

Complaints about repairs – guidance and checklist

Repairs are consistently the biggest driver of complaints made to social landlords. They are also by far the largest category of complaint escalated to the Housing Ombudsman. Whether it's a problem with damp and mould, heating, hot water or any other aspect of the property's condition, these issues directly affect residents' daily lives. Residents want the problem diagnosed and resolved within the landlord's timescales, and when this doesn't happen, they may well use the complaints procedure to try to resolve the matter.

Social landlords' repairs performance, and their response to damp and mould in particular, have been under intense scrutiny in recent months. Media reports and TV documentaries about damp and mould in social housing were followed by a damning coroner's report into the death of two-year-old Awaab Ishak following prolonged exposure to mould in his social housing home. This has led to scrutiny and demands for action – not just from residents, but from the Regulator of Social Housing, the Housing Ombudsman and the Secretary of State.

While landlords try to get a grip on damp and mould, it's important not to take their eye off the ball when it comes to other areas of disrepair. Complaints can reveal weak areas of repairs performance and can be a valuable source of learning for landlords. Improving repairs services and effectively managing complaints if things go wrong isn't just the right thing to do, but essential to meet the expectations of both the Ombudsman and the Regulator, particularly with the introduction of Tenant Satisfaction Measures.

This guidance aims to help landlords avoid complaints about repairs, deal effectively with any complaints received and avoid any adverse findings from the Ombudsman.

Avoiding complaints about repairs

Prevention is better than cure. Landlords need to be aware of the common drivers for complaints about repairs and constantly work to avoid them. Some of the most common factors are:

- Delays
- Missed appointments
- Poor diagnosis of the cause (particularly in cases of damp, mould and leaks)
- Failure to get it 'right first time'
- Poor quality work
- Poor contracts and weak contract management
- Poor communication – failures to update etc
- Poor record keeping
- Operatives' behaviour – eg, causing damage or leaving a mess.

Landlords need to focus on these areas in particular. Where things have gone wrong in the past, or complaints have been raised, landlords should analyse the root cause of these failures and use this learning to drive improvement. For example, a pattern of complaints about poor-quality work may reveal a problem with a particular contractor, or with a post-inspection procedure.

New lettings (voids)

A significant number of complaints are about the condition of the property when let, or can be traced back to problems that could have been addressed when the property was void.

A new letting marks the beginning of the landlord/tenant relationship, and it's important to get off on the right note. A poor experience when moving in can colour a resident's view of the landlord and it can be hard to rebuild their trust.

The landlord needs to ensure that the property meets all legal standards and its own letting standard, and that the new resident is fully aware of any outstanding works and when they will be completed. This can be challenging, given the pressure on landlords to reduce relet times and minimise rent loss, but taking short cuts is likely to prove costly later on.

Landlords should ensure that properties meet the following minimum standards:

- The legal standard: Is 'fit for human habitation' and free from 'prescribed hazards'¹
- The landlord's own letting standard.

Frontline staff and complaints officers may not be familiar with the detail of the legal standards but should know where to turn for advice if needed.

Landlords' own lettings standards need to at least meet the minimum legal standards. When drawing up a letting standard, a useful benchmark is to ask: 'what standard would I expect when moving to a new home?' Some landlords have reduced discretionary void works in recent years due to financial pressures, but many will still carry out cosmetic works, deep cleaning or decorating prior to letting, which can benefit the start of the landlord/tenant relationship.

Essential repairs should be carried out before letting, but any minor works can be carried out later – ideally with the new tenant's agreement – to enable the tenant to move in as soon as possible and reduce the relet time. The tenant should be given clear written details of any outstanding works and target completion dates before they move in.

It's essential for landlords to keep clear records of void works (see 'record keeping' below). It's useful to take and attach photos of the works required and again on completion.

