

Social Housing Team
Ministry of Housing, Communities and Local Government
Third Floor – Fry Building
2 Marsham Street
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6 November 2018

Dear Charlie,

A new deal for social housing

I am writing in response to the Ministry of Housing, Communities & Local Government's (MHCLG) consultation on the Green Paper, 'A new deal for social housing'. We have restricted our comments to the issues in Chapter 2, Effective resolution of complaints, that the Association has expertise in.

Summary

1. The Ombudsman Association welcomes the Ministry's intention to strengthen redress in social housing.
2. The 'democratic filter' should be removed as a matter of urgency to reinstate direct access to the Ombudsman.
3. There should be a mandatory requirement on landlords to signpost to the Ombudsman.
4. To be effective an ombudsman needs to work in a well-regulated environment, with clear common standards to measure against, and liaise closely with enforcement bodies.

Background

5. The Ombudsman Association was established 25 years ago and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, the Republic of Ireland, the British Crown Dependencies and the British Overseas Territories.
6. The Vision of the Association is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
7. An Ombudsman helps to underpin public confidence in the institutions that they cover; by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.

8. The Association's membership criteria are recognised by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*¹, which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'².
9. The Association's Validation Committee scrutinises both applications for membership and the 5-yearly re-validation of existing members against our membership criteria.³ The Validation Committee has a majority of independent members who are appointed via an open recruitment process for their knowledge and expertise of the ombudsman sector.

Chapter 2: Effective resolution of complaints

Q5. Are there ways of strengthening the mediation opportunities available for landlords and residents to resolve disputes locally?

10. The ideal scenario is that any dispute is solved locally between the landlord and resident. Ombudsman schemes normally exist where there is a power imbalance between the citizen and a service provider. For that reason, it is essential that if the dispute is not resolved swiftly it can be escalated without delay to an ombudsman for an independent and impartial decision.
11. As is discussed later, the insertion of the 'democratic filter' put a barrier in the way of access to the ombudsman and has delayed the resolution of residents' disputes. There is a danger that an attempt to insert a 'Mediation stage' could have a similar impact.
12. It is important to distinguish between formal (capital 'M') Mediation, where a qualified Mediator facilitates a mutual agreement between two parties, and the role of an Ombudsman in investigating and adjudicating a dispute. Many ombudsman schemes, including the Housing Ombudsman, already use mediation techniques alongside their other processes to secure as swift a resolution as possible, as different investigative techniques will be appropriate in different circumstances.
13. It is also worth noting that Mediation is usually confidential. One of the major strengths of the ombudsman system is the learning that can be taken from the resolution of disputes; the feedback that is provided to the sector to improve the service they provide, the sharing of decisions taken with the advice and advocacy sector to inform the advice they provide, and the intelligence shared with the regulator to inform regulatory action.
14. There may be some benefits to educating landlords in mediation techniques to resolve disputes, or in giving residents the option of trying to resolve their dispute through Mediation, but this should not be made a mandatory requirement, fetter the direct access to the Ombudsman, or insert a further stage into 'local resolution' that might lengthen the time taken to resolve a dispute.

Q6. Should we reduce the eight week waiting period to four weeks, or should we remove the requirement for the "democratic filter" stage altogether?

15. Free, direct and immediate access to an ombudsman if the organisation complained about does not resolve the complaint promptly is an accepted and essential feature of an ombudsman scheme.

¹ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

² www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

³ www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

16. The introduction of the 'designated persons' system under the Localism Act in 2011, or 'democratic filter' as it has been labelled, unnecessarily restricted direct access to the ombudsman for those in social housing in England. This restriction on access is as damaging as having no access at all. Whilst the intention may have been to encourage 'local resolution', these arrangements have failed to deliver what was initially intended and simply introduced an enforced eight-week delay to accessing justice; the Housing Ombudsman has highlighted that 93% of the formal complainants they dealt with last year had to wait the full eight weeks to access their service.
17. In Scotland, Wales and Northern Ireland, citizens who have complaints about housing have direct access to the relevant ombudsman. There is no convincing rationale as to why citizens in England should be denied the same rights that their fellow citizens enjoy in the rest of the UK.
18. Internationally, the only other instance where citizens do not have direct access to an ombudsman is in regard to complaints about Westminster government departments, where the 'MP filter' currently still exists for the Parliamentary & Health Service Ombudsman. The Government have recognised that as an anachronism and committed to remove it via the Draft Public Services Ombudsman Bill. Removal of the 'democratic filter' would therefore align Government policy regarding direct access.
19. It is worth reiterating that the removal of the 'democratic filter' would not prevent tenants from seeking the support of their elected representatives in resolving their disputes or during their engagement with the Ombudsman in the future.

