

**Report of the Housing Ombudsman's
Independent Reviewer of
Service Complaints**

Introduction

Background

The Housing Ombudsman's dispute resolution principles are: be fair; put things right; and learn from outcomes. The Ombudsman applies these principles internally to complaints about the service it has provided to its customers as well as externally. The appointment of the Independent Reviewer of Service Complaints is intended to enhance its learning with an independent perspective and demonstrate its transparency through the publication of the reviewer's reports.

Service complaints during the period

This report covers service complaints closed during the period 1 October 2021 to 31 March 2022. The Ombudsman's approach to service complaints is to uphold them if there is any doubt over the service provided.

During this period:

- The service investigated and closed 255 service complaints at stage 1 and 78 at stage 2
- It upheld or partially upheld 154 service complaints at stage 1 and 38 at stage 2
- The total of service complaints investigated and closed at stage 1 and stage 2 represents 3 per cent of the enquiries and complaints brought to the Ombudsman and closed over the same period.

Sample selection

The Ombudsman selects 10 cases for review in each six-monthly period. For this review, the sample was skewed to service complaints relating to delays in investigating cases. The unprecedented surge in demand experienced during 2021-22 – a nearly 80% increase in demand – has meant some cases have taken longer to allocate and determine. The Ombudsman took the opportunity of this Independent Review to learn what it could do to improve its service in this area.

Analysis of Service Complaints – May 2022

This is my third report as the Independent Reviewer of Service Complaints (IRSC) for the Housing Ombudsman. As before, I remain impressed by the attitude of the Housing Ombudsman staff and their evident commitment to excellence in customer service. Alongside the ten cases discussed here, I have reviewed a further ten in order to ensure that I have a good sample of evidence from which to work, and overall I am struck by the high quality of the way these complaints were dealt with. I am also impressed by the willingness of the organisation to admit error, a necessary prerequisite for establishing consumer trust. One striking example is case no 202117108, where HOS service complaints staff conducted a search of the call recordings and as a result overturned their own decision.

The period covered by this review coincides with the working through of the consequences of a mismatch between a sudden surge in the number of complaints against landlords and the resources available to handle them. As a result, there are now a higher number of cases awaiting allocation, meaning that some complainants are now waiting many months for their cases to be allocated for investigation. The selection of service complaints I have been given to review on this occasion has been deliberately constructed to include many such examples. I have borne those pressures in mind in my work on this occasion.

The majority of cases I have reviewed were well handled. However, as before, the cases I have reviewed do raise issues worth recording. As I have said in both my previous reports, given that I read only a small sample of the thousands of cases dealt with by HOS and given too that the cases I do read are the subject of service complaints, the issues I shall raise here should not be thought of as necessarily representative of the quality of HOS's work overall. However, they are issues which I have seen in other Ombudsman schemes which are ones to which I suggest HOS management gives some thought.

Handling delay

Many of the cases reviewed involved resident complaints about their housing provider where there had been a delay in the matter being assessed and investigated as the sample was skewed towards these. To the organisation's credit, when this had happened, the complaint response usually included a full acknowledgement of the fact, together with an explanation of the reasons and the steps taken to address the issue for future complainants. While that explanation was perhaps somewhat formulaic and phrased in language which is, in my view, somewhat bureaucratic in feel, it nevertheless has the virtue of honesty and openness.

To that extent, I fully support the organisation's response to these service complaints. However, I am struck by the statement in the reply in case no 202121449 that "cases are allocated in the order in which they come within HOS's formal remit for investigation and, in the interests of fairness and transparency... we do not prioritise cases based on the nature and severity of the complaint." Similar

sentiments are expressed in one other reply. The service complaint response in another case reviewed, case no 202123842, articulated a similar approach to telephone calls: “in the interests of fairness and transparency we do not prioritise call back requests based on the nature or urgency of the request”.

The decision as to what case handling policies to adopt for his or her organisation is clearly for an individual Ombudsman to determine. However, it is worth noting that having an unequivocal “first come, first served” policy is something which is generally avoided by other Ombudsman schemes where there are backlogs. Most schemes which have backlogs in my experience allow for some level of exceptionalism to deal with cases where time is of the essence, allowing fast-track case handling processes to deal with complaints where delay would have serious consequences. Such processes, while administratively more difficult, nevertheless minimise the effect on particularly vulnerable complainants of the efficiency problems of the Ombudsman scheme. I was therefore reassured to be told that these comments were based on a misunderstanding on the part of the service complaints team and have since been corrected. While the allocations policy does take into account the date on which a complaint is received, it requires issues such as complainant vulnerability and health and safety (among other factors) into account. Nevertheless, the fact that the organisation’s policy on allocations is not understood by all staff is a concern, and I therefore recommend that steps be taken to ensure that all staff are made aware of it and how it should be applied. Similar consideration might be given to the blanket call back policy articulated in case no 202123842.