¹ Sections 8 and 10 'Landlord and Tenant Act 1985' as amended by the 'Homes (Fitness for Human Habitation) Act 2018'. What constitutes a hazard is set out in the Housing Act 2004

Any void works should be 'signed off' when completed satisfactorily and it's good practice to give a copy of the completion list to the new tenant and ask them to sign a satisfaction slip.

Landlords should monitor any repairs carried out in the first 12 months of a tenancy to check whether they resulted from weaknesses in the voids standard or the void repairs, and, if necessary, make changes to the standard or repairs procedure.

Responsive repairs

Responsive repairs (also known as 'day-to-day repairs') are the repairs reported by residents that landlords need to respond to – as distinct from planned or cyclical maintenance, or major works. Responsive repairs account for the largest proportion of formal complaints made to landlords and investigated by the Ombudsman.

A landlord's repairing responsibilities are set out in law². The landlord is responsible for keeping in repair the structure and exterior of the property, and maintaining the installations for the supply of water, gas, electricity, sanitation, space heating and hot water.

Landlords are not liable to carry out a repair until they are aware of it. This will usually be the date the tenant reports the repair, but it's not always necessary for the tenant to have given notice for the landlord to be considered liable. For example, in one case of widespread damp, the High Court held that the landlord became aware of the disrepair during a visit, despite the tenant's failure to draw attention to the individual areas of damp³.

Once it's aware of disrepair, the landlord must carry out repairs within a 'reasonable time'. There's no legal definition of 'reasonable time' and ultimately it would be up to a court to decide what's reasonable in a particular case. However, social landlords will generally publish their own repair priorities and timescales and will be judged by tenants and the Ombudsman on whether they adhere to these.

Complaints often arise due to the time taken to carry out repairs. Some delays stem from the point at which repairs are reported and result from landlords taking down incorrect or insufficient details about the job. This can lead to operatives turning up with the wrong tools or underestimating the time required to complete a job.

It's important for landlords to ask the right questions when a repair is reported. They should clearly record when the repair was first reported and track progress, to make sure that timescales are met. Inevitably, there will sometimes be delays, perhaps due to a shortage of parts, in which case it's important to update the tenant promptly and provide a revised timetable.

² Primarily the 'Landlord and Tenant Act 1985 as amended by the 'Homes (Fitness for Human Habitation) Act 2018'

³ Kerr & Anor (as Trustees) v Maass 2019

Complaints can often arise because jobs are cancelled – sometimes without the resident's knowledge. Work should not be cancelled without good reason, and if it is cancelled, an explanation should be given to the resident promptly and the appointment re-arranged if necessary.

There may be additional obligations written into the tenancy agreement or the landlord's own policies which will also need to be met. For example, some landlords undertake to repair internal doors, fixtures and fittings. It's therefore important to check the specific tenancy agreement for that resident, which may differ from the latest generic tenancy agreement used by the landlord. If the Ombudsman investigates the complaint, they will ask for a copy of the original tenancy agreement, and some landlords have fallen foul of the Ombudsman by being unable to provide this, or by providing the wrong agreement.

In cases of extensive or long-term disrepair, the landlord may need to provide temporary help, such as temporary heaters or bottled water. The landlord should ensure that it can provide such items at short notice. In some cases, a temporary decant to another property might be necessary.

Case law has established that landlords' repairing obligations extend to making good any damage to décor caused by the repair work. Making good should be to a good standard, using good quality material, even if it results in betterment. This applies whether the damage is consequential (ie, as a direct result of undertaking repairs) or because the landlord failed to meet its repairing obligations in the first place.

Also, patch repairs aren't always sufficient to discharge a landlord's repairing obligations. For example, case law has found that where patch repairs have been undertaken for an extended period of time, it may be necessary to completely overhaul or replace an item to address the specific cause of the issue, rather than repeatedly repair it.

It's essential that landlords keep comprehensive records of repair works, including the date reported, works undertaken and completion dates (see 'record keeping' below).

Damp and mould

Whilst damp and mould is just one area of disrepair, the recent focus on its extent and severity in social housing, and instances of poor responses from social landlords, mean that it warrants particular attention.

