

# THE HOUSING OMBUDSMAN SCHEME

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## Introduction

The Housing Ombudsman Scheme is approved by the Secretary of State under section 51 of and Schedule 2 to the Housing Act 1996.

The Act requires social landlords, as defined by section 51 (2) of the Act, to be members of an approved scheme. Others may join the Scheme on a voluntary basis.

The purpose of the Housing Ombudsman Scheme is to enable tenants and other individuals to have complaints about members investigated by a Housing Ombudsman.

The role of the Ombudsman is to resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate, as well as to support effective landlordtenant dispute resolution by others.

The Scheme came into effect on **1 September 2020** and replaces the previous scheme which was in operation **from 1 April 2018**.

## **PART 1 General terms and definitions / Membership / Financing arrangements**

### The approved Scheme

1. The Scheme is approved by the Secretary of State under the terms of section 51 of the Housing Act 1996. It also applies to others who apply to join the Scheme and meet the conditions for membership.
2. In the Scheme:
  - a. 'the Secretary of State' means the Secretary of State with responsibility for housing;
  - b. 'the Ombudsman' means the person appointed to that office by the Secretary of State;

- c. 'members' means social and private landlords, lessors, licensors, managing agents and other providers of housing services which are members of the Scheme either on a mandatory or voluntary basis;
  - d. 'social landlords' has the meaning given by section 51 (2) of the Housing Act 1996;
  - e. 'registered providers' has the meaning given by section 80 of the Housing and Regeneration Act 2008 and include for-profit as well as not-for-profit bodies;
  - f. 'the Regulator of Social Housing' has the meaning given by section 92 of the Housing and Regeneration Act 2008;
  - g. 'determination' means a formal decision by the Housing Ombudsman.
3. The Scheme will normally be reviewed by the Ombudsman every five years, but any proposed changes must be approved by the Secretary of State. From time to time between these formal reviews the Ombudsman or the Secretary of State may propose amendments to the Scheme. Significant amendments may only be made following consultation as determined by the Secretary of State.

#### Membership Mandatory members

- 4. All bodies, other than Local Housing Authorities, which are, or at any time have been, social landlords must be members of the Scheme (which is the only scheme currently approved by the Secretary of State) in respect of all their housing activities.
- 5. Local Housing Authorities in England which are registered providers of social housing are social landlords and must be members of the

Scheme in connection with their housing activities in so far as they relate to the provision or management of social housing. In addition, those Local Housing Authorities must be members of the Scheme in connection with the management of dwellings which they own and let on a long lease.

6. Social landlords who become members of the approved Scheme must give notice of that fact to the Regulator of Social Housing within 21 days of joining.

### Voluntary members

7. In addition to social landlords the Ombudsman may admit to the Scheme other members who meet the conditions of paragraph 9.
8. A person who applies to become a member of the Scheme must do so to the Ombudsman in such form and with such supporting information as the Ombudsman may require. Units covered can include those not let at a social rent.

### Obligations of members

9. As a condition of membership of the Scheme, a member must:
  - a. agree to be bound by the terms of the Scheme;
  - b. establish and maintain a complaints procedure in accordance with any good practice recommended by the Ombudsman;
  - c. as part of that procedure, inform residents of their right to bring complaints to the Ombudsman under the Scheme;
  - d. publish its complaints procedure, and where applicable, its membership of the Scheme, and make information about both easily accessible to those entitled to complain on its website and in correspondence with residents;
  - e. manage complaints from residents in accordance with its published procedure or where this is not possible within a reasonable timescale.

10. The member must provide copies (without charge) of any information requested by the Ombudsman, that is, in the Ombudsman's opinion, relevant to the complaint. This may include the following records and documents:
  - a. the landlord's policies and procedures;
  - b. any internal files, documents, correspondence, records, accounts or minutes of meetings, in hard copy or electronic form. This includes records relating to similar cases where the Ombudsman needs them to establish consistency of practice.
11. The member must provide the requested information within a reasonable timescale or allow access for inspection.
12. When the Ombudsman gives reasonable notice, the member must (without charge):
  - a. allow the Ombudsman to interview the member's staff, board or committee members;
  - b. require a representative to attend any meetings convened by the Ombudsman;
  - c. use its best and reasonable efforts to help the Ombudsman get information from third parties who may know about the complaint or from the member's former members of staff; and
  - d. provide such other reasonable help as the Ombudsman may request.

#### Non-compliance with membership obligations

13. Failure to comply with the conditions of membership may result in an Ombudsman's determination of complaint-handling failure and an order to rectify within a given timescale.