A second feature which emerges from this sample is, unsurprisingly, that of communication and expectation management. A number of the cases also indicate that the organisation did not always succeed in keeping complainants up to date with the progress of their complaints or giving them an accurate estimate of how long it would be before their case was investigated (case no 202120667 is one such example). I have previously suggested that it was important to give complainants accurate information about how long their cases would take; these cases suggest that that is still not always happening. I therefore recommend that consideration be given to a policy of requiring caseworkers proactively to update complainants if it appears a previously promised deadline was not likely to be met.

Balancing efficiency with justice

One of the key issues experienced by most Ombudsman schemes is the necessity of balancing efficiency with justice. Efficient Ombudsman schemes measure staff performance on speed of discharging the various functions of their role: determining eligibility, investigating, seeking to resolve and, where appropriate, determining fair redress. It is, of course, vital to the mission of Ombudsman schemes that sufficient time and attention is given to each of these stages to ensure a just outcome. However, there is a risk in every scheme that the need for efficiency, in the margins, inclines staff to rush to inadequate conclusions or, worse, to use the – often complex – rules of the individual Ombudsman scheme to delay or eliminate the time-consuming business of performing a full investigation.

As an Ombudsman, I saw this at work in the schemes for which I was responsible and as reviewer of service complaints, I am alive to this risk in the schemes which I review. Being definitive about the extent that this risk is being realised in practice is an almost impossible task, especially when, as I have said above, I am reviewing merely a handful of the thousands of cases handled by HOS. I am therefore emphatically not stating here that the following cases are examples of such the phenomenon: the individual decisions are defensible in their own terms and it is not the role of the reviewer to seek to overturn individual case decisions. Nevertheless, I consider that it is worth highlighting them in order to alert HOS management of the possibility of the risk playing out and encourage the close monitoring of outcome decisions in order to forestall any wider issue developing.

The first example is case no 202116885 which was seemingly initially ruled out of jurisdiction because it involved a matter which had previously been mediated on but eventually progressed because of the persistence of the complainant and Local Councillor. The fact that a jurisdiction decision was incorrect is not, in itself, an issue: such things happen even in the best-run schemes. What interests me more here is that there were two different answers given during the service complaints process about why the decision was incorrect. The first service complaint stated that HOS had missed opportunities to assess jurisdiction properly at an earlier stage; however, the second service complaint response explained the mistake on the basis that the jurisdictional issues were complex. Leaving aside the fact that it is not clear to me in reading the file what the complexities of the jurisdictional decisions were – the second response does not explain them – the fact that there were differing views about what happened and the complainant received differing explanations was unsatisfactory.

I am left with similar questions in reading case no 202124690. In this case, the complainant challenged HOS's refusal to accept for investigation a complaint about whether the landlord had properly implemented the results of a review required of them under a previous Ombudsman's order. It is not clear to me in my reading of the documents on the file or, in particular, the answers given to the complainant whether the jurisdiction decision adequately distinguished between the issue of whether the landlord has carried out a review and that of whether the landlord has acted properly in the implementation of the outcome of that review. It may be in this case that there are jurisdictional issues to do with the interaction of the Housing Ombudsman's remit with those of the First Tier Tribunal (Property Chamber); however, if this the reason for the decision to refuse jurisdiction, I would have expected to see reference to the fact in the responses. Again, I am not saying that the decision itself was incorrect – that is not a judgement for me to make in my role – but the file does not contain evidence that the complainant's request received sufficiently nuanced consideration.

Case no 202117108 also shows some evidence of the scheme's scope being interpreted in a relatively narrow way. The first stage complaints response articulates an approach to dealing with primary evidence which is at odds with what I normally expect to see in Ombudsman schemes: that "our role is not to arbitrate on the facts of any case as we are not best placed to do so". I am also surprised by the

fact that HOS did not consider the delay occasioned by the Subject Access Request process to be a relevant consideration in deciding whether or not to waive its own timescales. The result is a case which leaves me uneasy as whether the complainant has truly received access to fair redress.

