

Appendix 1

Taken from the Housing Ombudsman website

REPORT

COMPLAINTS 202109998 & [202117383](#)

Arun District Council

31 May 2022

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The resident complains about:
 - a. The landlord's approach to repairs during Covid-19 (complaint A).
 - b. The handling of complaint A (complaint B).
 - c. A warning the landlord gave about unreasonable behaviour (complaint C).
 - d. Overall complaint handling and adherence to the Ombudsman's Complaint Handling Code.
 - e. The landlord's unreasonable behaviour policy.

Jurisdiction

2. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider

all the circumstances of the case as there are sometimes reasons why a complaint will not be investigated.

The landlord's unreasonable behaviour policy

3. It is noted that while the landlord had no specific policy in place at the time of the original complaints, it has now published an 'unreasonable behaviour policy' on its website. The resident has recently raised concerns with this Service about its contents, which he feels do not align with the Ombudsman's Complaint Handling Code (CHC). He feels the policy may give rise to systemic failings as it does not refer to the Scheme, is unfair in referring to 'raising a formal complaint for very minor problems' as unreasonable behaviour, and does not have an appeal process. He states that the landlord has declined to respond to a formal complaint about this matter, saying that it was unable to consider the issue other than via judicial review.
4. Paragraph 36 of the Scheme states that for the Ombudsman to consider a complaint, 'The person complaining, or on whose behalf a complaint is made must have been, in the Ombudsman's opinion, adversely affected by those actions or omissions in respect of their application for, or occupation of, property.' In this case, the resident has not been the subject of the new unreasonable behaviour policy and so cannot have been adversely affected by it. As such, this investigation does not consider this matter.
5. The Ombudsman does encourage the landlord to consider the resident's complaint about the unreasonable behaviour policy however.

Background

6. The property is a general needs four-bedroom mid-terrace house. Under section 11 of the Landlord and Tenant Act 1985, the landlord has a legal obligation to keep in repair the installations for sanitation, including the toilet. This is also reflected in the resident's tenancy agreement.
7. The landlord's Tenants Handbook and its 'Housing Service Standards' document that was in place at the time sets out the different repair categories and timeframes for response:
 - a. Emergency repairs – to be carried out within 4 hours or made safe and full repairs carried out at a later date.
 - b. Next Day – within 24 hours.
 - c. Urgent repairs – within 5 working days.
 - d. Routine repairs – within 20 days.
 - e. An 'Emergency Repair' is 'where there is a risk of personal injury or severe damage to property'.

8. The landlord has provided a copy of a document titled 'Repairs in tenants' homes during the COVID-19 outbreak' which is dated 8 January 2021. This states: 'During the COVID-19 outbreak, we'll only be carrying out emergency and essential repairs in tenants' homes. Emergency repairs are generally anything which causes immediate risk to your health, safety and security of any occupants and /or visitors in your home. Or causing immediate damage to a property's structure, fixtures and/or fittings. However for the immediate future, emergency repairs will also include some work which under normal circumstances we'd classify as routine and would take longer to complete.'
9. The Government's 'Guidance for landlords and tenants' was non-statutory guidance for landlords and tenants which gave details on repairs and inspections in the context of COVID-19. The version as was updated on 8 January 2021 stated: 'Landlords can take steps to carry out repairs and safety inspections under the national lockdown which is in force in England, provided these are undertaken in line with public health advice and the relevant coronavirus (COVID-19) legislation. We understand current restrictions may mean it is harder to carry out routine or essential repairs and maintenance, but we expect landlords to make every effort to meet their responsibilities.'
10. The landlord had no 'live' complaint policy in place at the time of the matters complained about. It has provided the Ombudsman with a link to its website which gave details of the complaint process, but this link no longer functions. From a previous case investigated by this Service, it is understood that the website set out the following at the time of the matters complained about: At stage one, the landlord would acknowledge complaints within five working days, telling the resident the name of the officer who would be dealing with their complaint. The person investigating a stage one response would send the resident either a full answer or a progress report in writing within ten working days.
11. If the resident escalated their complaint to stage two, it would be formally investigated by an officer from a different service area. Where possible, this investigation would be completed within 20 working days. If this was not possible, the resident would be sent a progress report indicating the timescales for completion of the investigation. When completed, the stage two response would be passed to either the Chief Executive or a Director for review and sign off within an additional five working days.
12. The Ombudsman's Complaint Handling Code (CHC) was introduced in July 2020 (with landlord's expected to be compliant by January 2021) and sets out good practice that will allow landlords to respond to complaints effectively and fairly. Following a review one year after it was introduced it was updated

to strengthen provisions to support a positive complaint handling culture. The updated CHC took effect from 1 April 2022 and landlords have until 1 October 2022 to become compliant.