14. The Ombudsman may report a member's complaint handling failure to any appropriate regulatory agency and/or the board, committee, panel or senior officer of the member along with any related details as the Ombudsman sees fit.
15. The Ombudsman may publish the fact and circumstances of a member's complaint-handling determinations, naming the member in the Ombudsman's annual report or elsewhere. This may include details of any voluntary member who withdraws from membership prior to complying with an order made by the Ombudsman.

#### Removal or withdrawal of a member

16. A social landlord may withdraw from the Scheme if it complies with the requirements set out in paragraph 5 (1) and (2) of Schedule 2 to the Housing Act 1996 (to be a member of an approved Scheme), and with any conditions that the Ombudsman may require according to the circumstances of each case.
17. A voluntary member may withdraw from the Scheme if it complies with the conditions that the Ombudsman may require according to the circumstances of each case.
18. The Ombudsman may withdraw membership if the voluntary member does not comply with the Scheme or with undertakings given to the Ombudsman as a term of admission.

#### Financing the Scheme

19. The Scheme will be financed by a subscription payable on demand to the Ombudsman by each member. The total amount to be recovered from members will be decided by the Ombudsman and is payable on demand.
20. The total amount will be the amount that the Ombudsman decides is enough to meet all the expenses of the Scheme having taken into

account any expected cost recoveries from training activity and grant-in-aid from the Secretary of State. The Ombudsman will have regard to forecasts of the likely demand on the Scheme and any performance targets, past and future liabilities and the provision of reasonable reserves.

21. The basic principle for calculating the subscription is that each member must pay an amount decided by reference to the number of units of accommodation covered by the Scheme which it owns or manages. The per unit charge will be calculated by dividing the amount to be recovered by the total number of units of accommodation owned or managed by members. Each member's subscription will be calculated by multiplying the total number of its units of accommodation by the per unit charge.
22. Any increase in the per unit charge must be approved by the Secretary of State.
23. A member must calculate the number of its units of accommodation in the Scheme on a day to be determined each year by the Ombudsman. The principal officer of the member must certify the number calculated.
24. The subscription will be due and payable on a date specified in the invoice. The Ombudsman will require payment of interest calculated at the rate of 2% above the base rate (or its equivalent) of a clearing bank nominated by the Ombudsman from the date that such sums become due until payment.



## **PART 2 Complaints about members – dispute resolution**

### People who can use the Scheme

25. The following people can make complaints to the Ombudsman about members:

- a. a person who is or has been in a landlord/tenant relationship with a member landlord. This includes people who have a lease, tenancy, licence to occupy, service agreement or other arrangement to occupy premises owned or managed by a member;
  - if the complaint is made by an ex-occupier, they must have had a legal relationship with the member at the time that the matter complained of arose;
- b. an applicant for a property owned or managed by a member;
- c. a representative of any of the people above who is authorised by them to make a complaint on their behalf;
- d. a representative of any of the people above who does not have the capacity to authorise a representative to act on their behalf. The Ombudsman must be satisfied that the representative has the legitimate authority to act on the person's behalf; or
- e. a person with authority to make a complaint on behalf of any of the people above who is deceased.

### Referral by designated persons

26. The following people (designated persons) can refer complaints about members to the Ombudsman:

- a. a member of the House of Commons;
- b. a member of the local housing authority for the district in which the property concerned is located; or

c. a designated tenant panel for a social landlord.

27. The referral of a complaint to the Ombudsman by a designated person must be made in writing.

#### Alternative dispute resolution and local resolution

28. The Ombudsman may establish arrangements for resolving disputes with the consent of the parties whether by local resolution (where a complaint is resolved by a member, generally as part of its complaints process), mediation, arbitration or otherwise.

29. The Ombudsman will support the local resolution of complaints whilst a complaint is within the member's complaints procedure.

30. The Ombudsman may decide to suspend or not to progress an investigation if, in the Ombudsman's opinion, there is an opportunity to resolve the dispute locally.

31. The Ombudsman may at any time promote local resolution of a dispute by either:

a. referring the complaint back to the complainant and the member and/or designated person to take further action to resolve the dispute; or

b. providing assistance to the complainant and member and/or a designated person to resolve the dispute.

32. The member may be required to report the actions taken and the outcome of the local resolution to the Ombudsman within a reasonable time frame, set by the Ombudsman.

33. The Ombudsman may decide a member's complaints procedure has been exhausted where, in the Ombudsman's opinion, there have been repeated failures in the handling of a complaint. Such

failures may also result in the Ombudsman issuing a complaint handling determination to the member.

