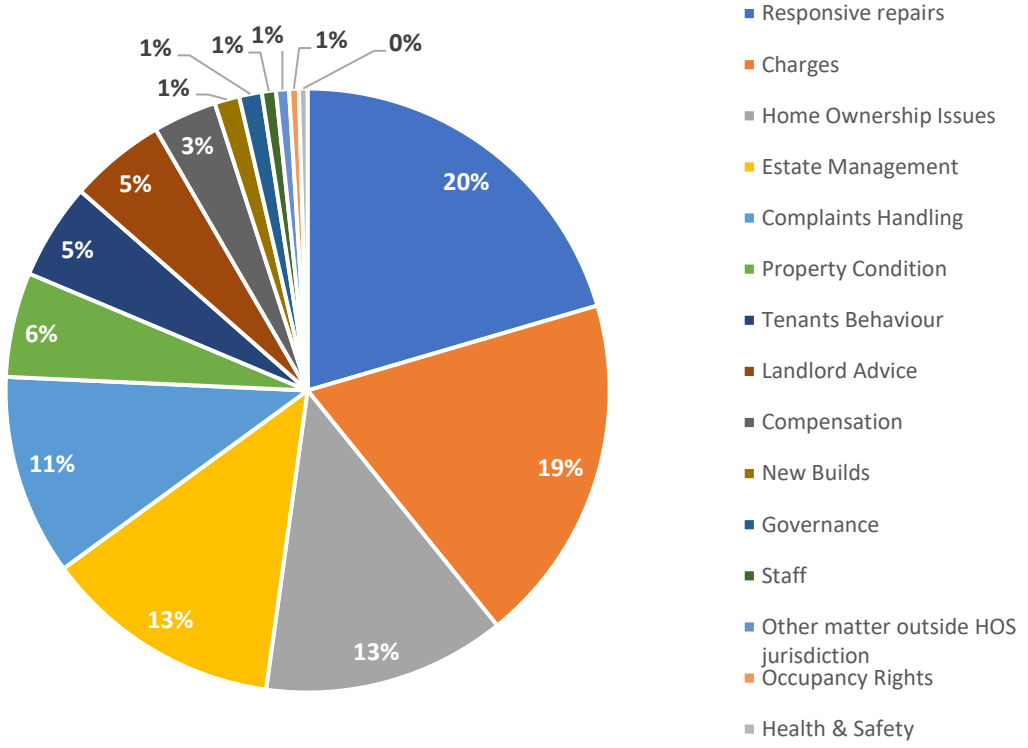
[1] House of Commons Briefing paper 8047

Whilst the largest complaint category was responsive repairs, this was notably smaller than the proportion of complaints about repairs across our service overall which was 38% in 2019-20. Complaints regarding charges were the second highest category followed by home ownership issues and estate management.

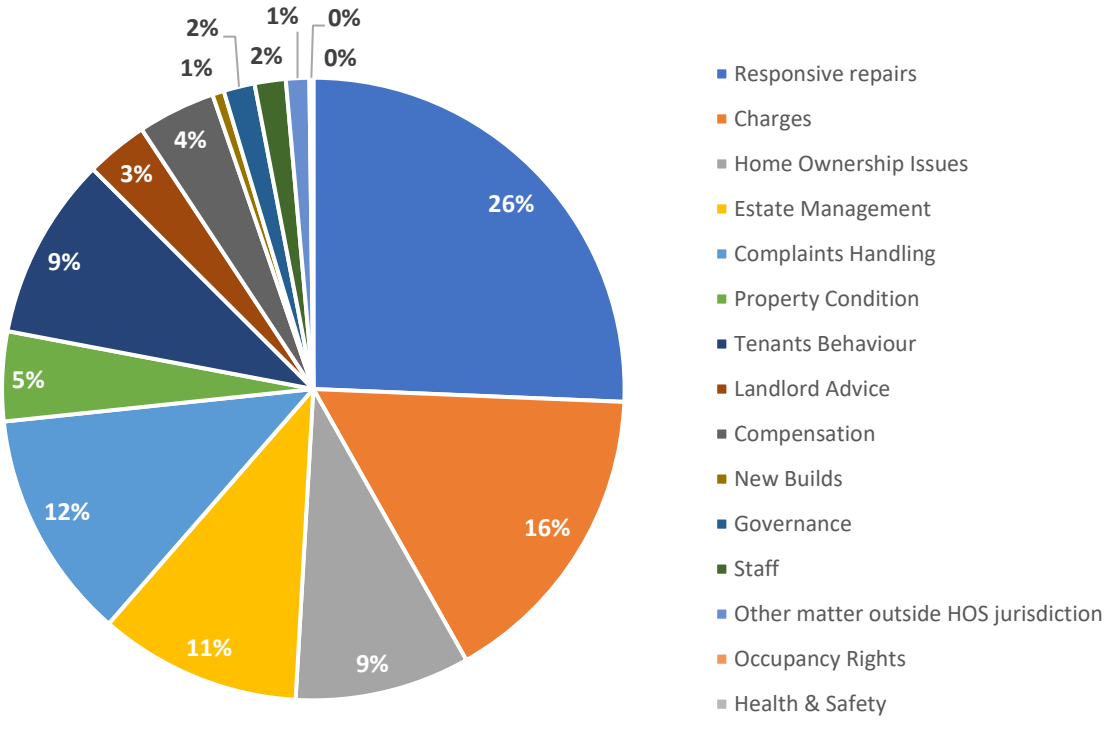


When complaint categories are analysed by landlord type, we can see local authorities receive a higher proportion of repairs complaints while housing associations receive more in relation to charges, home ownership and estate management.

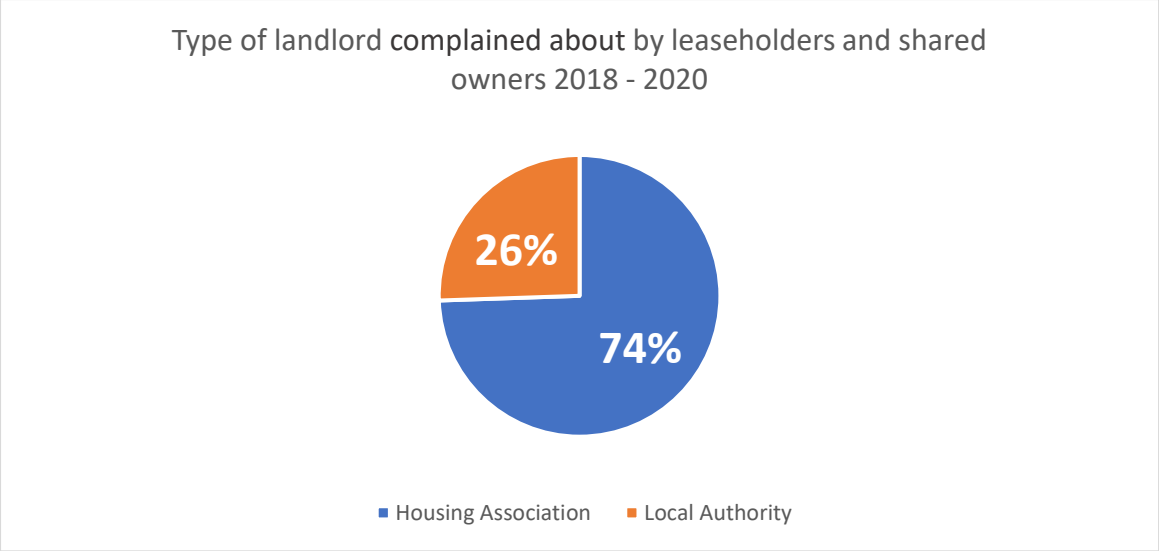
Category of complaints received from housing association leaseholders and shared owners 2018-2020