The Housing Ombudsman published a thematic report on complaints involving damp, mould and condensation in 2021 and expects landlords to have read it and considered its recommendations⁴.

⁴ <https://www.housing-ombudsman.org.uk/wp-content/uploads/2021/10/Spotlight-report-Damp-and-mould-final.pdf>

The report's key message is that landlords should adopt a zero-tolerance approach to damp and mould and should not 'blame' the resident or start from a position of assuming that any condensation is caused by the resident's lifestyle. The report also points out that void periods are an ideal time to proactively respond to damp or mould issues before the new resident moves in.

When investigating a damp and mould complaint, the Ombudsman's assessment will include:

- Whether the landlord has fully and fairly investigated the issues, including engaging independent expertise where appropriate
- Where the issues are structural, has the landlord taken appropriate and reasonable steps to undertake repairs and address them?
- Where the issues are non-structural and causing condensation, has the landlord done all it can to mitigate the impact and provide appropriate advice and support to the resident?
- Throughout its response, has the landlord considered the individual circumstances of the resident, including any vulnerabilities or health issues?
- Where significant works are required, has the landlord appropriately managed the resident's expectations regarding timescales, considered whether a decant might be necessary, and completed smaller remedial works to improve the resident's living environment pending completion of the main works?
- Has the landlord communicated regularly and fully with the resident?

The Ombudsman will expect to see evidence that shows how the landlord has arrived at its decisions regarding the cause of the damp or mould and the actions to be taken, including copies of any specialist technical advice.

Gas and electrical safety

It's vital that landlords take all reasonable steps to ensure gas and electrical safety at the start and throughout the tenancy, and comply with the relevant regulations.

Gas safety

By law, landlords must carry out an annual gas safety check and provide the tenant with a copy of the safety record following the inspection. New tenants should receive a copy before they move in, and existing tenants should get a copy within 28 days of the annual check.

If a tenant doesn't receive a gas safety record, they can report this to the Health and Safety Executive (HSE) for enforcement. If access has been a problem, the HSE will consider whether a landlord took all reasonable steps to carry out the check, which might require repeat appointments and, ultimately, an injunction to gain access.

Electrical safety

Social landlords are required by law to ensure that electrical installations in a rented property are safe when the tenant moves in and throughout the tenancy.

There are currently no prescribed timescales for electrical safety checks by social landlords in England (there are in Wales and Scotland) and no requirement to provide tenants with copies of safety records. However, the government recently consulted on introducing five-yearly checks, to mirror requirements that were introduced for the private rented sector in 2020.

Despite the current absence of regulations, it's recognised good practice in the sector to carry out electrical inspections at least once every five years⁵.

Remedies and compensation

When a landlord investigates a complaint about repairs it should consider whether it needs to provide a remedy. Landlords should have fair and robust remedies and compensation policies which reflect the requirements of the Housing Ombudsman's Complaint Handling Code.

A remedy doesn't always have to involve compensation. Sometimes an apology and explanation are all that are required. In other cases, further works or a 'goodwill gesture' might be appropriate.

In repairs cases, although a compensation policy cannot cover every eventuality, it should include guidance for staff on payments for common factors, such as missed appointments, loss of amenities, or loss of use of a room. It should also cover 'quantifiable loss' (such as increased heating costs due to boiler disrepair). But the policy should also allow discretion to be applied to take account of the specific circumstances of the case and the impact on the resident.

For more comprehensive guidance, see 'remedies and compensation guidance' on the HQN Complaints Hub.

Contractors and other third parties

If a landlord contracts out its repairs service, or uses external surveyors and inspectors, the obligation to repair remains with the landlord, and not the contractor. Any formal complaint is also the responsibility of the landlord, rather than the contractor.

