Remedies and compensation guidance

Providing a fair and proportionate remedy is an essential part of successfully resolving a complaint if a landlord has been at fault. Where something has gone wrong, a landlord should acknowledge this and set out the actions it has taken, or intends to take, to put things right. This is recognised by Part 6 of the Housing Ombudsman's Complaint Handling Code ('the Code'), which is dedicated to 'Putting things right'.

Landlords should have fair and robust remedies and compensation policies which reflect the requirements of the Code and a customer-centred culture, and empower staff to reach fair outcomes. This guidance is intended as a reference tool for landlords to help them create the right culture and offer appropriate remedies.

The range of remedies

Remedies are not always about financial compensation, although it may sometimes be appropriate. The right remedy depends on what has gone wrong in an individual case and may include one or more of the following:

- An acknowledgement and explanation of what went wrong
- An apology
- Reconsidering or changing a decision
- Financial compensation
- Repair works or other actions
- Changing a policy, procedure or practice
- Discretionary 'goodwill' gestures.

The remedy offered should reflect the extent of the service failure and the impact on the complainant. The Code reminds landlords to be careful to manage residents' expectations and not promise anything that cannot be delivered or would cause unfairness to others.

Things to consider

Establish the full facts: Before an appropriate and proportionate remedy can be proposed, there needs to be a thorough investigation to understand the full facts of the case and consider:

- What went wrong?
- What is the extent of the service failure/s and over what period?
- How has this impacted the complainant?

Once you have established the full facts you are in a position to consider what a proportionate and fair remedy looks like. Take extra care in complex and multi-faceted complaints to ensure that all aspects have been taken into account.

Are any statutory payments due? The most common would be a statutory home loss payment, but other statutory payments might also be due.

Quantifiable loss: Consider whether the customer has experienced an actual financial loss such as:

- Increased heating/energy bills due to a landlord's failure to complete a repair
- Takeaway meals when disrepair makes a kitchen unusable
- The cost of replacing damaged carpet or furnishings
- The cost of reasonable alternative accommodation if the landlord's failure to repair has made the home uninhabitable.

Any costs should have been reasonably incurred and it is not unreasonable to ask for receipts as evidence. It may have been appropriate for a resident to notify the landlord before incurring expenses, but the urgency of the situation also needs to be taken into account.

Time and trouble: This would include the time a problem persisted, as well as the time taken to go through the complaints procedure. It might also include the number of telephone calls, office visits, emails and letters required before the problem was resolved. Common examples include the extent to which a customer has had to chase a landlord to get a repair completed or to have a complaint progressed through all stages of the complaints procedure.

Distress and inconvenience: This should be considered where a customer has been caused upset, discomfort or worry. Examples include going for extended periods without an essential amenity, such as heating or hot water, being left to live for an unreasonable period in damp and mouldy conditions, or a landlord's failure to take reasonable steps to alleviate noise or anti-social behaviour.

Consider the individual: For example, if a customer has vulnerabilities such as being elderly or having mental of physical health conditions, this should be taken into account when considering the overall impact and should be reflected in any remedy. The impact of being without heating or hot water for several days in winter is likely to be very different for an older, disabled resident than for a younger resident who is out at work during the day.

What is the resident seeking as an outcome? It is important to ask the complainant this question directly, as they may not have considered what a satisfactory resolution to the dispute looks like. This provides an opportunity to manage expectations if the request is unreasonable or not within a landlord's authority to provide and it also gives a focal point for both parties to work towards.

Medical evidence: The Housing Ombudsman would not expect a landlord to establish any causal link between its actions or omissions and the complainant's health. If a resident is seeking damages for the impact on their health, this should be dealt with via a personal injury claim. It is nevertheless reasonable to expect a landlord to recognise and acknowledge any medical evidence that a customer may have provided and to factor this in when considering any compensation for distress and inconvenience.

Did the customer contribute towards any delay or failure to resolve the issue? The Housing Ombudsman will consider what part both parties played in any delays or failure to resolve an issue and landlords should do the same. For example, this might include a resident not providing access for repairs without good reason. Consider the actions of both parties to ensure that any remedy is balanced and proportionate. If the resident's actions have led to a change in the remedy offered, such as a lower level of compensation, explain this clearly to the customer and the Ombudsman.

Cumulative impact: Recurring issues, such as sewage leaks or boiler failures, will have a cumulative impact on a resident. There may also be factors beyond the substantive issue that will have a cumulative impact. For example, delays in attending to a leak may cause damage to property and belongings. There may also have been missed appointments, failures in communication, or poor behaviour by an operative. These additional factors should all be recognised in the remedies offered.

What to include in a remedy

Below are some of the most common elements of a remedy. Not all will be appropriate in every case, it will depend on the particular circumstances of the case and the extent of any failures by the landlord.

Apology: An apology is sometimes all a complainant is seeking. A personal apology by telephone or in person can have a positive impact on the resolution of a dispute, but make sure the apology is genuine and sincere, not impersonal or formulaic. A badly worded or caveated apology can make matters worse.

