

<b>Committee:</b> Housing Management and Almshouses Sub-Committee	<b>Dated:</b> 3 June 2024
<b>Subject:</b> Housing Complaints Update	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	2, 4, 12
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>N</b>
<b>If so, how much?</b>	<b>£</b>
<b>What is the source of Funding?</b>	
<b>Has this Funding Source been agreed with the Chamberlain's Department?</b>	<b>N/A</b>
<b>Report of:</b> Judith Finlay, Executive Director of Community and Children's Services	<b>For Decision</b>
<b>Report author:</b> Liam Gillespie, Head of Housing Management, Department of Community and Children's Services	

### Summary

This report addresses two actions contained in the Housing Management and Almshouses Sub-Committee action tracker, relating to housing complaints and the potential use of arbitration as a means of resolving complaints.

The Housing Ombudsman's expectation of social landlords in complaints handling has changed, with a new Complaint Handling Code, which is now statutory following the passing of the Social Housing (Regulation) Act 2023. This Code requires landlords to identify a senior lead person and a Member responsible for complaints, and two recommendations are made about the proper people to hold these positions.

This report also outlines recent complaints and compensation figures and provides an update on how officers intend to incorporate complaints learning into current processes through a Complaints Learning Panel.

The current policies on complaints and compensation are under review and will be submitted to this Sub-Committee for approval, once they have been amended to ensure compliance with the changed Complaint Handling Code.

### Recommendations

Members are asked to:

- Note the report
- Comment on the suitability of arbitration as a potential dispute resolution measure for housing complaints at the City Corporation

- Endorse the suggestion that the Assistant Director for Housing Management acts as the 'senior lead person' for housing complaints in accordance with the Housing Ombudsman's Complaint Handling Code
- Endorse the suggestion that the Chairman of this Sub-Committee acts as the Member Responsible for Complaints (MRC) under the same Code
- Agree the reporting cycle for complaints matters proposed in section 11

## **Main Report**

### **Background**

1. This report is intended to update Members on our management of housing complaints and outline regulatory changes relating to the handling of complaints by social landlords.
2. Our current policies on Complaints and Compensation are under review and are attached to this report. Members may wish to comment on any matters they would like officers to consider as part of the review of these policies.
3. At the April 2023 meeting of this Sub-Committee, Members suggested that officers should examine the possibility of using arbitration as a means of resolving complaints. The example of Southwark Council's housing arbitration service was suggested, and officers have been in contact with counterparts at that authority regarding their process. Further information is provided below.

### **Housing Ombudsman - Complaints Handling Code**

4. The City Corporation is a compulsory member of the Housing Ombudsman Scheme. The Ombudsman provides a free, independent, and impartial service which investigates complaints from tenants and leaseholders of social landlords, in accordance with the rules set out in the Housing Ombudsman Scheme.
5. The Ombudsman has a Complaint Handling Code, which sets out the Ombudsman's expectations of landlords and how they manage complaints. Some key areas of the Code are:
  - a universal definition of a complaint
  - providing easy access to the complaints procedure and ensuring residents are aware of it, including their right to access the Housing Ombudsman Service
  - the requirement to have two complaints stages, and clear times set out for responses
  - ensuring fairness in complaint handling with a resident-focused process
  - taking action to put things right and appropriate remedies
  - creating a positive complaint handling culture through continuous learning and improvement
  - completing an annual self-assessment against the Code

6. With effect from 1 April 2024, the Code became statutory in accordance with the Social Housing (Regulation) Act 2023. Landlords with more than 1,000 homes are now required to return an annual self-assessment of their compliance with the Code, at the same time as they submit their Tenant Satisfaction Measures (TSMs) return to the Regulator for Social Housing.
7. The deadline for the next TSMs return and submission of the self-assessment is 30 June 2024. Officers are due to complete the latest self-assessment in April 2024. This will be published on our website so that residents can see how we are performing against the requirements of the Code.
8. A service improvement plan will be developed to address any areas of non-compliance with the Code, which will be submitted to this Sub-Committee and published on our website.