Some landlords may ask their contractors to assist with their initial complaint responses, but the final decision is always the landlord's responsibility. Landlords therefore need to ensure that they have robust contracts which include penalties and break clauses, and effective contract monitoring arrangements which include consideration of any complaints received.

⁵ <https://www.electricalsafetyroundtable.co.uk/downloads/ESR-Social-Housing-Code-of-Practice.pdf>

Vulnerable residents

When dealing with repairs, landlords should always be aware of any vulnerabilities or special requirements that a resident may have. This isn't just good practice and the right thing to do, but 'reasonable adjustments' may also be required to comply with the Equality Act 2010. This might include:

- Prioritising work because of personal circumstances – eg, work for an elderly, housebound or disabled person without heating or hot water, particularly in winter
- Spending extra time at the start of the tenancy to explain, for example, how the thermostat and appliances work. Some landlords help tenants sign up for fuel supplies if they find this difficult
- Ensuring contractors are aware of any vulnerabilities that might affect how works are carried out or how they need to communicate with the resident.

Communication

Poor communication by the landlord is often an underlying cause of a finding of maladministration by the Ombudsman in repairs cases. This is usually poor communication between the landlord and tenant – such as failing to update them or respond to their enquiries. But it can also be poor communication between landlords and their contractors or other third parties, which can result in misdiagnosis of the problem, jobs not being done 'right first time', delays and missed appointments.

Tenants should be given clear information on progress, plenty of notice of appointments, and, ideally, a single point of contact to communicate with.

Record keeping

Poor record keeping by the landlord, like poor communication, is often an underlying cause of an Ombudsman finding of maladministration.

It's essential for landlords to keep clear records of repairs and void works, not just for internal use, but in case a complaint is raised and the Ombudsman requests information later on. If there's a disagreement over the condition of the property, the landlord should be able to clearly demonstrate that it's met legal standards and its own repairs and lettings standards and timescales, with reference to robust evidence.

The records should include the date a repair was reported, appointment dates, inspection and survey reports, works required, completion dates and any tenant satisfaction forms. In some cases (such as void works) it can be helpful to take and retain photos from before and after the works.

Missed appointments

Missed appointments are a common cause of disputes that can lead to complaints. Landlords and contractors don't always fully appreciate the extent of the inconvenience caused by cancelling or not keeping an appointment, particularly if the resident has taken time off work or rearranged their plans. If an appointment cannot be kept, the resident should be given maximum notice and offered alternative dates, and it may be appropriate to compensate them.

Another cause of complaint is when a landlord or contractor claims they attended but couldn't gain access, but the resident disputes this and says they were at home and nobody visited. These disputes can be difficult to resolve. Landlords should do all they can to provide evidence that they visited the property and did their best to contact the resident. Some landlords have introduced a no access phone line which contractors must call so efforts can be made to contact the tenant. Many also require contractors to take a time-stamped photo at the door when delivering a 'no access' card'.

Legal disrepair cases and the pre-action protocol

Residents may consider taking legal action to resolve disrepair issues. Many social landlords are concerned by the increase in the number of legal firms focusing on disrepair claims, but residents are entitled to use their services.

The Housing Ombudsman has issued guidance on cases that involve the Pre-Action Protocol for Housing Conditions Claims⁶. The guidance explains that, even when a landlord receives correspondence initiating the protocol, it's important that they don't disengage from either their internal complaints process or the repair issue itself.

The Ombudsman also stresses the importance of landlords remaining committed to inspecting properties as soon as a claim is raised and to completing any repairs needed as soon as is practicable. The guidance states that: *'Where a resident has been advised by a solicitor to deny access to complete the repairs, the landlord should consider alternative methods of gaining access, such as seeking an injunction.'*

Receipt of a legal disrepair claim or the instigation of the pre-action protocol doesn't mean that a complaint need no longer be progressed through the landlord's complaints procedure. Complaints often involve issues that won't be considered in any court proceedings, such as missed appointments, poor communication or the behaviour of operatives. The correct approach is to continue responding to other elements of the complaint but note in your complaint responses that legal matters, such as liability and damages, are awaiting the outcome of the protocol or legal proceedings.