34. The Ombudsman must publish details of the established arrangements for alternative dispute resolution.

#### What can be complained about

35. The Ombudsman will consider complaints about the actions or omissions of a member.
36. 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.

#### Complaints which the Ombudsman may not investigate

37. The Ombudsman must determine whether a complaint comes within the Ombudsman's jurisdiction under the terms of the Scheme.
38. The Ombudsman will make any enquiries that they consider necessary to decide if a complaint comes within jurisdiction or to resolve a complaint.
39. The Ombudsman will not investigate complaints which, in the Ombudsman's opinion:
  - a. are made prior to having exhausted a member's complaints procedure, unless there is evidence of a complaint handling failure and the Ombudsman is satisfied that the member has not taken action within a reasonable timescale;
  - b. are made within 8 weeks of having exhausted a social landlord's complaints procedure;

- unless a designated person has refused to refer the complaint to the Ombudsman or has agreed to the complaint being brought to the Ombudsman and the refusal or agreement has been confirmed;
- c. concern the operation, process or decisions relating to the designated persons referral system;
- d. were brought to the Ombudsman's attention normally more than 12 months after they exhausted the member's complaints procedure;
- e. were not brought to the attention of the member as a formal complaint within a reasonable period which would normally be within 6 months of the matters arising;
- f. concern policies which have been properly decided by the member in accordance with relevant and appropriate best practice, unless the policy may give rise or contribute to a systemic service failure;
- g. concern the level of rent or service charge or the amount of the rent or service charge increase;
- h. concern matters that are, or have been, the subject of legal proceedings and where a complainant has or had the opportunity to raise the subject matter of the complaint as part of those proceedings;
- i. concern matters where the Ombudsman considers it quicker, fairer, more reasonable or more effective to seek a remedy through the courts, a designated person, other tribunal or procedure;
- j. concern the terms and operation of commercial or contractual relationships not connected with the complainant's application for, or occupation of, a property for residential purposes;

- k. concern terms of employment or other personnel issues, or the ending of a service tenancy following the ending of contract of employment;
  - l. concern matters raised by a complainant on behalf of another without their authority; unless sub-paragraphs 25 d or e apply;
  - m. fall properly within the jurisdiction of another Ombudsman, regulator or complaint-handling body;
  - n. are being pursued in an unreasonable manner including frivolous or vexatious complaints;
  - o. seek to raise again matters which the Housing Ombudsman, or any other Ombudsman has already decided upon;
  - p. are about matters which relate to the processes and decisions concerning a member's governance structures;
  - q. concern matters which, in the Ombudsman's opinion, do not cause significant adverse affect to the complainant; or
  - r. concern matters where the complainant is seeking an outcome which is not within the Ombudsman's authority to provide.
40. At any time, the Ombudsman may determine the investigation of a complaint immediately if the Ombudsman decides that any of the reasons in paragraph 39 apply.
41. A complainant may withdraw the complaint at any time, but the Ombudsman must be satisfied as to the circumstances and may make whatever enquiries they see fit, before ceasing consideration of the complaint.

#### How the Ombudsman will investigate

42. The Ombudsman must investigate any complaint duly made, not withdrawn, or not referred to a member for local resolution. The

Ombudsman may investigate any complaint duly made but withdrawn.

43. The Ombudsman will determine complaints by what is, in the Ombudsman's opinion, fair in all the circumstances of the case.
44. The Ombudsman will decide how to consider and investigate complaints subject to the Scheme and taking account of the evidence of service failure presented.
45. The Ombudsman is not bound by any legal rule of evidence.
46. The Ombudsman must publish and make available full information about the Ombudsman's procedures for carrying out investigations.
47. The Ombudsman may accept an individual's complaint as a test case if its facts equally affect others.
48. The Ombudsman may accept one complaint from more than one complainant about the same member if the issues and facts are the same without carrying out multiple investigations.
49. The Ombudsman will provide details of the investigation into the complaint setting out:
  - a. the nature of the complaint, the allegations and evidence against the member; and
  - b. the member's case in reply.
50. The Ombudsman may conduct further investigation beyond the initial complaint or landlord to establish whether any presenting evidence of service failure is indicative of a systemic failing. Where this is the case it will be referred to the appropriate regulatory body.
51. If the complaint is referred by a designated person, the Ombudsman must inform the designated person of the result of the investigation and any determination made. Likewise, if the Ombudsman decides not to investigate or to discontinue the investigation the

Ombudsman will inform the designated person of the reasons for that decision.