### **‘Senior Lead Person’ and ‘Member Responsible for Complaints’**

9. The Complaint Handling Code requires:

- A ‘senior lead person’ to be appointed as being responsible for complaints handling, who must assess any themes or trends to identify potential systemic issues, serious risks, or policies and procedures that require revision
- A member of our governing body to be appointed to have lead responsibility for complaints, to support a positive complaints culture (referred to as the Member Responsible for Complaints or ‘MRC’). The MRC will be responsible for ensuring the governing body receives regular information on complaints that provides insight on the landlord’s complaint handling performance. This person must have access to suitable information and staff to perform this role and report on their findings

10. It is suggested that:

- the Assistant Director for Housing Management acts as the named senior lead officer for this purpose
- the Chairman of the Housing Management and Almshouses Sub-Committee should hold the responsibilities of the Member Responsible for Complaints

11. The Code states that the MRC must receive:

- regular updates on the volume, categories and outcomes of complaints, alongside complaint handling performance
- regular reviews of issues and trends arising from complaint handling
- regular updates on the outcomes of the Ombudsman’s investigations and progress made in complying with orders related to severe maladministration findings
- an annual complaints performance and service improvement report

12. To meet the requirements of the Code in relation to the MRC's responsibilities, it is proposed that officers submit a quarterly report to this Sub-Committee, outlining performance and key information on complaints.
13. Subject to Members' comments, the first such report can be submitted to this Sub-Committee's next meeting on 8 July 2024, to cover the full 2023/4 financial year, and including the self-assessment against the Code. Subsequent reports can then be provided, covering each quarter, and providing the information outlined in paragraph 8 above.

### **Complaints Learning Panel**

14. Officers have set up a Complaints Learning Panel, which will be held quarterly to review the outcomes of complaints from residents. The purpose of the Complaints Learning Panel is to identify themes, trends and potential service improvements (including amendments to policies and procedures) arising out from resident complaints. Any identified actions will be tracked by the responsible officers. The Panel will be chaired by the Assistant Director or their delegate, as the senior lead person for complaints purposes.
15. The activity of the Panel will be used to create reports to this Sub-Committee and support the role of the MRC, as well as informing communications with residents on service improvements identified.

### **Complaints Figures, 2021 – 2024**

16. **Appendix One** shows the total Stage One complaints received over the past three financial years.
17. There has been a marked increase in total complaints, particularly for repairs related matters (which includes Major Works complaints). In 2023/4, there was an increase in repairs complaints of 84% based on the previous year. The increase for housing management complaints was 55% for the same period.
18. A change in the Housing Complaints Policy came into force in September 2021, bringing the process in line with the Housing Ombudsman Complaint Handling Code. Changes to the policy removed the third investigation stage, with stage two being the final stage for internal investigation. Stage Three investigations were honoured for those complaints currently under investigation at the time of the policy change.
19. In line with the Complaint Handling Code, we promoted resident awareness of how to make a complaint by promoting the service and policy changes, including updating the webpage, ways to make a complaint, attending estate drop-ins and placing articles in the @Home residents' magazine.
20. We increased complaints awareness among staff at this time, ensuring that officers are clear on what defines a complaint, and their responsibility in ensuring that complaints are forwarded appropriately and that residents are signposted to the service.

21. Increased awareness of the complaints process might explain some of the increase, however the standard of service provided in some areas, for example in responsive repairs, will likely account for a sizeable part of the noted increase. Members are aware of the challenges faced by the Repairs service at present, and the actions being taken by officers to address under-performance.
22. An analysis of trends and themes arising from these complaints is being compiled for discussion at the Complaints Learning Panel, to try to isolate the drivers for the increase in complaints over the past three years, and enable remedial action to be planned. Officers will present this further analysis to Members in July 2024.

