Housing Ombudsman Service

Spotlight on:

Landlords' engagement with private freeholders and managing agents

Where regulated and unregulated sectors meet

March 2022

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Ombudsman's foreword

At the heart of this report is a culture clash between regulated and arguably largely unregulated parts of the housing market. For all the challenges facing social landlords, I believe it is a sector that wants to be professional and perform better. The evidence in this report shows many social landlords facing poor standards of practice amongst private managing agents. And it is the resident who experiences the unfairness of being stuck in the middle.

This matters because of the scale of some of the challenges it involves, and the impact on residents and landlords. Building safety and decarbonisation are high profile. But that is the tip of the iceberg. This report shows the breadth of issues where residents can experience deep dissatisfaction. The imbalance of power and the reality of living with problems comes across strongly in our casework. The shared owner living in a hazardous overheated home. The tenant's young family without hot water during the winter. The leaseholder trying to figure out the latest increase to their service charge. The tenant passed from pillar to post to stop water coming through their ceiling.

Through our investigations we have seen enough evidence that shows the landlord-agent relationship is often strained, and at worst dysfunctional. It is not clear if there is a single common cause, beyond a comparative lack of regulation, or whether it is the cumulative effect of several smaller causes. However, we know from speaking to landlords that they feel a tension between their social objectives and the business objectives of some managing agents, and possibly some of the freeholders that appoint them.

The need to raise standards amongst agents was set out by Lord Best's review and the subsequent codes of practice being developed by the Regulation of Property Agents (RoPA) Codes steering group, led by Baroness Hayter. The evidence in this report should contribute towards this debate around professionalism in the housing market. I recognise that some landlord-agent relationships work well and getting the relationship right at the start is important; and that sometimes the agent response is hampered by the freeholder. Nonetheless, without a standalone regulator driving consistency and improvement, the managing agent sector presents significant challenges and risks to social landlords. Further change is needed and the impact on social landlords and their residents deserves greater recognition.

Given the impact and reputational risk presented by the current landscape, the sector should consider raising its voice as a catalyst for change. The size of some social landlords makes this essential if they are to avoid residents potentially being treated as 'second class' and in a way that is not consistent with their values. And if

individual landlords feel their voice or leverage is insufficient, how can the collective voice of the sector be heard?

Yet we still have to deal with the circumstances as they are. It is clear some social landlords are eschewing Section 106 agreements, with implications for housing need. However, this will not be the approach of every landlord, even if they had the capacity and capability for direct development. The report highlights how more could be done through these arrangements to improve long-term management, as well as more immediate steps social landlords could take for things in their control.

Overall, I would encourage governing bodies, if they are not doing so already, to consider their strategic approach to freeholders and managing agents; whether the relationship is working and how they can avoid the real-life experiences of residents told in this report. There are five questions we ask senior leaders to consider on:

- their risk appetite
- the compromises they are prepared to make without complete autonomy
- the robustness of due diligence
- the clarity on their roles and responsibilities, and
- achieving performance improvement.

In short, landlords need to be clear, confident and consistent in their approach with managing agents and/or freeholders. This discussion needs to be at governance level to ensure there's a clear organisational position – one of the tensions our investigation found is between the different objectives of development and operational teams.

This does not mean there are not important practical, operational lessons for landlords to handle things better. In three-quarters of cases we considered, something had gone wrong which the landlord could have done better; and our maladministration rate following a formal investigation is 65%, which is excessively high. Knowing the challenges they can face, it is vital for landlords to have proper agreements in place with the managing agent and/or freeholder, with clarity around roles and responsibilities. Yet we have seen no clear arrangements in place and, even if they are, no proactive action. It's also important to take ownership of the landlord-resident relationship; in particular this means an end to the practice of 'signposting' the resident when it's the landlord's responsibility to sort things out, and considering appropriate interim measures if resolution isn't timely.

This report draws on several real-life experiences, but a single resident's story forms its backbone. It involves the loss of heating and hot water during more than a year and provides several, powerful lessons for landlords who want to ensure an effective response when a managing agent is involved.

This report also focuses on landlord engagement with third party freeholders and managing agents who sit outside our Scheme. Of course, social landlords may appoint or act as an agent themselves. It would be an illusion to conclude there are not issues here, as demonstrated by a recent severe maladministration decision published by us, where a vulnerable resident was placed in unsuitable temporary

accommodation. While this aspect of landlords' activities is outside the scope of this report, some of its lessons may be transferable.

Finally, I am grateful to The Property Ombudsman who we discussed this report with, and we have agreed to collaborate more closely across our jurisdictions. I am also grateful to residents, including from the Resident Panel, and landlords who we spoke to during the investigation.

I would encourage landlords to consider the learning provided by this report and set out how they may do things differently.

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.

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
- 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.

Summary of recommendations for the sector

Chapter 3: Looking Forward

1	Without a standalone regulator driving consistency and improvement, the managing agent sector presents significant challenges and risks to social landlords. This is unsatisfactory for landlords and unfair on residents. Landlords should be proactive raising their concerns with relevant parties and use their collective influence to shape change in this sector.

2	Sector membership organisations, networks and individual landlords to consider how they may collaborate to increase their collective influence on rogue or poor performing managing agents and/or freeholders.

3	The Ombudsman will work with relevant parties to promote greater protection for residents and higher standards of professionalism amongst managing agents where this interfaces with the social housing sector.

4	The Ombudsman will work closely with The Property Ombudsman Scheme on sharing insights. This includes the development of a Memorandum of Understanding and exploring the potential for joint investigations.

Summary of recommendations for local government

Chapter 1: Strategic Issues

1	We would ask that local authorities consider this report in the context of decisions relating to Section 106 agreements within their area and how to ensure social landlords are involved at the earliest opportunity.

Summary of recommendations for landlord senior management

Chapter 1: Strategic Issues

1	Given the challenges identified in this report, landlords should ensure that they understand the level of risk they are exposed to in relation to fulfilling statutory and contractual obligations for properties where they are reliant on others such as managing agents or freeholders to act, especially in light of the need for further regulation of agents. This should be presented to the landlord's governance body to consider their risk appetite and take appropriate steps to mitigate against unacceptable levels of risk.
2	Landlords should ensure their development and operational teams have a shared understanding of the challenges and risks associated with new homes. Having considered in house expertise and residents' views, landlords should be clear on what compromises or restrictions they are prepared to accept when taking on properties owned and managed by third parties. They should then ensure that this is clearly communicated to their staff and that they have a robust due diligence system to prevent or reduce future problems and effectively manage residents' expectations.

Chapter 2: Operational Learning

3	Landlords should have, or actively seek, clear service level agreements with managing agents and/or freeholders. Landlords should review their agreements to clarify roles and responsibilities for those buildings where the landlord itself is the leaseholder. They should then ensure an effective mechanism to clearly and accurately communicate this to residents, staff and contractors.
4	Landlords should review complaints they have received where managing agents have been a contributory factor to identify areas for improvement. Landlords should then create an action plan to implement the findings from this review.
5	Landlords should review their operational response to service or repair requests in buildings owned and managed by third parties to ensure they are effective, including provision of interim support and maintaining accurate and robust records. Where these records are held or made on behalf of managing agents and/or freeholders, landlords should endeavour to ensure that they are provided either with copies of, or other clear information on, technical assessments, decisions and future plans**.**
6	Landlords should ensure their processes for responding to service issues, particularly involving multiple parties, include the development and use of

	clear action plans, and that performance against these plans is effectively monitored. Landlords should ensure these plans are proactively and effectively communicated to the resident so that they can understand the path to resolution and can support the landlord with monitoring performance.
7	Landlords should ensure that they are proactive in pursuing managing agents and/or freeholders for meaningful account information relation to service charges to ensure it is provided in a timely manner. In addition, landlords should ensure they are regularly and transparently communicating with their residents with respect to service charges, delays in providing them and the method of calculation.
8	Landlords that use standard form agreements should review those agreements against their responsibilities in buildings run by managing agents or freeholders. Where conflicts are identified then landlords should take steps to either remove the conflicts or communicate with the residents to explain why they believe aspects of the agreements do not apply.
9	Landlords should ensure they clearly outline their approach when it comes to escalating performance concerns with managing agents, and ultimately to freeholders. Landlords should also be clear at what point they would consider legal enforcement of contract or lease terms and ensure they openly and transparently communicate this to all relevant parties, in particular their residents.