⁶ <https://www.housing-ombudsman.org.uk/landlords-info/guidance-notes/guidance-on-pre-action-protocol-for-housing-conditions-claims-and-service-complaints/>

Insurance claims

Customers are usually expected (through a clause in the tenancy agreement) to have their own contents insurance in place and where appropriate should be advised to claim for loss or damage to personal possessions or household items from their insurer. However, if there's any suggestion or allegation that a landlord's actions or inactions have resulted in the damage to belongings, the landlord should investigate and establish what happened before causing a resident the added inconvenience (and possible cost due to an increased premium) of requiring them to make a claim through their own insurer.

If the landlord is at fault, it should take appropriate steps to put things right, which could include replacing any damaged belongings or referring the issue to the landlord's own insurer. This is commensurate with the guidance issued by the Housing Ombudsman which sets out how it expects landlords to handle complaints where insurance claims are involved⁷.

The role of governance and scrutiny

The Housing Ombudsman's Complaint Handling Code makes it clear that governing bodies should be well informed about complaints and receive appropriate information. They should also be scrutinising how well the landlord is maintaining its stock and responding to any concerns, such as the landlord's response to the current focus on damp and mould.

Residents can also have a role in scrutinising the landlord's performance through, for example, scrutiny panels, satisfaction surveys and taking part in the selection and monitoring of contractors.

Dealing with the Housing Ombudsman

If the Ombudsman decides to investigate a complaint, the landlord will be asked to provide information. The information requested will usually include the tenancy agreement or lease, copies of relevant policies and procedures, records relating to the repairs in question and copies of relevant correspondence, including the complaint correspondence and formal responses.

It's important that a landlord provides all relevant information by the deadline, or asks for an extension (which can be agreed at the Ombudsman's discretion). Landlords may also wish to provide additional information, such as their own summary or commentary on the history of the repair.

Landlords should consider the findings and recommendations in the Ombudsman's thematic 'spotlight' reports which are available on its website⁸. These reports are based on the Ombudsman's casework experience and feedback from the sector, they also include examples of good practice. Some of the reports directly concern repair issues, such as repairs in general, damp and mould, and heating and hot water. Others deal with separate topics, such as noise, but still include issues connected to the property's condition and structure.

⁷ <https://www.housing-ombudsman.org.uk/wp-content/uploads/2020/11/Guidance-on-Insurance.pdf>

⁸ <https://www.housing-ombudsman.org.uk/about-us/corporate-information/publications/spotlight-on-reports/>

Checklist

Below is a checklist of actions and steps to take:

- Clearly set out and publish repair responsibilities, priorities and timescales – eg, in repairs policies and tenant handbooks
- Review and update your voids standards and procedures regularly
- Ensure that the void period is used effectively – eg, to check for damp and mould and replace any items that are likely to need repairs in the next 12 months
- Ensure you have a robust policy and approach to damp and mould
- Consider and respond to the recommendations in the Housing Ombudsman's spotlight report on damp and mould and its other spotlight reports
- Ensure there's flexibility to meet the individual needs of vulnerable residents
- Ensure compliance with gas and electrical safety regulations and good practice
- Communication: Provide timescales and regular updates
- Record keeping: Keep clear and comprehensive records
- Ensure you retain and can easily access copies of original tenancy agreements
- Review past performance and diagnose why failures occurred – eg, missed appointments, delays and failures to get it 'right first time'. Use the findings to drive improvement
- Ensure that contracts and contract management arrangements are robust
- Ensure that the governing body is aware of the landlord's approach to, and performance on, repairs and on complaints about repairs.

We would welcome your comments on this guidance and any of your own suggestions, to inform future versions of the guidance.

If you have a question or feedback for our Complaints Hub leads, John Goodwin and Dave Simmons, please send it to networks@hqnetwork.co.uk.