

Levelling Up, Housing and Communities Committee

Oral evidence: Regulation of Social Housing, HC 874

Tuesday 19 April 2022

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Members present: Mr Clive Betts (Chair); Bob Blackman; Ian Byrne; Darren Henry; Kate Hollern; Andrew Lewer; Mary Robinson; Mohammad Yasin.

Questions 267 - 352

Witnesses

I: Richard Blakeway, Housing Ombudsman, Housing Ombudsman Service; and Jonathan Walters, Deputy Chief Executive, Regulator of Social Housing.

Examination of Witnesses

Witnesses: Richard Blakeway and Jonathan Walters.

Q267 Chair: Welcome, everyone, to this afternoon's session of our inquiry into the regulation of social housing. We have before us this afternoon the Housing Ombudsman and the Regulator of Social Housing. We will come over to our witnesses in a minute and ask you to introduce yourselves. Before then, I ask members of the Committee to put on record any interest they may have that may be directly relevant to this inquiry. I am a vice-president of the Local Government Association.

Mohammad Yasin: I am a member of Bedford town deal board.

Ian Byrne: I employ a councillor and my daughter is a councillor.

Kate Hollern: I also employ a councillor.

Mary Robinson: I employ a councillor in my staff team.

Andrew Lewer: I am a vice-president of the LGA.

Darren Henry: I am co-chair of the midlands engine all-party parliamentary group. My wife is the police and crime commissioner for Nottinghamshire. I am a member of the Stapleford town board and cycle network, which are both unpaid roles.

Chair: Thank you very much. Welcome, Darren, to your first Committee meeting. Over to our witnesses today. First, the Housing Ombudsman.



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Richard Blakeway: My name is Richard Blakeway. I am the Housing Ombudsman.

Jonathan Walters: I am Jonathan Walters. I am deputy chief executive at the Regulator of Social Housing.

Q268 **Chair:** Thank you both for coming this afternoon to answer questions from the Committee. We are going to split the questioning into two halves. There may be issues where one of you wants to come in on a question that has been directed to the other. We will begin with some questions to the Housing Ombudsman and then go on to the regulator but, again, please come in if there is something relevant you think you can add.

Richard Blakeway, as the Housing Ombudsman, could you just explain, as a start-off, what happens when someone makes a complaint to you as the ombudsman? How do you begin the process to try to get a resolution?

Richard Blakeway: The last year has seen us handle an unprecedented volume of complaints, and tremendous credit is due to my team for the way they have responded to that increase in volume. Typically, we will start with a phone call, and we receive a phone call roughly every two minutes from someone who is bringing a complaint to us.

At an early stage, we are clear that we need to try to resolve the complaint early and locally through the landlord's process. About 80% of our casework is closed before a full investigation. That means we have to encourage the landlord to progress the complaint through their own procedure, and it is important to emphasise that the landlord is responsible for trying to address the issues that have been raised. Our role is to try to encourage them to do so.

If the complaint is unresolved, we can, if it is brought to us, do a formal investigation. By law we have to wait for the complaint to have exhausted the landlord's process, but then we can do a full investigation. Our approach is quite different from a court's. In essence, an ombudsman is an alternative to a court. It is potentially an alternative to no redress at all, but it is certainly an alternative to a court. That is reflected in a number of ways, first in our treatment of evidence and also in our discretion as an ombudsman.

One of the first things we have to do, which is important, is to find what the complaint is about. Often when we start an investigation it is clear, when we look at the information that we are getting from the landlord, there is a hot mess of issues that we are trying to unpick. I know the Committee will have seen that in some of the evidence you have heard. We take an active role in gathering the evidence. We are there to be inquisitorial in our approach, not just to look at the evidence that we are presented with but to keep digging, to keep asking questions, and after that investigation we will produce our report.



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We will look at the substantive issue—for example, it might be a repair—as well as the complaint handling, if appropriate. I think the Committee may have heard evidence that suggests we do not necessarily look at the substantive issue and just look at the complaint handling. That is not the case. We will look at the substantive issue as well. Then we will make our findings.

Overall, I think our casework is becoming more complex, which is reflected in an increase in the findings and remedies we are making. I am very conscious that doing that whole process, in a timely way, is very important for residents—it is an investigation not a review of the complaint; it is a thorough investigation—and we are trying to do it faster. Over the last five years we have halved our investigation time.

Q269 Chair: The number of complaints you are dealing with has risen significantly. Is that simply down to Covid, or does it indicate a deteriorating level of disrepair in the housing stock, poorer management and organisations struggling more than they did to manage properties properly?

Richard Blakeway: I think there are a number of factors, and some of them date back a few years. Perhaps what you are seeing as a Committee is almost a perfect storm. There were perhaps delays to planned repairs, a reliance on responsive repairs, and responsive repairs that have not always been effective. That is then compounded by issues around building safety and the impact on landlords having to manage that, alongside the impact of Covid, as you say, which will have created some delays, but I think it is beyond that. We are also expecting more.

We have set our complaint handling code and we have set expectations around effective complaint handling. That has come as well, and I think it has presented some landlords with some very real challenges. Certainly on the complaint handling side—I think it is now getting addressed—in the past landlords have neither resourced nor perhaps respected the complaint handling team sufficiently, so that team has not necessarily had the authority and resources to try to get a response from the repairs team to resolve an issue.

Q270 Chair: I will come on to more detail about the complaint handling in a second. Finally, coming back to the nature of the complaints you get, you were talking about a perfect storm, and it is probably around repairs to some extent. One of the things landlords have fallen back on, in my experience, is to say, “Of course during the lockdown we could not go and do these repairs.” I was not always convinced by some of those arguments. They should have dealt with them an awful lot better in many cases. Is that something that has come forward as a systemic problem, as far as you are concerned, and have you been reasonably robust in going to social landlords and saying, “Hold on a minute, you did not have to stop doing repairs for that period of time. The lockdown did not prevent you. You chose to, it was your decision and you are bearing the consequences, or the tenants are bearing the consequences now”?



Richard Blakeway: The short answer is yes. We continued to progress complaints during the whole of the Covid period, during the first lockdown and onwards. When we were making our findings we were clear about looking at what the circumstances were at that time. What were the restrictions that may have prevented something happening? Would those restrictions have prevented a particular intervention happening? And when we made our orders we were clear with landlords, "We expect you to do this in this timescale. If you cannot, you need to be clear why not," but then there still needs to be a clear date.

One of the challenges landlords have, and it partly relates to Covid but I think it also relates to responsive repairs more generally, is adequate record keeping. If your repairs team were very effective, perhaps the record keeping might matter less, but because appointments are often missed or the wrong operative goes out to try to address an issue, that is then compounded by poor record keeping, which means it is not picked up later. Often during an investigation we will see there may have been an intervention and then the trail tails off, the records are poor and months, perhaps years, will elapse before an intervention is made.

Chair: Let's move on to the issue of the new powers and complaints handling code.

Q271 **Mary Robinson:** We have heard, ombudsman, that your powers have recently been extended. Using your powers, you published a complaint handling code in 2020, which we have been discussing. What did you want to achieve by the code's publication? Have you been successful?

Richard Blakeway: What we wanted to achieve was consistency. This is a code that applies across our whole membership. We have about 2,500 landlords within our membership. There should not be a postcode lottery around complaints, and therefore there should be consistency across landlords. We wanted perhaps to raise expectations, particularly around timescales. One of the areas I was very keen on in the code was to be clear about how many stages there should be and to ensure there was natural justice, if you like, at a landlord level by not having just a single stage. Some landlords simply had a single stage, which meant there was no recourse for the resident within the landlord's process.

There are also landlords with multiple stages, and then you end up in some sort of labyrinthine process to try to get your issue addressed. We are also keen to promote what we describe as a positive complaint handling culture. Learn from it. Try to use the complaints to prevent the same thing happening. Try to use the complaints to extend fairness to residents who, for whatever reason, may not use the complaints process.

Have we been successful in achieving those outcomes? We have had a high level of engagement with the code. We know that the code itself has been downloaded from our website 12,000 times. We know the self-assessment form that we provided has been downloaded around 2,500 times. That suggests a high level of engagement.



