Housing Ombudsman Service

Spotlight on:
Dealing with cladding complaints

Three key lessons for social landlords

May 2021

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Foreword

Unlike a regulator that seeks compliance, an Ombudsman is concerned with fairness. And at the heart of the cladding crisis there exists extreme unfairness. And the longer it persists the greater the sense of unfairness grows.

Unquestionably residents, facing extremely difficult circumstances through no fault of their own, will feel this sense of injustice most. Landlords too will identify unfairness – how they are one party often responding to lenders, surveyors and government. But, above all, landlords should consider their residents. In making our decisions we have been clear about what it is reasonable to hold social landlords responsible for, but however difficult the situation is for landlords it is infinitely worse for any resident living in a home affected by this crisis.

In this complex picture, what is the Ombudsman's role? I am acutely aware the limitations of our jurisdiction mean in this situation our remedies may not always provide complete resolution. Yet our decisions can make a difference and ensure a resident's voice is heard. You will see the real-life experiences set out in this report detail remedies to help individual residents. Where appropriate, we have sometimes extended orders or recommendations to help their neighbours. And the purpose of this report is to extend our recommendations further, to the benefit of far more residents.

Our casework reveals the extraordinary lengths residents are taking to overcome the barriers preventing them re-mortgaging, staircasing or selling – and central to our report is concern about residents' individual circumstances being lost because of the enormity of the challenge facing social landlords.

Whilst the building safety crisis is broad, our report focuses on the aspect where we have received most complaints – the landlord's response to leaseholders and shared owners seeking to re-mortgage, staircase or sell. Given the fluidity of the situation we intend publishing further reports, but always focusing on our jurisdiction. We would also like to engage further with other Ombudsmen where aspects of this issue fall into their jurisdiction.

Last October we published guidance setting out our approach for considering what is fair in all the circumstances on cladding-related disputes. Whilst each case is considered on its own individual facts and circumstances, the guidance set out a three-pronged approach, asking landlords about long-term compliance, communication and responding to individual circumstances. Our report assesses our evidence against these areas. Whilst our evidence is just one piece of the jigsaw, our unique and entirely independent perspective as an Ombudsman means it provides important lessons and practical recommendations for areas that are within the landlords' control.

This report sets out three actions.

- Firstly, it is clear most landlords are taking a risk-based approach to inspections and, whilst this is rational, these plans do not appear to adequately consider the broader implications for all residents, especially those living in buildings below 18 metres. We believe it is essential for landlords to provide a clear road map – with timescales – to all residents.
- Secondly, effective communication is vital, and landlords need to assure themselves that their strategy for this is robust, well-resourced and proactive. The risk otherwise is increased frustration and deterioration of the resident and landlord relationship. This extends to being open and transparent about long-term plans.
- Thirdly, landlords should always address the individual circumstances presented in a complaint and, where appropriate, exercise discretion as they would with other complaints. The longer this crisis continues the greater the impact will be on individuals' life chances, their finances, mental health and well-being. Our investigations have found landlords could do more to respond to an individual resident's circumstances which is why, in exceptional cases, we have proposed equity release instead of subletting as an appropriate remedy.

This crisis continues to present a challenge for the leadership and reputation of the social housing sector. Every social landlord whose residents are affected should consider the actions proposed. Senior leaders should discuss them at their governing body and share their response with their residents.

We would welcome your feedback to inform future reports.

Richard Blakeway
Housing Ombudsman

Our jurisdiction

We can consider complaints from the following people[1]

- 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
- An ex-occupier if they had a legal relationship with the member at the time that the matter complained of arose
- A representative or person who has authority to make a complaint on behalf of any of the people listed above

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

In the context of cladding this means we can consider cases relating to a member landlord's:

- Response to government guidance with respect to external cladding systems
- Communication and consultation with affected residents.

However we cannot consider complaints where:

- The landlord/managing agent is not a member of the scheme
- The complainant does not have a landlord/tenant relationship, including leaseholders and shared owners, with a member landlord/managing agent
- The landlord complaints procedure has not been exhausted
- They concern matters that are, or have been, the subject of legal proceedings and where the complainant has or had the opportunity to raise the subject matter of the complaint as part of those proceedings
- That involve the level of service charges or costs associated with major works
- They fall within the jurisdiction of another Ombudsman, regulator or complaint handling body.

[1] Para. 25 of the Housing Ombudsman Scheme lists the people who can make a complaint to the Ombudsman.