### **Compensation and Housing Complaints**

23. The aim of complaints resolution is to put matters right as far as is reasonably practicable. Sometimes, the appropriate solution is an amount of financial compensation, for instance where there has been a quantifiable loss to a complainant (e.g. damage to their property).
24. In some cases, it is appropriate to offer an amount in recognition of distress or inconvenience caused to a complainant. Our current Compensation Policy gives some examples of the sums that might be offered in these circumstances:
  - £25 for a missed appointment
  - Goodwill gesture up to £50 for distress and inconvenience
25. Officers have discretion under this policy to make an award of financial compensation appropriate to the circumstances. If a service failure results in serious inconvenience or distress to a complainant, a decision will be made on an appropriate amount of compensation with reference to previous complaints and typical amounts awarded by the Housing Ombudsman.
26. As outlined below, the Compensation Policy is being reviewed and it is intended that more detail will be provided about financial compensation and the typical amounts that might be offered in given circumstances.
27. The table below shows the total compensation paid to complainants over the past three years.

<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
£750.00	£7,351.00	£9,221.61

28. The figures above include some substantial amounts of compensation which were payable by contractors, however they are included in the figures as they were offered in response to complaints investigated through our complaints procedure.
29. There are several possible reasons for the increase in compensation besides the increase in complaints which are upheld:

- the compensation policy had not always been referred to correctly by complaints investigators, to determine if the level of service failure warranted an award, however this has been addressed
- investigating officers for repairs and maintenance complaints had been relying on complainants requesting compensation, rather than referring to the policy to determine if the service failures identified warranted compensation

30. The changing requirements of the Complaint Handling Code and improved awareness among officers has meant that complaints investigators are now clearer on the expectations regarding awards for service failures which have caused distress and inconvenience to residents.

### **Policy Reviews**

31. Officers are currently reviewing both the Housing Complaints Policy (Appendix Two) and the Compensation Policy (Appendix Three), to ensure that they are compliant with the expectations of the Housing Ombudsman and the Complaint Handling Code.

32. The Housing Complaints Policy was last reviewed in 2021 and best practice in this area has developed in the meantime, however it is not anticipated that the policy will change significantly. Some improvements and clarifications have been identified, to better meet the requirements of the Complaints Handling Code.

33. The Compensation Policy was last approved in 2020. Officers have identified that the current policy requires improvement in some respects, to give more detail about typical circumstances in which compensation will be offered, and, where financial remedies are appropriate, list standard amounts that will normally be offered as compensation.

34. Officers intend to submit the revised policies to the 8 July 2024 meeting of this Sub-Committee.

### **Arbitration as a Complaints Resolution Method**

35. At the meeting of HMASC on 17 April 2023, an action was added to the Action Tracker regarding the potential for an 'Arbitration Panel' for resolving complaints from tenants and leaseholders.

36. The model used by the London Borough of Southwark was suggested as an example of the kind of solution that could be considered. Officers have spoken to a counterpart at Southwark Council about the Southwark Arbitration Service, which is used to resolve disputes between that authority and its tenants or leaseholders. It is believed that Southwark's service is the only one of its type operated by a local authority in London.

37. Southwark's Arbitration Service operates two 'tribunals'; one for tenants and one for leasehold disputes. The average caseload pre-COVID was around 45 cases

per year, however this has since fallen. It should be noted that Southwark has a housing stock of approximately 38,000.

38. Each tribunal has a set of rules, which outline the sort of disputes which can be entertained, the composition of the panels and the rules for findings and remedies. The legal basis for the service is the Arbitration Act 1996 and the provisions of the Tenancy Agreement or lease. The Tenancy Agreement lists the sort of disputes which can be referred for arbitration.