I think we are going through a period of adjustment, and it is a more complicated picture because of Covid and because of a dramatic increase in volumes but, over time, complaint handling should be stronger if landlords use the code. Where we see landlords are not using the code, we will be very clear in our investigations and our work.

Q272 Mary Robinson: How will you measure that success? Will it be in fewer complaints coming forward? How will you measure whether you have the consistency of performance that you want?

Richard Blakeway: This will sound counterintuitive, but an overall increase in complaints against a landlord or the sector is not necessarily failure. It would demonstrate greater access perhaps, and it would demonstrate that residents think there is value in the complaints process, that it might make a difference. An increase in itself should not be seen as failure. It is what happens next, certainly from our perspective, such as the maladministration rate around complaint handling and whether it is increasing. We know that if we look at the 2021-22 financial year—we published some information on this recently—the average upheld rate across all landlords on complaint handling was about 66%. That is quite poor.

The increase in complaints is not an issue necessarily, but if it is being mirrored by an increase in our upheld rate for complaint handling, that is a problem. At the moment it is clearly too high. That 66% is an average across the whole sector. If you disaggregate landlords, because they are not a homogenous group, it will be considerably higher for some types of landlord.

Q273 Mary Robinson: It is very likely that some people are not going to complain, that they will not want to raise a complaint with their landlord because they may fear retribution or whatever. Do you factor that into your figures?

Richard Blakeway: Our analysis of our figures will be based on the complaints that we handle. I have asked the team to look at where we are not seeing complaints where you would ordinarily expect to see them. We are continuing to do that work. We will look at individual landlords, but I also want to look at issues and groups. Within the demographic in social housing, are there groups who are under-represented in the complaints process? That might cause concern, and access may not be working for them.

There is a considerable amount of work to do to make sure the complaints process is accessible at a local level, is trusted and makes a difference. The work we have done around transparency in recent months and years is important to demonstrate the difference the complaints process can make. It is there. It is a genuine alternative to the court process, certainly from an ombudsman's perspective, but it should work at a local level as well.

Q274 Mary Robinson: You have asked providers to self-assess against the



code. How many have done so?

Richard Blakeway: That is a very good question. Asking for the self-assessment to be done was an important step for us. This was not us producing a code and saying, "Here is a piece of best practice, please look at it." We were clear that we wanted landlords to do a self-assessment and to take that self-assessment to their governing body—that was an important part of the process, to get governing bodies focused on these issues. It is not just someone sat in the complaints team who should be thinking about this; it should be an organisational approach. It should then be published so it is clear and transparent.

We do not have the power to monitor how many self-assessments have been done. The best indication I have is how many times it has been downloaded. If we find through our complaint handling, either at our early resolution stage, which I was describing, or through an investigation, that we cannot find the self-assessment online or something like that, we will talk to the landlord to understand whether they have done it and not published it or whether they have not done it at all. If necessary, we might make findings. If it is at an investigation stage, we will make findings.

I would like us to have the power to do more so that we are not reliant on a complaint to see whether or not the self-assessment has been done and the code has been used, because then you are months, possibly years, down the road. I would much prefer to do something much sooner.

Q275 **Mary Robinson:** Of course providers could be downloading the code, thinking it is too difficult to be bothered with and not doing anything at all. That is the issue, I guess. In the social housing White Paper the Government said they would consider putting compliance with the code on a statutory footing. Are the Government planning to do this and, if so, when?

Richard Blakeway: It was very positive that the Government recognised the ombudsman's power should be reviewed as part of the White Paper. That partly relates to the code, but it is not exclusively about the complaint handling code. We have worked constructively and positively with officials in the Department to try to progress that. I would hope to see something in the forthcoming legislation that follows the White Paper, but obviously it will be an issue for Ministers when it comes to the publication of that Bill.

Chair: Moving on to other issues with regard to the new powers, Kate Hollern.

Q276 **Kate Hollern:** Another new power you have is the ability to issue complaint handling failure orders against providers whose complaint handling is obviously inadequate. What was the reason for the new power, and how are the orders working?



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Richard Blakeway: When I was asked about how we investigate a complaint, I was keen to highlight that about 80% of our casework is closed without formal investigation. While our powers are more limited at that stage, the role that complaint handling failure orders play is an important one. By publishing the code not only have we set out for the sector, "Here is consistency. We are expecting to see consistency in practice," but it also gives us a clear platform on which to say, "You are not following the code" or, "You are not progressing this complaint in a way that is appropriate."

The power to issue the orders is essentially our opportunity, where we have a complaint, to say to the provider, "You are not progressing this complaint appropriately." In some cases, we will say, "Your process has been exhausted. You have had the opportunity to progress this complaint, but we believe the process has been exhausted because you are not doing so" and then that will allow us to take the complaint into formal investigation rather than it just ending up stranded at a landlord level.

The complaint handling failure orders work on a number of levels, but they allow us to progress complaints. They allow us to issue orders where we are seeing that those complaints are not progressing. If those orders are not complied with, we might say the complaint process is exhausted and take it into formal investigation more quickly than would have been the case otherwise.

Every quarter we publish the orders that we have issued. To date we have published 79 orders that we have issued. We will publish the number of orders for the last quarter soon. We name the landlord, we identify the landlord, and we say the reason for the order being issued. We think that transparency also helps landlords to respond more effectively. I think landlords recognise that having one of these orders issued is not a great place for that landlord to be in.

Where we have seen repeated failures, it is also an indication of whether we should do further investigation, and we have done that with some landlords more recently with our formal investigations.

Q277 **Kate Hollern:** Who determines whether the process is adequate or not? Is there a tick box?

Richard Blakeway: What we are looking at is the complaint handling. We are looking at the process, not the substantive issue. That is for investigation. The process sets out very clearly the definition of a complaint. Has a valid complaint been accepted as a valid complaint and treated as such? It sets out very clearly the timescale for responding to the resident and progressing the complaint. If those things are not happening, it is very clear for us to say we are going to issue an order. The assessment is made against the code, and that assessment is very transparent. Where we have issued the orders, we are very transparent about that, too.



Q278 **Kate Hollern:** You will know we have heard evidence that sometimes landlords stall complaints, which means tenants cannot access the ombudsman. They can do that only once the provider's process has been exhausted. Were these orders partly a response to that problem? As a former local councillor, I know the frustration of residents when they cannot even get to the ombudsman because their landlord has stalled the process. Is that one of the reasons behind these orders?

Richard Blakeway: Yes. It is very clear that there was no consistency in practice before the code was issued. Since the code has been published, it is clear that the procedure, as it should be, has always been followed. By having the code and by having the orders, we are able to highlight much more clearly where acceptable and appropriate practices are not happening.

If, for whatever reason, the landlord needs to spend more time looking at an issue, they can do so, but they should be very clear with the resident and with us, if we are involved, about why and for how long. Then at least if the landlord is unable to resolve the matter, the resident can get that final response and, if necessary, if they want to, they can bring it to us for formal investigation.

Q279 **Kate Hollern:** And the landlord will have to produce evidence of why there was any delay or stalling in the complaint process?

Richard Blakeway: Yes. We have strengthened the code in the last few weeks. The code was published about 18 months ago, so it is still a relatively new document. We made some adjustments to the code a few weeks ago. One of the adjustments we made was to be very clear that, if a resident feels they are not being given an adequate explanation, they could come to us at this early resolution stage to say, "My landlord said they have to extend the process. I am not clear why, I am not clear what the timescale is." We have highlighted, "If that is something you are unhappy about, you should come to the ombudsman and we will be able to look at it," not the substantive issue but the process and obviously, if appropriate, we would issue a complaint handling failure order in due course.

Q280 **Kate Hollern:** We will come to tenant awareness in a minute, but how well-informed do you think tenants are about their ability to turn to you if the provider is not progressing the complaint properly? What does the ombudsman do to make people aware of their rights? How do the general public know at what point they can come to you and what they can expect?

Richard Blakeway: I think there is quite high awareness of the code among residents. We see the code being referred to by residents, "My complaint has not been treated in the way it should be. There is this code and it has not been treated in that way." I have heard that referred to.