Key data

Complaint volumes and outcomes

This report is based on complaints determined by the Housing Ombudsman between October 2019 and March 2021. Over this period the service:

- considered 64 complaints from residents about the issues covered by this report, either at dispute support[2] or within our formal remit
- investigated 17 complaints within our formal remit following referral by the resident, finding maladministration in 15 out of 17 (88 per cent) of those cases
- made 31 individual findings within those 17 complaints, finding maladministration on 22 occasions (71 per cent)
- made 39 orders to put something right and 19 recommendations.

Landlord data

The table below shows the landlords with findings for the issues covered by this report.

Landlord	Maladmin. findings	All findings	Maladmin. %	Number of homes (approx.)	Per 10,000 homes
Newlon Housing Trust	3	3	100	8,000	3.75
One Housing Group Limited	2	4	50	15,000	1.33
London & Quadrant Housing Trust	9	13	69	87,000	1.03
Catalyst Housing Limited	3	3	100	31,000	0.97
Hyde Housing Association	3	4	75	41,000	0.73
Peabody Trust	1	2	50	56,000	0.18
Clarion Housing Group Limited	1	1	100	120,000	0.08
A2 Dominion Housing Group Limited	0	1	0	33,000	0.00

[2] Dispute support is where we use our dispute resolution principles to assist and facilitate landlords and residents to resolve complaints within the landlord's complaint procedure.

Background

Following the tragic events at Grenfell in June 2017, in December 2018 the Government issued Advice Note 14 (AN14) concerning wall covering systems (cladding) that did not incorporate Aluminium Composite Material (ACM). This advice note set out Government advice and expectations regarding the safety of cladding systems in relation to buildings of over 18m in height.

In January 2020 this guidance was later consolidated in **'Building Safety advice for building owners'** https://www.gov.uk/government/publications/building-safety-advice-for-building-owners-including-fire-doors. This extended the reach of the requirements to all buildings regardless of height and included other structural issues such as fire breaks, cavity walls, and balconies constructed of flammable materials. The consolidated guidance states: *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 guidance to act.*

Where building owners have been unable to provide assurance on compliance, surveyors are refusing to provide a valuation – returning a zero valuation on properties within affected buildings. This effectively halts the sale, staircasing or re-mortgage process leaving residents in high-rise blocks unable to complete the transaction. The widespread distress, anxiety and financial hardship this has produced for residents, through no fault of their own, comes across strongly in our casework.

In March 2021, the Royal Institution of Chartered Surveyors (RICS) put forward new proposed guidance which seeks to clarify the types of buildings that surveyors and mortgage lenders should demand assurance on compliance for before buying or selling properties. The intention is to remove the need for an EWS form for buildings taller than 18m with no cladding or curtain wall glazing, as well as buildings of under six storeys with less than 25 per cent of the façade covered in non-metal composite cladding.

Our approach

We recognised that complaints relating to cladding systems required our staff to understand both the technical and logistical challenges for all parties. Given the high level of media interest in issues surrounding cladding and in anticipation of a high volume of complaints we created a dedicated team to consider disputes involving cladding, enabling the Housing Ombudsman to develop expertise in this area.

To support landlords with handling disputes in relation to cladding we published a Guidance note on Fire Safety and Cladding in October 2020.

This outlined the three-pronged approach we adopted to help us to consider what is fair in all the circumstances:

1. What are the landlord’s long-term plans for compliance with the guidance, and are these fair and reasonable?
2. How has it communicated with shared owners/leaseholders regarding the situation, and was this communication appropriate?
3. How has it responded to the individual circumstances of the resident?

Chapter 1: Long-term compliance plans

What are the landlord's long-term plans for compliance with government guidance and are these fair and reasonable?

The Government's expectations are set out in guidance, not in legislation. This means there is an element of discretion as to how and when a landlord chooses to comply with the guidance. The Housing Ombudsman cannot force a landlord to undertake testing, particularly given the logistical challenges posed by a shortage of experts. We also cannot force a surveyor to release a true valuation of a property.

We found that landlords were taking steps to comply with the Government's guidance in respect of affected buildings in nearly all cases. We also found that, in most cases, landlords were taking a risk-based approach to prioritising their buildings for inspection considering height, occupancy and known building materials. On balance we consider this to be a rational approach to responding to government guidance.

However, while a risk-based approach is rational for the primary purpose of the Government's advice ie fire safety landlords do not appear to be adequately considering the broader implications on individuals of taking this approach and the unfairness it presents. We are increasingly seeing cases where residents in buildings below 18m are being given lower priority by landlords. This means that residents in these buildings are experiencing exactly the same problems as those in taller building, but with less consideration and access to redress. This is unfair.