### Joint investigation

52. At any stage during the investigation of a complaint the Ombudsman may decide that the complaint relates partly to a matter which could be within the jurisdiction of the Local Commissioners or other Ombudsman. If the Ombudsman so decides, the Ombudsman must consult with a Local Commissioner and may then either:
- a. inform the complainant, representative or designated person how to bring a complaint to a Local Commissioner or other Ombudsman; or
  - b. conduct an investigation jointly with a Local Commissioner or other Ombudsman.
53. If the Ombudsman conducts an investigation jointly with a Local Commissioner or other Ombudsman:
- a. the requirements of paragraph 42 may be satisfied by a report made jointly; and
  - b. a joint report must distinguish the determinations of the Housing Ombudsman from the findings or recommendations.

### What the Ombudsman's investigation seeks to establish

54. When investigating, the Ombudsman is concerned to establish whether the member has been responsible for maladministration (which includes findings of service failure, maladministration and severe maladministration). This may include, but not exclusively, circumstances where the member:

- a. failed to comply with any relevant legal obligations;
- b. failed to comply with any relevant codes of practice;
- c. failed to apply its own policies and/or procedures;
- d. delayed unreasonably in dealing with the matter;
- e. behaved unfairly, unreasonably or incompetently; or
- f. treated the complainant personally in a heavy-handed, unsympathetic or inappropriate manner.

55. At any time, the Ombudsman may determine the investigation of a complaint immediately if satisfied that:

- a. the complaint is not within the Ombudsman's jurisdiction;
- b. the member has offered redress to the complainant prior to investigation which, in the Ombudsman's opinion, resolves the complaint satisfactorily. This will result in a finding of 'reasonable redress'; or
- c. the member has made an offer of redress following the Ombudsman's intervention which, in the Ombudsman's opinion, resolves the complaint satisfactorily. This will result in a finding of 'resolved with intervention'.

#### What the Ombudsman can do following investigation

56. The Ombudsman's determination may uphold or reject the complaint or make orders or recommendations, including that the member:

- a. apologise to the complainant;
- b. pay compensation to the complainant;
- c. performs or does not perform any of the contractual or other obligations existing between the member and the complainant;



- d. exercises or does not exercise any of the rights existing between the member and the complainant;
- e. undertakes or refrains from undertaking works;
- f. takes such other reasonable steps to secure redress within the legal powers of the member.

### Compliance with the Ombudsman's orders

- 57. Where the Ombudsman's consideration of a complaint finds evidence of maladministration the Ombudsman may order the member to take steps to put things right.
- 58. Members must provide evidence of compliance with the orders of the Ombudsman within the timescale given by the Ombudsman.
- 59. The Ombudsman may require a member to report to the Ombudsman on compliance with a determination in such a way and at such a time as the Ombudsman may specify.
- 60. The Ombudsman will report a member to any appropriate regulatory agency and/or the board, committee or scrutiny panel of the member, if it fails to comply with the Ombudsman's determination.
- 61. The Ombudsman may order a member which fails to comply with a determination to publish that it has failed to comply, in such a way as the Ombudsman sees fit.
- 62. The Ombudsman may publish the fact and circumstance of noncompliance by any named member in a special report and may also include these details in the Ombudsman's annual report or elsewhere.
- 63. Failure to provide or facilitate any of the above may result in a determination of complaint handling failure and paragraphs 13-15 will apply.

## Reviewing the Ombudsman's determination

64. The Ombudsman will make provision for a review of the determination of a complaint in the following circumstances:
- a. when aware of new facts and/or evidence which may have a bearing on the determination; or
  - b. by either party challenging the facts and/or evidence on which the Ombudsman relied.

## Publication

65. The Ombudsman will produce an annual report on the discharge of the Ombudsman's functions and the administration of the Scheme. The Ombudsman will publish the report and the Secretary of State will lay the report before Parliament.
66. The Ombudsman may publish any determination as and when appropriate.
67. When publishing any determination or report, the Ombudsman will have regard to the requirements of General Data Protection Regulation and the need for confidentiality and will exclude, as far as practicable:
- a. any matter which relates to the private affairs of an individual, where publication would seriously and prejudicially affect the interests of that individual; and
  - b. any matter which relates specifically to the affairs of a member where publication would seriously and prejudicially affect its interests, unless the inclusion of that matter is necessary for the purpose of the determination or report.