These are just three cases and, as I have said, that is too small a sample to draw definitive conclusions. However, at a time when HOS is experiencing real issues of the mismatch between demand and available resource – the sample given to me to review was deliberately weighted to reflect that fact – there is a risk that the drive for efficient management of caseloads may lead to short-cuts being taken. In my experience, any such tendency towards a tightening approach to jurisdiction and evidence-gathering often shows in broader quality performance indicators such as acceptance and uphold rates. I therefore recommend that close attention to these should be paid over the coming months.

Ensuring good quality and timely first tier complaint handling

In recent months, the Housing Ombudsman has placed a great deal of emphasis, quite properly in my view, on the need for landlords to handle complaints properly. This follows his introduction of some clear expectations for first tier complaints handling, increasing his ability to enforce compliance. Both of these are in my view extremely positive developments.

However, the sample of cases I have reviewed still contained examples of cases where complainants had struggled to obtain proper responses from landlords in a timely fashion and it was not always clear from the files that HOS staff had been proactive in responding to these situations. Where, in addition, complainants then had to suffer lengthy and unexpected delay in HOS allocating their complaint for investigation, there was understandably some negative emotion expressed by complainants. This sample is clearly unrepresentative of the majority of complaint matters since it is deliberately skewed towards cases where there are allegations of delay in the handling of complaints. Nevertheless, I am struck by the length of some of these delays, particularly in matters where the complainant has already been exposed to delay in the landlord's response to their attempts to resolve the point at issue.

For example, case no 202110334 involves a matter which was first brought to the scheme's attention in June 2020; while the matter had not yet at that point exhausted the first tier complaints process, HOS itself admitted that it failed to take action to ensure a timely landlord reply in October 2020 by January 2022, over 18 months after first knowing of the case and eight months after the stage 2 landlord response, had not yet allocated the matter to an adjudicator. Similarly, the response to the service complaint in case 202122878, a case first raised with the service in December 2020 and where the final response from the landlord had been written in September 2020, sets a deadline for a HOS decision of July 2022.

I accept that the responsibility for keeping to deadlines in replying to first stage complaint rests with the landlord rather than the Ombudsman. However, it may be

that HOS management may wish to examine how far HOS staff are actively policing the new expectations on landlords to minimise the number of complainants who are experiencing such delays. Where complainants have already experienced poor complaints handling service from landlords, it is also important that HOS staff make particular effort to provide them with a superior and timely complaints handling experience. Many of the cases in the sample involve repeated instances where complainant contacts go unaddressed and deadlines for promised responses are missed. I have seen, and commented, on failures to meet call-back targets in the past. I am not in a position to understand the internal mechanisms for setting individual tasks for HOS staff or tracking the extent to which deadlines are met. However, this appears to me to be a fruitful area for further examination for the organisation.

Conclusion

As I have said, the selection of cases reviewed was deliberately slanted towards issues of delay, which speaks well of the integrity of HOS staff in seeking feedback from an independent reviewer. I am not surprised by anything I have found. The Housing Ombudsman is not alone in dealing with issues of delay; I am aware that one of my old Ombudsman schemes, the Legal Ombudsman, now has a serious backlog and the Financial Ombudsman has been struggling with a structural backlog for over a decade. However, in my view, the fact that such issues are common should not blind oneself to the fact that managing them effectively (or, better, avoiding them altogether) is a critical component of success. If delays are allowed to persist and become accepted as the norm, the consequences can seriously threaten a scheme's effectiveness as a deliverer of justice.

Having said that, I am aware that the organisation is fully aware of this risk and have taken urgent steps to respond and attempt to reduce the delays in responding to resident complaints about housing providers. It has been successful in advocating for an increase in resources from its funding authority, which may allow it to first manage and subsequently, I trust, eliminate delays over the coming months. I look forward to seeing the evidence of the undoubted benefits which this will bring in my next review.

Service Complaint Case Summary

Case No 202120667

A complaint about the time taken to investigate an eligible case. The matter was first raised with HOS in April 2021 and although it was already eligible for investigation, the organisation failed adequately to keep the complainant updated as to progress or respond to the complainant's requests for information; even the promise in the stage 1 service complaint report that the newly-allocated caseworker would contact the complainant was not acted on. However, these failures were properly acknowledged in the stage 2 response and it appears as if the case was completed not long after the 12 month target date.