In common with the wider debate about this issue, a central theme in complaints we investigated was that leaseholders and shared owners were experiencing difficulties with selling or re-mortgaging their properties. In some of these cases, leaseholders were additionally experiencing increased service charges to fund interim safety measures, leaving them feeling trapped and under financial pressure. This issue is likely to become more widespread following the passing of the Fire Safety Act 2021 in April.

This suggests that landlords may not have expressly considered or fully understood the impact of their approach on leaseholders and shared owners when making decisions on their response to government advice. For example we have seen little, if any, express consideration for the financial or mental health impacts of this situation or the landlord response on residents. Whilst these issues are perhaps less immediately visible to landlords they are no less impactful and should be considered accordingly.

In our decisions, we have recognised the complexity of the guidance and challenges many landlords have faced responding to the situation. It was not immediately clear, for example, how lenders would respond to the AN14 and we have been careful not to apply hindsight to our decisions.

Another issue that we identified was a lack of timely progress in responding to the guidance. In one case, despite being aware of the presence of cladding that required further investigation, two years later, there was still no clarity about when the issue would be rectified. In this case we recommended that remedial works are carried out within two years, which would be a total of four years since the publication of AN14.

Where landlords have set out their long-term compliance plans we would expect progress to have been made against these plans, even accounting for the impact of Covid-19 on activity. The longer the gap between setting out long-term plans and any progress the less likely it is that this will be considered fair and reasonable.

Case study 1 – Lack of action plan

Mr M, a leaseholder, was re-mortgaging his flat and in December 2019, asked his landlord for a written statement confirming that the building was AN14 compliant.

The landlord replied with a generic response about the situation, the difficulties of obtaining the certification, that an absence of the certificate did not mean the building was unsafe and that they were taking a risk-based approach to the issue which might mean it would take several years to deliver. They stated that the building had an up-to-date fire assessment, that these were reviewed every year for high-rise blocks and any recommendations were dealt with immediately or put into a programme of works for completion as soon as possible. It did not provide any detail particular to his building.

Over the next month, Mr M and the landlord continued to correspond about the situation with Mr M asking for his building's specific fire safety assessment repeatedly. This was provided at the end of January 2020. There had been a fire assessment in 2017 immediately after the Grenfell fire which highlighted a high priority need to test the cladding and samples had been taken for that purpose. There was then a further assessment in February 2019 where it was noted that the testing had not yet occurred. By December 2019, despite the assertions in the landlord's letter to Mr M, there was still no evidence of any remedial action having been completed or a scheduled programme of works planned.

The landlord's website subsequently stated that it would be able to give timescales to leaseholders for the inspection of high-rise buildings in September 2020 and, for the remaining buildings, April 2021.

Outcome

We found service failure[3] in respect of the landlord's response to government guidance on fire safety and cladding.

We ordered the landlord to pay £200 compensation for providing inaccurate and misleading information to Mr M in its December 2019 response.

[3] A 'service failure' is a category of maladministration in the Housing Ombudsman Scheme. Where the term 'maladministration' is used in this report it includes findings of 'service failure' and 'severe maladministration' unless these are separately identified.

We also recommended that the landlord adhered to its commitment to updating residents and that any works identified during those inspections should be commenced within two years, given that they have been aware of the issue for the last two years.

Case study 2 – Impact of risk-based prioritisation

Mr R, a leaseholder, was in the process of selling his flat. He contacted his landlord in September 2019 to ask, on behalf of his buyer's mortgage provider, for confirmation that any cladding was AN14 compliant. The landlord replied that the property did not have a fire certificate. Mr R asked the landlord to inspect the property and in October 2019 the inspection reported that the fire risk was not enough to warrant removing the cladding or taking remedial action, but further investigation would be needed.

The landlord reported this back to Mr R and advised him that the building was low on the risk-based priority list for further investigation, and they had no plans to escalate the priority of his building.

Mr R replied asking if their inspection could be expedited and gave details of a company he had sourced that could do the inspection promptly, and that other residents of the block of flats were supportive of this course of action. He also highlighted that the landlord appeared to be doing these checks on new developments that were not yet occupied. The landlord declined the offer and reiterated that the situation was outside of its control and may take years to resolve.