Acknowledgement and explanation: It is important to clearly recognise where something has gone wrong and provide as full an explanation as possible. Be open and honest and take ownership for any mistakes. Complainants want to understand why things may have gone wrong and know that their landlord also has that understanding.

Demonstration of learning: Complainants want reassurance that problems they have experienced will not be repeated. Any remedy should include details of what a landlord has learned from its mistakes and what action it has taken to prevent a recurrence. This could range from providing staff training through to a substantial overhaul of policies and procedures, or a change of contractor.

Commitment to complete outstanding repairs or other actions: If there are outstanding repairs or other actions which a landlord has failed to take, these should be listed together with a timetable for their completion.

The Housing Ombudsman encourages landlords to think more broadly and consider going above and beyond their normal service provision to put things right. It is always worth considering what the customer may want and an appropriate remedy could include working outside normal contracted hours to complete a job or providing a service that the landlord is not normally contractually obliged to deliver, such as a one-off garden clearance or painting a customer's kitchen.

If such commitments are made, it is important that a landlord has systems in place to monitor them through to a conclusion. Many disputes are made worse by landlords failing to fulfil commitments or failing to complete them on time or to a good standard.

Compensation: Landlords should always consider their compensation policy and apply this fairly and appropriately. But it is important to note that the compensation policy is a guide which will not fit every situation. There will be situations where common sense and discretion need to be used to ensure the level of compensation offered is appropriate and fair. It is important that staff feel empowered to sometimes make decisions that go outside normal policy without the fear of repercussions.

The Ombudsman does not prescribe any compensation levels to landlords, but does publish remedies guidance for its own staff (updated in September 2022) which includes four broad bands of compensation that it might order a landlord to pay[1]. There is no upper limit on the amount of compensation that the Ombudsman can order.

Although the Ombudsman's staff guidance provides useful context, it does not set out the specific amounts or the detailed categories that should be included in a landlord's own compensation policy. Landlords can gain a better understanding of the Ombudsman's assessment of compensation by looking at the investigation reports published on its website[2], which can be searched by complaint category and 'Compensation' to show the full details of all cases where compensation was awarded.

Some landlords have concerns about creating a compensation culture which might set a precedent for others to follow or encourage spurious claims. It should be remembered that the vast majority of residents are reasonable people who just want to live in a decent home and be treated fairly. While there may be times when setting a precedent is a consideration, cases are unique and should be treated on their own merits.

Goodwill gestures: These can be offered to patch-up relationships where a resident has been impacted or is upset by a situation which cannot be directly attributed to any actions or omissions by the landlord. These gestures might include the offer of flowers, chocolates, or vouchers. Making such offers is a judgement call and it is important to consider the individual and how they might react. They can sometimes be welcome but can also backfire as residents may feel fobbed off or patronised.

Be mindful of how the term 'goodwill gesture' is used. It should not be used when paying compensation for a landlord's failings, as it suggests that the landlord is simply being generous and has not done anything wrong.

Thinking outside the box: Landlords have often come up with ingenious solutions to resolve disputes which focus on the resolution sought, rather than offering compensation. For example, in one case a landlord directly replaced a resident's stolen computer as it accepted that it had been responsible for a lack of security in the building.

[1] https://www.housing-ombudsman.org.uk/wp-content/uploads/2022/09/Remedies-Guidance-September-2022.pdf
[2] Decisions Archive - Housing Ombudsman (housing-ombudsman.org.uk)

Conclusion

Ultimately, any remedy should be proportionate to what has gone wrong and accurately reflect the impact on the complainant. Sometimes complainants will remain dissatisfied even when they receive the outcome they were seeking; this may be due to the tone of a letter or the way in which they have been spoken to. Always consider the way in which you communicate with residents with a focus on being open and accountable rather than partial and defensive.

Checklist

Here is a checklist to consider before offering a remedy to a complainant:

- Have we a full understanding of what went wrong?
- Have we considered the full range of potential remedies and included all that are appropriate?
- Are any statutory payments due? Any claims under insurance?
- Has the complainant suffered quantifiable loss such as additional fuel costs?
- Is a payment for the complainant's time and trouble, or distress and inconvenience appropriate?
- Have we taken the complainant's individual circumstances and any vulnerabilities into account?
- Do we know what the complainant is seeking as an outcome and have we tried to meet this, or explained why we can't?
- Did the complainant's behaviour (such as refusing access) contribute to the service failure and is it reasonable to adjust the remedy to reflect this?
- Does the proposed remedy reflect the cumulative impact on the complainant, including, for example, missed appointments and poor communication?
- Have we set out our learning from the complaint and shared this with both the complainant and across the organisation?
- Is our apology sincere?
- Have we included a timescale for any outstanding repairs or other actions? And if so, have we set up monitoring/reporting of this so that we can proactively ensure actions are progressed and completed?
- Have we followed our compensation policy, applied any discretion that is appropriate, and explained how we calculated the amount offered?
- Overall – is the remedy proportionate to the shortfalls in service experienced and does it accurately reflect any detriment caused to the customer?

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**