Case No 202110334

The matter to which this complaint relates was to do with repairs (largely heating) and poor complaints handling on the part of the landlord. There had also been an earlier complaint which had been determined some years before. The issue with HOS was to do with the length of time the matter was still held at stage 1 of the landlord's complaints process: although the resident had disagreed with the stage 1 response in August 2020, it took until May 2021 for a stage 2 response to be issued. The complainant repeatedly contacted HOS during this period, often receiving little or no response, to seek to encourage the organisation to put pressure on the landlord, but it took until February 2021 for HOS to do so. Even then, it took until August 2021 for the case to be passed to the investigation stage. There was also a short delay in the service complaints procedure itself.

The response letters are full and do not attempt to gloss over these issues. The second stage response also sets out the background to the staffing problems. I am content that this aspect of the case was handled well.

Case No 202116885

This case also involved a resident who had previously complained to HOS. The issue here was the time taken for HOS to accept the matter for investigation, a delay created by the fact that the issue being raised was the same as before – cold temperature caused by the venting system. The explanation given to the complainant was that the delay was because the jurisdiction issues involved were complex, with the landlord arguing that because a determination had been issued on the same point previously, the matter was out of jurisdiction. There is little on the file which I have seen to substantiate this: from my reading of the evidence, it was evident that while the underlying issue was the same, this complaint was that the landlord's attempts to fix the problem had not worked and that the complaint was therefore eligible. I also note that the line taken in the first complaint response was different: that the delay was the result of HOS missing opportunities to give due attention to the jurisdiction matter between March and September 2021.

Case No 202121449

This is a simple matter of delay. The case was accepted for investigation in June 2021 and the complainant was given a target date for completion by the end of November. However, when the complainant asked for an update in mid-November, he was told that the case had not yet even been allocated to an adjudicator. When he received no further information, he submitted a service complaint in December.

The response to this complaint is adequate and both explains the circumstances and organisational policy and apologises. However, I note that it merely commits the organisation to “ensure that accurate information is provided to residents requesting details of the likely timescales for their investigations”. This is not the same as committing to ensuring that *all* complainants are provided with such information nor that they are updated should those timescales change.

Case No 20212878

This case centres on a long delay in accepting a case on the basis that the complainant had not submitted the second page of the landlord’s complaint response. There is some doubt about this – the file at times indicates that the issue was not that the second page was missing but merely that what had been submitted was a screenshot rather than a copy and the complainant’s insistence that she had submitted both pages was largely unaddressed in the responses. I am surprised that what appears to me to be a simple issue went effectively unaddressed for ten months, despite the active involvement of an MP, with a significant number of missed chances to respond to the resident and her representative. The reply acknowledged the facts but apologised only for the failure to manage her expectations about the length of time the investigation was likely to take.

Case No 202114203

This complaint is about a delay in accepting the case and a dispute about whether the landlord had issued a stage 2 response. The second stage response to the complaint is, in my view, an excellent one, acknowledging the issues, apologising for the organisation’s failings, and – in the case of the disputed landlord’s response – explaining clearly what HOS’s view is and committing the organisation to clarify the landlord’s position as a matter of urgency.

Case No 202117108

This matter centres on the refusal of the organisation to allow a complainant to submit evidence of a recording of a noise nuisance in a case involving alleged ASB, evidence which had been gathered via a Subject Access Request after the issuing of a determination. I have discussed my views on some of the issues involved in my thematic review. It is worth recording that while, from a tone and process point of view, the responses the complainant received were unobjectionable, I am not convinced that the statement that made in the second stage response that “our role is not to arbitrate on the facts of any case as we are not best placed to do so” is consistent with what I am used to seeing in the other Ombudsman schemes with

which I have been involved. Indeed, if an Ombudsman is not there to judge facts, it is difficult to see what he is there for.

Case No 202117205

Central to this complaint was a dispute about whether the complainant had made a call to HOS as he claimed or had not. The service complaint responses both at first and second stage positively denied that he had, with the second response stating “I have also checked our call recording system and again there is no record of a call on these dates”. When the complainant persisted, to their credit HOS staff performed a more detailed check and when the call came to light, again to their credit, admitted that and apologised. While this is admirable, it does perhaps call into question the accuracy of the sentence in the second response quoted above.