39. In outline, Southwark's Arbitration Service works as follows:

- The two tribunal panels are made up of an independent chair (often a housing professional), a Member (not from the Ward in which the dispute arose) and a resident (usually nominated by a Tenants' Association, again not from the area in which the dispute arose)
- A barrister acts as Clerk to the panel to ensure the rules are followed and to record the proceedings and decisions
- The complainant can apply to have their complaint considered by the panel once they have been through the formal housing complaints process (i.e. stages one and two)
- Taking the arbitration route is done by mutual agreement and the parties consent to being bound by the findings of the panel
- The tribunal may award compensation, require specific performance of works up to £50,000, or make a declaration as to the rights of the parties

40. Although the formal complaints process must be exhausted before arbitration may be applied for, it is not strictly a 'third' stage to the housing complaints process, as it is not compulsory; the complainant still has the choice to go to the Housing Ombudsman instead of using arbitration if they wish.

41. The status of arbitration as a quasi-legal method of dispute resolution means that arbitrated complaints will not normally be entertained by the Housing Ombudsman if the complainant subsequently approaches them, as their jurisdiction precludes becoming involved in legal and quasi-legal processes.

42. The types of complaints from tenants that Southwark Arbitration can deal with are contained in the Council's Tenancy Agreement (Conditions of Tenancy) booklet, and include:

- disrepair
- missed appointments
- lack of heating and hot water
- standard of repair

43. The types of complaints from leaseholders that the panel can deal with are:

- alleged unreasonable action regarding the Right to Buy sales process
- alleged breaches of covenant, excluding those which fall under the jurisdiction of the First-Tier Tribunal (Property Chamber).

44. While arbitration is not a 'third stage' of the complaints process, we would still need to clarify how an arbitration process would interact with the revised Complaints Handling Code expectations. The new Code requires that:

*Where a landlord's complaint response is handled by a third party (e.g. a contractor or **independent adjudicator**) at any stage, it must form part of the two stage complaints process set out in this Code. Residents must not be expected to go through two complaints processes.*

45. The justification for providing arbitration is presumably that it is a voluntary option open to the complainant; they may instead elect to pursue their complaint to the Ombudsman if they wish.

46. Were we to consider this further, the following implications would need to be addressed:

- Tenancies and leases would need to be reviewed to ensure that they provided for arbitration. There is reference to arbitration as a dispute resolution option in current leases, however the scope of this would need to be determined. Current tenancies make no reference to alternative methods of dispute resolution
- The potential cost of maintaining the system would need to be determined (this would largely consist of legal fees and officer time)
- The responsibility for administering any arbitration service would need to be decided (i.e. which Department it would sit in, to ensure independence and confidence in the process)
- The compliance of any process with the Housing Ombudsman's expectations would need to be clarified

47. Members are asked to comment on this process and indicate whether they would like officers to consider it further.

## **Corporate & Strategic Implications**

### **Strategic implications**

A clear, transparent and fair complaints process will support the achievement of the outcomes in our proposed Housing Strategy, which is designed to support the delivery of quality resident-focused services.

Financial implications – none.

Resource implications – none.

Legal implications – none.

Risk implications – none.

Equalities implications – none.

Climate implications – none.

Security implications – none.

## **Conclusion**

48. This report addresses two actions contained in the Housing Management and Almshouses Sub-Committee action tracker, relating to housing complaints and the potential use of arbitration as a means of resolving complaints.

49. The Housing Ombudsman's Complaint Handling Code, which is now statutory, outlines expectations of social landlords in complaints handling. Officers are currently reviewing the existing Complaints and Compensation Policies to ensure that our practice in this area accords with these requirements.

50. Housing complaints have increased significantly in 2023/4 and officers will analyse trends and themes in complaints to inform learning and service improvements, through a new Complaints Learning Panel. Members will be kept informed of developments in this area through Committee reports.

51. The model for housing dispute arbitration used by the London Borough of Southwark has been examined and Members are asked to comment on whether this might be suitable for our purposes. The implications of using arbitration, particularly how such a service would interact with the Complaint Handling Code, need further investigation.

## **Appendices**

- Appendix 1 – Complaints totals 2021 - 2024
- Appendix 2 – Complaints Policy
- Appendix 3 – Compensation Policy

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