13. As the matters complained about occurred while the original CHC was in place, they are assessed against this version rather than the April 2022 version.
14. This investigation report addresses two complaints brought to us by the resident: 202109998 (about the landlord's approach to repairs during Covid-19 and complaint handling) and 202117383 (about the unreasonable behaviour warning/policy and complaint handling). While these complaints were brought separately, as the issues raised are interlinked, the Ombudsman has made the decision to investigate these together.

Summary of events

15. In December 2020 the area that the resident's property is situated in went into a 'tier four' local lockdown. On 4 January 2021 the Government announced the third national lockdown for England. On 8 January 2021 the landlord limited its repairs service to emergency/essential repairs only.
16. On 1 February 2021 the resident reported to the landlord that the toilet cistern in his home was constantly running. On 27 February 2021 he reported the kitchen tap was leaking.
17. On 1 March 2021 the resident emailed the repairs service, and also a senior member of staff (Senior Staff Member) raising concerns that the landlord was not attending to repairs in spite of the Government's 'Guidance for Landlords and Tenants' document which said that it should.
18. The repairs service replied on 2 March 2021 stating that during the Covid-19 outbreak and in accordance with Government guidance it would only be carrying out emergency and essential repairs.
19. On 3 March 2021 the landlord emailed the resident to explain that the restrictions on repairs were being lifted as of 8 March 2021 and it would be in contact shortly to book appointments for the repairs he had reported.
20. A manager emailed the resident on 5 March 2021 explaining that when the area was placed into tier four, followed shortly by the national lockdown, the landlord took the decision to undertake emergency/essential repairs only to help minimise the spread of infection. The website was updated to reflect this, and tenants were informed when calling to report a routine repair. It was

returning to its normal repairs service as of 8 March 2021. The resident reports that he did not receive this email.

21. On 8 March 2021 the landlord contacted the resident to arrange the toilet repair, but the resident stated that he had already arranged this himself as he had not wanted to wait any longer.
22. The resident made a formal complaint (complaint A) on 15 March 2021 about a lack of response from the Senior Staff Member to his concerns, and that the landlord was giving out false information regarding Government guidelines, which he said clearly stated that repairs could go ahead during the current lockdown.
23. The landlord acknowledged the complaint on 17 March 2021 and said that usually a response would be provided by the Senior Staff Member within ten working days, but this had to be extended to 13 April 2021. The resident expressed his dissatisfaction with this, and asked to add the matter of the complaint response being delayed, and the Senior Staff Member investigating an issue that they were directly involved in, to complaint A.
24. The landlord declined to add the resident's two additional concerns to complaint A and asked the resident if he wanted to make a new complaint about these matters. The resident did so on 24 March 2021 (complaint B). The landlord acknowledged this on 31 March 2021.
25. In response to enquiries the resident made about a complaint policy around his same time, the landlord confirmed that it had no standalone complaint policy and was currently working to the corporate complaint policy, providing a link to its website for this.
26. The landlord provided a stage one response to complaint B dated 9 April 2021 in which it explained that as complaint A was about repairs it was the Senior Staff Member that was responsible for responding. It said that had another member of staff dealt with the case they would still have needed to revert to the Senior Staff Member.
27. Regarding the extension to the stage one response timeframe, the landlord acknowledged that the resident would prefer a quicker response, but there were justifiable reasons for the extension (annual leave), and the CHC permitted deadlines to be extended for justifiable reasons.
28. The resident made a stage two complaint (complaint B) dated 9 April 2021 in which he referenced the CHC which said that landlords should address all points and provide clear reasons for decisions, referencing relevant policy and law.

The resident went on to reiterate his concerns about the handling of the matter and asked for compensation for stress and time taken.