We are reliant on landlords issuing the final response and, when they issue the final response, being clear with the resident that if they are



unsatisfied they can come to the ombudsman. That does not always happen in the way it should, so either the final response is not issued, which is wrong, or the landlord is not clear it is the final response, which is wrong, or the signposting to the ombudsman is not as clear as it needs to be. A few months ago we published some guidance on how final responses could improve to ensure that is addressed, but it is not unusual for a landlord—I am sorry, I have overstated it—I certainly have seen landlords refer residents to the wrong ombudsman. I saw a case this morning where the resident was referred to the wrong ombudsman. That signposting needs to improve.

In terms of what we do, we are doing a lot around our transparency and we are doing a lot to raise awareness of the service, but there is more to do.

Q281 Kate Hollern: If tenants are unaware, they are unaware. Possibly some partnership working is needed, because it is very difficult if a tenant is unaware that the ombudsman exists or of the process they have to go through for their particular complaint.

Richard Blakeway: One issue we have is that, with the democratic filter in place at the moment, residents are in limbo, unless it is referred to the ombudsman by a designated person, for eight weeks. This democratic filter has been in place for a decade and I think it has created an impression that the ombudsman is the absolute last resort. It pushed residents, I would argue, away from the ombudsman a bit or put the ombudsman further out of reach. Even though we expect the democratic filter to be removed by the Building Safety Bill, there is work to do to change a cultural perception around the ombudsman being an absolute last resort. Sometimes people may be aware of the ombudsman but the democratic filter not only presents a technical impediment but creates a certain perception for some residents.

I was in Stockport a few weeks ago to meet residents, and they were saying, "We have heard of you, but we thought we should be going to our councillor or MP." Obviously that can be an important route, but you can also come to the ombudsman. I think there is a lot of work to do to change the perceptions on that in homes and estates.

Q282 Kate Hollern: The ombudsman has recently been given the power to investigate potential systemic failures by housing providers. What issues have you investigated? What have you found? What action have you taken?

Richard Blakeway: This is important for us as an ombudsman. This is what makes us different from a complaint handling body. This is an ombudsman's work, I think. Since I became the ombudsman, the number of remedies we have issued has doubled. I have seen the same issues week in and week out. The ability to dig deeper and the ability to promote learning, which is what those powers are about, are critical because we have high compliance with our individual orders, which is



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great, but the same issues keep happening so there is clearly a lot more for the sector to do around learning—not all the sector but large parts of it.

The power you are referring to is paragraph 50 of our scheme, and I think it works on two levels. It works on an individual provider level and it works on a sector basis. For an individual provider, if we have evidence that we are seeing repeated issues and it has become very apparent that there is a problem, we will do a paragraph 50 investigation based around the formal investigations that we have open at that time. Our remedies in those investigations will potentially speak to each other, certainly the recommendations around learning, improvement and prevention, and we will produce a learning report at the end of the process. We have done that once so far with a provider, and we published our report a few weeks ago. We are currently doing that with two other providers.

The other way it works is on sector-wide issues. We have looked at, I think, five issues since I was ombudsman. Damp and mould is probably the report that has had the most visibility, but we have also looked at issues such as cladding, heating and hot water, particularly heat networks. Recently we looked at the role of managing agents. We have looked at a number of issues, and in all those reports we have been finding very high maladministration rates, in excess of 60% across the sector. All our learning tools have been downloaded from our website about 10,000 times. The spotlight reports, which look at the sector-wide issues, have been downloaded something like 7,000 times. That suggests a high level of engagement with the reports, and we do a lot of sector development work with landlords to make sure they consider the recommendations and think about implementing them.

Q283 Kate Hollern: How do you decide what issues to investigate? Are there issues that you commonly say are not within your remit?

Richard Blakeway: We will only investigate something that is in our jurisdiction. On the landlord level, it will be because there is a trigger or a pattern we have seen that makes us think we should be doing something further. In the report we recently published about a provider, it was because we had issued a complaint handling failure order to that landlord in every quarter since we started issuing complaint handling failure orders. In the case of the other two providers, it was because of a single investigation where our findings made us think the issue would happen again. We are trying to prevent issues that are repeatedly happening from happening again. Those cases caused us sufficient concern to say that, over a period of six months, we want to look at other cases that are presenting the same complaint and investigate them.

On the sector-wide work, we have discretion over what we investigate but, again, it will be based on seeing a pattern in our casework, the timeliness of the issue. For example, we did a report on cladding about a year ago. That was on cladding-related complaints, and it was a timely report to do. So sometimes it will be based on what is happening within



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the environment so the report has impact, as well as what is happening in our complaints. We will try to supplement our own intelligence and data with other information to progress an investigation.

Q284 Kate Hollern: Can you give me some examples of cases that you decide not to investigate? Why do you not investigate them?

Richard Blakeway: We will formally investigate an individual complaint under the Housing Act 1996 if it is a duly made complaint and it is within our jurisdiction. We will investigate every individual complaint.

Q285 Kate Hollern: I thought you said it was at your discretion.

Richard Blakeway: The discretion is on what we do as a sector-wide investigation, which is not about individual complaints but about a theme that we are seeing. For instance, we decided to do our report on damp and mould at the beginning of last year, and we published it in October. That was an area in which I was seeing significant issues that the media were commentating on during the course of the year. We knew we had over 400 investigations into damp and mould, and we knew we had a high maladministration rate of about 65%. There were a number of indicators saying there was a problem here and we needed to dig further. We were not going to have the impact on the sector through individual investigations. Yes, we will do those, but to have further impact, and to extend fairness to people whose complaints were not coming to us—I think we received complaints about 142 landlords on damp and mould, but we have 2,500 landlords in our jurisdiction, so there will be plenty of landlords who may have damp and mould issues but we had not received a complaint to investigate.

Kate Hollern: Because the tenant does not know?

Richard Blakeway: Partly that, possibly. We wanted to ensure this work could extend fairness to all residents who could be experiencing the problem, even where we had not investigated a complaint from them.

Q286 Kate Hollern: Finally, do you discuss your investigations with the regulator?

Richard Blakeway: Yes. Jonathan may want to come in, but we share individual landlord investigations with the regulator once we have concluded our work. We are sharing the reports on thematic investigations and the information around them with the regulator as well.

Jonathan Walters: We have very regular meetings with Rick and his team, both at a strategic level and at an operational working level. We get to see what they are working on.

Q287 Ian Byrne: Are there any implications for tenants who makes a complaint, such as a section 21 notice being issued to them for being troublesome? Is there any data on people who made a complaint and received a section 21 notice?



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Richard Blakeway: Section 21 notices can be more prevalent in the private rented sector. With our jurisdiction being made up of social landlords, this is—

Ian Byrne: I am just asking whether there is an issue around social landlords doing it as well?

Richard Blakeway: Not that I am aware of, but I can go back and ask if we have done an investigation into that.

Q288 **Ian Byrne:** If we could see any available data to see if it reflects what happens in the private rented sector, that would be good.

Secondly, you mentioned a lot about downloads, and the ability for tenants to understand what power sits with the ombudsman. Everything comes into me and, from my postbag, people do not talk about the ombudsman. For people who have issues, it is always the MP that they turn to. I am glad you have acknowledged it, but what do we do for people who are vulnerable? What do we do for people who are not computer literate or do not have access to a computer? Everything you are talking about is focused on having that ability. I think there should be a plan B. How are we reaching people who are not able to go through the computer element?

Richard Blakeway: Around half the complaints we receive will be by telephone rather than email. Our complaint handling code is clear that landlords should provide more than one route to their complaints process. They cannot simply have a digital platform; they have to provide alternatives as well. We are clear about that. With additional powers, I would like to examine it further in terms of compliance with that code.

Q289 **Ian Byrne:** Do you have the capacity to do that?

Richard Blakeway: With additional powers, we would obviously resource our work to be able to do that. At the moment we do not have the power to do it, and therefore we are obviously not resourcing it. We have started a project to look at groups who may have particular challenges around accessing digital, and you are right. People for whom English is not their first language are a concern, too. We are looking at our own data to see where there may be gaps, and we are collaborating with other bodies to try to work out the best plan to ensure greater awareness and better access for those groups.