In January 2020, the sale of the flat fell through. In February, Mr R paid for an EWS1 form to be completed for his flat and provided his landlord with a quote to complete an EWS1 form for the entire block. Throughout the next four months, the landlord continued to refuse to consider changing their risk-based approach or instructing surveyors outside that approach, citing concerns that their insurance might not cover the damage caused by the inspection and that agreeing to this request might set a precedent. In May, another sale of the flat fell through because of the lack of EWS1 form for the entire building.

Subsequently, the landlord agreed to consider whether it was possible to introduce a tandem approach to inspections – doing assessments on low-risk buildings at the same time as the high-risk buildings.

Outcome

We found service failure in respect of the landlord's response to Mr R's request for an EWS1 form, and in respect of its communication and complaint handling, and ordered the landlord to pay £450 compensation.

We did not accept that agreeing to the independent survey would create a precedent that they would be bound by. We ordered the landlord to meet with the residents of the block to explore what more it could do to assist with the situation, including reconsidering the independent survey proposal.

We recommended that they review their risk-based approach to ensure that, within every priority banding, they considered what support and assistance they could offer while residents were waiting for assessment and remedial work to be completed.

Actions for landlords

- Landlords should review their long-term compliance plans and consider how broader impacts are accounted for, such as those on leaseholders and shared owners. And in particular those living in buildings with a lower fire risk, and whether any modifications to those plans may be required. This should include consideration of any additional support and assistance landlords can offer to leaseholders and shared owners seeking to sell their homes.
- Landlords should provide a clear roadmap to outline their long-term compliance plans to all residents. These plans should include clear and realistic timescales for action, and be kept under review and regularly updated where changes occur.

Chapter 2: Communication

How has the landlord communicated with its residents regarding the situation and is this communication appropriate and effective?

We have seen from our casework that communication and complaint handling has often not been effective. A large proportion of our findings of service failure and maladministration were because of poor communication. Some of the poorest examples involved residents of lower-risk buildings, reinforcing our concern that landlords have not fully considered the broader impact of taking a fire risk-based approach.

Effective communication is vital and is especially important given the level of distress an absence of information can cause for residents in these circumstances. The Housing Ombudsman expects landlords to be proactive – providing residents with regular and accurate information on the landlord's approach to compliance. This ensures that residents are provided with all the right information they need to enable them to make informed decisions and avoid wasting time and incurring unnecessary costs if seeking to sell, staircase or re-mortgage.

Landlord approaches to refunding the costs of leaseholder packs and other similar landlord charges have been mixed. Although some landlords have reimbursed costs where communication has been poor or ineffective, we are still seeing cases where that has not happened. This is disappointing.

We recognise the pressures and challenges this situation has presented to landlords and welcome the creation of dedicated teams who can build specialist understanding of the complex issues. Landlords should ensure they monitor the effectiveness of these teams.

Another issue our casework identified is the particular complexity when the landlord is not the freeholder of the building. Although it is the freeholder who is responsible for acting on the Government's guidance, it is the landlord who owns the relationship with the resident. We saw numerous examples of landlords in this situation who only started communication with the freeholder to find out their plans following an enquiry from a resident. Landlords must be proactive in their communication with the freeholder, whether directly or through a managing agent, and ensure they have regular dialogue so that they are able to regularly update their residents on the long-term plans of the freeholder.

By mid-2019, the impact of compliance with AN14 and the approach being taken by many lenders was widely known about. Therefore, when landlords received enquiries or applications from residents to sell their properties or to staircase, we would have expected landlords to provide information to ensure residents were aware of AN14, and the possible implications of compliance on lender decisions. In many cases this did not happen, and this has resulted in the Ombudsman issuing orders and recommendations to improve communication with residents, with awards of financial compensation in some cases.

Landlords need to be aware of, and take steps to avoid, the impact of misinformation when communicating with residents. Issues concerning cladding and compliance with AN14 are both technical and complex by nature and landlords should ensure that they are providing timely, understandable and accurate information to residents that is kept under review for accuracy.

In July 2020 we published our Complaint Handling Code which sets out our complaint handling standards for landlords. Landlords need to ensure that responses provided to residents are specific and tailored to the questions they have asked[4] rather than responding with standard content. Generic responses have been provided to residents too frequently, particularly to residents living in buildings under 18m in height, meaning that landlords failed to address specific concerns, leading to service failure or maladministration findings. The use of generic responses has led residents to feel they are not being listened to, and further disempowered, which is something the complaints process is intended to address.

We are aware through our investigations that landlords' approaches have evolved. In more recent cases we have seen examples of effective communication such as the case below where the landlord proactively published, and regularly updated, information about fire safety and the implications for anyone looking to buy or sell their properties.