29. The landlord provided a stage one response to complaint A dated 12 April 2021. This referred to the 5 March 2021 email and explanation and said that Government guidance was 'guidance' only and ultimately it was for the landlord to make decisions in relation to its operational delivery of services. The landlord noted three repairs that the resident had reported since December 2020:
 - a. 1 February 2021: Toilet constantly running, classified as a routine repair to be carried out within 20 working days. The landlord contacted the resident on 8 March 2021 to schedule the work, and the resident said he had repaired it himself as he did not want to wait any longer.
 - b. 15 March 2021: Repair to a front bedroom window reported, classified as urgent and attended to on 16 March.
 - c. 5 March 2021 leaking kitchen tap: This was attended to on 11 March 2021.
30. The landlord did not uphold the complaint.
31. The resident made a stage two request (complaint A) on 13 April 2021. In this he said that the Senior Staff Member should have provided him with regular updates and emailed him before issuing the stage one response, in line with the CHC. He also said that the stage one response failed to set out the landlord's legal obligations, as per the CHC. The resident said that the tenancy agreement was legally binding and any changes made regarding repairs should be discussed with every tenant.
32. The resident stated that he was unaware that the landlord had suspended non urgent repairs as when he reported the toilet running on 1 February 2021 he received no reply. It was not until he reported the kitchen tap on 27 February 2021 that he was informed of this. He said, 'The toilet was running so badly, after 2 months of waiting for toilet to be repaired, I had to get this fixed myself as the council refused to fix it and the water running down the pan was costing me money. Not to mention the annoyance of water constantly running.'
33. The resident complained that the landlord had said that attending to only emergency repairs was in line with Government guidance, when in fact the guidance stated that landlords could carry out repairs. The resident said that the stage one response failed to address this or the landlord's legal obligations.
34. The resident said he did not receive the 5 March 2021 email, concluding, '...Arun District council have totally let me down and tried to pull the wool over my eyes. They have failed to follow their

legal obligations owed their tenants. The stage 1 complaint was a total whitewash. ADC totally washing their hands of any responsibility as usual. I would like compensation for the serious service failures and compensation for the time and effort to me for bringing yet another problem and failure in customer service to the attention of ADC. I would also like compensation for getting the toilet fixed and for the time and stress.'

35. The landlord then contacted the resident to clarify the complaint. In reply on 29 April 2021 the resident explained that his complaint '...centres around the fact tenants have legal rights under the tenancy agreement'. He said that the landlord should have stated its legal methodology in its stage one response, in line with the CHC, as the tenancy agreement was a legally binding contract between the tenant and the landlord.
36. It was agreed that the landlord would provide a single response to both complaints A and B at stage two. Internal emails from 10 May 2021 confirm that the landlord had not yet incorporated the CHC into its own complaint policy, although it recognised that the CHC had become operative in January 2021.
37. On 21 May 2021 the landlord shared its provisional stage two response with the resident, which he stated he did not agree with and so would be raising the matter with the Ombudsman once the landlord had issued the final response. The landlord did so on 24 May 2021. In its stage two letter it referred to the resident's comments about the CHC and stated that it did not regard this as a 'rule book' and noted that the CHC itself said that while landlords must comply with some elements, the Ombudsman recognised that there were some areas where landlords could use their discretion.
38. The landlord said that it was unaware of a deadline for implementation of the CHC and it was working to align this with its existing corporate complaints code. Regarding the resident's comments about the landlord's stage one response not stating its legal methodology, the landlord said that reference to policy or law was not always required in a complaint response.
39. The landlord acknowledged that the resident had not received the 5 March 2021 email, but said that it had been sent and to the correct email address. It said that that it would have been better had the stage one acknowledgment letter detailed the reason for the extended stage one response time. The letter also said '...I will recommend that consideration also be given to other senior officers in housing having the authority to authorise complaint responses in [the Senior Staff Member's] absence.
40. Regarding the resident's complaint that the landlord had not published its complaint policy, the letter said that this was available

online and provided the website address. A new complaint policy was being prepared. The letter stated, 'I will be recommending that the Council's web pages for the Housing service be improved alongside the adoption of the new Housing Complaints policy so that information on how to make a complaint accords with the Code.'

41. The landlord noted that the resident had wanted to add issues to his stage one complaint but had not been permitted to. It said it saw no value in the resident adding these matters, but also there had been no value in the landlord not allowing this.
42. The resident had complained the stage one response was not shared with him prior to it being issued, in line with the CHC, but the landlord said that not doing so was in line with its own procedures. However, it had shared the stage two response with him.
43. Regarding the resident's comments about the landlord's legal obligations and tenancy agreement, it said, 'The Pandemic has caused many organisations, not just this Council, to adopt different practices on a temporary basis to reduce the risk of transmitting Covid 19. This is for the benefit of staff and residents alike. When the Government announced measures aimed at tackling Covid 19 this Council had to respond appropriately. The decision was taken, as [the stage one response] explained, to delay non-essential repairs. This approach accorded with the Government guidance that was available at the time regarding Health and Safety measures. This guidance has now been updated...However, I note the guidance still encourages the Council to consider other legal requirements such as Health & Safety concerns.' It explained that it was not practical for the landlord to contact every tenant each time there was a change in the 'very fluid' situation, and it had posted information about its repair service on its website.
44. On 17 June 2021, in an email relating to a complaint that the resident had raised about the 'designated person' role, the landlord noted that the resident had made nine complaints in the last 12 months and said, 'We would like to draw your attention to the advice given by the Housing Ombudsman on Managing Unacceptable Behaviour.... Some of the examples they refer to are: Unreasonable persistence (refusing to accept the answer that has been provided, continuing to raise the same subject matter without providing any new evidence, continuously adding to or changing the subject matter of the complaint): Overload of letters/calls, emails or contact via social media.'
45. The landlord said that it was not at present going to pursue this route, but if the resident's volume of communication continued it was something it may need to consider, for example by providing a single point of contact.