Background and approach

Everyone deserves a decent, safe, good quality home that they can enjoy in peace, and this is critical to health and wellbeing. Nevertheless, things can and do go wrong. When this happens it can be a source of immense stress and anxiety for residents who live with the consequences daily. Therefore, it is important that residents know where they can go for help and that they have confidence that things will be put right.

However, particularly in relation to acquisitions through Section 106, landlords may not be solely responsible for putting things right. They are themselves reliant on the actions of third parties over whom they may have variable degrees of influence.

To help meet local housing needs landlords will become responsible for homes through acquisition including new build, sometimes even before managing agents are appointed. This can create risk for landlords due to their reliance on these parties. Where things go wrong it can create real challenges and frustrations for residents, landlords and their staff alike.

Through our casework we have noticed an increasingly complex landscape with many and varied arrangements. We have also seen landlords expending an enormous amount of time and energy on attempting to resolve issues without real progress.

The increased complexity of these arrangements seemingly correlates with an increase in confusion, delay and unfairness. This contrasts with the Ombudsman's efforts to simplify complaints processes and improve outcomes. For this report we looked at 62 cases across 37 landlords between November 2020 and December 2021. We found the maladministration rate was 64.5% compared to an average of 45% over the same period.

Notably, these investigations accounted for a larger proportion of investigations during this period than we anticipated, at 2.3% of cases. Figures[2] published in July 2020 by the Department for Levelling Up, Housing and Communities estimated that in 2018-19 there were around 234,000 leasehold homes owned by social landlords and let in the social rented sector, making up just under 5% of homes operated by landlords in our jurisdiction. Therefore, the issue of landlords' engagement with third party freeholders and managing agents seems to disproportionately appear as a critical factor in our casework. This is an issue that we touched upon in a previous Spotlight Report on leasehold and shared ownership but the continued prevalence of the issue in our casework has prompted us to look at this issue again in more depth.

The focus of this Spotlight Report is on landlords' engagement with third party freeholders and managing agents who sit outside of the Housing Ombudsman Scheme. We have defined a managing agent as a person or company appointed by the building owner (or someone else on their behalf) to manage that building. Their

[2] https://www.gov.uk/government/statistics/estimating-the-number-of-leasehold-dwellings-in-england-2018-to-2019

role may include, for example, repairs, maintenance and collection of service charges (or provision of financial information to landlords for this purpose). The government used a similar definition of managing agents in the protecting consumers in the letting and managing agent market call for evidence.[3]

Managing agents directly appointed by landlords to discharge their duties are considered by the Ombudsman to be an extension of the landlord itself, and as such we would expect landlords to monitor performance and take appropriate action to address poor performance as if the service was in house. We are not considering other governance arrangements such as Arm's Length Management Organisations (ALMOs) or Tenant Management Organisations (TMOs) in this report.

Whilst this report has not considered the relationship with agents appointed by the landlord, it is important for landlords to be clear about their approach where complaints are made to its agent. In the Ombudsman's experience, when a landlord uses a managing agent it will often require the agent to provide the first formal response, with the landlord providing the review if the resident remains dissatisfied. It is essential landlords are clear about complaint handling between itself and its agents, and take overall responsibility for ensuring this procedure is effective. This needs to be clearly communicated to residents to prevent confusion and delay between the landlord and its agent when responding to complaints.

Although there are undoubtably many good examples of where this relationship works well for the benefit of all concerned it is clear from our casework and conversations with landlords these can be difficult relationships. In addition, residents in these cases have not always found the complaints process accessible or effective. There is often confusion, not just for the resident, but also the landlord and third-party managing agent and/or freeholder as to responsibilities. This confusion can then be compounded by poor communication.

Central to this is accountability. Residents should be able to hold the professionals that are responsible for the quality, safety and management of their homes to account for ensuring that defects are repaired and that their complaints are resolved in a timely manner. In turn, landlords should also be able to hold third party freeholders and managing agents to account in relation to discharging their responsibilities.

The learning in this report will have relevance to many of the big challenges faced by the sector such as building safety, plans for developing new homes and the decarbonisation agenda. Both landlords and the sector will need to get to grips with the challenges brought by this additional complexity now or they may run the risk of increasingly dissatisfied residents.

For some landlords the learning in this report will not be new. Hopefully they will use this report to take stock of their position, their performance, and get reassurance that they already have a strong grasp on these issues. However, the aim of this report is

[3] Protecting consumers in the letting and managing agent market (publishing.service.gov.uk)

to highlight what we have found and to raise awareness in the sector of the inherent challenges faced by landlords. We also want this report to support landlords to assess how well their own approach is working, identify areas to make improvements, and encourage greater collaboration to overcome some of these challenges.

Landlords are increasingly exploring direct development and less reliance on Section 106 agreements to address housing need, but also exercise greater control. However, capacity constraints may mean this route may not be open to all landlords. We want to ensure landlords that are considering entering into, or increasing their participation in, Section 106 or other arrangements with third party managing agents and/or freeholders do so with their eyes open as to the longer-term challenges they may encounter.

Our approach

In this report we used our casework to explore:

- Whether landlords are put, by themselves or others, in a weaker position when it comes to complaint resolution, service quality and discharging their statutory and contractual obligations through reduced autonomy or control.
- The degree of clarity that landlords, third party freeholders and managing agents, and residents have on their roles and responsibilities when dealing with service issues and complaints.
- Whether, in properties where their landlords needed to engage with third party freeholders and managing agents, residents are at an increased risk of receiving a lower standard of service.
- How landlords have navigated the additional complexity of engaging with third party freeholders and managing agents and how that contributes to findings of maladministration.

Key data

Determinations made between November 2020 and December 2021

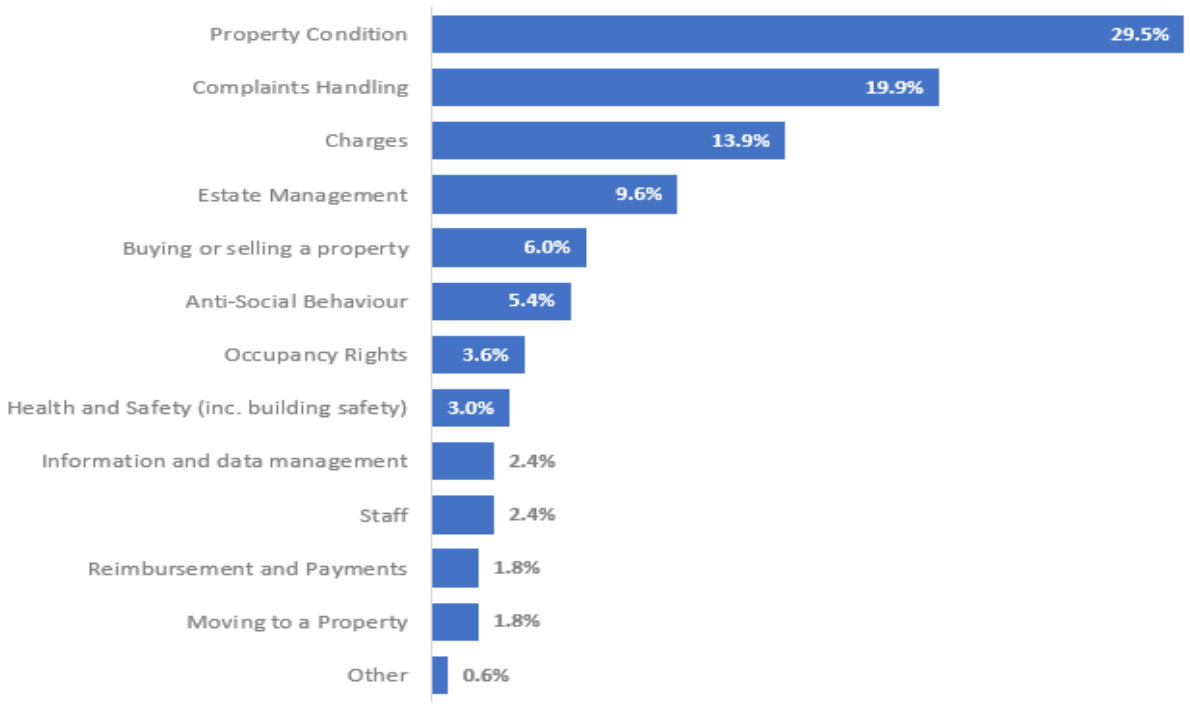
62 cases involving managing agents and private freeholders were considered by the Ombudsman, accounting for 2.3% of all cases considered in the same period.