Category of complaints received from local authority leaseholders and shared owners 2018-2020

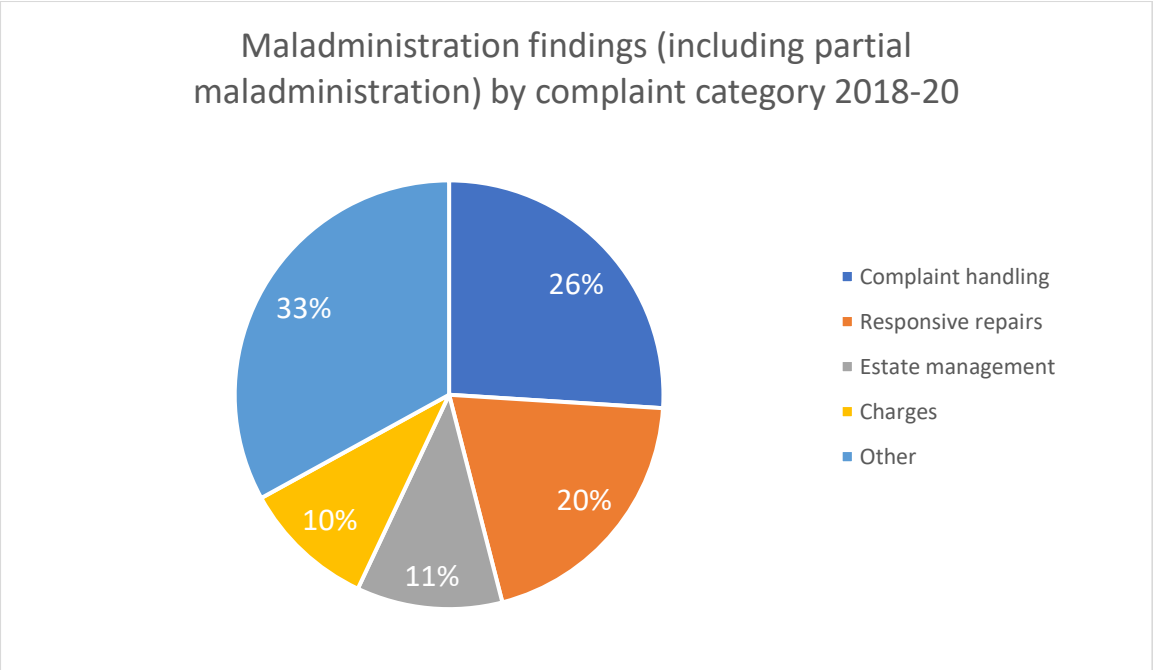


The majority of complaints were received from leaseholders and shared owners of housing associations.



The higher proportion of complaints from housing associations is broadly in line with the higher proportion of shared ownership and leasehold properties held by housing associations.

The most common reason for maladministration was complaint handling.



The Ombudsman made a finding of maladministration in 317 (39%) of the complaints (this includes partial maladministration where a finding is made on one or more elements of a complaint and severe maladministration) from leaseholders and shared owners that we formally investigated.

In addition, there were a further 105 cases (13%) where things had gone wrong and a resident had had to complain to get the matter resolved in the complaints process. A further 15 cases (2%) were resolved by an Ombudsman-mediated settlement.

Overall, this means redress was required in some form in just over half of the cases the Ombudsman investigated over this two-year period.

Landlords

The top six housing association and local authority landlords with the highest number of maladministration findings (including partial maladministration and severe maladministration) from leaseholders and shared owners are shown in the tables below.

Housing association	Maladministration findings	Number of determinations	Uphold rate
Clarion Group	18	36	50%
A2 Dominion Group	18	25	72%
Notting Hill Genesis Group	16	37	43%
Peabody Group	15	39	38%
L&Q Group	8	31	26%
Orbit Group	8	18	44%

Local authority	Maladministration findings	Number of determinations	Uphold rate
Southwark Council	13	33	39%
Hammersmith and Fulham Council	12	16	75%
Lambeth Council	9	14	64%
Westminster Council	8	14	57%
Haringey Council	6	14	43%
Camden Council	6	18	33%

It is notable that all of the top six local authorities are London boroughs and a postcode search of the housing associations shows a strong London representation. The uphold rates for four housing associations and four local authorities are above the average uphold rate of 39%.

Remedies

Across 2018-20 we made a total of 923 orders and recommendations following investigations into leasehold and shared owner complaints. This was made up of 618 orders to put something right and 305 recommendations for wider service changes. At 68%, by far the most likely remedy ordered following an investigation was compensation.

Order	Number	%
Compensation	423	68%
Other	106	17%
Apology	35	6%
Process Change	29	5%
Repairs	25	4%

Insights on learning

Our report makes recommendations relating to the types of complaint we receive. The following chapters focus on the four areas where maladministration or partial maladministration has been found most often: complaint handling, repairs, estate management and charges. The report then goes on to consider other issues which are commonly raised, such as staircasing, as well as the more recent issues relating to cladding and building safety.

The featured case studies have been selected to illustrate the range of findings and outcomes in our work and how lessons can be drawn from those to share more widely.

Complaint handling: Landlords should reflect on ways to improve the handling of complaints from leaseholders and shared owners. Landlords must consider ways to improve lease agreements at the outset. They must also strengthen their systems and approaches to capturing and sharing knowledge and information across organisations. This is an area we would encourage sector collaboration on.

Repairs: Clear lease provisions to gain swift access, force repairs or recharge for work carried out to rectify issues. Landlords should consider a key performance indicator of customer satisfaction with repairs when evaluating contractors' repairs services and procuring contracts.

New builds: Be clear with residents at the outset how it will respond both during the defects period and once this has expired.

Estate works: Ensure timely and accurate communication with all residents as communal areas can be a significant cause of inconvenience and dissatisfaction. Where maintenance works are planned, residents should be informed of the works and timescales. Where repairs repeatedly fail, landlords should have systems in place that bring this to their attention and consider different approaches.

Service charges: Provide a comprehensive narrative with the invoice explaining the charges and calculation methods, accurately reflecting the charges being made to provide greater transparency.

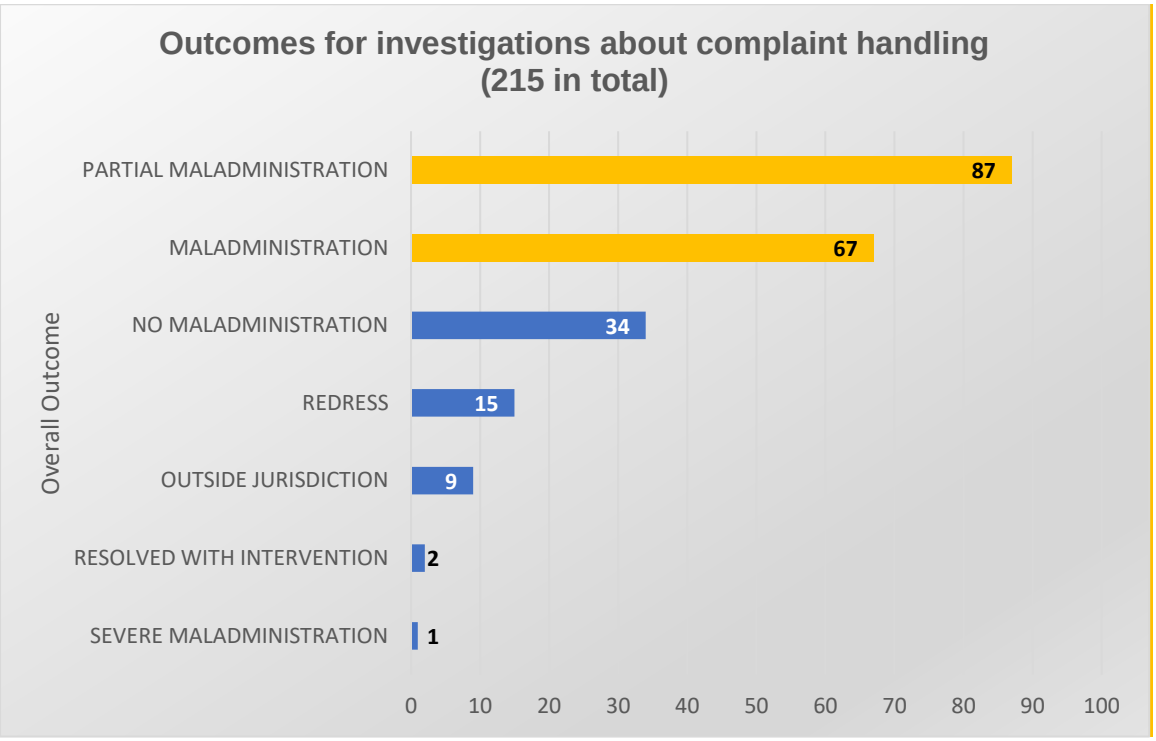
Sales: Ensure that staff are fully informed about the products that the landlord sells, their differences and similarities and are able to give accurate advice to residents seeking to sell or purchase. Take steps to ensure that prospective purchasers are given clear information regarding the property they are purchasing and the legal obligations set out in the lease.