46. The following day the resident made a stage one complaint (complaint C) about ‘...the councils threat to try and stop me holding the council to account by using the housing ombudsman Managing Unacceptable Behaviour’. He said that the only time he contacted the landlord was when it had failed to follow its own policies, regulations and the law. He asked for a copy of the landlord’s unacceptable behaviour policy. The landlord acknowledged this on 23 June 2021 saying that this would be dealt with as a ‘service complaint’ and not a stage one.
47. The resident emailed the landlord on 23 June 2021 with what he described as further evidence for his complaint. This email consisted of quotes from the CHC regarding how landlords should deal with complaints, and that a three-stage complaint process was not acceptable.
48. On that same day the landlord provided a ‘service complaint’ response, stating that as no decision had been made about ‘unacceptable behaviour’, no evidence had been gathered of this other than referring to its complaints record. It said that it did not currently have an unacceptable behaviour policy and this was something it was hoping to implement within the next few months. It noted the 17 June 2021 email had said that it was not currently taking the unacceptable behaviour route.
49. On 24 June 2021 the resident made a stage one complaint (complaint C) about the landlord’s reference to unacceptable behaviour, and its decision to reply to the initial complaint as a ‘service complaint’ which he said was not in keeping with the CHC. He stated, ‘The council have no policy on complaint handling, they only publish a process, which in no way, shape or form is a policy.’ The resident said that with the chief executive stage to the complaint process, this was four stages which was inappropriate. The resident asked for an apology from the chief executive, and compensation for the stress and anxiety the matter was causing him.
50. After the resident chased this up the landlord acknowledged the stage one complaint on 29 June 2021 and said a reply would be provided in ten working days (13 July 2021). A stage one response to complaint C was sent on 1 July 2021. In this the landlord made reference to the resident ‘going off on a tangent’ in his complaint. It accepted that it had warned the resident that it may have to manage correspondence with him under the Ombudsman’s guidelines on managing unacceptable behaviour. It said it had not been in this position before and so did not yet have a policy of its own, but this did not prevent it from dealing with challenging behaviour.

51. Regarding the resident's concerns about a four-stage complaint process, it said, 'The Council does not have a four-stage process. Therefore, this complaint is dismissed.'
52. Regarding the request for compensation, the landlord said that the resident had produced no evidence of any diagnosis of stress and anxiety, and even if he did have stress and anxiety, it was not considered that he had established that any stress and anxiety was caused by the email relating to managing unacceptable behaviour. Therefore, compensation was not warranted.
53. On 2 July 2021 the resident made a stage two complaint saying, 'I totally disagree with everything [the stage one response] states, totally non-factual and a load of excuses made up to cover the total incompetence of Arun District council....I did not go off into a tangent and find this wording very very insulting, I was stating only factual material clearly stated on the housing ombudsman's website...' The resident said that the landlord had no evidence on which to base the warning that he had been issued, quoting the landlord's reference to having gathered no evidence other than referring to its complaints record. The resident asserted that making a complaint regarding service failure did not count as unreasonable behaviour.
54. The resident said that he had made a stage one complaint, but the landlord had 'enforced' a service complaint. There was then a stage one, stage two, and chief executive stage, making four stages in total. The resident said that the situation had made him distressed and upset and again asked for apologies and compensation.
55. The landlord acknowledged this on 7 July 2021 and said the investigation would be completed in 20 working days. The stage two response would be passed to the chief executive when completed for review and this would be done within five working days.
56. An internal email dated 5 August 2021 noted that the landlord did not have a complaint policy (although had a website section on complaints).
57. The landlord provided a stage two response on 11 August 2021 in which two separate complaints were addressed: Complaint C and an issue (complaint D) relating to concerns the resident had raised about the landlord not setting out to achieve the 25 working days response time for stage two investigations as published on its website.
58. Regarding complaint C, the letter said that the resident had made a significant number of complaints over the last year which were concerning the complaint handling process, not

repairs. The landlord did not consider that the correspondence was resulting from 'a significant unmet need or service failure' and therefore felt that a warning was necessary due to the volume of the correspondence. It concluded that it had acted reasonably.