Case study 3 – Proactive and timely updates

The Government issued AN14 in December 2018. By the summer of 2019, it was becoming widely known that mortgage providers were providing zero valuations if there was no evidence of compliance.

In August 2019, the landlord published a briefing note about cladding and fire safety on its website which specifically included detail of the impact that this had had on mortgage providers' willingness to lend. The note also articulated what this meant for anyone looking to buy or sell one of their properties. It set out that they might not be able to provide a satisfactory compliance certificate immediately and what steps might be needed to acquire one.

The landlord kept this briefing updated and in November 2019, it gave further details of the impact on property sales and how the landlord would respond to any requests for information it received. It explained its prioritisation process – that it would concentrate on buildings over 18m and those below 18m with balconies. It also made it clear that the landlord would not be compensating any financial losses because this issue was sector-wide and not of their creation. It specifically urged leaseholders considering selling to contact them before committing to any action.

In November 2019 Ms F accepted an offer from a prospective buyer and her solicitor wrote to the landlord to request a management pack, paying the appropriate fee. There was some delay by the landlord in providing the management pack which was provided in January 2020, just over three weeks outside its published timescales.

[4] Paragraph 3.14 Housing Ombudsman Complaint Handling Code

In January, the Government issued further guidance, which brought Ms F's building within the scope of the guidance. The landlord arranged a stakeholder meeting within four weeks to review its response following the change in advice, with the intention of providing a timeline to the residents affected for when their building would be inspected. Those timelines were then adhered to and when the remedial work required was further delayed by Covid-19, the landlord ensured that the affected residents were kept updated and provided with a revised timeline.

The landlord accepted that the information pack had not been provided on time, however did not feel it was reasonable to assume that the sale would have completed before the updated guidance was published.

In recognition of the failure to provide the information pack on time, the distress and inconvenience this had caused, and the general difficulties faced by leaseholders, it offered Ms F £450 compensation and suggested Ms F may wish to consider sub-letting as an option.

Outcome

We found that the landlord made a reasonable offer of redress prior to our investigation in respect of its delays in providing the leasehold management pack.

We found no maladministration in respect of the landlord's communication with residents or with the landlord's handling of the resident's request for an EWS1 form.

We recommended that the landlord updates Ms F on the building's remediation window date within six weeks and that the landlord offers the opportunity for Ms F to discuss options to reduce the financial hardship and distress caused by the situation, pending completion of remedial works.

Case study 4 – Long-term compliance when not the freeholder

In November 2019, Mr M, a leaseholder, contacted his landlord to ask for a copy of the fire safety report for his block of flats. He had accepted an offer on the flat and the buyer's mortgage provider required it to complete the sale.

The landlord acknowledged the request and advised that it was trying to find it in its records, but also stated that Mr M might have to approach the freeholder directly as they did not own the building and the fire safety report was not its responsibility.

The landlord then contacted the freeholder, who confirmed that an AN14 inspection had not been done, but they were commissioning one. Despite the shortage of accredited professionals across the sector, an inspection was completed within a matter of days and an engineer sent a letter to the freeholder confirming that the building was safe as far as cladding was concerned. Mr M sent this on to the mortgage provider who replied stating that they needed the postcode on the report and details of whether the wooden balconies were safe.

Throughout December and January 2020, Mr M and the landlord chased the freeholder for that information. In January 2020, EWS1 was introduced and the freeholder wrote to Mr M explaining that they could not give a timeline for providing the EWS1 but that they would provide the landlord with regular updates and asked

Mr M to contact his landlord for updates in future. In early February 2020, the building was inspected and that highlighted that an intrusive inspection would be required to complete the EWS1. The intrusive inspection was delayed by Covid-19, but was completed by the end of May 2020. In mid-June 2020, the EWS1 form was signed and the flat was successfully sold later that year.

Outcome

There was no contact between the landlord and the freeholder prior to Mr M's approach, despite it being widely known by the summer of 2019 that AN14 compliance was causing issues with mortgage valuations. In addition, the landlord indicated in its complaint response to the Ombudsman that it did not have copies of the fire safety reports that were commissioned by the freeholder.

Although responsibility for compliance with AN14 does reside with the freeholder, the landlord owns the relationship with the resident and had an obligation to all the residents, not just Mr M, to ensure it was aware of what the compliance situation was and obtain copies of the fire safety reports. This was in order to keep itself sufficiently informed so that it could, in turn, keep residents informed. The landlord did not start sending communication to other residents about this issue until Mr M took it upon himself to share a copy of his correspondence with them.