64.5% of cases we investigated resulted in findings of maladministration, compared to 45% for cases of all types in the same period.

In **9.7%** of cases we found that although something had gone wrong landlords offered reasonable redress, compared to 10.6% for cases of all types in the same period

£20,727.71 in compensation was ordered across 62 cases.

Complaint category breakdown



Chapter 1: Strategic Issues

Risk in relation to statutory and contractual obligations

It is evident from our casework that social landlords can find fulfilling their obligations when working with the freeholder, or its managing agent, challenging. Where landlords take on properties that are owned and managed by third parties, landlords are reliant on those parties to discharge their statutory and contractual obligations. The purchase of those homes is likely to have been done by a different team to that which will handle the longer-term landlord-resident relationship. Landlords will be aware that this arrangement exposes landlords to risk, depending on how responsive and effective the managing agent and/or the freeholder are. It is arguable that residents are often less aware.

Our casework shows that some landlords can be more effective than others at mitigating these risks.

By examining their organisation's approach to managing agents and freeholders, governing bodies could ensure that the organisation, as a whole, understands the level and type of risk it is exposed to in relation to statutory and contractual obligations. Additionally, governance can consider their risk appetite, and take appropriate steps to mitigate against unacceptable levels of risk both in relation to existing homes and future development opportunities.

In doing so they should have regard for the fact that health and safety risks have been highlighted in the Social Housing White Paper as an area of both political and regulatory interest.

The following case study, which focuses on the landlord's engagement direct with the freeholder, demonstrates many of the areas where the response could have been significantly better. It also highlights the risks with respect to fulfilling statutory and contractual obligations that landlords may be exposed to because of a lack of direct control.

Case Study 1 – Overheating property

This case concerns the landlord's handling of reports of excessive heat and poor ventilation in the resident's property.

The building concerned is owned by a private freeholder. The landlord is a head leaseholder of several shared ownership properties in the building, and the resident is a shared owner of one of these properties. Another registered provider also has properties in the same building but has no direct relationship with this resident.

The issues with excessive temperatures and the inability to fully open windows were first reported by the resident in 2009, at the time stating many other residents had made similar complaints.

In April 2010 the local authority Environmental Health Enforcement Officer (EHEO) met with the landlord and other registered provider. Both organisations agreed to undertake initial investigations to establish their position regarding responsibilities with the freeholder to mitigate excess heat hazards in their properties. It was felt by the EHEO that a dual approach including changes to windows and additional measures such as comfort cooling would likely be required.

It is not clear what action, if any, took place following this until May 2016. The other registered provider contacted the landlord to say that it planned to install air cooling in its flats and invited the landlord to join their project. It does not appear the landlord elected to do so. The resident continued to raise this issue with the landlord during this time. In November 2016 she asked the landlord to ask the freeholder to ensure all flats in the building had adequate ventilation and air cooling.

The landlord responded in December 2016 to say it was aware of the overheating and window opening issues but, as it did not own the building, it had been limited in what it could do. It was aware of other works going on and that it would re-engage with the other registered provider to determine its plans and if the landlord would want to do the same. The landlord also said that it considered air cooling to be an improvement and therefore would be the resident's responsibility under the terms of the lease. However, it would liaise with the other registered provider then provide its final stance on this issue, although this appears not to have happened. The landlord also said that it would not be taking the decision to install ventilation and cooling systems in leaseholders' flats.

The landlord did subsequently engage with the other registered provider about its plans. The landlord also queried why the freeholder was not taking responsibility given this was a structural matter, indicating a shift in its stance. The landlord provided temporary air conditioning units in July 2017, although the resident felt this was not practical for daily use. The landlord indicated that it was still trying to find a permanent solution.

The landlord also met again with the Environmental Health Officer who informed it that the overheating was a category 1 hazard under the Housing Health and Safety Rating System.

The resident escalated her complaint. The landlord recognised the length of time this issue was taking to resolve and appreciated this must have been very tiring, as well as frustrating. It understood the seriousness of the issue and how it affected the enjoyment of the property.

The landlord then failed to regularly update the resident with respect to a plan to resolve the issue. This prompted a chaser from the resident in April 2018, nearly nine years after the issue was first reported. It is understood some measures such as solar film were being installed in September 2018 however no substantive progress had been made with respect to other possible solutions.

Findings

It is clear that the landlord was aware of the issues for at least eight years and had accepted that it failed to take timely action. It was unclear why it has taken so long to investigate the matter, determine who was responsible for any works needed, or take any practical action to resolve the issue. It is of concern that despite the landlord

being aware that overheating represented a category 1 hazard there is still no plan in place to address it.

It is unreasonable that no decision has been made regarding whether air cooling is to be installed and what is to be done about the windows. The only action taken has itself been delayed for a long time and had not been completed for the resident at the time of the investigation.

We found severe maladministration in the landlord's handling of the reported overheating at the property. The landlord was ordered to pay £500 to the resident for the time, trouble and frustration experienced in pursuing the matter.

Further orders were made for the landlord to arrange for a full survey of the property by an independent surveyor with a report to be produced within a month of that survey. Any works recommended in reference to the windows and air cooling to be completed within three months of the report. The landlord should comply with the orders regardless of cost, it will then be for the landlord to claim back any costs from third parties as it sees fit.

Recommendation 1 for senior management

Given the challenges identified in this report, landlords should ensure that they understand the level of risk they are exposed to in relation to fulfilling statutory and contractual obligations for properties where they are reliant on others such as managing agents or freeholders to act, especially in light of the need for further regulation of agents.

This should be presented to the landlord's governance body to consider their risk appetite and take appropriate steps to mitigate against unacceptable levels of risk.

Prevention and due diligence

Landlords may seek to address housing need by acquiring homes through Section 106 agreements, which is often long before the managing agents are appointed. Landlords often have little or no influence in relation to which managing agent is appointed by the developer but are left to manage any legacy issues that come to light after the development is complete and the properties are handed over.

Even when developers and managing agents are known we understand that these can change without the landlords having any opportunity to input or influence decisions, leading to shifting of the goalposts. This can undermine preventative work or due diligence carried out by the landlord in relation to appraising Section 106 opportunities.

Some landlords report that they would not have taken on certain schemes had they known the identity of the eventual freeholder or managing agent at the time the decision was made, based on their previous experience of working with them.

Unfortunately, some landlords have fed back to the Ombudsman that some of the learning they have taken away is reduced willingness to be involved in some Section 106 schemes. This is because the problems that they may inherit in the longer term are often disproportionate to the benefits and any subsequent housing provision would not be in line with their objectives or the service they wish to offer to residents.

Some of the landlords that do continue to take advantage of Section 106 opportunities report that they are increasingly selective with respect to developers that they will work with. Where the identity of the developer is either unclear or cannot be ascertained this can be an indicator of increased risk, and therefore opportunities are considered with that additional risk in mind.

Whilst these are ultimately commercial decisions for landlords they have highlighted the benefits of being involved in Section 106 developments at the earliest opportunity. This supports landlords to identify and manage risks in relation to both the technical aspects of the development itself as well as the longer term risks associated with the management of those properties.

Recommendation 1 for local government

We would ask that local authorities consider this report in the context of decisions relating to Section 106 agreements within their area and how to ensure social landlords are involved at the earliest opportunity.

Some of the subsequent challenges landlords and residents face can be ‘baked in early’, prior to their involvement. This can result in some of these challenges either being easily missed and can make it difficult to change at a later stage. As such landlords need to be clear on what risks or compromise they are prepared to accept in relation to their services and their reputation in advance.

However, despite some of the challenges outlined above, there are still reasonable steps that landlords can put in place to reduce the likelihood or severity of future problems.