Staircasing: Actively communicate with shared owners as soon as the landlord is advised they wish to sell to reduce the likelihood of disappointment and delay.

Building safety: Give clear information regarding plans for compliance with Government guidance and consider the impact of these plans on residents. When dealing with complaints from residents who are unable to sell or staircase due to the absence of a cladding assessment, landlords should consider the individual circumstances of the resident, show empathy for residents trapped in these circumstances and to mitigate the impact where possible.

Chapter 1: Complaint handling

This is one area where the sector appears to be consistently getting things wrong. Complaints can be difficult to get through the complaints procedure and residents are more likely to experience delays and periods of inaction resulting in a high proportion of maladministration findings at 72% of cases (including partial maladministration) where complaint handling was part of the investigation. This is higher than for other tenures dealt with by the Ombudsman. Complaint handling can be poor, even when the substantive issue has been responded to appropriately.



This is a concern for the sector. Leaseholders and shared owners commit to a long-term relationship with their landlord. A poor experience of complaint handling can damage this relationship and sour a resident's perception of their landlord.

It is essential that landlords have clear lease arrangements at the outset to avoid misunderstandings and dissatisfaction when issues arise together with strong systems and record keeping so that knowledge and information can be readily accessed. There should be strong communication between teams within organisations who may be handling different aspects of a complaint. These systems need to be particularly effective when there is a stock transfer or merger or staff turnover.

Ineffective landlord response causes poor living conditions for two years

A water leak from an upstairs leasehold flat caused significant damage to Ms A's home, damaging her kitchen flooring and carpet. The landlord did not have a specific policy in relation to leasehold obligations and when it would act. However, the lease did include obligations allowing the landlord inspection access. The lease also confirmed that the leaseholders were responsible for any pipes which solely served their property. Therefore, the leasehold neighbour was responsible for fixing the leak and not the landlord in the first instance. Finally, the lease also allowed the landlord to carry out repairs and recharge the leaseholder if the required works had not been completed within two months.

Despite these provisions, the landlord was slow to respond to the Ms A's report about the leak and did not initiate an inspection until three months later. Having inspected and identified the origin of the leak, there was no evidence that the landlord then took any action to ensure the leak was remedied or that it contacted the leaseholder to advise her of the repairs she needed to carry out until a further two and a half months later.

Due to the length of time the leak was allowed to continue, Ms A's walls became mouldy, tiles fell from the wall and door frames warped. Repairs were subsequently carried out, but these were not successful. The leak was not fixed until nearly two years after Ms A first raised her formal complaint, despite the poor living conditions created for her as a result.

Outcome

The Ombudsman made a finding of severe maladministration, ordered £3,850 compensation be paid to Ms A, that the landlord take action to resolve the problem in the flat above and that it assist with making good the bathroom.

Landlord repeatedly fails to respond to resident or Ombudsman

For eight months, Ms S made regular enquiries to her landlord about the service charges for her property. This included how it was handling credit to her account and contributions to the buildings insurance. The landlord could provide no evidence it had responded to these enquiries other than a single letter in relation to buildings insurance. This led to Ms S making a formal complaint to her landlord.

Over the next four months the Ombudsman contacted the landlord on six occasions, requesting it respond to the formal complaint. However, the landlord failed to do so, missing an opportunity to resolve the complaint at an earlier stage and failing to comply with its own complaints policy. Nor did the landlord provide a copy of the

lease or copies of relevant written communication during the Ombudsman's investigation, despite several requests.

Outcome

There was a serious failing in the landlord's complaint handling. By not responding to Ms S's queries and providing a formal response to the complaint, the landlord missed the opportunity to identify its shortcomings and take action to put things right. The failure to provide documents to the Ombudsman also restricted its investigation. The Ombudsman found service failure in relation to the landlord's record keeping, maladministration regarding its communication about service charges and severe maladministration in respect to its formal handling of the complaint. The Ombudsman ordered the landlord to meet with Ms S to respond to her queries, pay £450 in compensation and review its procedures.

Recommendations

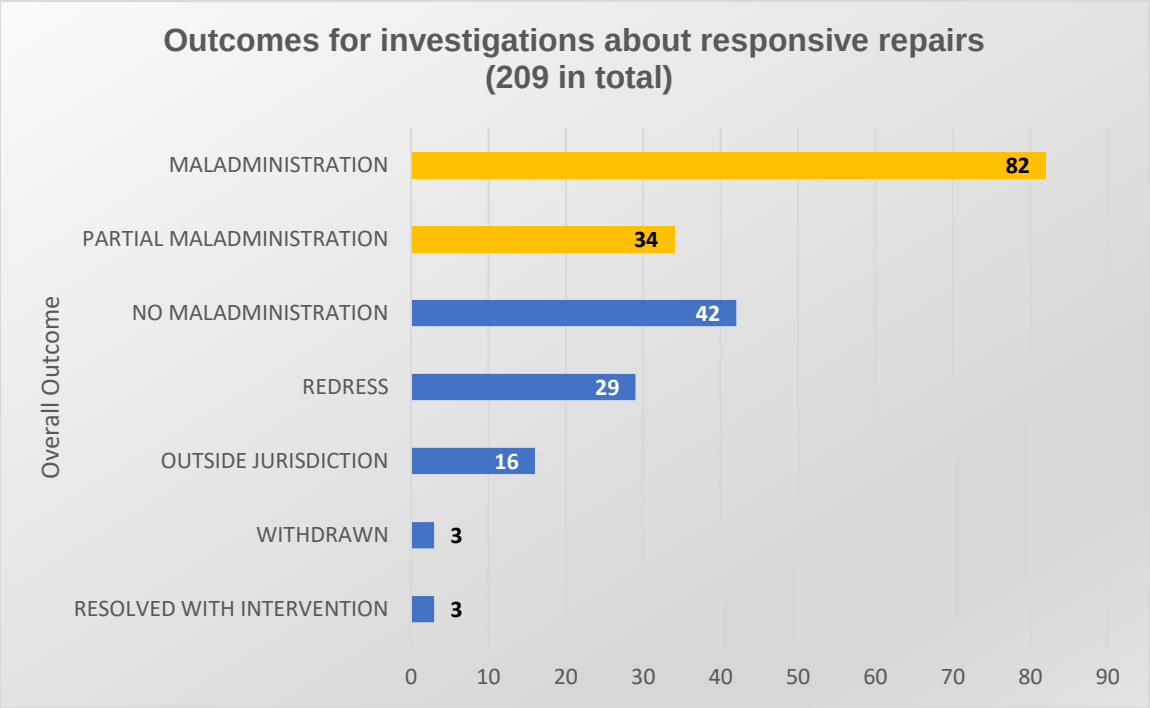
- Landlords must reflect on ways to improve the handling of complaints from leaseholders and shared owners.
- Landlords must consider ways to improve lease agreements at the outset to avoid confusion or delays when trying to put things right when they go wrong. This an area we would encourage the sector to collaborate on.
- Landlords should strengthen systems where necessary, and approaches to capturing and sharing knowledge and information within organisations and between teams.
- It is important to ensure effective communication with residents, contacting the resident at an early stage to clarify the complaint, the outcome they are seeking and keeping them regularly updated even when there may not be new information.
- Provide clear, comprehensive responses at each stage and adhere to the timescales set out in your policy, which should be in accordance with the Ombudsman's Complaint Handling Code.