59. Regarding the resident's concern that by treating his 18 June 2021 complaint as a 'service complaint' the landlord had added a stage to the complaint process, it said, 'What are often couched as complaints are service requests, and/or can easily be resolved informally by the service area to which they relate. The primary aim of dealing with complaints is to resolve them. It is, therefore, normal practice for the service area to respond in the first instance.' The letter noted that the resident had received a substantive response from the service area on 23 June 2021, and the landlord did not consider providing the relevant service area with the opportunity to resolve the complaint constituted an additional step in the complaint's process, nor that it caused any undue delay. While the resident felt that the chief executive stage was a fourth step in the process, this was not the case, as it was simply a review of the draft response to ensure oversight and organisational learning.
60. The landlord concluded that while it had a two-stage process, 'it is worthy of note that although the Housing Ombudsman Service do not believe it necessary to have a three stage process, they do accept that some landlords consider it necessary.' It did not uphold the residents' complaints and therefore did not agree that an apology was due, nor that compensation was payable.
61. Regarding complaint D, this was about the resident being advised by email on 20 July 2021 that a stage two response would be provided by 24 August 2021. The landlord acknowledged that in fact the stage two request was submitted on 13 July 2021, and therefore the resident should have been advised that a response would be provided by 17 August 2021 (25 working days later). The landlord apologised for this and said that it would recommend that it expedited the work which had been underway for some months to develop and adopt a more detailed complaints procedure, and ensure that the CHC was fully and demonstrably complied with. It would also recommend that its customers were consulted on a draft.
62. The resident referred his complaint to this Service as he remained dissatisfied that with the landlord's response.

Assessment and findings

Complaint A – repairs

63. The landlord was obliged under Section 11 of the Tenant and Landlord Act and the tenancy agreement to carry out repairs. In relation to the window and the tap, it did so within the

appropriate timeframe. However, it did not take steps to attend the toilet repair until over a month after it was reported.

64. As can be seen from the background section above, Government guidance as was in place at the time was that landlords could continue to carry out all repairs, maintenance and safety inspections. Therefore, the repairs service email dated 2 March 2021 was incorrect in suggesting that the landlord's decision to provide emergency only repairs was in line with this guidance.
65. In its 5 March 2021 email the landlord explained that when the area was placed in tier 4 in December 2020 followed shortly by the third national lockdown in January 2021 it took the decision to undertake emergency/essential repairs only to help minimise the spread of infection. While the landlord has provided some reasoning here as to why it made the decision, it did not fully justify its decision to limit repairs at this time given the Government guidance, nor set out why it was unable to follow this guidance.
66. The landlord's response at stage one did address this to some extent, saying that government guidance was 'guidance' only and ultimately it was for the landlord to make decisions in relation to operational delivery of services. It is the case that this was non-statutory guidance, and the landlord was not obliged to follow it. However, the Ombudsman expects landlords to have acted within the guidance unless there were clear, compelling and relevant reasons not to do so. While it was reasonable for the landlord to make an assessment of the situation and respond accordingly, it should be able to fully explain the reasons for its decisions. The resident had specifically asked why the landlord was not following the Government guidance, but the landlord did not provide a full explanation.
67. The stage two response referred to a need to adopt different practices on a temporary basis to reduce the risk of transmitting Covid-19 for the benefit of staff and residents alike, hence the decision was taken to delay non-essential repairs. The landlord said, 'This approach accorded with the Government guidance that was available at the time regarding Health and Safety measures.' It is not clear in what way the landlord felt this was in line with the Government guidance, which said repairs could go ahead. If it was the case, for example, that the landlord had assessed the situation and found that it was unable to undertake repairs in line with public health advice, then this could have been explained by the landlord, but no such explanation was given.
68. The document the landlord issued on 8 January 2021 titled 'Repairs in tenants' homes during the COVID-19 outbreak' stating that it was carrying out emergency/essential repairs only, was not in line with the Government guidance issued that same day

which specifically stated that repairs could go ahead and, ‘...we expect landlords to make every effort to meet their responsibilities.’ The Ombudsman acknowledges that Covid-19 had a major impact on a range of services provided by social landlords, particularly in relation to repairs, and that normal services may have been significantly and unavoidably disrupted during the pandemic. The restrictions on the repairs service in this case were in place for a short period only, and it returned to its normal service on 8 March 2021. The landlord contacted the resident on this date to arrange the toilet repair, which the resident declined.