Q7. What can we do to ensure that the "designated persons" are better able to promote local resolutions?

20. We strongly recommend that the Government recognise that the 'designated persons' role is an inappropriate barrier to justice and work to remove it as urgently as possible, rather than attempt to 'tinker' with it in the short term.
21. The Government should take a strong and principled policy stance and provide guidance to all 'designated persons' that they should immediately start referring people directly to the Housing Ombudsman, in advance of the legislative changes coming into force. The Housing Ombudsman could also play a role in assisting this change through an enhanced awareness raising campaign with all stakeholders.
22. This approach would reflect the position the Government has already taken in relation to complaints from rail passengers. In the absence of changes to the existing statutory complaints system and the establishment of an ombudsman via legislation, the Department for Transport has worked with the industry, the regulator and advocacy bodies, to agree a joint position that passengers will now be signposted towards the soon to be launched Rail Ombudsman in the first instance, rather than to the existing passenger advocacy bodies (Transport Focus and London TravelWatch), thereby bypassing the advocacy bodies' existing statutory role in complaint handling. This will have a double benefit of ensuring direct access to the ombudsman and enabling the advocacy bodies to focus on advice and advocacy. As this change has been achieved without primary legislation it shows that the same approach could be adopted for social housing.

Q8. How can we ensure that residents understand how best to escalate a complaint and seek redress?

23. All ombudsman schemes should pro-actively raise awareness of their services and engage with advocacy and advice bodies, such as Citizens Advice and Age UK, to ensure all stakeholders are aware of their service and can signpost their clients accordingly.
24. In addition, there should be a requirement on those in an ombudsman's jurisdiction (in this case landlords and housing associations) to both signpost to and inform consumers of their

right to take their complaint to the Ombudsman, as already takes place for example in the financial sector. Mirroring the approach in the financial sector, that information should be provided both at the 'point of sale' (i.e. every new letting), in a landlord's own literature about how to complain, and at the point of their final decision.

25. However, an ombudsman is just one piece of the puzzle. Ombudsman schemes are most effective in sectors where they work closely with a regulator and other accountability bodies. This can be seen for example in the energy sector where the ombudsman works closely with Ofgem. In order to both improve services and hold organisations to account there needs to be clear common standards and commitments that an ombudsman can then measure organisations against, and effective relationships with regulators and other bodies in place to ensure enforcement. For a requirement to be effective - such as mandatory signposting to the ombudsman - there also needs to be a sanction in place for non-compliance and this would most logically sit with the regulator.
26. There is also ample evidence that the 'complaints maze' across the complaints landscape is impenetrable for the ordinary citizen and that a single portal for all complaints, akin to the e-People system in South Korea⁴, could be of benefit.
27. However, it is worth stressing that whilst the introduction of a single portal would greatly improve issues around signposting, it would not address the many criticisms of poor complaint handling within the sector. Real improvement to redress can only be achieved if there is a single ombudsman scheme with a holistic jurisdiction and overview of the issues in a sector, working effectively with the regulators / enforcement bodies to drive improvements.

Q9. How can we ensure that residents can access the right advice and support when making a complaint?

28. Sufficient and effective funding of advice and advocacy bodies operating in the sector is required to ensure residents can access the right advice and support.

Q10. How can we best ensure that landlords' processes for dealing with complaints are fast and effective?

29. One of the benefits that an ombudsman brings as opposed to straight-forward adjudication is its role in proactively influencing the service provision and complaints handling of the bodies in its jurisdiction. This can be undertaken through training, producing guidance materials, and providing feedback on patterns in type and numbers of complaints. This has been done most effectively by the Scottish Public Services Ombudsman (SPSO) through their Complaints Standards Authority role, which is also being adopted by the public services ombudsman schemes in Northern Ireland and in Wales.
30. The introduction of a simplified, standardised complaints process, along the lines of the SPSO's Complaints Standards Authority role would ensure consistency of timeframes and processes across the sector. The Ombudsman's experience and expertise in complaint handling means that they are best placed to set this standard, working together with the sector regulator to ensure compliance.
31. It is a key element of an ombudsman scheme that as well as providing individual redress they should also share information wherever possible to help the wider sector learn from complaints handling and to improve the provision of services. Transparency is one of our key membership criteria and the publication of information about decisions and the performance of organisations is an important tool to drive improvement in conjunction with regulators and policy makers.

⁴ www.epeople.go.kr/jsp/user/on/eng/intro01.jsp

The Association would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely

Donal Galligan
Director, Ombudsman Association