Two things probably need to happen. First, I would like to change our scheme so that it reflects our code, and that change would mean landlords have to make residents aware of the ombudsman at the first contact with their complaints team, not the final response.

Ian Byrne: That is a good point about demystifying the ombudsman, because it looks like another level of bureaucracy and people are frightened to go into that. A lot of people are frightened to go there because of potential consequences. How do you demystify the



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ombudsman and make it easier to access?

Chair: We are going to come to that.

Ian Byrne: Sorry, Chair.

Q290 **Chair:** Can we just take a look at what happens when you uphold a complaint? Can you explain why you decide in some cases to go for an order and in some cases to go for a recommendation? What is the distinction?

Richard Blakeway: The scope of our orders is set out in the Housing Act 1996, and they are very much focused on remedying for the individual. Our orders focus on putting the individual back in the position they would have been in if the problem had not happened. Typically that will look at compensation, or it might be an apology, but also addressing the substantive issue if the substantive issue is outstanding.

Our recommendations will typically look at the learning that the landlord can take away from the case. We might say, "You need to consider your policy because your policy was not working properly," or, "There were gaps in your policy," or, "Your policy was inadequate," or, "Your staff clearly were not aware of how to respond effectively, so you might need to identify some training for staff," and so on. That is the distinction. The Act focuses our orders on the individual. Our recommendations, which are not in the Act, are focused on the learning.

I would like the scope of the orders to be widened so that we could include that learning as an order and therefore seek compliance.

Q291 **Chair:** On the various new powers that you have taken already, and others that you now say you would like, do you have the capacity—both staff and financial—to fulfil all the new powers you have and the other new powers you are seeking?

Richard Blakeway: When I started as ombudsman there was still a three-year freeze on our subscription rate. Obviously the subscription rate has now increased and we are looking at a significant step up in our subscription rate in this financial year. That will be reflected by an increase in recruitment. The size of the organisation will grow significantly over the next few months. Broadly speaking, we will be an organisation of about 300 people—not all working on casework—by the end of this financial year.

That is important because we need more caseworkers and support staff to handle the dramatic increase we have seen. Essentially, in the last year we have seen two years' worth of complaints in one year. The number of complaints for formal investigation has increased by 88% over the last year.

We have made some efficiencies. The productivity of individual caseworkers is up. The number of findings we are making has increased



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substantially, as have the orders and remedies. Making those orders is fine because they flow from an investigation, but it is about seeking compliance with them and we have also tightened up how we seek compliance. We will use complaint handling failure orders to progress compliance if it is not happening in a timely way.

My assessment is that the increase in resources, changes in practice and utilising those powers in the most effective way mean that, although it is a challenge, we can respond to the increasing casework, but that is not a reason not to strengthen our powers and ability to have more impact so that hopefully in time we might see fewer complaints about the same issues.

Q292 **Chair:** Just going back to the compensation, I was quite surprised to find that the average award is only £260 given that you highlighted to us that damp is one of the major issues you have looked at. Again, from experience, if you have a severe damp problem in a property and it has not been dealt with over a long period, the damage to people's belongings, the carpets, the furniture, the clothes and the drawers can be considerable. On top of that there ought to be compensation for the upset and disturbance that people have suffered in not having the problem resolved for so long. The sum of £260 seems a very small figure.

Richard Blakeway: I am keen to talk about issuing remedies, as it is not only about compensation, but I will address your compensation point. One of the witnesses to the Committee, I think it was Nicole, talked about how she had heard her apology for the first time on the TV, not direct from the landlord to her. Our remedies around apologies are important for residents, as well as addressing the substantive issue, particularly if it is outstanding, to get that repair done or whatever.

Our compensation is not meant to be punitive. It is not a regulatory fine; it is meant to relate to the individual. Sometimes we will express the sum to say that this level of compensation should be paid for specific things we have identified through our investigation. Sometimes we will make an order to say that we would also like the landlord to go away and assess the loss of belongings or whatever it might be, or progress an insurance claim, if that is more appropriate. Those things might be dealt with as well, but they are expressed through different orders and no financial figure is made in our determination for whatever work is needed.

All of that said, our compensation in the last year has increased substantially. In the preceding year, in 2020-21, our compensation was about £450,000. Last year our compensation was in excess of £600,000. There has been a step-change in the amount of compensation that we have awarded over the last 12 months, and we have also introduced a new band for compensation reflecting severe maladministration. On those findings we have put in a new band of more than £1,000 for each individual finding where we find severe maladministration.

Q293 **Chair:** Is that to compensate people for the upset, disturbance or



whatever they have suffered?

Richard Blakeway: It depends on the individual circumstances. In a case I was looking at this morning, the resident had not been able to use one of their bedrooms. We compensated that based on the landlord formula for compensation for loss of bedroom space, and we made an additional award of compensation for distress and inconvenience. Then we made several other orders that were non-financial but related to apologising and addressing the issues that had occurred.

Q294 **Chair:** When you ask a landlord to go away and look at something, as you have just described, do you come to a view about whether they have looked at in a reasonable way? It would be very easy for the landlord to go away and say, "We do not think it is worth very much," and the tenant is still dissatisfied.

Richard Blakeway: Yes. We go through compliance on our orders. We have high compliance rates. We have to be satisfied that there has been a thorough process, so if it is not signposting or helping progress an insurance claim, we would obviously look at whether receipts have been provided or the payment had been made and if the resident was happy with that, before we said that the order was complied with.

Chair: I do not quite understand the insurance point.

Richard Blakeway: It depends on who is responsible for the loss of belongings. If there was an incident where the landlord might say it is more appropriate to progress an insurance claim, sometimes they will do that and sometimes we will say, "You should support the resident in doing so." Sometimes we will say the responsibility rests with the landlord.

Chair: Landlords, in my view, will quite often fall back on that, even when it is their responsibility, "If you have insurance, claim on your insurance." Surely that is not appropriate. Household insurance is there to cover the issues for which the tenant is responsible, not the landlord.

Richard Blakeway: I understand that.

Q295 **Chair:** Finally, would you like the power to have heavier fines? Surely some social housing providers who have very good records must be saying, "We are having to pay more in subscriptions to the ombudsman to pay for the costs of the other lot who do not manage their houses properly." Should the other lot who are managing their houses badly be made to pay more for your services when they get things badly wrong?

Richard Blakeway: I would not express our compensation as a fine. I would express it as a remedy for the individual, and it is therefore always going to be based on individual circumstances. We do not have a cap on the level we can award. We are seeing an increase in the level we are awarding, and sometimes we will order further investigation, which is not reflected in the overall sum published in our annual accounts. Remedies



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overall, including compensation, is something I want to review. I think we should introduce a new tier for severe maladministration, but we will look at it further to see whether we should increase our bands overall.

Q296 Kate Hollern: I am concerned about the insurance element, but if a tenant is paying rent for a property they cannot live in because there is a problem, surely they should be compensated with a refund on the rent they have paid.

Richard Blakeway: That can happen, and it is potentially something that we order.

Chair: Coming back to the issue of tenant awareness, a very important issue, Darren Henry.

Q297 Darren Henry: We mentioned this earlier, but to expand on it, there are concerns that providers are not making tenants aware of their right to complain to you as the ombudsman. You mentioned that, at final response, tenants should be referred to you. You also suggested that it should possibly be at the point of first contact as well. Under your complaint handling code providers must now proactively raise awareness of the ombudsman among their tenants. What is your assessment of the current level of compliance? How would you monitor this? And could you expand on the potential first-contact idea?

Richard Blakeway: Compliance is the area where we would like our powers strengthened so that we could monitor it. It is not something that we monitor at the moment, unless we receive a complaint and identify something when we are handling that complaint. There is absolutely a need to monitor, to assess compliance and to ensure it is done in the right way. I would like the power to do that, and it is something we would then resource.

On the point about first contact, at the moment our scheme expresses that at final response the landlord should make the resident aware that they can come to the ombudsman. That is done better by some landlords than others, so we publish best practice and we pick up with landlords where we think the signposting is not effective. They might have done it, but not as effectively as they should have done.

