

To all member landlords

29 November 2022

Dear Chief Executive

Complaints relating to damp and mould

It is 12 months since we published our Spotlight report on damp and mould and, following the appalling and preventable death of Awaab Ishak, I wanted to write to bring renewed focus on the recommendations we made in that report.

I know many landlords will be reflecting on the circumstances of this case and what it means for their approach and services. While we did not investigate Awaab's case, I was asked by the coroner to give evidence at the inquest. Having listened to Awaab's parents' testimony at the inquest before I gave evidence and carefully examined the coroner's report, there are several clear lessons.

There has been an exponential rise in casework involving damp and mould reaching our service, with 134% more cases for formal investigation and 42% of our severe maladministration decisions involving damp and mould. With the cost of living crisis, I am concerned that more cases will present themselves and it is crucial that landlords have an effective approach in place.

This letter aims to complement those you will have received from the Secretary of State and the Regulator, and primarily focuses on approach, complaints and claims.

Spotlight report

Many landlords have actively engaged with our recommendations in the Spotlight report, with more than 4,000 downloads since its publication. I would urge you to consider the report's 26 recommendations once more and self-assess against them if you have not already done so; to share and discuss this assessment at your governing body, and to publish the outcome. I would also encourage you to engage with residents given the importance of effective communication. The Ombudsman will request this assessment as part of its investigation into relevant complaints.

I would also highlight two areas of the report. Firstly, my report recommended landlords take a zero-tolerance approach to damp and mould. I further recommended landlords consider a dedicated policy to support decision-making and an urgent, proactive approach. I am asking all landlords to actively consider whether such a policy is required, if not done so already. If a dedicated policy is genuinely not considered necessary, I ask you to be really clear why.

Secondly, my report highlighted our concerns about the tone of some communications, especially language such as 'lifestyle choices' and 'behaviours' that infer blame on the resident and places the onus for resolving the issue on them, absolving the landlord of responsibility. This underlying

attitude can impede an effective diagnosis of the causes and timely actions that should be taken by the landlord. This reflects some of the evidence heard at the inquest.

This call to change language has resonated with many landlords who have taken action. However, I am acutely aware that, given this language had become so widespread and accepted, the sector may still have some way to go before it is eradicated from the vernacular of social housing.

I consider the use of patronising, stigmatising or potentially discriminatory language as ‘heavy handed’ and therefore may, under section 52(f) of our Scheme, make a finding of maladministration.

Today I published a sample of damp and mould cases we have determined since our Spotlight report, and while some of those cases’ events will pre-date our report, the language of ‘lifestyle’ is pervasive across them.

Legal claims

Alongside the Spotlight report, last year the Ombudsman published [guidance](#) for landlords on the pre-action protocol for housing conditions claims and revised its jurisdiction guidance to address our concerns about the way some landlords handled complaints when a legal claim was also made. Although progress is being made by landlords to get effective practices in place, I remain concerned.

Having an accessible complaints procedure is essential to promote alternatives to the courts to resolve disputes. I have seen some landlords close complaints prematurely because the protocol has commenced, or even when the resident seeks legal representation. It is the resident’s right to decide which route they would like to follow to seek redress, but it is important that landlords do not limit access to alternative redress – use of our service is actively encouraged through the protocol. Landlords should consider reviewing restrictive policies which exclude consideration of complaints where a pre-action legal claim has been made and instead consider how better to use the complaints procedure to resolve these disputes.

To be absolutely clear as I was in the report: use of the pre-action protocol does not constitute legal proceedings and therefore does not preclude the landlord responding through the complaints procedure, or the Ombudsman formally investigating. No landlord should advise its resident that they cannot refer their complaint to the Ombudsman in these circumstances. The complaints process remains available until papers are served in the courts and, even then, the landlord should be certain that the claim reflects all aspects of the complaint before suspending the complaint procedure. To support landlords to develop a clear, consistent and effective approach, in addition to the guidance referenced above, there is also a [podcast](#) on our website setting out the issues in depth.

I know there is poor practice in a minority of the legal sector in relation to disrepair claims. I would stress the importance of landlords remaining committed to inspecting properties as soon as a claim is raised and to completing the repairs needed as soon as is practicable. 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. I would also re-emphasise our guidance in the Complaint Handling Code of the importance of landlords taking action to put things right, such as a repair, without waiting for the complaints procedure to be completed.

If landlords can evidence that they are struggling to progress a complaint alongside a legal claim, I would encourage them to raise it with our dispute support team who will be able to offer guidance and possible options for progression, including taking the complaint for investigation if necessary.

Equally, if a landlord does not accept or progress a complaint because of a legal claim, we may, as we do now, issue a Complaint Handling Failure Order.

Complaints

You will be aware that since the publication of the [Complaint Handling Code](#) two years ago, we have stressed the importance of landlords having an open and accessible complaints procedure. This is critical for residents to have its trust and confidence as a route for resolving issues.

I would emphasise the importance of section 2 of the Code, which we strengthened earlier this year and required self-assessment against, which requires proactive awareness raising, including outside the complaints process and as part of routine communication with residents.

It is crucial for landlords to consider what more they can do in this space, especially to raise awareness with more vulnerable or marginalised groups, or where there appears to be an underrepresentation amongst the landlord's resident population in the complaints procedure. Landlords need to take this responsibility seriously, as I know many do, and I would ask the new leads for complaints on governing bodies to review their landlord's approach as a priority.

Landlord performance reports

Throughout this year I have emphasised the importance of complaints and complaints teams during uncertain times. The Ombudsman will be shortly publishing our annual landlord performance reports for 2021-22. The issues we see in our casework on damp and mould and some of the issues heard at the inquest are common themes that result in service failure: poor communication, inadequate records or record keeping, and incomplete or outdated policies. It is essential for landlords to routinely learn from complaints as part of a positive complaint handling culture and put in place effective systems to enable this to happen.

Unfortunately, too often landlords may suggest that the circumstances that led to service failure in one case are isolated or historic, when in reality they are repeated too often across the casework we handle with an individual landlord or throughout the sector. This defensiveness has to change. The publication of the landlord reports are another way for landlords to focus on service improvement, to promote learning and to demonstrate change.

I look forward to continuing to work with you to make complaints matter.

Yours



Richard Blakeway
Housing Ombudsman