We found service failure in respect of the landlord's response to Mr M's request for certification to demonstrate compliance with government guidance on fire safety and in respect of its complaint handling and ordered the landlord to pay £300 compensation.

We also recommended that the landlord review its communication with leaseholders in buildings which are subject to AN14 to ensure the implications are clearly communicated to them.

Case study 5 – Inadequate, misleading and unhelpful communication

Mr K contacted his landlord in October 2019 about selling his shared ownership flat. His landlord directed him to its website for more information about how to proceed but also noted that he would need to do a valuation and advised him to choose a valuer from its panel.

In December, Mr K contacted the landlord again to ask if the building had cladding. In January 2020, the landlord replied that there was no cladding on the building. Mr K went ahead and paid for a valuation on the property and the flat went up for sale in February.

In July, the mortgage provider for the prospective buyer informed Mr K that they needed the EWS1 form as it currently had a zero-valuation due to the cladding that was on the building, contrary to the landlord's assertion in January. Mr K passed this request onto his landlord. The landlord, who was not the freeholder, replied that it was the freeholder's responsibility to provide the EWS1 form, but the absence of an EWS1 form did not mean that the building was unsafe. This was inaccurate as the landlord had been told that week that the EWS1 inspection had occurred, and the

building had been rated B2 – meaning that an adequate standard of safety had not been reached and remedial and interim measures were required.

There was no contact between the landlord and the freeholder prior to Mr K's approach in July 2020, despite it being widely known by the summer of 2019 that AN14 compliance was causing issues with mortgage valuations.

In January 2020, the landlord had constructed a letter, seemingly never sent, highlighting that Mr K might experience problems selling because of mortgage providers' response to AN14 and suggesting he get in touch with the freeholder for compliance certification. The letter did not contain any contact details for the freeholder which would have been entirely unhelpful even had it been sent to him.

Outcome

Although responsibility for compliance with AN14 resides with the freeholder the resident's contract is with the landlord not the freeholder. The landlord had an obligation to all the residents, not just Mr K, to ensure it was aware of what the compliance situation was in order to keep itself sufficiently informed so that it could, in turn, keep residents informed.

We found maladministration by the landlord in respect of the information it provided to Mr K regarding cladding on the building which he owned a property in. We also found maladministration by the landlord in respect of its complaint handling.

We ordered the landlord to pay Mr M £900 compensation in respect of its maladministration and to refund any other administration fees paid to it connected to the property sale if it had not already done so.

We also ordered the landlord to make enquiries with the freeholder to obtain a comprehensive update on its response to the Government's guidance and to update Mr K.

We recommended that the landlord review the information on its website so that it clearly explains it may be the lessor of a property where it is not the freeholder and ensure it proactively engages with the freeholder to obtain regular updates (at least quarterly) on its compliance with the Government's guidance.

Actions for landlords

- Landlords must review their communications strategies on fire safety and cladding to ensure that it covers the full range of impacts as it is currently understood, and provisions are put in place to ensure that future developments on this issue are proactively communicated to residents and this work is appropriately resourced.
- Landlords must ensure that they are proactive in providing appropriate and timely updates on a regular basis, at least once every three months even where there is little or no change.
- Where the landlord is not the freeholder of the building, they should engage the freeholder or their managing agent to ensure the landlord has as much

information as possible to enable timely and comprehensive updates to residents.

- Landlords should ensure they respond to specific issues raised by residents and not provide entirely or substantially generic responses.
- Landlords should assure themselves that those responding to cladding enquiries or complaints have access to accurate information and an understanding of specialist terms to ensure correct interpretation of technical information.

Chapter 3: Individual circumstances

3.1 How is the landlord responding to individual circumstances of the resident?

We would expect landlords to consider the impact of the situation on the resident when responding to enquiries or complaints. From the cases we have considered this has been a consistent failing of landlords – from the provision of generic replies, as outlined in Chapter 2, to holding back on action because they are waiting for government or lending policy to change.

We recognise this is a complex and challenging situation for landlords, who have for the most part responded in a rational manner. In almost all cases we have seen landlords refer to representations they are making as a sector to government and others. However, this should not stop landlords considering what they can do now to address individual circumstances and, in the Ombudsman's opinion, failing to do so is unfair on residents.

It is particularly important that landlords demonstrate empathy for residents trapped in these circumstances through no fault of their own and seek to mitigate the impact where possible.