Making the resident aware of the Housing Ombudsman Service at the start of the complaints process would be beneficial for residents. Although we say that in our code, it does not say that in our scheme. I would like to change the scheme so it does say that. I would like landlords to do more to raise awareness of the ombudsman on their websites, in regular communication with their residents, rent letters, whatever, to raise awareness of the Housing Ombudsman Service, as that would be beneficial. I want to work out what best practice looks like and then work with landlords to ensure they try to follow that and encourage it.

I would also like us to be less reliant on the landlord to be the communicator about the Housing Ombudsman Service. We do our



outreach work and we are doing a lot around transparency. We had 1.3 million hits on our website last year, which shows that we have traffic, as well as the increase in complaints, but there is a lot more I would like us to do. I would like to resource it. An option that I am keen for us to explore is an additional charge on our subscription rate to produce a ring-fenced budget for awareness-raising activities by our service, whether for the vulnerable groups who we think might be struggling to access the service, or more generally. We are very likely to consult on that when we set out our next business plan later this calendar year.

Q298 Darren Henry: That is an interesting suggestion—ring-fencing some money to try to raise awareness—but you are not addressing the compliance bit of it, so you have no means of monitoring to ensure compliance.

Richard Blakeway: If we receive a complaint and it is clear to us that, for example, the landlord has not published its self-assessment against the complaint handling code, we will take that up with the landlord, but we rely on the complaint being received. Obviously the risk is that we are not receiving the complaint because awareness of the service or the complaints process is not as high as it should be.

If we identify poor signposting through an investigation, we will in our remedies seek to address that with the landlord and get them to review their practice so that it can be improved. Alongside that, we produce best practice on more effective signposting and informing residents about the service, but we do not have the power to do the kind of monitoring that you are talking about, which I would like to do. We have proposed to the Department that we should have that power.

Q299 Darren Henry: Yes, because clearly under your complaint handling code you should be proactive in raising awareness, so that would be desirable.

Tenants sometimes go to a solicitor to seek compensation or an injunction to force their provider to undertake repairs. When they do that, they cannot then refer the complaint back to the ombudsman. What do you think is motivating tenants to go to solicitors? Is it the prospect of higher compensation or a speedier resolution, or is it just back to insufficient awareness of the ombudsman?

Richard Blakeway: This is one of the areas that we sought to address when we published our report on damp and mould in October. Alongside that report we issued new guidance on our jurisdiction. It is important to be clear about what we can and cannot do when there may be a legal process. That needs to be clear to residents, but landlords need to be clear in their handling of a complaint where there may also be a legal issue being progressed.

Overall, our approach around jurisdiction in my very strong view is that we should handle and investigate as many issues as we can, and be as embracing in our jurisdiction as we can be, rather than rule something out as outside our jurisdiction because potentially there is a legal process



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alongside it. To be clear, unless proceedings have started in court, I think we can potentially investigate, and the complaint should still be progressed by the landlord. It is also important to be clear that any legal claim reflects the complaint, because it may be that the issues that have been raised through a legal process might be much narrower than the issues that have been raised in the complaint.

In my view, the complaints process has been a potentially more effective way to resolve an issue because it could be faster and it is less adversarial, or it should be. It may be that the issue raised through any legal process or any preaction process on housing conditions, for instance, is far more narrowly defined than the complaint itself. A landlord needs to be clear about what is in the potential legal process and what is in the complaint and ensure that they do not close down the complaints process and therefore miss the opportunity to address all the other issues that the resident may be raising. Certainly with the preaction protocol on housing conditions, until the particulars are issued in court it can still be treated through the complaints process and could still be investigated by the ombudsman.

Q300 Chair: Thank you very much, and we will now move on to the Regulator of Social Housing. Thank you for coming along, Jonathan Walters.

To begin on these issues, you have powers to regulate the quality of social housing, according to the four consumer standards, but the Government asked you to review these standards in their White Paper. How far have you got with that review? The Government have also published some draft clauses for the forthcoming Social Housing (Regulation) Bill. Does that give you all the powers you think you are going to need to do this job properly?

Jonathan Walters: I will take that in two parts. Some of our consumer standards are directed to us by Government, including things like the decent homes standard and the tenancy involvement and empowerment standard. All the key elements are directed to us by Government. In the draft clauses that will hopefully come before Parliament shortly, the Government will take powers to direct us in other areas around transparency and safety, too. The suite of things on which we have to set standards will probably change as a result of the legislation.

We have been doing an awful lot of work talking to tenants and landlords, Government and others about what a new standards framework might look like, but we need to wait until the legislation has been passed and we have been directed by the Government on the areas that they already direct us on, plus the new areas, about what will be in our standards. We will then do a full standards consultation some time next year once the legislation has hopefully been passed.

On legislation, the Government are saying that roughly two thirds of the clauses have been published and another third are still to come. Within that third still to come there are some additional powers that we are quite



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keen to get, primarily around economic regulation, look-through powers and defining the types of organisation that can register, what “English body” actually means, which turns out to be quite a complex and thorny legal issue. There is some complex legislation still to come on the economic side.

On the consumer side, if the clauses are eventually passed by Parliament, we would feel that we have a strong set of tools to enable us to regulate the consumer standards.

Q301 **Chair:** Is there nothing else you want?

Jonathan Walters: I think that package will help get the job done.

Q302 **Chair:** It is unusual to have a witness say they have everything they want, but we have it on the record now. In terms of your regulation, these standards apply to registered providers but not all providers are registered. Should it be voluntary, or should there be an element of mandation?

Jonathan Walters: It is an interesting feature of our system that you can provide social housing in this country without being regulated. It is voluntary. I think the vast majority of social landlords are registered with us, and we have about 1,600 organisations registered with us providing 4.4 million social homes. There are a large number of historical organisations such as almshouses that, over the years, have chosen not to register with us. A small number do not, but the vast majority do.

Chair: That is a description, not a view.

Jonathan Walters: Yes, fair enough. Clearly it is the way legislation has been set up, and you will be aware that ONS looked at the classification of the social housing sector a few years ago. For a period the sector was reclassified on to the public sector balance sheet before deregulatory measures were taken to move it back off the balance sheet. One of the things ONS weighed quite strongly in its decision about classification was that it was a voluntary act to come on to the register. I cannot think of many organisations that provide social housing at any scale, I can only think of one, that are not regulated by us.

Q303 **Chair:** Which one is that?

Jonathan Walters: A stock transfer happened in Medway, a slight anomaly, in the early 1990s before the legislation was passed. There is one stock transfer organisation that is not regulated.

Q304 **Chair:** It is a complicated issue where balance sheets appear, in terms of whether they are public sector borrowing, so that is an interesting explanation.

Coming back to the fines, unlike the ombudsman you can fine organisations. The cap on fines is going to be lifted, but you do not actually fine organisations, do you? You never do it.



Jonathan Walters: We do not find that using fines is a particularly effective measure. We think there are other tools in our armoury, and we have quite a large armoury of tools, that are more effective. Unlike with Rick's scheme where the compensation paid by the landlord goes directly to the tenants to compensate them for their experience, any fines we levy ultimately end up going back to the Treasury. We are largely in the local authority or the not-for-profit sector. Although we have a small and increasing number of for-profit landlords, the vast majority of landlords are either not-for-profit or local authority bodies. Fining those organisations ultimately takes money out of the system. We would rather use other tools to get the job done, so we have decided over the years that fines are not the first tool we reach for.

Q305 **Chair:** Is it because you have decided, or is it because the way that many organisations are now structured means they could default on their borrowing if you levied a fine?

Jonathan Walters: I do not think that is something that would stop us doing it. A lot of loans will have covenants about using statutory powers, which include fines and other actions that we regularly use, such as appointing board members. Where we are unhappy with the quality of the board of a private registered provider, we can appoint members to that board. That is an action we take reasonably regularly, and it would trigger a loan default. Just because it is in the loan covenants does not mean we would not take that action.

Q306 **Chair:** What is the point of raising the cap on fines if you do not believe organisations should be fined?