Chapter 2: Repairs

Responsive repairs

Responsive repairs was the most common category of complaint from leaseholders and shared owners between 2018-20 with delays, the number of appointments required and the standard of works being key drivers.

We found maladministration (including partial maladministration) in 56% of our investigations and in a further 29 cases (14%) we found the landlord had made an offer of redress that satisfactorily resolved the complaint. This is further evidence indicating that repairs frequently go wrong and require a complaint to be made to put things right.



Leaks from neighbouring properties are a frequent cause of these types of complaint and the hazard is increased where electric supplies are at risk.

Poor landlord record keeping contributes to the high level of maladministration findings. In one case the landlord was unable to provide any evidence of its repairs work and could not therefore show what works had been attended to, how frequently it had responded to a leak, nor when the problem was finally resolved.

We often see landlord delays which add to the significant distress caused to residents. Where landlords do act, there is often a failure or inability to obtain swift action from neighbouring leaseholders to resolve the problem or to access the property where the occupier has failed to act.

Maladministration (including partial maladministration) in responsive repairs complaints was found against 26 councils (58 findings, 28% of the total), 17 of which were London boroughs (46 findings, 22% of the total). This may reflect the age of housing stock in London, differences in expectations and the density of the population, or it may illustrate that London authorities struggle more with maintaining a repair service that meets their residents' needs. London boroughs should consider what action they can take to improve their service in comparison to their counterparts to ensure that leaseholders and shared owners in London are treated fairly.

Delays lead to new build defects not resolved for nearly two years

In March 2018, Mr G purchased a flat in a new build block and moved in. He discovered a variety of issues and listed 19 items as part of the survey at the end of the defect period in November 2018. This included issues with the flooring at the property, the cooker hood, and ventilation in the bathroom. Whilst action was taken in relation to some issues no action was taken in relation to the others and he made a complaint.

In response to the complaint the housing association instructed an independent consultant to inspect the property as the defect period had expired. The inspection resulted in 12 out of 19 issues requiring action by the landlord, involving a variety of teams. The majority of this work was undertaken but there were a number of delays causing inconvenience to Mr G and the ventilation to the bathroom was not repaired with damp and mould affecting the room for 21 months.

Outcome

The Ombudsman found maladministration due to the delays in rectifying the defects and ordered £700 compensation.

Recommendations

- It is vital that landlords have clear lease provisions to gain swift access, force repairs or recharge for work they have carried out to rectify issues.
- Landlords must enact these provisions on a timely basis, particularly where issues are having a significant impact on other leaseholders or residents living conditions.
- Landlords should ensure that the correct operatives/contractors attend with sufficient tools and training to undertake the repair in question.
- Landlords should consider including a key performance indicator of customer satisfaction with repairs when evaluating contractors' repairs service and when procuring contracts.
- Landlords should monitor levels of missed and repeat appointments and take steps to improve where high numbers are reported.

New build defects

Defects and repairs that come to light once residents have moved in represent a potential area of complaint for new build leasehold properties. Developers retain responsibility for any defects that come to light within a certain timeframe. Most commonly this is 12 months from handover of the completed building to the landlord.

Generally, developers will undertake emergency repairs during this period, with non-emergency defects remedied towards the end. Whilst some of these may be cosmetic, having to wait for the defect period to expire before issues can be resolved can cause high levels of frustration and dissatisfaction for residents who may have spent their life savings on the property.

The number of organisations involved in leasehold properties can also result in complications when defects arise. The landlord in receipt of the complaint does not always have the power to investigate and resolve the issue itself which can make relationships difficult to manage.

It is particularly important for strong communication between development teams and operational teams to ensure information related to new build and sales is shared and understood. This would ensure that issues arising down the line can be dealt with effectively. Closer joint working at an early stage would enable development teams to draw on the knowledge of operational teams regarding leases; operational teams would have greater insight into the questions asked by potential leaseholders and tailor information accordingly.

Poor communication and failure to pursue the developer

Mr and Mrs J reported evidence of a leak on their ceiling to the landlord. A contractor attended and reported that the source of the leak was a communal pipe. The landlord stated that the repair was Mr and Mrs J's responsibility as the leaseholders and took no further action. Mr and Mrs J continued to pursue this with the landlord and the developer so that the cause could be rectified but were unable to gain a response. They also referred the matter to their insurers.

Three months later the leak recurred. The landlord inspected but again did not resolve the problem. Subsequently Mr and Mrs J's boiler stopped working as a result of the damp on the adjacent wall. Further appeals for assistance were made by Mr and Mrs J to both the landlord and the developer. Finally, the developer inspected the property, located a blockage in the communal pipe and the issue was resolved. However, in resolving the issue, poor communication between the developer and the landlord resulted in Mr and Mrs J being further inconvenienced by multiple visits, missed appointments and having to chase responses.

Outcome

The Ombudsman found reasonable redress by the landlord as it had acknowledged its poor handling of the matter and offered £540 as compensation to put things right following its failings.

Recommendations

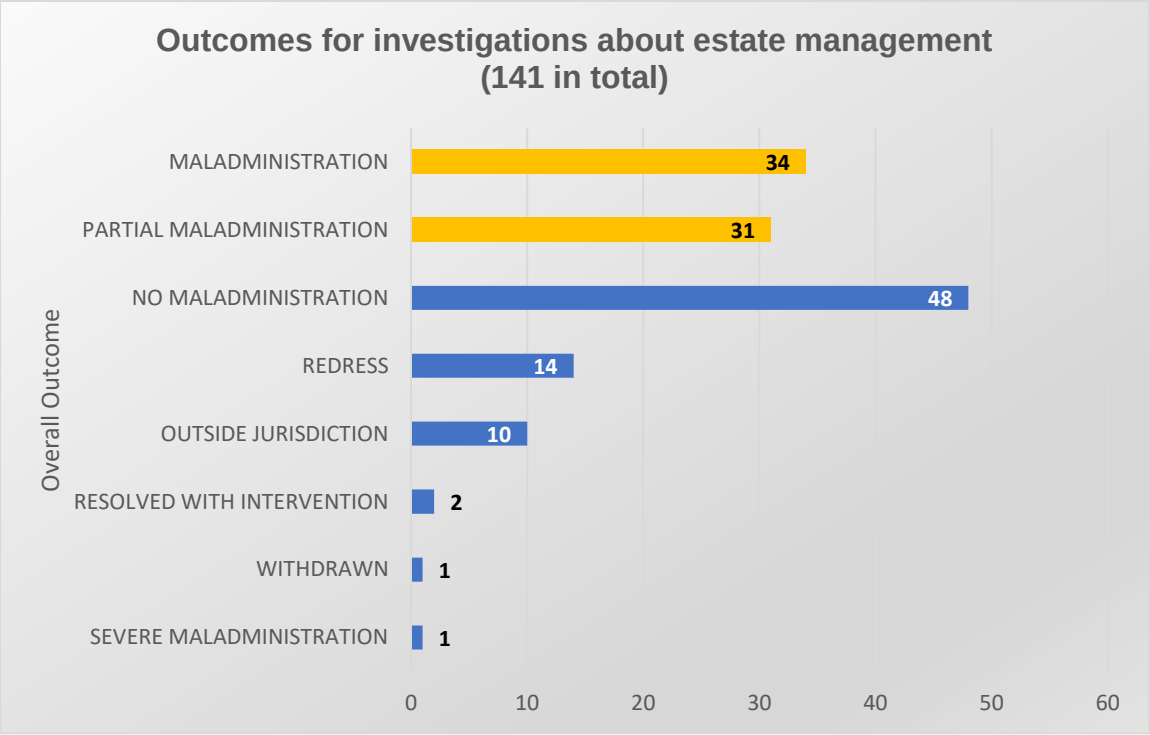
- During the defect period residents are reliant on the landlord to pursue the developer. Landlords must pursue these issues effectively on their behalf.
- Landlords must ensure that there are effective communications between all parties. In particular, development and operational teams should ensure there is a shared understanding of lease provisions.
- Landlords need to be clear with residents at the beginning of the contract as to how it will respond both during the defects period and once this has expired. Clarity should be provided on:
    - what might be considered a defect
    - the length of the defect period
    - whose responsibility it is to address problems during the defect period
    - what is considered an emergency and how they will deal with emergency defects
    - how to report a defect and how the landlord will respond
    - the process for resolving any outstanding dispute between the resident and the developer at the end of defect period.