Although we have seen landlords develop their approaches over the last two years, landlords have offered less discretion or flexibility than we see them usually apply elsewhere. This may reflect the scale of challenge facing many landlords, but this falls short for many residents and can undermine their relationship with landlords.

Where things go wrong, or the response to the resident falls short of what should reasonably be expected, landlords must not underestimate the value of recognising this and apologising where appropriate. This is important for the landlord-resident relationship and failing to do so can undermine the landlord's efforts to address the complaint. We have seen good examples of landlords adopting this approach within their complaint handling procedures, however, there have been a few occasions where we have ordered an apology to the resident.

In one case a breakdown in the relationship meant the landlord's offer of permitting sub-letting was refused even though it should have relieved some of the financial burden on the resident. We have sought to rebuild that relationship in our decision and have highlighted the importance of effective communication.

In several cases the landlord's approach could have more effectively addressed the individual circumstances presented and recognised the reasons behind many people wanting to move, such as financial challenges, employment, care provision for family members, or growing families. The resident is sometimes at risk of being lost because of the scale of the challenge facing landlords.

3.2 Subletting and equity release

We have been reassured to see landlord approaches develop and improve, taking steps to relieve some of the financial pressure on residents by permitting residents affected by these issues to sub-let. While this may not be universal across all landlords, it is a positive move and demonstrates landlords seeking to work with residents to ease some of the financial pressures caused by this situation not of their own making.

We have taken the view that in the cases seen so far it is reasonable for the landlord to charge a sub-letting fee, but we have been clear we would not expect the resident to be charged again if they are on a temporary sub-letting arrangement.

However, we are increasingly seeing that sub-letting is not an effective solution for all residents, especially those whose circumstances mean they need to release equity or where subletting could expose them to additional costs such as stamp duty for second homes. We would urge landlords to think beyond sub-letting and our recent decisions have recommended that landlords consider reverse staircasing given exceptional circumstances. In some cases the landlord had no policy on this, which is why it was not offered. We would strongly encourage landlords to explore every reasonable option available to support the resident, including sub-letting, reverse staircasing or potentially buy-back or transitioning of residents from leasehold to shared ownership.

Landlords will understandably have concerns about setting a precedent that is not financially sustainable or practically deliverable. It is not the Ombudsman's expectation that landlords automatically offer options to release equity, but we do expect landlords to have considered whether this is an option they can accommodate in exceptional circumstances. Landlords should have considered what those exceptional circumstances may be, adopting a holistic and empathetic approach to the range of circumstances that may impact residents.

Case study 6 – Recognising exceptional circumstances

Ms A was a shared owner of a flat. In September 2019 she made an application to sub-let her flat as she needed to move away to deal with a family matter. The landlord highlighted that she could only sub-let if she owned the flat outright and she would need to begin the staircasing process.

In October 2019, her mortgage provider asked for the cladding report and the landlord replied in November 2019 that they were doing the reports on a risk-basis and had not yet done Ms A's building. It offered to refund the administration fee, if she had already paid it, for the staircasing application if she was going to be unable to proceed.

Ms A asked the landlord if it would be prepared to let her sub-let despite not owning the flat outright. The landlord agreed to use the exceptional circumstances clause in her lease to allow her to sub-let for six months. This was later extended to 12 months at her request. Recognising that Ms A was not moving away through choice, the

landlord further agreed to waive the administration fees for arranging the sub-letting, though it did reasonably require Ms A to pay the legal fees.

Outcome

We found service failure for the lack of information about the impact of AN14 in the landlord's response to Ms A's September 2019 application to sub-let.

We also found service failure in its complaint handling for inadequate responses between November 2019 and April 2020 and ordered £300 compensation.

3.3 Considering resident solutions

In some of the cases we have seen residents, particularly those living in buildings below 18m in height, have gone to extraordinary lengths to try to resolve their problem. This has included residents sourcing their own RICS accredited surveyor to conduct inspections and complete ESW1 forms. Given that a reoccurring reason given to residents for not being able to progress compliance plans is a shortage of accredited surveyors, we are concerned that in most cases landlords did not adequately consider or even address the resident's proposal.

We recognise the issue with capacity shortages and have not ordered an inspection to be conducted, although we have made orders and recommendations in relation to future surveys. A completed survey is the outcome most residents who have complained to us are seeking, so it is important for landlords to give such proposals fair and reasonable consideration. As well as the case study below, case study 2 in Chapter 1 also illustrates the importance of considering resident proposals.