Jonathan Walters: An increasing number of for-profit organisations are entering the sector, as I was saying, and I think fines in that environment where the shareholder's mind is ultimately concentrated by the fine, rather than the consumer's, might be a useful tool in that context.

Q307 **Chair:** So we might see more fines in the future?

Jonathan Walters: I would not rule it out.

Q308 **Andrew Lewer:** Aren't you worried that you would be subject to a legal challenge for discriminating on the type of provider, rather than on the problems with the service being provided?

Jonathan Walters: We always try to use the right tool to get the job done. What we are looking for is the right outcome, which is our standards being met. As I said at the start of my remarks, we have never really found a situation in which fines would be the right answer. They might be in the future, but we often find that the threat of using powers or making a public regulatory downgrade are the types of actions that concentrate the minds of boards and organisations, and often those are the tools that we need to go to. We have a much wider spectrum that we can use if we need to.



Q309 **Andrew Lewer:** Right back to 2011 the regulation of consumer standards has been subject to the serious detriment test, but the Government are now legislating to remove it. Can you explain what impact the introduction of that serious detriment test has had on the way you have been able to regulate, and whether it hindered the ability to regulate?

Jonathan Walters: The serious detriment test was introduced in 2011. It followed the review of regulation in 2010 by the Government at that time. I think their aim was to ensure that, as far as possible, things were being dealt with at a local level, so local housing associations and tenants were putting issues right and you did not have a regulator interfering with what was essentially a very local relationship. That was the origin of the serious detriment test.

Over the last few years, it has become increasingly apparent that it is preventing us from taking appropriate regulatory action. It is not preventing us from taking appropriate regulatory action in all cases, but it is preventing us from regulating those standards proactively, and I think its removal is something we would welcome and would enable us to be a more proactive consumer regulator than we currently are.

Q310 **Andrew Lewer:** Given you have a very clear view about the problem it has caused for you, did you advocate to the Government and to the relevant Department for its removal?

Jonathan Walters: We have been talking to officials all the time. We have been talking to them over the last few years about the serious detriment test and its role and impact. I think Ministers have been keen to remove it, and we have been very supportive of that.

Q311 **Andrew Lewer:** They would not have been in any doubt about your clear view of that test as an organisation?

Jonathan Walters: Over the last few years it has become increasingly clear that it was hindering us from being a very proactive regulator. We think we have been very focused on economic regulation, where the serious detriment test does not count, so over the last 10 years we have mostly focused on being a proactive economic regulator. That is where our focus has been.

Q312 **Andrew Lewer:** Given that you will be able to broaden out, will it now enable you to inspect housing stock?

Jonathan Walters: We remain a regulator, not an inspector, in technical jargon. We are a regulator of organisations, so what we look to do is to ensure that landlords are delivering a good quality service. Our standards are all about setting high-level outcomes that landlords have to meet, in conjunction with their tenants, to ensure that the outcomes are delivered on the ground.



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In the first instance we always want to see the landlord putting those issues right and addressing them, but we will clearly collect information. We will look at what the landlord is collecting, we will come to a view in the round about the landlord's performance, but I do not think our job will initially be as an inspector of buildings or properties.

Q313 **Andrew Lewer:** You do not imagine that you would get to a point where someone was being so unco-operative that you feel the need to inspect their housing stock to see what is going on?

Jonathan Walters: We are going to have a legal power to look at stock and inspect it, if we ever reach that position. We would be prepared to do it if we needed to. We would always hope that the landlord puts it right first, because it is the landlord who is responsible for providing a good quality home to their tenants. We think the onus lies with them.

Q314 **Andrew Lewer:** I suppose if you relied on hope alone you would not need a regulator at all. I am taking from this that you have no specific idea about a resource for inspection. It is just something that you are holding in reserve.

Jonathan Walters: No, once we have the new consumer powers, we will need to significantly expand as a regulator. We will be carrying out proactive investigations of all large social landlords and engaging more regularly with landlords across the piece. As in the White Paper, we expect to look at each large landlord every four years to check if they are meeting consumer standards.

Q315 **Andrew Lewer:** Would that be a paper exercise rather than looking at housing stock?

Jonathan Walters: It will be going out to meet the landlord, to meet their tenants and to look at the information the landlord has. It would be trying to get under the skin of the organisation and how well it is delivering the consumer standards, in much the same way as we currently do on the economic standards.

Q316 **Andrew Lewer:** This touches on the principle of co-regulation within the sector. It is an expression that is used a lot, but could you explain to us your understanding of the principle of co-regulation?

Jonathan Walters: It is expressed in a range of regulatory systems using a range of terms. Essentially, it is based on the principle that it is far better if the firms, in this case the landlords, look to provide the right service and to do things the right way the first time, rather than a regulator second-guessing firms, or in this case landlords, and describing in great detail how they do their job.

We think the best outcomes for tenants are delivered when landlords engage with them, listen to them and deliver the right service, rather than the landlord listening to the regulator and trying to do it in the way that the regulator prescribes. It is much better for delivering outcomes on



the ground for tenants if the landlord is focused on that. Our standards are deliberately outcome-focused, telling landlords the outcomes they should be delivering for their tenants. How they go about doing that will depend on the landlord and their tenants working together. It will look different in different parts of the country. It will look different for different client groups. It will look different for the wide range of needs that the individual tenants will have. Rather than one-size-fits-all regulatory prescription, co-regulation is about saying to the landlord, "These are the outcomes that you should be delivering."

The job of the regulator is then to check that those outcomes are happening. The job of going out to engage with landlords and tenants is to understand if that is happening on the ground, "This is the experience that tenants should expect from their landlord. Is it being delivered?" Where it is not being delivered, we get to this point about the right remedies and tools the regulator needs to use to get the landlord to behave appropriately.

Q317 Andrew Lewer: Is your assessment of how well that is working based predominantly on feedback, notwithstanding that it is co-regulation and outcomes based, or are there some metrics in there as well?

Jonathan Walters: There are absolutely some metrics. At the moment we are only proactively regulating on the economic side, and there is a wide suite of economic metrics that we use. You will probably be aware that, as part of the White Paper, we have just had a consultation on the tenant satisfaction measures, so a basket of measures that aim to capture the outcomes that are delivered for tenants—the quality of repairs, the timeliness of repairs, the tenant's level of satisfaction and so on. We have just engaged in very extensive consultation with tenants and landlords across the country. We have been out on roadshows engaging with a wide group, and we have just closed the consultation and had over 1,000 responses. We are currently working through all those responses, over half of which were from tenants or tenant groups. We are looking at those responses and in the autumn we hope to publish a basket of measures that we expect all landlords to publish to be available to all tenants to see, and we will review and use that as part of our regulatory toolkit to try to identify where there is poor performance.

Q318 Andrew Lewer: Finally, as you are moving on from this purely economic metric to a wider basket of measures, how will it affect the importance of providers making referrals to you as part of this co-regulation world?

Jonathan Walters: That remains absolutely fundamental. It is important that landlords are honest with themselves and with their tenants, so when things go wrong they self-report to the regulator. It is important, as we discussed earlier, that tenants know how to get hold of the ombudsman and that we continue to talk so that, where Rick and his team are picking up issues, we are able to use that to triangulate our evidence. We want to pull in evidence from wherever we can to try to identify where there is poor performance and then to address it.



Q319 **Chair:** Are the four-yearly inspections something you have carefully considered to be the right period of time? Do you have evidence to back that up, or is it simply the period that you have the resources to do and you cannot do it more often?

Jonathan Walters: No, it is definitely not how many resources we have and what we can do. It is based on our current economic model, where we currently inspect or carry out an in-depth assessment of all landlords with more than 1,000 homes once every four years. We also supplement that with reactive engagement. Where a problem is identified, we do not wait for the fourth year. If we think a landlord has a problem, we get in there early and we would expect to do the same on the consumer side. We might have a plan for how we are going to do it, but if the evidence emerges that some landlords need to be engaged with much earlier, we would do that and engage with them very quickly.

Q320 **Ian Byrne:** Jonathan, the regulator intervenes only when there is evidence of systemic failure. This principle is based on your interpretation of your statutory duty to minimise interference and to act proportionately. How did you arrive at that interpretation?