We have seen examples of landlords using checklists supplemented by review meetings to ensure consistent and accurate record keeping with respect to these decisions. These are then included in employer’s requirements as appropriate. In addition, some landlords have also developed in house expertise to help them to identify areas that are likely to create problems in the future, particularly within their leaseholder, complaints and housing management teams. It is critical that development teams make use of the expertise within their organisation when making decisions on developments.

Considerations include, but are not limited to:

- *Planning or Section 106 covenants or requirements* – Ensuring awareness of the impact these may have on existing housing management strategies and

how residents live in those properties. For example, restrictions on drying clothes on balconies.

- *Building maintenance and lease structure* - Ensuring that there is clear division of maintenance responsibilities, including between internal and external responsibilities. Where communal heating and hot water systems exist, this can be an area of particular focus.
- *Management strategy and service charges* – This includes establishing what service provision there is across all tenures in the building, draft service charges and proposals on the identity of managing agents. This enables landlords to clearly communicate with residents prior to occupation with respect to costs and service expectations.
- Using or highlighting to others the best practice guide from LEASE[4] in relation to appointing managing agents to inform considerations.

Landlords should also take the opportunity to make full use of the expertise of their residents' experience. This can support decision making on which requirements to prioritise and, where possible, learn from those experiences to identify and mitigate potential problem areas for residents in the future.

This approach is also important for the landlord to manage its residents' expectations effectively when issues do arise involving third parties, and they are seeking to resolve them.

Case study 2 – Lack of transparency on roles and responsibilities

This case concerns transparency of information provided by the landlord concerning the freehold of the building the resident owns a property in, as well as information in relation to cladding and the landlord's complaint handling.

The freehold of the building is owned by a third-party private company. The landlord holds a head-lease with the freeholder and under-lease with the resident. A managing agent manages the building and provides services on behalf of the freeholder.

Advice Note 14 was issued by Government in December 2018 as part of its Building Safety Programme. In summary the advice was for owners of high-rise leaseholder buildings where the external wall of the building did not incorporate Aluminium Composite Material (ACM). The advice set out checks that building owners could carry out to satisfy themselves, and their leaseholders, that their building was safe. This guidance was consolidated in 'Building Safety Advice for Building Owners', issued in January 2020. Form EWS1 was introduced to prove to lenders that external cladding had been assessed by an expert.

In 2019 the resident contacted the landlord about selling his shared ownership flat. The landlord directed the resident 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.

[4] Appointing a Managing Agent - The need, selection and working with them - The Leasehold Advisory Service (lease-advice.org)

The resident contacted the landlord again to ask if the building had cladding. The landlord replied to the resident that there was no cladding on the building. The resident went ahead and paid for a valuation on the property, that went up for sale in 2020.

In July, the mortgage provider for the prospective buyer informed the resident that they needed the EWS1 form as it currently had a zero-valuation due to the cladding that was on the building. This was contrary to the landlord's assertion in January, and he passed this request onto his landlord. The landlord replied that it was the freeholder's responsibility to provide the EWS1 form but there was not one available for the building. The landlord further followed up and said the resident should contact the freeholder regarding form EWS1 and contact the landlord's Cladding Review Team about conflicting information he had been given about cladding on the building.

This was inaccurate as the landlord had been told that week that the EWS1 inspection had occurred, and the building had been rated B2. The rating meant that an adequate standard of safety had not been reached and remedial and interim measures were required. The agent also advised that it was working to ensure that all short-term interim measures identified by the inspection were executed as soon as possible.

The resident then made a formal complaint about the information the landlord had given him about cladding. He also said he had spoken to the agent who informed him the building was the landlord's responsibility.

In its final response the landlord said it was a leaseholder of the building and therefore did not have responsibility for the external walls of the building. The responsibility for external walls and therefore EWS1 rested with the freeholder, who may have delegated this to the managing agent. The landlord was unsure why the managing agent informed the resident it was responsible for the building, and it would contact the agent to ensure correct information was shared in future. The landlord apologised for the misinformation, stating it should have directed the resident's query regarding cladding to the freeholder as the responsible person.

The landlord partially upheld the resident's complaint, noting that while it had provided misinformation it had also informed the resident in subsequent correspondence shortly afterwards that it was not responsible for cladding. It confirmed no compensation would be offered as it was the resident's decision to sell their property without consulting the freeholder or agent regarding cladding.

When the resident referred the complaint to the Ombudsman he stated that he felt it was unreasonable that the landlord suggested he chase the freeholder or managing agent as he had no relationship with them. He also stated he was unaware that the landlord was not the freeholder of the building, as the information on its website sets out the landlord is the 'freeholder of your home' when a person purchases a share of a leaseholder property.

Findings and recommendations

The Ombudsman was satisfied the resident's lease documented that the landlord was not the freeholder of the building. However, the information published on its website was not sufficiently clear that the landlord is not always the freeholder. This may cause a leaseholder to assume the landlord is always the freeholder.

As the landlord was not the freeholder it was unable to obtain an EWS1 certification pursuant to Advice Note 14, this was the responsibility of the freeholder. It was unsatisfactory for the landlord to signpost the resident to the freeholder on this issue, as the resident's contract was with the landlord. The Ombudsman considered that the landlord had a responsibility to proactively engage with the freeholder regarding certification for its own benefit as a leaseholder and for its own leaseholders.

We found maladministration by the landlord in respect of the information it provided to the resident regarding cladding on the building. We also found maladministration by the landlord in respect of its subsequent complaint handling.

The landlord was ordered to pay £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.

A recommendation was made for the landlord to 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. Also to ensure it proactively engages with the freeholder to obtain regular updates (at least quarterly) on its compliance with the Government's guidance.

Recommendation 2 for senior management

Landlords should ensure their development and operational teams have a shared understanding of the challenges and risks associated with new homes. Having considered in house expertise and residents' views, landlords should be clear on what compromises or restrictions they are prepared to accept when taking on properties owned and managed by third parties.

They should then ensure that this is clearly communicated to their staff and that they have a robust due diligence system to prevent or reduce future problems and effectively manage residents' expectations.

Chapter 2: Operational Learning

Owning the relationship

While the context for providing services can be challenging for landlords, it is crucial they do not lose sight of the landlord-resident relationship. We have seen examples of landlords signposting residents to contact or chase managing agents and/or freeholders directly to resolve complaints. Although in some cases managing agents and freeholders have engaged with residents, we have also seen cases where they have, perhaps rightly, refused to do so as they do not have any form of contractual relationship with the resident.

It is the Ombudsman's view that the practice of signposting in this context is inappropriate. This is both inconsistent with the basic principle of privity of contract as well as the Ombudsman's expectations that landlords own the relationship with their residents and are proactive in pursuing resolution on their behalf.

It is important to remember the human element of these issues and the immense frustration residents will feel, like the resident who was passed between organisations to stop water coming through their ceiling in case study 4.

Landlords should be proactive in pursuing managing agents and freeholders to discharge their responsibilities, not only for their own benefit as a leaseholder but for the benefit of their residents. Again, as outlined the Spotlight Report on dealing with cladding complaints, the expectation is that landlords take ownership for getting clear updates and action from managing agents and/or freeholders, and failure to do so is unsatisfactory.

The Ombudsman will consider these actions when deciding what is reasonable when investigating an individual complaint. The following investigation illustrates this, and we have deconstructed the case study into four parts to help identify learning from different aspects of the complaint.

Case Study 3 (Part one) – Background and initial contact

This investigation concerned a complaint about the landlord's response to the resident's reports of heating and hot water issues at their property.

The resident was an assured shorthold tenant of the landlord and the household included young children. The property was a ground floor flat in a block, which was owned by a freeholder and managed by a managing agent on their behalf. The tenancy commenced in 2017 and the resident's sign-up documents advised that the rent included a distinct monthly charge for the heating and hot water services.

The property is served by a communal heating and hot water system, owned by the freeholder, and managed by the managing agent appointed on their behalf.

In November 2017 the resident started to experience heating issues and reported this to the landlord in early December 2017. This initial report was referred to the

managing agent to repair the communal system, however this repair did not resolve the issue. The resident followed up with the landlord who arranged for its contractor to attend, however the landlord's contractor cancelled appointments believing the managing agent was responsible for the repairs. The landlord intervened and its contractor visited the property, identifying that parts were required and followed up shortly after to complete the repairs.