69. However, overall, the landlord has not provided sufficient reasoning as to why it was unable to follow Government guidance and carry out its full repairing obligations for this period, or what steps it took to try and meet its responsibilities at this time. Neither did the landlord respond to the resident’s points regarding its legal obligations to repair in line with the tenancy agreement. There was maladministration on the part of the landlord here.
70. There was an adverse effect caused to the resident by the landlord’s failure to fully explain its position, who clearly found this frustrating and took time and trouble in pursuing the issue. In light of this, an order to ‘put things right’ is made below.
71. In terms of whether the landlord’s refusal to compensate the resident the cost of the repair was reasonable, it was only one repair, the running toilet, that was not attended to within the correct timeframe (although would likely have only been around two weeks outside of this had the resident accepted the repair on 8 March 2021). Given the circumstances in this case, most notably the national lockdown, the non-urgent nature of the repair, the fact that the landlord was not wholly obliged to follow the Government guidance, and its attempt to make the repair, albeit delayed, there is insufficient justification to order the landlord to reimburse the resident his costs in this respect.

Complaint B – ‘additional issues’ complaint handling

72. The resident expressed dissatisfaction that the deadline for complaint A was extended and that the Senior Staff Member was investigating it, given that the complaint concerned them personally.
73. The stage one response to this complaint did explain that as the original complaint (complaint A) was about repairs it was the Senior Staff Member that was responsible for investigating, and had another member of staff dealt with the case they would still have needed to revert to the Senior Staff Member.
74. Landlords should have a person or team assigned to take responsibility for complaint handling, although it is recognised that for some organisations, particularly smaller landlords, this role may

not be dedicated to complaint handling. A complaint investigation should be fair and take measures to address any actual or perceived conflict of interest. In this case it seems that there is no 'complaint team' or specific 'complaint officer' (the administration of the complaint was undertaken by a member of the Information Management Team) and it is the Senior Staff Member that is assigned to take responsibility for repair related complaints. It is not best practice to have an individual named in a complaint investigating and providing the response due to the conflict in interest this can create. It is understandable that the resident was concerned that the subject of his complaint was investigating and responding to the complaint as this did not give an impression of impartiality. Having said this, the complaint was that the Senior Staff Member had failed to reply to the resident's email, but as their response pointed out, a reply to the email was provided via the manager on 5 March 2021, so there was no failing in that regard. Therefore, the outcome of the Senior Staff Member's investigation was fair and supported by the evidence available. There was no detriment to the resident here.

75. While the landlord has said that it would recommend that consideration be given to other senior officers having the authority to authorise complaint responses in the Senior Staff Member's absence, it is not clear if this has been implemented.
76. Regarding the extension to the complaint A stage one response, it was not unreasonable for the landlord to extend the deadline for response due to staff absence. As stated in the CHC a stage one decision should be issued within 10 working days from receipt of complaint and if this is not possible, an explanation and a date by when the stage one response should be received. The landlord's actions were in line with this.
77. However, it was unreasonable and overly bureaucratic for the landlord to decline to add this to complaint A given that it was directly related to it, and doing so at that stage would not have caused a delay in the investigation. This meant that the resident then had to make another separate formal complaint to have the matter addressed, which caused him unnecessary time and trouble.
78. The landlord to an extent acknowledged this in its stage one response, but with the comment that there was no 'value' in the resident complaining about these matters. This was inappropriate: It was reasonable for the resident to raise his dissatisfaction with the delay to the stage one response and his concerns that the person that was involved in the complaint he was making was the person investigating it. His concerns were ultimately, and reasonably, about the administration of the process being used to investigate his current complaint.

79. This issue would not be so serious in isolation to warrant a finding of maladministration. However, viewed in the wider context of failings identified in this investigation and the cumulative impact of these on the resident, the Ombudsman finds maladministration in the landlord's complaint handling here.