Chapter 3: Estate management

During 2018-20 complaints regarding estate management were the third highest group to be upheld.

After a defect period, landlords have limited responsibility for repairs inside a leasehold home. However, obligations in relation to shared areas at the property should be remedied within policy timescales to avoid delays, wider negative impacts for residents and a drain on landlord resources.

We found maladministration or partial maladministration in 46% of the cases we investigated.



Ineffective gate repairs take two years to resolve

A group complaint was made by the resident in a block of flats regarding the repeated malfunctioning of communal entry gates which prevented it from locking. The situation had led to illegal parking and burglaries had occurred in several flats within the block. Concerns were raised regarding the length of time before any action was taken.

The landlord had sent contractors to fix the gates on several occasions, but the problem continually recurred a short time later. The landlord then carried out a further repair. Residents reported that gates were now very stiff, although they were functioning. The landlord then arranged an inspection which concluded that

the gates should be upgraded to prevent further breakdowns, and this was done a few months later.

Outcome

The Ombudsman found that the landlord had not completed repairs to the gates within the timescales in its repairs policy. In total, the gates had been malfunctioning for a period of two years. From the frequency of resident reports and failed repairs it should have been apparent to the landlord at an earlier stage that the repairs were not effective and an upgrade was required.

The Ombudsman found there had been maladministration by the landlord and ordered it to pay £50 to each household in the block for the inconvenience and worry caused by the delays.

Repeated miscommunication about cyclical repairs

Mr D contacted the landlord as the block had not been redecorated for 12 years and asked it to explain the reasons for this delay. His lease stated that the landlord would carry out cyclical redecoration of the exterior and communal areas of the block every eight years. Mr D reported that the block needed redecoration and also mentioned several repairs which were needed to communal areas, including cracked tiles and black mould.

The landlord advised it would start redecoration works by the end of the financial year and that it would give a more specific date once this had been confirmed with its contractors.

Mr D sent several requests for an update to his landlord who continued to say it would give a more specific start date when it could. After four months, the landlord then said it could not give a specific start date as it was experiencing delays to its major and cyclical works programme, so it was reviewing its priorities.

Mr D complained about poor communication and delays to the redecoration and repair works. The landlord's response advised that the timescale of eight years given in the lease was a guide and could be subject to change, for example, if the block was not in need of redecoration. It also advised it was not its policy to give specific start dates for cyclical works in advance in case the works were delayed and that it would investigate the repairs reported when it inspected the block prior to carrying out the redecoration.

The Ombudsman accepted that the timescale of eight years could be subject to change but concluded that the landlord should have explained why this timescale had been extended and provided evidence to support this. The Ombudsman also considered that the landlord had raised Mr D's expectations by repeatedly promising it would give a specific start date for the work before then stating it could not do so. The Ombudsman also noted that the landlord had not responded to the repair requests in line with the timescales in its repairs policy.

Outcome

The Ombudsman found maladministration and ordered the landlord to carry out the responsive repairs, provide Mr D with an update regarding the cyclical repairs and pay him £200 compensation for the inconvenience caused by poor communication and delays.

Managing agents

A further complicating factor in estate management complaints can be the multiple owners within a block and use of managing agents. This is of particular concern where the resident's landlord is not responsible for the repair causing the problem.

Managing agents

Ms N, a shared owner of a flat within a block, reported being disturbed by noise from the front entry door. Her landlord was a housing association that owned a head lease of a number of flats within the block. The freehold was owned by a private company that instructed a managing agent to maintain the communal areas.

The landlord initially gave unclear information to Ms N about the repair obligation in relation to the door, leading to a period of uncertainty for the resident and inaction on the door repair.

The landlord rectified this at stage two and provided clear information in relation to the managing agent and contact arrangements. It also ensured that the repair was reported and undertook its own inspection. The landlord offered gift vouchers to Ms N in recognition of its shortcomings in its initial handling of the problem.

Outcome

The Ombudsman found that the landlord has provided reasonable redress to put things right for the resident.

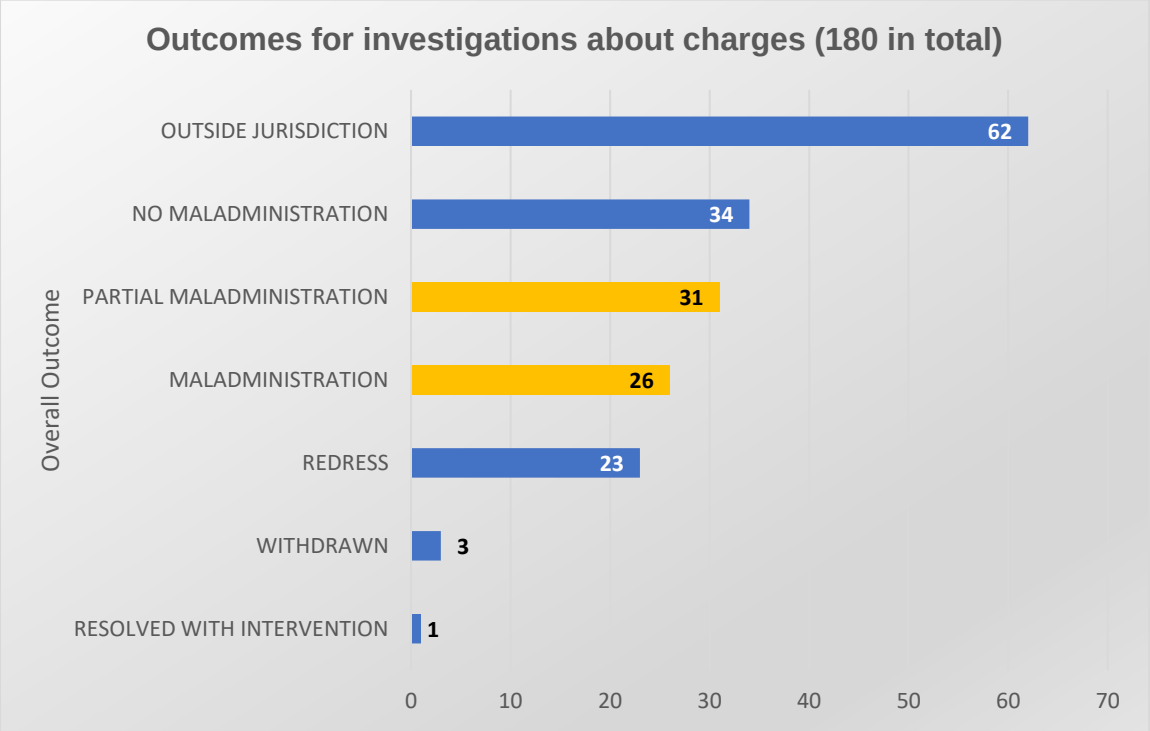
Recommendations

- Landlords must ensure timely and accurate communication with all residents on complaints about communal areas as these can cause inconvenience and dissatisfaction for many residents.
- Clear information should be provided to residents on how to report a problem on the estate, particularly if there is a managing agent or third party involved.
- Where maintenance works are planned residents should be informed of the work that will be undertaken and the timescale for completion.

