



Appeals against Housing Management Decisions Policy and Procedure

Version Number	4.0	Developed by	Sarah Cottrell
Approval Date	14.09.22	In Consultation With	Operations Managers
Classification Type - (Confidential, Restricted, Internal use only, None)			Internal use only



Appeals against Housing Management Decisions Policy and Procedure

Contents

1. Policy Statement
2. Context of the Policy
3. Appeals
4. Appeals Process
5. The Procedure
6. Context
7. Requesting a review
8. Review without a Hearing
9. Review with a Hearing
10. Further Appeals



Appeals against Housing Management Decisions Policy and Procedure

Policy Statement

This policy sets out Framework's approach to managing appeals made by tenants regarding a specific set of housing management decisions as set out below:

- Service of a Section 21 Notice to end an Assured Shorthold Tenancy
- Service of Notice of Seeking Possession which relies on Ground 7 (a) – absolute ground for possession under the ASB, Crime and Policing Act 2014
- Service of a Section 8 Notice where Ground 8 (mandatory ground for possession for rent arrears) is relied upon

Context of this Policy

- a. As part of Framework's work in managing its tenancies, a number of housing management decisions are made with regards to a tenant's ability to sustain their tenancy successfully. These include decisions on possession proceedings for breaches of tenancy conditions, including rent arrears or Anti-social behaviour.
- b. Following the judgment in *Weaver v London & Quadrant*, it was deemed that Registered Providers (RP) should be subject to the Human Rights Act 1998 by virtue that they provide social housing (being a "function of a public nature"). The further judgment found in *Manchester City Council v Pinnock* ruled that a Court could consider proportionality, under Article 8 (the right to a family life), when making a decision about possession, even in cases where the action sought was on mandatory grounds.
- c. Good practice for RP's has emerged since these judgments, to allow them to evidence that the action sought is a "proportionate response to a legitimate aim", which includes adopting an internal review of possession proceedings." This is not a legal requirement for housing associations, but is for local authorities, and Courts may wish to see evidence that a review has taken place, before deciding on a possession case, as it is encouraged as best practice and is unusual not to be in existence.
- d. Framework will offer tenants a fair and structured process to challenge any decisions made concerning them in relation to mandatory possession proceedings.
- e. The process will also provide assurance to Framework that decision making has been undertaken in an informed, fair and transparent way, fully taking into account individual tenant circumstances.



Appeals against Housing Management Decisions Policy and Procedure

Appeals

Framework's appeals process will be subject to the following principles:

- Fairness: appeals will be heard by a Manager not involved in the original decision, and of a more senior position than the original decision maker. Any legal process will not be commenced until the appeals process has been completed
- Proportionality: in reviewing an appeal FHA will ensure that an assessment of the reasonableness of the proposed action is a fundamental part of the appeal process
- Transparency: all decisions and their reasoning will be communicated to tenants in writing. All relevant correspondence from the FHA will advise individuals of their right to appeal
- Timeliness: appeals will be held within a reasonable time and tenants will be given maximum opportunity to attend including deferral of a meeting if there are good grounds for this. However, appeals cannot be used to unreasonably delay legal or other proceedings
- Continuous Improvement: FHA will use any learning points from appeals to improve policies and working practices as required
- Completing the process: Once the appeals process has been concluded and a decision reached there is no further right of internal appeal. Tenants can attend Court to put their case as part of the legal process

Appeals Process

The detailed procedure for appeals is set out below. The following are the key points of the process:

- Tenants will be advised of their right to appeal and advised on the process for this
- Tenants can request a hearing or have the appeal dealt with without a hearing
- The tenant can provide evidence in writing, verbally or a combination of both
- Venues for appeal hearings will be suitable and chosen with regard to the tenants address.
- Tenants can be accompanied to hearings by an advocate
- All decisions and reasoning will be communicated in a timely manner



Appeals against Housing Management Decisions Policy and Procedure

The Procedure

This procedure relates to matters where action is taken to end a tenancy using a route where possession should be mandatory.

The purpose of the review is to ensure that any decision to pursue a mandatory route of possession is robustly scrutinised by a senior manager, who was not involved in the original decision making. It allows tenants a fair and structured way of presenting any reasons for why they believe the decision unfair and Framework the confidence that decision making is fully informed and actions are being used appropriately.

Context

This process should be followed where any customer wishes to appeal any of the following decisions:

- Service of a Section 21 notice to end an Assured Shorthold Tenancy
- Service of Notice of Seeking Possession which relies on Ground 7(a) – absolute ground for possession under the ASB, Crime and Policing Act 2014
- Service of a Section 8 Notice where Ground 8 (mandatory ground for rent arrears) is relied upon

Requesting a Review:

- a. Framework must ensure that all covering letters that accompany any of the decisions covered by this process, explain that the tenant has a right of appeal and encloses a copy of the review form.
- b. Tenants have a period of 7 days, from the date that the notice is served on them, to request a review of the decision.
- c. A review request must be made by completing the enclosed form. If a tenant indicates that they are unable to complete the form, or there is reasonable belief that this could be the case, support should be given to ensure that they are not prevented from requesting the review
- d. On receipt of the review form, the officer should notify the Housing Services Manager who will ensure the most appropriate OLG Manager undertakes the review.