Complaint C – warning for unreasonable behaviour

80. The resident complains about the warning the landlord gave about unreasonable behaviour, and its decision to deal with the issue as a 'service complaint' response in the first instance.
81. As stated in the CHC, a complaint is defined as an expression of dissatisfaction. Landlords should recognise the difference between a service request (for example a request for a repair or a report of ASB), and a formal complaint, and address each appropriately.
82. The resident's 18 June 2021 email was not a service request but was clearly an expression of dissatisfaction and should have been dealt with at stage one of the complaint process. Instead, it was dealt with as a 'service complaint', effectively adding an additional stage to the complaint process. The Ombudsman does not consider three stages are necessary as part of a complaints process but if a landlord believes strongly that it requires one, this can be set out in its CHC self-assessment. In this case, the landlord did not refer to a 'service complaint' stage in its self-assessment, and this was not mentioned on the 'complaints' page of its website at that time. If a resident wishes to make a formal complaint via the complaint process (and it is not a service request) then it should be treated as such.
83. In relation to the warning itself, it is appropriate for a landlord to consider whether a resident is making unreasonable demands and any impact these may have on its ability to provide a service. However, in this case the basis for the warning appears to have been that the resident had made nine complaints in a twelve-month period. This in itself is not necessarily indicative of unreasonable behaviour, and as can be seen from the outcome of this investigation, some complaints were warranted. It should also be noted that one of these complaints (complaint B) was raised because the landlord unreasonably declined to add issues to an open complaint (complaint A) as stated above.
84. The 1 July 2021 stage one response to this matter referred to the resident 'going off on a tangent' and was overall inappropriate in tone. It stated that the resident's complaint was unclear: If this was the case, it would have been reasonable for the landlord to have made contact with the resident to clarify it. It also said that the fact that it had been difficult 'to understand what you are really complaining about' was the reason for triggering an unacceptable behaviour process. The landlord referred to there being no

evidence that the resident had been diagnosed with anxiety and stress. This was inappropriate in this context where the resident had explained that he was feeling stressed and anxious about the matter, rather than claiming a medical diagnosis.

85. The stage two response suggested that rather than the number of complaints being the issue, or these being unclear, it was the nature of the complaints the resident had made which were concerning the complaint handling process, not repairs. The landlord did not consider that the correspondence was resulting from 'a significant unmet need or service failure' and therefore considered that a warning was necessary due to the volume of the correspondence.
86. As part of this investigation the Ombudsman asked the landlord for an explanation of the number of complaints the resident has made, their nature and why the landlord considered this to be unreasonable. The landlord said that it was unable to provide this information as no unacceptable behaviour policy/restrictions had been implemented, only a warning. This was unreasonable: Given that the landlord had indicated that it was the volume and nature of the complaints that led to a warning, it should be able to provide information to support its position.
87. Overall, the landlord's approach was unreasonable and heavy-handed, and it acted unfairly. There is no evidence that the resident was making unreasonable demands and the landlord gave differing reasons for issuing the warning. The implication was that should the resident make further complaints, whether or not these were reasonable and warranted, the landlord may apply restrictions.

Overall complaint handling and adherence to the Complaint Handling Code.

88. Landlords should make their complaint policy available in a clear and accessible format for residents, detailing the number of stages involved, what will happen at each stage and the timeframes for responding. The landlord did not have a complaint policy in place at the time of the matters complained about, which was a failing, although its website did provide this information, albeit briefly.
89. The full complaint policy took a very long time to be produced. The landlord's 2020 CHC self-assessment said, 'A standalone complaints policy is being written, alongside process maps for investigating officers to follow.' As can be seen from this complaint, there was still no policy in place in August 2021. The landlord was still advising this Service in November 2021 that the policy was yet to be finalised. A complaint policy dated February 2022 is now available on the landlord's website. Due to this lack of complaint policy, the resident understandably referred to the CHC and

expected the landlord to adhere to this and was frustrated when it did not.

90. Some of the issues that the resident raised with the landlord as not being in line with the CHC were not indicative of failings on the part of the landlord. For example, the resident complained that he was not kept updated after his stage one (complaint A) complaint was accepted. While the CHC does say that landlords should keep residents regularly updated, in this case the resident was aware that a response was due by 13 April 2021, and so there was no update for it to provide before then.
91. The resident also complained that the landlord did not set out its legal methodology when responding to his complaints about the repairs service. The CHC does refer to landlords setting out relevant law and legal obligations, however, this does not mean that it needs to do so in every case. Having said this, in this case the resident did specifically raise concerns about the tenancy agreement and the landlord's legal obligations in relation to this, which the landlord did not address.
92. In November 2021 the Ombudsman explained to the landlord that the response time of 25 working days was unduly lengthy for a stage two response, and advised that it have regard for the CHC which sets out the response should be provided within 20 working days at stage two. It is noted that the landlord's new complaint policy still sets out 25 working days for the response, and so is not in line with the CHC. While the 'chief executive' step does not constitute a fourth stage, it does add this extra week to the timeframe.
93. It is also noted that there is an informal 'service stage' in the new policy. It states, 'Upon receipt of the complaint, we will look to see to if we can resolve the issue quickly for you at service level. The relevant service may contact you in the hope of resolving your concern.' This is then followed by a two-stage complaint process. This is effectively a three-stage process, which is again not in line with the CHC. Further, no timeframe is given for this 'service' stage, which could lead to delays in a complaint being escalated to a 'formal' complaint.
94. In addition, it can be seen in this case that the landlord has calculated its response times from the date of its own acknowledgment of the complaint, rather than the date of the receipt of the complaint, as specified in the CHC. In its stage two response dated 11 August 2021 it recognised this as a failing and said it would expedite the work to develop and adopt a more detailed complaints procedure to ensure that the CHC was fully and demonstrably complied. But it was another six months before this policy was in place, and this now states that the ten days begins from the date that the landlord 'confirms your complaint has been