Jonathan Walters: All of our powers and all the legislation that we have and operate within are about regulating organisations. What we are looking to do is to identify where organisations are failing. That can be different from individual cases or individual issues where something has gone badly wrong and a tenant has suffered something terrible that needs to be put right. That is why Rick and the ombudsman rightly have a key role in dealing with individual tenant complaints.

Where we engage and intervene is where there is evidence that the organisation as a whole does not have the systems or processes to deal with issues. We would expect a good landlord, where something has gone wrong, to admit to the tenant, the local authority and the regulator that something has gone wrong and then to take steps to address it. Where the regulator tends to get more involved is where landlords either do not want to or are unwilling to admit that something has gone wrong or that they have made a mistake. That is the majority of our casework, where landlords are either unwilling or unable to put things right.

Q321 **Ian Byrne:** How do you determine whether the failure is systemic?

Jonathan Walters: We look at a range of issues, but essentially we are looking at whether the evidence we have seen indicates a broad failing across the organisation. That can sometimes be triggered by one tenant referring an issue to us around fire safety, for example. And when you look at the basis of that referral, you find the organisation does not have the right systems to monitor its fire risk assessments and to check if they are being delivered and the actions are being followed up. Just one referral can take us into that space where we investigate.

It might be that we have had a number of referrals from Rick, or a number of complaints, and a picture begins to emerge that the landlord



does not have the systems to tell it what is going on, to tell it whether it is putting things right and to tell it if the actions it is taking are delivering the right outcomes.

Q322 **Ian Byrne:** Are there any published criteria for that?

Jonathan Walters: We publish "Regulating the Standards" in which we spell out how we go about our work. It is covered in that document.

Q323 **Ian Byrne:** Given what you have just outlined, why was Clarion not considered a systemic failing?

Jonathan Walters: We engaged extensively with Clarion on the Eastfields estate. In fact, Clarion self-referred to us and two tenants subsequently referred Clarion to us. We engaged with Clarion, and we took evidence from the ombudsman on what they were seeing in their casework around Clarion. We looked at our own casework on Clarion. What we found was that something had gone wrong on the Eastfields estate. What those individual tenants experienced and what we saw on the television was not acceptable, and we made it clear that in those individual cases it was unacceptable. What we did not find with Clarion was that, across the piece, its systems were not working. Clarion admitted it had got things wrong, and we also said that, even though we had not found a serious detriment in that case, what had happened to those individual tenants was unacceptable, which is why we asked Clarion to do a lessons-learned exercise.

Q324 **Ian Byrne:** Do you think there is a systemic failing between you and Richard? This has fallen through the gap, hasn't it? You are telling me it is not a systemic failing by Clarion, but we know how bad it was, because we have heard the evidence. Is there a gap between the ombudsman and the regulator?

Jonathan Walters: We all think what happened there is unacceptable. You touched earlier on visibility, and it is important that tenants know where to go. Clarion has learned lessons from the Eastfields estate, and it published its findings, which can be shared across the sector so that others can learn from those issues. I think there is a question about the visibility of the ombudsman and the regulator, and whether tenants know where to go. We talked earlier about how we raise awareness of the ombudsman and the regulator so that tenants know where to go when they need to. Going forward, that would be incredibly helpful.

Q325 **Ian Byrne:** If I were a tenant on Eastfields, and many were caught up in this, I would surely be thinking there were systemic failings. Why has your organisation not identified it as such, and what means it was not that?

Jonathan Walters: There were a number of cases highlighted in the media, including Croydon, where we did find examples of systemic failure. There is an interesting contrast with Croydon, because they simply did not have the systems to identify that things were going wrong,



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and they did not have the processes in place that you would expect a landlord to have in place. Clarion had those systems and processes in place. It clearly went wrong at the Eastfields estate and it clearly went wrong for those individual tenants, but those systems kicked in quickly and the right actions and remedies were subsequently taken.

Q326 **Ian Byrne:** But the regulator took no sanctions against Clarion.

Jonathan Walters: No, we did not find within our remit that it had breached the serious detriment test or our standards.

Q327 **Ian Byrne:** Back to my original point, do you think there is a gap there that should be rectified in any new legislation?

Jonathan Walters: It is important that Clarion takes responsibility for responding to the needs of its tenants, which is what it did. We engaged extensively with Clarion. Our chief executive took a reasonably exceptional step of writing directly to its board on the back of Eastfields estate to indicate that we did not find serious detriment, but that we did not consider what had happened to those tenants to be acceptable and we expected Clarion to put it right.

Q328 **Ian Byrne:** When a housing provider receives multiple serious complaints, should you not sanction them?

Jonathan Walters: We will certainly investigate the complaints that we get. We are looking against the current standards to see whether there has been a breach. If we are getting those sorts of complaints, we will look at what we know about the organisation in the round. Again, we will take evidence from Rick and his colleagues about what they are hearing and seeing. We will engage extensively with the organisation. If individual tenants have referred issues to us, we will talk to the tenants and engage with those who referred issues to us. We will take that picture in the round. Every year we publish a range of findings on consumer standards, and each year we normally publish half a dozen to a dozen findings of serious detriment. We publish regulatory notices and regulatory judgments. We do take action and sanctions where it is appropriate to do so.

Q329 **Ian Byrne:** Are you happy with the interpretation of the duty to minimise interference and act proportionately, or would you rather have it tightened up to make it easier to sanction providers appropriately?

Jonathan Walters: What we welcome most is the move to proactive consumer regulation and the removal of serious detriment. One of the things that minimising interference does is it makes you focus on the outcomes, and we see this with other regulatory systems. There is a question about who knows best how to run the service. Is it the regulator? Is it the landlord? We think it is always best for the landlord to be the one looking to put these things right.



I do not think minimising interference minimises our willingness to take sanctions. We regularly take sanctions, and we regularly downgrade organisations. We regularly use our powers where we need to, but clearly we are not trying to do that where we do not need to. Where the landlord is willing to put things right, and as long as we have been transparent with others about what we think of the performance, we think it is better for the landlord to put those issues right.

Q330 Ian Byrne: We have heard a lot about cultural change in our evidence sessions. Do you think that minimising interference and taking a light touch is the right way to deliver cultural change?

Jonathan Walters: I think proactive consumer regulation will help to drive culture change in the organisation, and I think the removal of the serious detriment test, the new standards framework and the transparency that the TSMs will bring will help drive a change in culture. To be fair, we are also seeing landlords beginning to do that. We are also seeing tenants being much tougher with their landlords. They have higher expectations of them and are pushing them more, and I think that is right. It is absolutely right that tenants are expecting more from their landlords. The job of a good landlord is now to listen to their tenants and to take the feedback on board.

Q331 Ian Byrne: The regulator also has an economic objective. Although the objective might have been effective up to now, the social housing sector has diversified and commercialised significantly in recent years, such as with the emergence of for-profit and lease-based providers. What challenge does this present for the sector and for you as a regulator?

Jonathan Walters: We are clear that the standards apply to for-profits, local authorities, housing associations—the whole sector—so they should be delivering good standards in this sector no matter what their constitutional form. An interesting development over the last few years is that a service that has traditionally been provided by the third sector and local authorities is now being provided by commercial organisations. Our job as a regulator is to ensure that those organisations are delivering a good quality service and that they remain viable and well governed through that process. We have always taken the view that being a social landlord is a special badge. You are a custodian of people's homes; you are a custodian of the homes of some of the most vulnerable people in society. This is not something you should be doing for short-term financial advantage, and I think a lot of the for-profit commercial organisations coming in get that and understand it. We have been clear with them as they have come into the sector. We expect to hold them to that, we expect them to be here for the long term and we expect them to deliver a good quality service.

We have also been clear that they cannot outsource responsibility. A for-profit commercial organisation might be getting a housing association or a managing agent to deliver its services, but that does not absolve it of its responsibility for delivering a good quality service. We have been clear



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with the for-profit landlords that we will hold them to account for the quality of their service, not their managing agents or the RPs.