Case No 202124690

This case, which I have discussed above, involves a case where the Ombudsman had previously ordered the landlord to carry out a review of their historic service charging in the light of building issues. The resident, who had been pressing HOS to press the landlord to act on that requirement, then wished to complain about how the landlord had implemented the results of that review but HOS refused to accept that as being within jurisdiction. This is a complex issue which it is beyond my role to assess; however, from my reading of the file, I am not assured that the nuances of the matter have been properly recorded let alone communicated to the complainant.

Case No 202124079

This is a simple complaint about jurisdiction, with the complainant taking issue with the decision that as a subtenant rather than a leaseholder, the complaint falls outside HOS’s powers to investigate. The handling of this matter appears entirely appropriate.

Case No 202123842

The service complaint here was about time taken in returning calls and made allegations about rudeness on the part of HOS staff. While the handling of the complaint was entirely appropriate, I note that the answer contained a blanket defence of the five-day call back policy, stating that this would not be waived in the case of urgent matters. While in this case, the subject of the underlying complaint – a bedbug infestation – may not perhaps have been the most urgent matter, it was nevertheless something which was of immediate import. More strikingly, as with the policy towards case allocation, this blanket policy is one which, it seems to me, might be one where management might consider waiving it in extreme circumstances.

Management responses

Recommendation	Management response
<p><i>The fact that the organisation's policy on allocations is not understood by all staff is a concern, and I therefore recommend that steps be taken to ensure that all staff are made aware of it and how it should be applied. Similar consideration might be given to the blanket call back policy articulated in case no 202123842.</i></p>	<p>Accepted.</p> <p>The Quality Team, who own all DS&R-related policies, will remind all caseworkers and service complaints investigators of this aspect of the allocations policy immediately.</p> <p>The Quality Team will also develop guidance to support our approach to call backs, in consultation with the Heads of Service in DS and DR, and inform all caseworkers by the end of September.</p> <p>Owner: Quality Manager</p>
<p><i>I recommend that consideration be given to a policy of requiring caseworkers proactively to update complainants if it appears a previously promised deadline was not likely to be met.</i></p>	<p>Accepted.</p> <p>We are creating dedicated roles to oversee cases awaiting allocation and one of the responsibilities will be to ensure pro-active updates to residents if target investigation dates will be exceeded.</p> <p>We will also review our initial communication on likely timescales with residents and landlords to ensure these reflect the challenges we are currently facing, set out the actions we are taking address them and are realistic.</p> <p>We will have these measures in place by 30 September 2022.</p> <p>Owner: Head of Dispute Resolution</p>
<p><i>There is a risk that the drive for efficient management of caseloads may lead to short-cuts being taken. In my experience, any such tendency towards a tightening approach to jurisdiction and evidence-gathering often shows in broader quality performance indicators such as acceptance and uphold rates. I therefore recommend that close attention to these should be paid over the coming months.</i></p>	<p>Accepted.</p> <p>We have a range of performance indicators covering quality, decisions ruled outside of jurisdiction and uphold rates. These will be discussed as a standing item at the monthly Dispute Support and Resolution Directorate Team meeting and cascaded up to the Senior Leadership Team through the Directorate update report with variances</p>

	<p>highlighted This will take place from August 2022.</p> <p>Owner: Head of Dispute Support and Head of Dispute Resolution</p>
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Progress against previous actions

Recommendation	Management response
<p><i>I recommend that where staff are dealing with individuals they know or believe fall under the Equalities Act, they are required to keep a formal record of any requests for adaptations to be made and their response to them. Such records should be easily available to other staff dealing with those individuals.</i></p>	<p>Accepted.</p> <p>We will review our guidance and update as required to ensure full records are kept for all requests/allegations under the Equalities Act, a full assessment is made against these and these are available to all staff. We will then train all relevant staff on these revised procedures by 31 March 2022.</p> <p>Owner: Quality Manager</p> <p>Update: The guidance was updated and new forms were developed to capture reasonable adjustments. Staff were trained on these and they went live on 1 April 2022. We have recently conducted a three-month post-implementation review with colleagues to check if there any further guidance or refinements are necessary and it was reported that these are operating effectively.</p>
<p><i>I recommend that the service complaints process should not be used to issue warnings or action for complainants' behaviour.</i></p>	<p>Accepted.</p> <p>Service complaints managers have been advised to cease this practice immediately.</p> <p>Update: There have been no subsequent recorded incidents of service complaints being used to issue warnings or action in respect of residents' behaviour.</p>