received' for stage one. This is not in line with the CHC. Conversely, for stage two the timeframe starts from the receipt of the request for review, which is in line with the CHC.

95. Overall, the complaint policy hasn't been decided in accordance with relevant and appropriate best practice and isn't compliant with the CHC that was in place at the time of the complaint. This has given rise to failings and potentially systemic failings if it continues to be applied in its current form. Taken in conjunction with the 'additional issues' complaint handling, the inappropriate tone of the 1 July 2021 response, and the issuing of a 'service complaint' response on 23 June 2021, this investigation finds that there was maladministration in the complaint handling. This has not been 'put right' in the issuing of the new complaint policy, as this does not accord with the CHC in places.
96. The Ombudsman has investigated previous complaints from the resident about the landlord where failings in complaints handling have been identified, and we have ordered the landlord to ensure that formal complaints are responded to in line with the CHC. It is therefore especially concerning that failings continue. The cumulative effect of these have been taken into account when making orders to 'put things right' for the resident.

Determination (decision)

97. In accordance with section 54 of the Scheme, there was
- a. Maladministration in the landlord's approach to repairs during Covid-19 (complaint A).
 - b. Maladministration in the handling of complaint A (complaint B).
 - c. Maladministration in the warning the landlord gave about unacceptable behaviour (complaint C).
 - d. Maladministration in the overall complaint handling and adherence to the CHC.

Reasons

98. The landlord's policy to only attend to emergency/sensational repairs in January and February 2021 was not in line with Government guidance at that time, and it has not provided sufficient explanation for why it was unable to follow this guidance. This was frustrating for the resident.
99. It was unreasonable not to add the additional issues raised to complaint A, which was again frustrating for the resident and led to time and trouble taken to raise a separate complaint so these issues could be addressed.

100. The landlord's decision to warn the resident about 'unreasonable behaviour' is not supported by evidence that demonstrates that his behaviour was unreasonable. This has caused the resident distress and anxiety.
101. The landlord was without a full complaint policy for an extended period, including when the CHC was in operation, which was a failing. The resident referred to the CHC to understand the landlord's obligations, and experienced frustration when the landlord did not adhere to these. The policy that is now in place does not fully correspond to the CHC. Overall there was maladministration in the complaint handling which is especially concerning given the previous investigations that have been carried out as noted above. While the order for compensation made below relates to this investigation only and not matters already compensated for in other cases, it does take into consideration the additional frustration caused to the resident in this complaint through repeated failures.

Orders

102. Within six weeks of the date of this report the landlord must:
- a. Pay the resident a total of £450 for the time and trouble, distress and frustration the failings identified in this report caused. This comprises:
 - i. £100 for the approach to repairs during Covid-19.
 - ii. £50 for the handling of complaint A.
 - iii. £150 for the warning about unacceptable behaviour.
 - iv. £150 for the overall complaint handling and adherence to the CHC.
 - b. Provide a written apology to the resident for the unreasonable behaviour warning.
103. Within ten weeks of the date of this report the landlord must:
- a. Review and revise its complaint policy to ensure that it is in line with the Ombudsman's CHC. The landlord may wish to use the Ombudsman's updated CHC, which sets out clearly where a landlord must comply, and where it has discretion. Even though landlords are not required to comply with this updated CHC until October 2022, early adoption will avoid further change within a short period. A copy of the revised policy should be provided to this Service.
 - b. If it has not done so already in the last 12 months, provide training to all staff that handle complaints to

ensure that this is being done correctly, and in line with the CHC. Details of this training to be provided to the Ombudsman.

Recommendation

104. If it has not done so already, the landlord should take steps to ensure that other senior officers have the authority to authorise complaint responses in the Senior Staff Member's absence, and that complaints about individual members of staff are not responded to by those staff members. The landlord should inform the Ombudsman in the next four weeks if it intends to follow this recommendation.