Case study 7 – Not considering proposed solution from resident

Ms H started to sell her flat in early 2019. In September 2019 her prospective buyer withdrew from the sale because of the fire safety issues highlighted in an inspection. Ms H was a shared owner and so was unable to sub-let it and was struggling to afford the flat because of the increase in service charges.

The landlord confirmed it would not be able to buy the flat back from her, but it might be able to agree to her sub-letting it during any remedial cladding work. The cladding team subsequently confirmed that her block of flats was not one that required remedial cladding work and, because the building was under 18m, there was no reason connected to AN14 that meant the resident could not sell and therefore, it could not offer an exceptional circumstances sub-letting option.

In December 2019, having found another buyer, there was further correspondence between the buyer's mortgage provider, Ms H and the landlord where the building's height was again asserted as being under 18m, though no evidence of this was supplied by the landlord, and AN14 did not apply.

In January 2020, after the EWS1 form was launched, Ms H wrote to the landlord asking when the form would be available for her building. The landlord replied confirming that the inspections needed for this were intrusive and resource-intensive

and that it might take several years to address all its buildings. It advised Ms H of the homeowner area of its website for future updates.

In February 2020, the prospective buyer's mortgage offer expired. In March 2020, Ms H approached the landlord to ask for the EWS1 to allow her to sell, or to consider reverse staircasing on her ownership of the flat as she was struggling financially, and sub-letting would not remedy that situation. The landlord acknowledged her contact and said it would reply soon, citing delays due to Covid-19.

In May 2020, the landlord confirmed to Ms H that it would be releasing its strategy for dealing with EWS1 soon and recommended she consider sub-letting as a resolution. It informed her that it could not consider reverse staircasing as 'it did not have a policy for that'. It did offer her a dedicated member of staff to discuss what further support with her financial issues it might be able to provide.

Outcome

Ms H had clearly explained the reasons why sub-letting was not a solution for her situation – she needed to have equity released from the property to assist with her financial situation. While the landlord was under no obligation to offer reverse staircasing, other landlords had offered it when the resident was in financial difficulty and Ms H's suggestion should have been actively considered, rather than rejected solely because it did not have a policy about how to do it.

We found maladministration for the landlord's handling of Ms H's request for the information she needed to complete the sale and maladministration for complaint handling. The landlord was ordered to apologise to Ms H and pay £400 compensation.

The landlord was also ordered to provide the outstanding information about her building and to consider what other options it could take to assist the resident, including re-consideration of its position on reverse staircasing.

We also recommended that the landlord updated Ms H on when she could expect her building to be inspected.

Actions for landlords

- Landlords should ensure that their policies and procedures are sufficiently flexible to allow them to respond to an individual's situation and consider all the possible options that might help. That should include the landlord's position on reverse staircasing, sub-letting and buy-back and landlords should develop or amend policies where they do not exist.
- Landlords should review their compliance plans to ensure that they are sufficiently flexible to allow resident alternative proposals to be properly considered.
- Landlords should ensure that the leaseholder information pack contains the most recent fire safety assessment and details of the building, including its height and cladding status, along with details of their intended actions and timescales to comply with relevant guidance.

Conclusions

In reacting to this high profile and complex situation landlords have prioritised their remedial programmes based on the fire risk posed to their residents – an entirely rational approach in the first instance. However, landlords have at times been too slow to recognise and act on the human impact, caused both directly and indirectly, which are not of the resident's making. The potential impact on leaseholders and shared owners of increased service charges or levies to fund remedial works may be significant and therefore we believe it is critical for landlords to demonstrate empathy and take steps to support residents trapped in this situation.

We have also seen landlords being passive at times – waiting on a change in government advice – and only being proactive with communication once an enquiry from a resident has been made. Our expectation is that landlords are proactive in both their response and the communication with residents about this evolving situation – the work to remedy this situation will continue for a number of years to come. Failings with respect to communication and provision of information were the most common cause of maladministration in the cases we investigated. We also welcome the improvements in landlord communication we have seen in some instances.

In addition to responding to the learning and actions identified in this report landlords should consider their resident engagement mechanisms and customer service information to ensure these impacts are identified and understood at the earliest opportunity. Senior leaders and boards will be aware of the importance of effective resident engagement and demonstrating learning from these complaints is essential.

The Ombudsman would expect the governing body of all landlords to review and discuss their approach against the content of this report and be satisfied that all of the actions have been addressed. We would ask that landlords share the outcome of this review with residents to improve openness and transparency.

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