- Cyclical maintenance and decoration should be scheduled and inspections should take place in accordance with obligations set out in the lease.
- Where a decision is taken to postpone cyclical works residents should be advised of the decision and informed when a further inspection will take place.
- Where repair work is overdue, residents should receive regular updates clearly explaining the reasons for delay and expected date of completion.
- Where repairs repeatedly fail, landlords must have systems in place that brings this to their attention and then consider a different approach or full replacement.

Chapter 4: Service charges

Almost 10% of our maladministration or partial maladministration findings concerned service charges over the two years.



This is also the area where the Ombudsman is most likely to rule a complaint outside its jurisdiction. We considered one third of these cases outside of our scope during 2018-20.

Whilst we encourage our caseworkers to look at the wider drivers behind complaints about charges, not all complaints relating to charges can be considered by the Ombudsman. Where the complaint is solely concerned with the level of the charge, we will rule the case outside jurisdiction and signpost the resident to the First Tier Tribunal (Property Chamber) and/or Lease.

We may, however, look at complaints that relate to the collection of rents or service charges (including failure to consult or inadequate consultation), their calculation or how this information was communicated. Where we can only consider limited aspects of the complaint, we may decide that the whole complaint can be better dealt with by the First Tier Tribunal, for example, if the complaint relates to the reasonableness of the charges.

Landlords are entitled to recover some costs from leaseholder residents. The lease should set out what expenditure the landlord can and cannot recover, the proportion of the charge the leaseholder will pay, whether these costs are fixed or variable and when they are due.

Service charges should be reasonable, accompanied by a comprehensive summary of rights and obligations and enable residents to understand what services they cover and how much they are paying. Information to residents should be easy to read, jargon-fee and available in appropriate languages and formats to ensure accessibility for all residents.

Leaseholders have the right to request a summary of the costs relating to their service charge account and are entitled to inspect the accounts, receipts and other relevant documents and to make copies.

Comprehensive response after a complaint about lack of transparency around service charges

Ms C was unhappy with the landlord's responses to her service charge queries, complaining that she had asked how the charges were calculated but no satisfactory response had been given.

Her landlord then provided her with a comprehensive response: a full invoice pack for the previous year and a detailed explanation as to how the current year charges had been set. The response also gave a detailed explanation as to how the charge for the communal entry system had been set and provided invoices, photographs and inspection reports. The landlord accepted that its previous responses had not been sufficient and that it had taken too long for Ms C to receive a response. It apologised and offered £100 compensation for the delay.

Outcome

The Ombudsman found that the landlord had offered reasonable redress to Ms C.

Miscalculation of service charges

Mr P complained about the landlord's apportionment and administration of his service charges.

The landlord sent out an invoice for the service charge with an accompanying breakdown of services and charges. Mr P believed the charges to be incorrect and emailed the landlord over a period of three months with a number of queries. A payment reminder was issued by the landlord which made no reference to these queries. Mr P again requested a response and when one was not forthcoming submitted a formal complaint.

The landlord responded apologising for the delay. It confirmed that one of the charges was incorrect and that this would be amended, as well as setting out its reasoning for the remaining charges.

Mr P disputed the remaining charges and provided historical correspondence from the landlord in support of his position. The landlord accepted that it had overlooked a previous agreement regarding its calculation of the service charge, which was recalculated. Mr P continued to challenge the landlord and a further charge was removed and another reduced. An apology was given for the further errors.
In its final response the landlord apologised, explained how the errors occurred and offered £100 compensation for staff failures.

Outcome

Given that there were several errors in information provided, a further delay in providing correct information, a delay in responding to the complaint and the high level of input required from Mr P to pursue the matter, the Ombudsman did not consider the compensation offered proportionate to the circumstances of the case. The Ombudsman made a finding of service failure and ordered additional compensation of £150.

Recommendations

- Landlords must provide a comprehensive narrative explaining the charges and calculation methods.
- This narrative should accurately reflect the charges that are being made and should accompany the invoice providing greater transparency for residents.
- Information on service provision and charges should be made available to residents upon request.
- Landlords should provide clear information to residents on how to raise concerns if they are not happy with the level of service provided.
- Landlords should provide clear details to residents regarding items covered by the sinking fund and planned schedules for replacement/improvements.

Chapter 5: Sales and staircasing, including Right to Buy

Right to buy or acquire

Residents base significant financial, and even life-changing, decisions on advice given by landlords regarding their ability to purchase their home. They are understandably dissatisfied if this is subsequently revised or amended.

Complaints about Right to Buy are dealt with by the Housing Ombudsman where the landlord is a housing association and the Local Government and Social Care Ombudsman where the landlord is a council. There are also statutory requirements regarding delays to the sale process which may be dealt with via the courts.

The majority of local authority secure tenants have the Right to Buy their home and this right transfers with the resident as part of large-scale voluntary transfers to housing associations – the preserved Right to Buy. This is not the case with individual transfers or mutual exchanges.

Many housing association tenants will be entitled to purchase their home under the Right to Buy or the Right to Acquire. In addition, a voluntary Right to Buy pilot scheme has been in operation offering the Right to Buy to tenants of participating housing associations who have successfully applied. Various statutory rights and restrictions operate over both schemes, setting out residents' entitlements and the purchasing procedure.

Misleading eligibility information has a financial impact

Ms T was an assured tenant of a housing association. Her tenancy made reference to the preserved Right to Buy, even though she had not been part of the large scale voluntary transfer, nor had she ever been a tenant of the council.

She applied to the landlord to exercise her Right to Buy which was initially accepted by the landlord. However, upon receipt of the valuation the landlord realised its error. Four months after the initial application it withdrew its offer.

Ms T was understandably upset and disappointed. She sought legal advice and complained to the landlord. She explained that her partner was terminally ill and she had sought to purchase their home to ensure her security. In her belief that she would be the owner of the property she had signed a contract for a new conservatory. She sought an apology, permission to proceed with the conservatory, reimbursement for the legal fees and asked that a repair be undertaken to the back door.

The landlord agreed to the conservatory and arranged to inspect the door. It apologised and offered £150 compensation but refused to reimburse the legal fees.

Outcome

The Ombudsman found service failure in that the landlord's response did not go far enough in terms of putting things right considering the distress and inconvenience that its mistake had caused. The compensation offer was inadequate as Ms T reasonably sought her own legal advice on the Right to Buy claim and it would have been appropriate for the landlord to have considered reimbursing some of the costs she incurred given the misleading information it originally provided.

The Ombudsman ordered the landlord to pay the original offer of £150 plus an additional £200 to the resident.

Recommendations

- Landlords must implement checks when signing up new tenants to ensure the correct occupancy agreement is used.
- Landlords' record keeping should identify for each property whether it is available under the Right to Acquire and for each resident whether they have an entitlement under the Right to Buy.
- Where residents request to transfer or move using mutual exchange they should be informed of any impact on the Right to Buy and/or the new property's Right to Acquire before a new tenancy is signed. This communication should be retained in the landlord's records.