## Access to information and confidentiality

68. The Ombudsman must publish the procedures for giving public access to information held by the Ombudsman, how the Ombudsman handles information obtained and its confidentiality and the Ombudsman's practice in publishing determinations.
69. The Ombudsman's determination may include reference to any statements, communications, reports, papers or other documentary evidence obtained during the Ombudsman's investigation. The Ombudsman will decide what detail to include in any determination.
70. In publishing any determination, the Ombudsman must maintain, as far as practicable, the anonymity of the complainant and any third parties, and must exclude any matter which relates to:
  - a. the private affairs of an individual where publication would seriously prejudice the interest of that individual; and
  - b. the affairs of a member where publication would seriously prejudice the interests of that member unless the inclusion of the matter is necessary for the purposes of the determination.
71. The Ombudsman may name a member against which a complaint has been made.
72. For the purposes of the law of defamation absolute privilege attaches to any communication between the Ombudsman and any person by whom or against whom a complaint is made under the Scheme.

### Improving complaint handling

73. From time to time the Ombudsman may develop best practice for members in complaint handling. Members will be expected to comply with any best practice set by the Ombudsman or provide a reasonable explanation for any non-compliance.
74. The Ombudsman may from time to time publish reports arising from the Ombudsman's work or research including such summaries of

the Ombudsman's determinations and any conclusions which the Ombudsman wishes to bring to a wider audience.

75. The Ombudsman will work with the sector to promote and support effective dispute resolution by landlords and residents through training, website tools and the promotion of shared learning.

### **PART 3 The Ombudsman's appointment, role and responsibilities / Scrutiny of the Scheme / Complaints about the Housing Ombudsman Service**

#### Appointment, terms and termination

76. The Housing Ombudsman is a corporation sole.
77. The Secretary of State will appoint the Ombudsman on such terms as the Secretary of State thinks fit.
78. The Ombudsman must not, during the appointment as Ombudsman:
- a. be an agent, shareholder or officer of a member;
  - b. take up a tenancy or any other form of occupation provided by a member without the consent of the Secretary of State;
  - c. be an employee of, or act in any professional or advisory capacity, for a member; or
  - d. without the consent of the Secretary of State, be an employee or hold any office or place of profit under a person or organisation who provides services or goods to a member or any person or organisation associated with a member.

79. The Ombudsman's appointment must be terminated if the Ombudsman resigns by notice in writing to the Secretary of State.
80. The Secretary of State may give notice to, and terminate the appointment of, the Ombudsman. Termination is immediate on the following grounds:
- a. grave misconduct;
  - b. gross mismanagement;
  - c. because illness has prevented the Ombudsman from carrying out their responsibilities for more than 6 months in any consecutive period of 12 months; or
  - d. any of the circumstances in paragraph 78 apply.
81. If the Ombudsman is indisposed or otherwise prevented for whatever reason from carrying out their duties, the Secretary of State may appoint any person or people to be Acting Ombudsman for such period and on such terms as the Secretary of State may decide. This appointment will be on the basis that the Scheme will apply to the Acting Ombudsman as if the Acting Ombudsman were the Ombudsman.

#### Responsibility for dispute resolution and determining complaints

82. The Ombudsman will be solely responsible for the conduct of dispute resolution and the determination of complaints under the Scheme. The Ombudsman may delegate the ability to issue determinations on their behalf to their deputy and other members of the dispute resolution team.

#### Responsibility for the administration of the Scheme

83. Prior to the start of each financial year, the Ombudsman will publish a business plan including projected annual budget, performance criteria and targets. The Ombudsman must have regard to the number of disputes being or likely to be submitted and to the

proposed performance criteria and targets, and the need to have appropriate and adequate resources to enable the Ombudsman to carry out their functions effectively, in a timely manner and in accordance with the Scheme.

84. The staff, contractors, consultants or agents employed by the Ombudsman will be appointed and dismissed by the Ombudsman. Within the approved budget and the established terms and conditions of employment, the Ombudsman will decide upon their numbers and terms of service or engagement, including remuneration, taking into account the annual Cabinet Office guidance on civil service pay or other relevant guidance.

#### Audit and advice to the Ombudsman

85. The Ombudsman must appoint, following approval of the Secretary of State, an Audit and Risk Committee. The Committee will scrutinise aspects of the operation of the Scheme as set out in its terms of reference in the Framework Document agreed with the Sponsor Department.
86. The Ombudsman shall prepare annual accounts in accordance with the Accounts Direction approved by its Sponsor Department.
87. The Ombudsman may from time to time decide to appoint a Panel of Advisors. The Panel will assist the Ombudsman in such matters as the Ombudsman considers relevant and as set out in its terms of reference in the Framework Document agreed with the Sponsor Department.

#### Complaints about the Service

88. The Ombudsman must make arrangements for receiving and dealing with complaints about the service provided and must publish such arrangements.



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