Understanding roles and responsibilities

An issue that appeared in the early stage of this case study is a lack of clarity around roles and responsibilities. This is reflective of a theme that we have identified in several cases we considered for this report. Here it caused avoidable inconvenience for the resident and a short delay to the initial inspection and repair. However, there are many other cases where the delays have been significant. Some delays are due to landlord teams needing to get support from their colleagues in legal teams. Other delays are caused by protracted correspondence with managing agents or freeholders before any form of follow up action takes place, causing much frustration and anxiety to residents.

We understand from landlords that roles and responsibilities vary from building to building and agent to agent, adding complexity to both service delivery and complaint resolution. The plethora of different lease agreements was an issue that was highlighted in our previous Spotlight on leasehold, shared ownership and new builds: complexity in complaint handling.

We also understand, from anecdotal feedback from landlords, that the level of legal and technical understanding that managing agents and/or freeholders have about their responsibilities can be enormously variable. We have seen residents given conflicting information by landlords and managing agents in our casework, adding to the confusion and eroding confidence.

Therefore, landlords should ensure that they and the managing agent and/or freeholder have a clear, shared understanding of their legal and contractual responsibilities, including what this means in practice. For example, with respect to a communal heating system, as in this case, where is the physical boundary between the communal system and the system within the property? Are there any shared responsibilities and interdependencies that require a collaborative approach?

Landlords should then make certain that their residents, staff and contractors are provided with clear, accurate information on the roles and responsibilities for each building their residents live in. This includes ensuring that all policies that may operate differently account for situations involving managing agents. Whilst this may be achieved in several ways landlords should consider the most effective means of doing so. For example this may include the use of sub policies and procedures and a clear central accessible record.

Landlords should also consider whether staff training is required so that they understand, and are able to explain, the landlord's responsibilities when it comes to its relationship with the managing agents and/or freeholders for each building.

Recommendation 3 for senior management

Landlords should have, or actively seek, clear service level agreements with managing agents and/or freeholders. Landlords should review their agreements to clarify roles and responsibilities for those buildings where the landlord itself is the leaseholder.

They should then ensure an effective mechanism to clearly and accurately communicate this to residents, staff and contractors.

Case Study 3 (Part 2) – Repair response

After the landlord's contractor visited they identified there was another issue that resulted in insufficient heat, and this required referral back to the managing agent. The resident raised the issue again with the landlord in January 2018 following five weeks of intermittent lukewarm heating and minimal hot water with the landlord providing heaters as an interim measure. The landlord also arranged a joint inspection of the heating system with its own consultant and the managing agent's contractor.

The consultant advised that the communal boilers were not all working and there was only a third capacity, and the resident's heating issues could not be addressed until the communal repairs were done. No information was given as to the managing agent's contractors conclusions. The landlord then had some difficulty contacting the managing agent. It later appeared they had rejected the findings of the landlord's consultant and said they had already carried out repairs, referring to the earlier repair. The landlord then reviewed if there were any outstanding works within its remit.

Working relationship with the managing agent

In this case the landlord noted some difficulty with contacting the managing agent. Whilst this is not within the control of the landlord there are actions that landlords can take that may improve their communication and relationship with the managing agent. This includes having clearly defined lines of communication at both operational and strategic level, and regular meetings to monitor performance, responsiveness and satisfaction in accordance with agreed or contractual service levels.

We accept that the responsiveness of managing agents or freeholders can be variable, and in some cases the ability of the landlord to influence this is limited. It is also not always clear from our casework whether the delays originate from the managing agent themselves or the freeholder that they represent. However, we would expect landlords to demonstrate that they have taken reasonable steps to engage with the managing agent or, if they are unresponsive, the freeholder.

Where landlords are able to build strong working relationships with managing agents then they may be able to develop a more efficient approach to roles and responsibilities, areas of crossover and shared responsibility in the longer term.

Recommendation 4 for senior management

Landlords should review complaints they have received where managing agents have been a contributory factor to identify areas for improvement. Landlords should then create an action plan to implement the findings from this review.

Effective response

This case study highlights several elements to an effective response, some which the landlord did well, and some where they could make improvements. Many elements have been explored in previous Spotlight reports which we would encourage landlords to review. Further, we will supplement this report with sector development resources to help landlords with these elements as part of our forthcoming centre for learning. These elements include:

- Timely response to service or repair requests
- Effective management processes to prioritise requests
- Provision of interim support
- Accurate and robust record keeping
- Being proactive rather than reactive
- Clear lines of communication with managing agents and/or freeholders.

Recommendation 5 for senior management

Landlords should review their operational response to service or repair requests in buildings owned and managed by third parties to ensure they are effective, including provision of interim support and maintaining accurate and robust records.

Where these records are held or made on behalf of managing agents and/or freeholders, landlords should endeavour to ensure that they are provided either with copies of, or other clear information on, technical assessments, decisions and future plans.

Case Study 3 (Part 3) – More heating problems and complaint investigation

Seven months later, from November 2018, the resident reported further heating problems to the landlord. She raised dissatisfaction that the communal heating system had not been fully functional for over a year, despite being informed by the landlord's contractor that it needed replacement.

The landlord responded to say that the communal system was working to full capacity even though one of the three communal boilers was not working. The landlord told the resident that the managing agent believed the heating problems

were originating from the resident's flat so it would send its contractors to investigate. The landlord, after a delay, supplied additional heaters and arranged a joint inspection with their and the managing agent's contractors for 18 December 2018.

On 23 January 2019 the landlord's contractor carried out substantial works, replacing several parts, vented and tested the system, and left having ensured everything was working.

The following day the resident reported complete loss of heating rather than intermittent issues as before. The landlord's contractor attended the same day, identified a potential conflict causing the heating not to work while the hot water coil was on, but the heating came on when the coil was turned off. They then took steps to ensure the heating was working on the basis that the system would be flushed by the managing agent, otherwise issues would arise.

The resident made a further report of no heating on 4 March 2019. The landlord's contractor visited the same day and noted that it suspected a conflict between the gas system and immersion heater and intended to visit to get this, but forgot.

On 20 March 2019, the resident complained about raising heating and hot water problems on numerous occasions since moving in and the failure to replace parts of the communal heating system. She also complained about services paid in rent but not received (monthly charge for heating and hot water services), increased electricity bills due to the use of emergency heaters, and the impact on her and her family's health in colder weather.

Managers from the landlord visited on 20 and 25 March 2019. They repeated the advice about not using the immersion when using the heating and to report if this did not solve the issue. They also noted that despite the thermostat being turned up to maximum the radiators were lukewarm and the flat was "border line comfortable in warmth", which the resident said was worse on cold days. As there were no reports from other flats they suspected it may be a thermostat fault.

On 27 March 2019 the landlord's contractor attended and advised there was nothing they could do. The issue appeared to be due to poor circulation from the main pump on the communal heating system and the managing agent needed to investigate. They also needed to advise on the procedure "to drain and fill" the system. The contractor later queried if the managing agent had completed any works following the earlier report of poor circulation. Subsequent discussions identified a lack of clarity over whether the system had been flushed by the managing agent's contractor following the works in January 2019.

The landlord's contractor visited again on 10 April 2019 and noted some information was needed about location of parts of the system so it could do an inspection. The landlord contacted the managing agent again on 26 and 30 April 2019 to again request water sample results from the flush and a further joint visit.

On 24 May 2019 the landlord noted its contractor and the managing agent's contractor met and "worked through" the system. The records of this visit indicated that no flush had been noted by the engineer and that the managing agent's contractor had been referred works to ensure the system is balanced correctly.

On 28 May 2019 the landlord internally queried whether there was a specification and timetable for agreed works. It noted that resolution required technical input from the landlord's contractor and dialogue with the managing agent. Delays resolving this

and other complaints about heating and hot water at the scheme had mainly been due to a lack of effective engagement with the managing agent and not fully establishing the root cause of the problems.

On 13 June 2019 it was noted that the managing agent's contractor had undertaken a flush of the system, which should support some repairs the landlord had undertaken at an earlier stage. The landlord also confirmed with the resident that the heating was working, who raised a concern that it always did work in the summer and that by autumn issues would reoccur. Compensation was discussed and the landlord advised it had a formula it would use to calculate energy costs.