Understanding the lease and ongoing obligations at the point of signature

When entering into a lease it is vital that both landlords and residents understand the rights and responsibilities that they are agreeing to and as set out in the terms of the lease. This will avoid problems and confusion further down the line, for example, in relation to maintenance and service charges or staircasing. Residents should be able to rely upon the information provided by the landlord and staff should be confident in dealing with queries from leaseholders and shared owners.

The points made earlier in the report about closer collaboration between development and operational teams are particularly relevant here including the use of shared terminology found in the lease.

Marketing material leads to confusion over parking entitlement

Mr B was the potential buyer of a 125-year shared-ownership lease. The property was a two-bedroom apartment on the first floor of a new build block of purpose-built flats. The property was under development when Mr B expressed an interest in buying it. The sales brochure relating to the project stated: *"limited parking available to selected 2-bedroom apartments at additional cost".*

The offer letter made no reference to parking. A reservation form following a 'down valuation' (signed by Mr B) stated that the purchase price included parking. The contract for sale included a sample lease, which included a definition of 'Parking Space' and a clause prohibiting parking unless approved by the landlord in writing first.

The landlord later informed Mr B that the 'down valuation' had not included the parking spaces. The email exchange clearly showed Mr B asked questions about parking and that this had been important to him. The landlord responded several months later indicating surface parking was available at a cost of £15,000.

Mr B expressed his dissatisfaction as he had believed the property was being purchased with secure parking at a cost of £20,000 which he explained had been a 'deal breaker' when reserving the property.

Outcome

The Ombudsman found that there were some discrepancies in the sales information. The brochure set out that limited parking was available to 'selected two-bedroom apartments'. Some of the documents confirmed that parking was included, and the draft agreement and draft lease promised an 'exclusive parking space'. It is not clear where that parking was based. Mr B clearly had to confirm this with the landlord and was disappointed to find his expectations were not accurate. The communication and sales material did not give an accurate picture of the parking on offer. This allowed room for confusion and misinformation.

The landlord was responsible for service failure and was ordered to pay Mr B £75 for the upset and disappointment. A recommendation was made that future offer and reservation documents set out the information given to potential buyers about parking and whether it could be subject to change. This would ensure a clear record of what was discussed to avoid disputes like this arising in future.

Purchasing 'off plan'

Issues can also arise from new build purchases made 'off plan' or where only a model flat has been viewed. Complaints can arise when the resident believes their property is not in the condition they were expecting upon occupancy. Some issues only become obvious when the property is viewed, by which point the sale is complete.

Buying 'off plan'

Ms F complained that the landlord had not disclosed the implications of bat conservation measures when selling her the property.

The developer of the property confirmed to the landlord that the property was constructed in accordance with planning conditions and that an ecological inspection would be required within three months of purchase. The landlord stated that its sales pack had included that there was a requirement to survey for the presence of bats. Ms F disputed that this had been explained to her. She arrived at the flat having picked up the keys to find an ecological survey taking place. She was unable to access the loft area in the property due to the location of bat boxes.

The landlord confirmed that information on the survey had been provided to Ms F's solicitors as part of the conveyancing process but did agree that it was not immediately evident from these documents that bat boxes were required. It could not grant access to the loft as this was not something it controlled and permission would need to be obtained from the local authority. The landlord confirmed that no information was deliberately withheld and noted that it was the purchaser's responsibility to make all reasonable enquiries to ensure the property was one that they were happy to purchase. As a goodwill gesture it offered £500 to reflect that the purchase was made off plan and the resident did not have the opportunity to inspect the property prior to the sale.

Outcome

The Ombudsman made a finding of no maladministration as the landlord could evidence information about the conservation area was available prior to the sale and, in addition, it recognised that Ms F had the option of a visual inspection which would have made the implications of the planning requirements clear.

Recommendations

- Landlords must ensure that prospective purchasers are given clear information regarding the property that they are purchasing, and that the legal obligations set out in the lease are clear. This should include information on the responsibilities that will fall to the resident, those that are retained by the landlord and where

relevant those that fall to a third party. We have seen good examples of this in the form of FAQ booklets or information guidance.

- Regular checks should also be made to ensure that the information is accurate and relates to the specific lease agreement for the property being sold. Templates should regularly be updated and checked to ensure that they match the property type referred to.
- Landlords must ensure that staff are fully informed of the products that the landlord sells, the differences and similarity between these and that they are able to give accurate advice to residents seeking to sell/purchase.

Shared ownership - staircasing

Shared ownership is a form of leasehold where the resident owns a share of the property and pays rent on the part of the property not owned. The leaseholder is able to purchase additional shares up to 100% ownership which is known as staircasing. The mechanisms for these transactions are usually set out in the lease. Landlords should also have policies and procedures to explain the process and make this easier for shared owners and its own staff to understand.

It is important that these provisions are in place as retrospectively untangling them takes a lot of unnecessary time and effort for both landlords and residents.

Poor record keeping leads to unacceptable staircasing delays

Mr Y was an 80% shared owner in his property and applied to his landlord to staircase to 100% ownership. At this point both the landlord and Mr Y discovered that neither had a full copy of the lease, nor had a copy been registered with the Land Registry. This meant that neither party knew how to complete the transfer of the remaining 20% share in the property.

It took approximately two years for the transfer to be completed as negotiation with the developer and their solicitors, the managing company, the previous legal advisors and Mr Y's current solicitors was needed.

The landlord apologised for the delay in the final staircasing process but concluded that it was not responsible for the delays. It said that these were down to the management company's solicitors who were not managed by the landlord.

Outcome

The Ombudsman found that there had been maladministration by the landlord as it had entered into a lease with Mr Y without retaining a copy. This was a serious concern as the lease governs the landlord-tenant relationship and sets out the parties' rights and responsibilities. When a copy of the lease was located, it did not

contain the transfer document to which the lease referred. Consequently, a transfer document had to be agreed between all parties.

The combination of these two issues resulted in unreasonable delays to the completion of the staircasing transaction. The Ombudsman ordered the landlord to apologise to Mr Y and to pay him £4,500 in compensation.

Activating the sales process

Re-selling a leasehold property or share can be more time consuming for the owner compared to a freehold home, for instance, it may be difficult to find buyers who meet the landlord's eligibility criteria. In turn, this can put pressure on residents living in properties that may no longer be suitable to their needs or finances.

Advising shared owners of the landlord's obligations when selling

Mr K was a 50% shared owner in his property and wanted to sell his share to a third party. He complained about the maximum sale price enforced by the landlord which was based on a surveyor's valuation. Mr K believed that the landlord should allow him to sell his share at a higher price, particularly given the price he had paid some years earlier and works that had been completed in his property.

The landlord explained that it was only able to use a valuation set by a Royal Institution of Chartered Surveyors (RICS) qualified surveyor to determine the price of his share in his property under the requirements set out by its regulator and its own internal policies and procedures.

Outcome

The Ombudsman found that the landlord had acted appropriately in declining Mr K's request to sell his share of his property at a higher price than the valuation and it had acted in line with its regulatory and procedural obligations.

Recommendations

- Landlords must actively communicate with shared owners as soon as they are advised that they wish to sell to reduce the likelihood of disappointment and delay. This should cover:
    - any requirements regarding valuation
    - the impact of shared owner improvements on the value of the property; the choice of valuer or surveyor
    - the landlord's "right of first refusal" on staircasing sales.