Appeals against Housing Management Decisions Policy and Procedure

Review without a hearing:

- a. Where the tenant has asked for the matter to be determined without a hearing, a letter must be sent to the tenant, by the reviewing manager, advising them that they are able to make written representations in support of their review request.
- b. The letter must specify a deadline for receiving these representations. This date must be at least 7 days after the letter is delivered/posted
- c. Once the deadline for submissions of representations has passed, the reviewing manager should take into account any representations made, when making a decision.
- d. If the tenant has not made any written representations, the reviewing manager should continue to review the decision without further opportunity to the tenant.
- e. The reviewing manager must:
 - i. Be of a greater seniority than the person making the original decision
 - ii. Not have been involved in making the original decision
- f. The reviewing manager should make their decision within 10 working days of the deadline for submitting representations. If there is to be any delay in this decision, the person requesting the appeal should be informed in writing, with reasons for the delay and a new deadline for response.
- g. The reviewing manager can also ask for information from Housing Management staff.
- h. The reviewing manager should consider the following:
 - i. Whether the relevant policies and procedures were followed (Tenancy Management, ASB or Rent)
 - j. Whether the action taken is a proportionate means to a legitimate aim
 - k. Whether any alternative action would be likely to resolve the issues, without resorting to eviction
- l. The reviewing manager may:
 - i. Uphold the decision and decide that the action taken was appropriate (further recommendations may be made if appropriate)
 - ii. Find that the actions are unreasonable and make recommendations as to the future of the case, which may include retracting the notice and intended action
- m. The reviewing manager should write to the tenant, explaining the actions that they have taken and the outcome of their assessment



Appeals against Housing Management Decisions Policy and Procedure

Review with a hearing:

- a. When the tenant has asked for the matter to be dealt with by way of a hearing, the reviewing manager must send a letter to them advising them of the date for such a hearing. The date of this hearing must be at least 5 days after the date on which the letter will have been deemed to have been received by the customer
- b. If the tenant says that they are unable to attend on the date given, 2 further alternatives should be given. These should however be within 21 days of the letter. If the tenant insists that they cannot accommodate these alternatives, a decision can be made by the reviewing manager that the review is decided in the tenant's absence
- c. The review hearing will be conducted at a Framework office, unless an alternative venue if more suitable or appropriate (a decision determined by the reviewing manager). Any health and safety risks must be considered before conducting the hearing
- d. The Senior Housing Officer should also be invited to the hearing and asked to prepare written submissions
- e. The reviewing manager must:
 - i. Be of a greater seniority than the person making the original decision
 - ii. Not have been involved in making the original decision
- f. The reviewing manager should ensure that the hearing is conducted with the minimum amount of formality and can direct how the hearing proceeds. Present at the hearing should be an officer who takes a record of the conversations.
- g. In most instances, the hearing will take the following approach:

	Action	Responsible person
1	Introductions and overview of structure of hearing, including ground rules	Reviewing Manager
2	Re-cap of reasons for hearing	Reviewing Manager
3	Oral or written submissions made	Tenant (or representative)
4	Questions asked relating to the submissions	SHO
5	Oral or written submissions made	SHO
6	Questions asked relating to the submissions	Tenant (or representative)
7	Questions or points of clarification	Reviewing Manager
8	Next steps outlined and hearing closed	Reviewing Manager

- h. In some circumstances (e.g. if more information is required to make a decision), the reviewing manager may decide to adjourn the hearing. Where this occurs, the reviewing manager must set a new date and ensure that all people party to the hearing, are informed in writing



Appeals against Housing Management Decisions Policy and Procedure

- i. If the tenant does not attend the hearing, the reviewing manager can decide to make a decision in their absence or adjourn the hearing. This decision should be made based on the reasons given by the tenant for not attending and how reasonable they are. Where the tenant simply does not attend, the normal course of action will be to make a decision in their absence
- j. Following the hearing, when making the decision, the reviewing manager should consider the following:
 - i. Whether the relevant policies and procedures were followed (Tenancy Management, ASB or Rent)
 - ii. Whether the action taken is a proportionate means to a legitimate aim
 - iii. Whether any alternative action would be likely to resolve the issues, without resorting to eviction
- k. The reviewing manager may:
 - i. Uphold the decision and decide that the action taken was appropriate (further recommendations may be made if appropriate)
 - ii. Find that the actions of the case officer were unreasonable and make recommendations as to the future of the case, which may include retracting the notice and intended action
- l. Within 10 days of the final hearing, a decision should be communicated in writing to the tenant and other parties

Further Appeals

There is no right of appeal in terms of the decision made in relation to this process. The tenant will have the opportunity to address the action of Framework in any subsequent legal proceedings.