Action plans and effective monitoring

A gap in the landlord's record keeping in this case weakened its ability to diagnose the problem and resolve the issue as well as hold the managing agent to account and communicate with the resident.

This information is also necessary to enable to landlord to monitor, and if necessary, chase, the performance of the managing agent against either its responsibilities or those of the freeholder.

Landlords should be able to demonstrate attempts at effective engagement with the managing agent to establish the root cause of the issues, develop clear action plans, and ensure that performance is both proactively and robustly monitored.

Recommendation 6 for senior management

Landlords should ensure their processes for responding to service issues, particularly involving multiple parties, include the development and use of clear action plans, and that performance against these plans is effectively monitored.

Landlords should ensure these plans are proactively and effectively communicated to the resident so that they can understand the path to resolution and can support the landlord with monitoring performance.

Case study 3 (Part 4) – Complaint response and outcome

On 18 June 2019 the landlord issued a stage one response noting that there had been visits to resolve the problem. It also noted a report from the managing agent indicated no clear fault but the issue may be linked to part of the communal system failing, impacting the resident's property in periods of high demand. It apologised for the inconvenience caused and offered £1271.06 for the period of heat loss based on their formula, in addition to £50 for service failure.

The resident asked for the compensation to be reviewed as she felt the heating issues persisted over a longer period than accounted for by the landlord calculation.

The landlord agreed to recalculate compensation to include electricity costs during the winter months of December to May each year.

On 1 August 2019 the landlord issued a final complaint response in which it offered £1,789.37, comprising of its previous offer and heater and immersion costs for 3 January 2018 to 30 April 2018. The resident again asked for the compensation to be reviewed as the period of heating and hot water issues was longer.

On 5 December 2019 the landlord offered £2137.46 comprising of the original offer made in June 2019 and additional compensation for a lack of heating, lack of hot water and electric fan heating costs for 115 days.

In January 2020, and for most of that year, the resident asked for the compensation to be reviewed as the calculation was incorrect and didn't cover the right period. On 3 November 2020 the landlord restated the final response of 5 December 2019 and explained the calculations reflected timelines from contractors.

Findings

It was reasonable to initially refer the resident's reports to the managing agent and then appropriate to intervene when the resident reported cancelled appointments. However, in this case the evidence demonstrated that the landlord did not always respond in a timely manner. There was also no record keeping about when recommended repairs within the managing agent's responsibility were carried out.

Timely steps were also not taken to provide emergency heaters following the initial complaint. These were provided significantly outside the timeframe in the landlord's repair policy for heating issues during winter months. This was repeated the following winter with heaters again not being supplied in a timely manner, and again outside of the timeframe of the landlord's repair policy.

Whilst it was positive that the landlord arranged joint visits with the managing agent there was no clear record of detailed action plans agreed with the managing agent for any visit, or why some works took so long to be carried out. It was also unclear whether some actions required of the managing agent were carried out. This indicated a lack of effective monitoring which impacted the landlord's ability to take appropriate action when heating issues were re-raised.

The landlord in this case provided limited information regarding discussions with the managing agent, recommendations and what actions were agreed to. There was a lack of engagement and effective collaboration with the managing agent in addition to poor record keeping and a lack of proactive monitoring and communication in dealing with the issue.

The complaint responses were outside of the landlord's policy timeframes. They also stated that further works had been identified and that it could provide no assurances about this as it did not have influence over the managing agent. This may have undermined the resident's confidence that the landlord could effectively pursue resolution.

We found service failure by the landlord in its response to the resident's reports of heating and hot water issues. While the landlord acknowledged service failures and inconvenience caused to the resident the compensation was not proportionate to the extent of service failures and cumulative distress and inconvenience caused to the resident.

An order was made for the landlord to pay a total of £3,048.23 compensation. This comprised of the landlord's offer of £2,137.46, plus £400 for distress and inconvenience and additional sums to refund for the monthly heating and hot water charges paid to the landlord as the service was not received plus additional costs relating to using the emergency heaters.

We also ordered the landlord to review their contractual arrangement with the managing agent to ensure similar issues are troubleshooted and resolved as effectively and quickly as possible and provide minutes of this review to this service.

Service charges

Many of our cases involved service charges either as one of several issues, or as a specific issue in itself. This is an area where the Ombudsman may investigate complaints about collection of service charges, their calculation or how this information was communicated. The Ombudsman will not consider the level of the charge or increase to the charge. While many of the cases considered by the Ombudsman concerned leaseholders and shared owners these issues can and do impact tenants.

In the following case study, the landlord failed to proactively pursue the managing agent and/or freeholder for the account information. The landlord even failed to act at an early opportunity following the enquiries made by the resident, leaving the resident in the dark for a significant period as to how much they may owe.

We understand from landlords that this as an area of particular challenge for them as some managing agents and/or freeholders do not produce accounts, do not provide transparent and properly audited accounts, or fail to produce them in a timely manner. In this situation the Ombudsman believes that it is reasonable to expect landlords to demonstrate proactive engagement and, if needs be, chasing service charge account information so that this can be considered in a timely manner.

Late provision of this information causes uncertainty for residents as to charges for which they may be liable. It also undermines both their and the landlord's ability to appropriately scrutinise and challenge the method used to calculate the charges so long after the event. It is the Ombudsman's opinion that the longer the delay to providing this information the greater the possibility of unfairness to the resident.

In addition, landlords should ensure that they are regularly and transparently communicating with the residents about their service charges. This applies not only to information about service charges but all aspects of the services they receive.

Case study 4 – Service charges

This investigation concerned the landlord's response to the resident's requests for a breakdown of the service charges for 2018-19 and 2019-20 periods and its handling of the associated complaint.

The resident was a leaseholder of the property, the landlord was the head lessee but not the freeholder of the building. The freeholder employed a managing agent who was responsible for maintenance of the property on behalf of the freeholder.

In September 2019 the landlord issued a Section 20(b) notice to inform the resident they would not be making a service charge demand within 18 months of expenditure being incurred, as the year end accounts had not be finalised. It confirmed that full cost details were not available and provided provisional figures to the resident. It apologised for the delay and confirmed a finalised service charge booklet would be sent as soon as the required information was available.

In June 2020 the resident emailed the landlord to request a breakdown of her service charges for 2018-19 and 2019-20. The landlord responded, attaching copies of estimated service charge information for her property as it had yet to finalise the accounts. It explained that normally the account charges would be provided in the September following the end of the financial year, however there was a delay in finalising the 2018-19 accounts. It confirmed that it hoped to issue both 2018-19 and 2019-20 accounts in September 2020.

In November 2020 the resident followed up and asked the landlord when she would receive a breakdown of the actual service charges for the previous two financial years. She stated it was a legal requirement for the landlord to provide these documents, especially for the older accounts. She was dissatisfied that it had been over a year since the Section 20(b) notice and the landlord had not provided further update or explanation of the delay. The resident subsequently raised a formal complaint with the landlord.

The landlord's records show that in December 2020 it emailed the managing agent of the property to request year end accounts from 2018 to date.

The landlord issued its complaint response to the resident in December 2020. It confirmed that the managing agent provided communal services at the resident's building and the landlord required the managing agents accounts to provide the resident with further details. The accounts for 2018-19 were received at the beginning of December and work had begun to analyse these. It said the process could take some time to complete and the resident would be provided with a summary of the amount incurred by January 2021.

The landlord also apologised that it had not yet sent the 2019-20 accounts or a Section 20(b) notice. This was because it was reliant on the accounts for that year being provided by the managing agent, and it had not yet received them. It confirmed that it would be sending a Section 20 (b) notice to the resident, and it would not know the actual cost until it had analysed these accounts. It acknowledged it would only be able to charge the resident for costs incurred within 18 months of the notice.

The landlord upheld the resident's complaint and offered £50 compensation in recognition of the inconvenience caused by its failure to respond to her queries and provide her with the information she had requested. The landlord confirmed this concluded their internal complaints process.

Findings

A landlord would usually be obliged to provide information regarding its service charge accounts within one month of a request from a tenant, or six months from

year end, whichever is later. In this case the 2019-19 accounts had been delayed by 14 months and the 2019-20 accounts had been delayed by 2 months.

The landlord explained that all service charges for the property were managed by the managing agents, employed by the freeholder. The landlord would not be in control of the delay caused by the managing agent's failure to provide information. However, the landlord would be responsible for following up with the managing agent, asking for the relevant information and keeping its residents updated.