- Landlords should ensure that they take swift action upon receiving a request to sell and take decisions in a timely fashion allowing a sale on the open market where appropriate.
- Landlords must ensure they have a copy of the lease for all leasehold properties.
- Landlords should ensure other necessary documentation and records for all leasehold properties is clear, accurate and easily accessible.
- Landlords should be able to progress staircasing requests within any target times set out in the lease or in its own policies and procedures. They should keep shared owners informed where there are unforeseen delays.

Chapter 6: Building safety

There has been widespread media reporting of the problems leaseholders and shared owners are experiencing with cladding and fire safety. Large numbers of shared owners are finding themselves unable to staircase, re-mortgage or sell their flats as banks are refusing mortgage applications and surveyors are providing £0 valuations until relevant fire safety approvals are provided.

The response to this issue is evolving and complex. The Government issued guidance on '*Building safety advice for building owners of multi-storey, multi-occupied residential buildings'* incorporating its previous advice notes, including Advice Note 14. The guidance sets out the measures building owners should take to review ACM cladding and assess non-ACM external wall systems. Buildings must be checked by professional fire safety experts who can then provide assurances to lenders/valuers that the property is safe or otherwise. This process is often referred to as EWS1, after the industry-led form.

The shortage of appropriately qualified fire experts coupled with the extensive testing required has made it difficult for many landlords to comply with the guidance. Many surveys are likely to be intrusive and may result in remedial works that will take time to complete, particularly where a large proportion of a landlord's stock is involved.

Government guidance is clear:
'*1.3 For the avoidance of doubt, building owners should follow the steps in this advice as soon as possible to ensure the safety of residents and not await further advice or information to act.*'

The Ombudsman has recently received a number of complaints from residents who find themselves unable to sell or staircase due to this issue. Many of these complaints are currently within the landlord's complaints processes.

The Ombudsman intends publishing a dedicated report on this issue in due course and sets out below our guidance for landlords on handling these complaints.

Recommendations

- Where a complaint concerns building safety requirements the landlord should give clear information regarding its plans for compliance with Government guidance and consider the impact of these plans on its residents.
- Landlords should communicate with their shared owners and leaseholders ensuring accurate information is provided regarding the impact of the building safety guidance.
- When dealing with complaints from residents who are unable to sell or staircase due the absence of a cladding assessment landlords should consider the individual circumstances of the resident in question, show empathy for residents trapped in these circumstances and to mitigate the impact where possible.

Summary of recommendations

Complaint handling

- Landlords must reflect on ways to improve the handling of complaints from leaseholders and shared owners.
- Landlords must consider ways to improve lease agreements at the outset to avoid confusion or delays when trying to put things right when they go wrong. This an area we would encourage the sector to collaborate on.
- Landlords should strengthen systems where necessary, and approaches to capturing and sharing knowledge and information within organisations and between teams.
- It is important to ensure effective communication with residents, contacting the resident at an early stage to clarify the complaint, the outcome they are seeking and keeping them regularly updated even when there may not be new information.
- Provide clear, comprehensive responses at each stage and adhere to the timescales set out in your policy, which should be in accordance with the Ombudsman's Complaint Handling Code.

Repairs – responsive repairs

- It is vital that landlords have clear lease provisions to gain swift access, force repairs or recharge for work they have carried out to rectify issues.
- Landlords must enact these provisions on a timely basis, particularly where issues are having a significant impact on other leaseholders or residents living conditions.
- Landlords should ensure that the correct operatives/contractors attend with sufficient tools and training to undertake the repair in question.
- Landlords should consider including a key performance indicator of customer satisfaction with repairs when evaluating contractors' repairs service and when procuring contracts.
- Landlords should monitor levels of missed and repeat appointments and take steps to improve where high numbers are reported.

Repairs – new build defects

- During the defect period residents are reliant on the landlord to pursue the developer. Landlords must pursue these issues effectively on their behalf.
- Landlords must ensure that there are effective communications between all parties. In particular, development and operational teams should ensure there is a shared understanding of lease provisions
- Landlords need to be clear with residents at the beginning of the contract as to how it will respond both during the defects period and once this has expired. Clarity should be provided on:

- what might be considered a defect
- the length of the defect period
- whose responsibility it is to address problems during the defect period
- what is considered an emergency and how they will deal with emergency defects
- how to report a defect and how the landlord will respond
- the process for resolving any outstanding dispute between the resident and the developer at the end of defect period.

Estate management

- Landlords must ensure timely and accurate communication with all residents on complaints about communal areas as these can cause inconvenience and dissatisfaction for many residents.
- Clear information should be provided to residents on how to report a problem on the estate, particularly if there is a managing agent or third party involved.
- Where maintenance works are planned residents should be informed of the work that will be undertaken and the timescale for completion.
- Cyclical maintenance and decoration should be scheduled and inspections should take place in accordance with obligations set out in the lease.
- Where a decision is taken to postpone cyclical works residents should be advised of the decision and informed when a further inspection will take place.
- Where repair work is overdue, residents should receive regular updates clearly explaining the reasons for delay and expected date of completion.
- Where repairs repeatedly fail, landlords must have systems in place that brings this to their attention and then consider a different approach or full replacement.

Service charges

- Landlords must provide a comprehensive narrative explaining the charges and calculation methods.
- This narrative should accurately reflect the charges that are being made and should accompany the invoice providing greater transparency for residents.
- Information on service provision and charges should be made available to residents upon request.
- Landlords should provide clear information to residents on how to raise concerns if they are not happy with the level of service provided.
- Landlords should provide clear details to residents regarding items covered by the sinking fund and planned schedules for replacement/improvements.

Sales and staircasing

- Landlords must implement checks when signing up new tenants to ensure the correct occupancy agreement is used.

- Landlords' record keeping should identify for each property whether it is available under the Right to Acquire and for each resident whether they have an entitlement under the Right to Buy.
- Where residents request to transfer or move using mutual exchange they should be informed of any impact on the Right to Buy and/or the new property's Right to Acquire before a new tenancy is signed. This communication should be retained in the landlord's records.
- Landlords must ensure that prospective purchasers are given clear information regarding the property that they are purchasing, and that the legal obligations set out in the lease are clear. This should include information on the responsibilities that will fall to the resident, those that are retained by the landlord and where relevant those that fall to a third party. We have seen good examples of this in the form of FAQ booklets or information guidance.
- Regular checks should also be made to ensure that the information is accurate and relates to the specific lease agreement for the property being sold. Templates should regularly be updated and checked to ensure that they match the property type referred to.
- Landlords must ensure that staff are fully informed of the products that the landlord sells, the differences and similarity between these and that they are able to give accurate advice to residents seeking to sell/purchase.
- Landlords must actively communicate with shared owners as soon as they are advised that they wish to sell to reduce the likelihood of disappointment and delay. This should cover:
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    - the impact of shared owner improvements on the value of the property; the choice of valuer or surveyor
    - the landlord's "right of first refusal" on staircasing sales.
- Landlords should ensure that they take swift action upon receiving a request to sell and take decisions in a timely fashion allowing a sale on the open market where appropriate.
- Landlords must ensure they have a copy of the lease for all leasehold properties.
- Landlords should ensure other necessary documentation and records for all leasehold properties is clear, accurate and easily accessible.
- Landlords should be able to progress staircasing requests within any target times set out in the lease or in its own policies and procedures. They should keep shared owners informed where there are unforeseen delays.

Building safety

- Where a complaint concerns building safety requirements the landlord should give clear information regarding its plans for compliance with Government guidance and consider the impact of these plans on its residents.
- Landlords should communicate with their shared owners and leaseholders ensuring accurate information is provided regarding the impact of the building safety guidance.

- When dealing with complaints from residents who are unable to sell or staircase due the absence of a cladding assessment landlords should consider the individual circumstances of the resident in question, show empathy for residents trapped in these circumstances and to mitigate the impact where possible.

We would welcome your feedback on this report by completing this short survey.

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