The landlord had initially taken appropriate steps by writing to the resident in September 2019 explaining there would be a delay. However, there was no record of further communications. The landlord also did not actively pursue the managing agent for the accounts until December 2020 despite multiple requests from the resident. The managing agent provided the 2018-19 accounts promptly, having been signed off in October 2020. We found that the landlord did not act reasonably given its obligation to provide this information to their leaseholders.

We found there had been service failure by the landlord with respect to providing this information. In addition, the offer of £50 compensation was not proportionate to the length of time it took to provide accounts summaries, nor the time and inconvenience experienced by the resident pursuing this matter. The landlord was ordered to pay £225 compensation to the resident, £150 for the delay in providing the service charge information and £75 for the time and trouble spent pursuing the complaint.

Recommendation 7 for senior management

Landlords should ensure that they are proactive in pursuing managing agents and/or freeholders for meaningful account information in relation to service charges to ensure it is provided in a timely manner.

In addition, landlords should ensure they are regularly and transparently communicating with their residents with respect to service charges, delays in providing them and the method of calculation.

Care with standard form agreements

It is important that the landlord's agreement with the managing agent and/or freeholder reflect their obligations to the resident.

The range and complexity of different landlord relationships with different managing agents and/or freeholders can understandably create a drive towards standard documentation. The use of standard form tenancy and leasehold agreements are clearly desirous for landlords from the perspective of consistency and the management of obligations landlords have to their residents. However, the following case highlights the pitfalls that can be associated with this approach where other agreements are in place which can, in effect, undermine agreements made with residents and the reasonable expectations they may have of their landlord.

Case study 5 – Misleading tenancy agreement

This investigation concerned the landlord's handling of a resident's reports of water ingress and consequential repairs which were required.

The resident is a tenant of a flat in a block, the landlord is the leaseholder of a private freeholder who owns the building the flat is situated in. The freeholder uses a managing agent to perform its responsibilities in respect of the building.

The resident reported water ingress from the ceiling in one of the bedrooms in the property. After inspection and referral by the landlord to the freeholder there was some question as to responsibility raised by the freeholder. The landlord also noted there were several leaks in the building that the management agent was not responding to properly and its legal team were enlisted to help resolve the situation.

Nearly three months later, after several chasers from the landlord, the managing agent confirmed a possible cause for the leak had been identified and repaired, and it would wait until everything had dried out and then arrange redecoration.

A month later the managing agent confirmed to the landlord that repairs were complete and there had been no other reports of leaks from other tenants. However, the resident said the managing agents had visited three weeks before to see what repairs were required but nothing had happened since.

Another month later the landlord said it was still waiting on a response from the managing agent, stating it would use its own contractor to do the work if there was no progress shortly. It eventually set a cut-off date of around 10 weeks after the external repairs had been carried out and the room had been ready for redecoration.

Following contact from the resident the Ombudsman then contacted the landlord to clarify the status of the complaint and to chase its final complaint response, some eight months after the initial complaint was made to the landlord.

In its final response the landlord set out that it felt it had acted appropriately in pushing the managing agent to get the works done. It also concluded the internal decorations were outside of its obligations but acknowledged that it had failed to follow its complaints policy and offered £100 compensation for this.

The landlord concluded that it had acted appropriately in complying with its own policies and procedures, other than its complaint handling. It would help the resident make a claim against the managing agent's insurance for damage and consequential loss, but it could not make the claim itself as the resident suffered the loss. Should the resident be unsuccessful in claiming against the managing agent's insurance it would compensate him for the loss of the room as a gesture of goodwill, calculated using its own method and other small consequential losses.

Findings

The resident's tenancy agreement stated the landlord had responsibility for both internal and external repairs to the property, and it would make good and tidy up after any repairs and improvement works.

Given this the landlord should have considered its obligations to the resident, clearly explained why it did not consider it was responsible for repairs and sought legal advice if necessary. It was understandable that the resident expected the landlord to do more to resolve the substantive issue and subsequent redecoration. The fact that

the landlord's lease with the freeholder did not reflect the same responsibilities of those in its agreement with the resident, or that the landlord could not perform its obligations under the agreement without enforcing the terms of its lease with the freeholder, did not alter its obligations to the resident and did not prevent the resident from enforcing those obligations.

We found maladministration in relation to the landlord's handling of reports of a leak to the resident's roof and the associated complaint and claim for compensation.

An order was made for compensation to be paid to the resident in respect of loss of use of the room, additional utility costs, delays in complaint handling and inconvenience. An additional order was made for the landlord to review the resident's other claims for compensation in relation to the consequential losses he had suffered.

Recommendation 8 for senior management

Landlords that use standard form agreements should review those agreements against their responsibilities in buildings run by managing agents or freeholders.

Where conflicts are identified then landlords should take steps to either remove the conflicts or communicate with the residents to explain why they believe aspects of the agreements do not apply.

Escalation

The learning highlighted earlier in this report will be able to resolve or mitigate against some of the challenges we have seen in our casework, but not all of them. There may come a stage where landlords decide that managing agents and/or freeholders are not meeting their obligations in a timely manner, and/or with sufficient care and skill.

Poor agreements and enforcement of them can go beyond issues with service charges and repairs and can extend into other key areas around risk management and health and safety compliance.

Landlords should consider whether they are consistent when it comes to escalating performance issues with managing agents, and/or freeholders and confident in their approach. This includes raising and escalating their own complaints through the managing agent's complaint process and ultimately to the freeholder.

We would encourage all parties to be clear on the trigger points for escalation, what step they are escalating to, and at what point landlords will consider legal enforcement of contract or leasehold terms. Landlords should also consider the value of greater resident involvement in the process of block management and the viability of options available to them.

Crucially, landlords should be transparent with residents so that they are aware and assured by the landlord's approach.

Recommendation 9 for senior management

Landlords should ensure they clearly outline their approach when it comes to escalating performance concerns with managing agents, and ultimately to freeholders. Landlords should also be clear at what point they would consider legal enforcement of contract or lease terms and ensure they openly and transparently communicate this to all relevant parties, in particular their residents.

Chapter 3: Looking Forward

Two tier services

Landlords face difficult decisions on a range of complex, and sometimes conflicting, issues. There can be a tension between provision of social homes and potential risks to service levels, statutory and contractual obligations, and landlords' reputations.

The Ombudsman may apply the landlord's policy when deciding what is fair in all the circumstances, given the landlord's obligations to its residents, regardless of whether it has sought to deliver those obligations through third parties.

Where the landlord does not have complete autonomy to act and is reliant on others, such as managing agents or freeholders, there is a risk of creating a two-tier level of service for their residents. Residents in properties owned and managed by the landlord can reasonably expect that the service they are provided is in line with the landlord's statutory obligations and in accordance with their own policies.

However, residents in properties where this is not the case are often told that the landlord will "use reasonable endeavours to ensure a satisfactory service" or similar. As was the case in the second case study. This is a different, and possibly lower, level of service by comparison with other residents. It is also these residents who are at a greater risk of falling into the gaps in understanding of roles and responsibilities and the subsequent enforcement of them.

Landlord policies may not be applied directly in these situations, adding to the operational complexity for their staff and residents. As mentioned earlier landlords may wish to consider the use of sub or block policies to deal with this to avoid unintentionally misleading their residents and ensuring clarity as to the service level they should expect.

Landlords should also make sure that residents are expressly aware of this and the potential challenges the property may cause the landlord and resident, ideally prior to beginning occupation or purchase. This follows the same principle that we previously outlined in our Spotlight Report on dealing with cladding complaints. If there are issues that the landlord is aware of that may impact decisions made by residents, or future residents, they should take steps to ensure they are aware of this. They should also be aware of any measures the landlord has put, or is putting, in place to address this. This is to ensure transparency with respect to potential service levels to ensure residents can make informed decisions.

Although there is no simple solution to address this issue, boards and governance bodies should reflect on this, and having understood their current situation and options, be clear on their approach.

Collaborative working

As with many issues in the sector this one is not unique to landlords of a particular size, type or location. There is also no one single action that will resolve these issues. Increasingly landlords are using their existing networks and collective experience to support each other both generally and with tackling specific poorly performing managing agents and/or freeholders. Based on the evidence in our report, we believe further collaboration would be beneficial to the sector.

Landlords have told us how they have had some success in taking a collaborative approach in situations where the responses of managing agents and/or freeholders has been unsatisfactory.

- *Firstly, internal collaborative working.* We are aware that some landlords have found support from their legal teams has assisted them to get traction with, and improve the response from, managing agents they work with. Landlords have also found success by making sure their development teams are aware of the challenges that their colleagues in housing management and complaints teams face in the longer term so this can be accounted for when making development decisions.
- *Secondly, collaborative working with other building occupants*. Some landlords have found that raising issues with managing agents and/or the freeholder in partnership with other building residents of all tenures, including private leaseholders, has proved effective in improving responses and action.
- *Finally, collaborative working with other registered providers*. We are aware of some instances where multiple providers within the same building have collaborated and found success in improving the response and action of managing agents.

On that basis we would encourage landlords that are not already doing so to share what strategies and approaches have worked well for them, and what has not worked so well, to overcome some of these challenges.

Sector-wide collaboration

There will be occasions where, despite landlords' efforts, they are unable to effect change in the performance or behaviour of managing agents and/or freeholders. It is apparent that poorly performing managing agents and freeholders are a hugely frustrating issue for the sector and has been described to the Ombudsman as feeling like 'The Wild West'. It is even more frustrating for the resident who may be stuck in the middle.

The Ombudsman considers poor performing managing agents and/or freeholders are detrimental to the sector and both the individual and collective interests of social landlords and residents. Within its jurisdiction, the Ombudsman is unlikely to be able to make orders direct to the managing agent where it has seen the landlord has acted reasonably but the issues may remain unresolved. However, the Ombudsman is increasingly likely to make recommendations and propose the determination is shared with third parties. Where the freeholder or managing agent is also a member

of our Scheme, we may extend an investigation under paragraph 50 of the Scheme. The Ombudsman is also exploring collaborative working with The Property Ombudsman Scheme. This includes developing a Memorandum of Understanding, following the suggestion by The Property Ombudsman.

There is also considerable influence that the sector could bring to bear to drive improvements in this area.

There is potential for landlords to collaborate further through membership organisations and networks to articulate a shared view of the standards and service levels they need from the managing agents sector. This could include input into the development of the Block Management Sector Code[5].

Beyond this the sector may wish to consider how well Section 106 is working for them in practice and outline any potential changes to the planning process or working practices that would encourage greater participation and improved outcomes for the sector and its residents.

Landlords should consider how they might share intelligence about poor performing managing agents and freeholders. They may also consider how they can bring about positive changes in performance and ultimately alienate poor performing managing agents and/or freeholders. This includes sharing intelligence on agents who may be performing poorly with The Property Ombudsman Scheme, which could inform its work on membership compliance.

Recommendation 1 for the sector

Without a standalone regulator driving consistency and improvement, the managing agent sector presents significant challenges and risks to social landlords. This is unsatisfactory for landlords and unfair on residents. Landlords should be proactive raising their concerns with relevant parties and use their collective influence to shape change in this sector.

Recommendation 2 for the sector

Sector membership organisations, networks and individual landlords to consider how they may collaborate to increase their collective influence on rogue or poor performing managing agents and/or freeholders.

[5] Draft: Block Management Sector Code, 1st edition - International Standards Consultations (intstandards.org)

Recommendation 3 for sector

The Ombudsman will work with relevant parties to promote greater protection for residents and higher standards of professionalism amongst managing agents where this interfaces with the social housing sector.

Recommendation 4 for sector

The Ombudsman will work closely with The Property Ombudsman Scheme on sharing insights. This includes the development of a Memorandum of Understanding and exploring the potential for joint investigations.

Conclusions

Engagement with managing agents, and by extension, freeholders can be a challenging and frustrating issue for landlords. It is also clear that where there are gaps in understanding, response or resolution to issues, residents are bearing the burden of the impact.

In many cases it is also hard to distinguish between the actions or inactions of a managing agent or the freeholder they are acting on behalf of. Managing agents can be beholden to the instructions and decisions of the freeholder, in addition to their own timescales for response. In some instances this may be driving the challenges landlords face.

A key aspect of this challenge is that this is the point at which a regulated sector is interacting with an arguably largely unregulated sector. Through our investigations we have seen enough evidence that shows this relationship is often strained, and at worst dysfunctional.

It is not clear if there is a single common cause, beyond the comparative lack of regulation, or whether it is the cumulative effect of several smaller causes. However, we know from speaking to landlords that they feel a tension between their social objectives and the business objectives of some managing agents and possibly some of the freeholders that appoint them.

What is clear, based on the casework we have seen and our experience from previous Spotlight Reports, is that if improvements are not made in this space, it is likely to be a significant blocker that will negatively impact delivery against objectives placed on the sector to provide a decent home.

The Ombudsman notes the 2019 report into the Regulation of Property Agents, chaired by Lord Best, and welcomes the recommendations it made to reduce the instances of poor service we are seeing.

The Ombudsman also notes the consultation on a Block Management Sector Code[6] being facilitated by RICS on behalf of the RoPA Codes steering group. It sits beneath the high-level principles of professionalism set out in the overarching code and follows on from the recommendations made by Lord Best. We would encourage the managing agents sector and private freeholders to consider adopting the requirements of the draft Code and engage with this report and its recommendations to support social landlords and residents.

Boards and governing bodies should ensure they are informed and ask the following questions of their organisations. They may also consider the value of using these questions as a basis for self-assessment on this issue.

1. **How exposed are we in relation to risks around meeting our statutory or contractual obligations?** Landlords should be clear on their risk appetite in this area and have a good understanding of how many buildings are occupied by their residents and how many residents are in them. They should also understand how well, or otherwise, they are able to meet their obligations in a timely and efficient manner. Poor performance in this area may be reflected in resident satisfaction which is an area of current focus both in policy and regulatory terms.

2. **What compromises are we prepared to make, if any, in providing homes without complete autonomy to act?** Landlords face challenging decisions when it comes to balancing the need to provide additional homes and surrendering autonomy. Feedback from landlords is that some of these compromises are 'baked in' very early on. Before entering into these arrangements landlords should take steps to be clear on what compromises they are prepared to make, both in terms of their autonomy to act and the types of restrictions that may be imposed on the way their residents live. Landlords should satisfy themselves that the voice of their residents is included in reaching this decision.

3. **How robust is our due diligence in this area?** Having clarified the position with respect to compromises landlords should satisfy themselves that they have adequate expertise and robust processes to appraise future opportunities. Again, landlords are encouraged to use the expertise of the teams from across the organisation to feed into development decisions. Landlords should also ensure lessons learned from complaints are fed back into this process.

4. **How clear are we on our roles and responsibilities? Do we have a common understanding between ourselves, managing agents, freeholders and residents?** This is a complex area and can be one of the driving factors behind complaints. Failure to ensure clarity both in terms of legal and practical responsibilities can also result in lost productivity, additional expense and deterioration in the relationship with residents.

[6] Draft: Block Management Sector Code, 1st edition - International Standards Consultations (intstandards.org)

Landlords should take steps to ensure a shared understanding of responsibilities and ensure this is communicated effectively with all parties.

5. **What steps can we take to improve performance?** Landlords should understand where there is good performance and where there is poor performance. Landlords should consider how they could get more engagement and better response through building relationships and any other levers available to them, both formal and informal. They should have clear policies or processes for staff to follow to escalate instances of poor performance and be clear on how they will enforce obligations. They should also consider how they can collaborate with partners in the sector to collectively make the sector a hostile place for rogue and poor performing parties.

To support landlords and the sector further we are discussing our findings as well as some of the challenges posed to the sector with The Property Ombudsman Service, who have jurisdiction over managing agents. It is our intention to develop a Memorandum of Understanding with them to use our jurisdictions collaboratively.

Through our proposed Centre for Learning we will also develop content and tools to help landlords with the key elements of an effective response. We will also look specifically at how we can support landlords with dealing with difficult and complex casework to further strengthen local complaint handling.

Housing
Ombudsman Service

PO Box 152, Liverpool L33 7WQ
0300 111 3000
www.housing-ombudsman.org.uk

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