Q332 **Ian Byrne:** Those are warm words, but how do we ensure that for-profit providers do not prioritise shareholders to the detriment of the tenant? How would you act, and do you have the ability to act robustly?

Jonathan Walters: There are two parts to that. First, I think having proactive consumer regulation will be helpful in that regard. We will look at the quality of the service they are providing to their tenants in the for-profit sector just as much as we are in the not-for-profit or local authority sector. Having that commonality of purpose is important.

As an organisation we have been staffing up in this area and taking on additional expertise to make sure we have the right skills to regulate that. We recognise that dealing with commercially driven organisations with their different set of financial imperatives is a different skillset, so we are recruiting.

Q333 **Ian Byrne:** Are you confident that you will have the ability, the skills and the staff to match what they have?

Jonathan Walters: As of today we are confident that we are recruiting the right staff to have the right people in place. Clearly, it is a sector that is developing very fast, and one of our jobs is to make sure that we keep developing as fast as they do and take on those skills.

Q334 **Ian Byrne:** For the sake of the tenants. The majority of the sector's financing now comes from borrowing. Are you concerned about the levels of debt in the sector overall and in individual providers?

Jonathan Walters: One of the great successes of this sector is that it has now raised over £100 billion-worth of private finance from the capital markets and banking markets and has used that to build new homes and invest in existing stock. We think that is a positive development. As you know, we monitor the financial health of the sector very closely, both at an aggregate level and at individual organisation level. We grade those organisations, and we publish viability judgments on all the large private registered providers. We are about to start doing that on for-profit providers. Some of them are now of such a size that we will be publishing those judgments.

Our overall assessment at the moment is that the sector is in a good financial position, but there are issues with which it is grappling. Every year we publish the sector risk profile where we outline what we think those issues are. Clearly, we are coming to an end of a period of low borrowing costs. Interest rates are beginning to rise, and inflation is the big economic story at the moment, which will have a particular impact on housing association business plans. There are some challenges and some headwinds. At the moment, the vast majority of the sector, all bar two or three organisations, are at V2 or V1, which are compliant viability grades



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as far as we are concerned. We think that pattern will continue for the foreseeable future.

Q335 **Ian Byrne:** I want to touch on the mega-mergers we have heard quite a lot about. Some commentators are concerned about the mega-mergers and the recent appearance of very big housing providers losing touch with the localities. Is size necessarily a problem, and would you welcome a power to prevent mergers where you see them as not in the interest of the tenants?

Jonathan Walters: We used to have to grant consent to mergers, until the deregulatory measures following the ONS reclassification. That power was taken away as it was seen as too great a control on the sector. We no longer have that power.

Q336 **Ian Byrne:** Would you welcome that power back?

Jonathan Walters: I am not sure that anyone would welcome the debt being put back on the public sector balance sheet. It is not a question I feel capable of answering because it is a classification issue. If you reintroduce the power, the debt comes back on the public sector balance sheet, which I think is a difficult issue.

The mergers were happening previously, and they have happened subsequent to that power. What has been interesting over the last few years is that those mergers, which were initially about building new homes, have increasingly become about having the financial capacity to withstand some of the financial pressures you were just talking about.

It has also been interesting that, in some of the more recent mergers, landlords have directly taken on the point of whether they are getting too big. Some of them have begun to say that, as part of these mergers, they will move to a patch system or reintroduce local housing officers. I think they recognise that, as they get bigger, they need to work quite hard to ensure that they stay in touch with their local communities.

I would also say we see poor performance and good performance from both small and large landlords. We do not see a direct correlation between worse performance from large and better performance from small. I think you can run housing organisations well or badly whether you are large or small.

Q337 **Chair:** It is not just about the for-profit providers, but some of the borrowing arrangements are now getting incredibly complicated. You have hedge funds involved, embedded swaps and all those sorts of things. You might even get borrowing from offshore entities. Are you satisfied that you have the skills to get on top of these complicated arrangements, which you might come to one day when the organisation collapses?

Jonathan Walters: We have to work hard to keep up to speed with what is happening. If you remember, Chair, we changed quite a lot as an



organisation after the Cosmopolitan failure. We adopted a different operating model and took on a great deal of additional, more senior staff to give us the skills we need to regulate effectively. A lot of our work is now focused on ensuring we have the skills and capacity to look at those structures.

Putting aside the consumer issues, on the economic side the complexity of borrowing arrangements, the complexity of some of those constitutional forms, are one of the things we focus on most when we engage in in-depth assessment with organisations, including whether the boards themselves have the right skills and are taking the right advice to understand and manage the risks that come with that.

Q338 Chair: Moving on to the issue of where the debt sits in terms of public sector borrowing, in your role as a regulator, should you not be thinking about being a bit more proactive in your value-for-money responsibilities? I am amazed that no one seems to look at the multiplicity of different housing organisations that operate in the same area. If you are looking to do some rationalisation, it would not simply be about trying to put together two already very large organisations; it might be about saying, "You are managing six properties over there, this one is managing 10 over there and that one is managing four down the road, which is hardly efficient. Why don't you do some consolidation and maybe one organisation takes on the properties there and another organisation takes on the properties over there?" We should get away from the idea that, as sometimes happens, you have a bit of green open space and you need four different organisations to agree to cut the grass at a particular time? Should you not be looking at a different way of reshaping the housing market?

Jonathan Walters: We are absolutely looking at the value for money offered by organisations. We have seen over the last few years an increasing number of stock swaps, so organisations doing exactly as you have described, saying, "We manage some stock in that area and you manage some stock in that area, and also in this other area we both manage stock. Why don't we—"

Q339 Chair: As a regulator, are you taking a lead on that?

Jonathan Walters: It is not in our remit to make that happen, but we certainly encourage landlords to think about putting in place the best arrangements to deliver the best value for money. Yes, we support—

Q340 Chair: Why is it not in your remit? If you are about value for money, why is it not in your remit? I do not understand that.

Jonathan Walters: We do not have a remit to shape the sector and say, "This is how the sector should operate."

Q341 Chair: Should it be in your remit, if you are having your remit reformed in the new legislation?



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Jonathan Walters: That would certainly take us beyond minimising interference. We think it is a job of boards.

Q342 **Chair:** So you are back to this issue of minimum interference. Should that be challenged? Should your role be widened with the removal of that particular constraint?

Jonathan Walters: We would be a very different regulator, and I think the Government would need to think very carefully about the trade-off, the pros and cons, that would come from that.

Q343 **Darren Henry:** The importance of tenant engagement has been one of the major themes ever since the Grenfell Tower fire. You need to do this through the tenant involvement and empowerment standard. A common criticism we have had from social housing tenants is that they do not feel listened to by their provider, yet you have only found one provider in breach of the standard. Why is that?

Jonathan Walters: This is a good example of where proactive consumer regulation will help. The TI&E standard is not one of the harder-edged standards that is easy to measure. It is not like the decent homes standard, which asks whether a home is of decent quality or not. The tenant involvement and empowerment standard is about how the tenant feels listened to, respected and engaged with by their landlord, which is hard to do as a reactive regulator. As a proactive regulator going out and engaging with tenants and the landlord to come to a view, I think that will give us a much more rounded picture about the tenant involvement and empowerment standard. The fact we are going out there challenging landlords and listening to tenants will be the sort of thing that will drive a culture change in the sector.

Q344 **Darren Henry:** Are you doing that systematically?

Jonathan Walters: Once we are able to be a proactive consumer regulator, following the passage of the legislation, that is very much what we want to do.

Q345 **Darren Henry:** Do you feel you have been discouraged from engaging directly since the 2010 review of social housing recommended concentrating on only the most serious failures?

Jonathan Walters: As I said, over the last decade we have been very much more of an economic regulator than a consumer regulator, and I think that is one of the reasons why we welcome the legislation, because it will give us a chance to build up the consumer regulation part of the organisation to be on an equal footing with the economic regulation and to be doing both in tandem. You often find that organisations that are poor at delivering a good quality service to their tenants are often poor at other aspects, including on the economic side and on value for money.

I think we have been constrained in the past because you can measure the pounds cost through the economic side, but getting a feel for the



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quality of the service that is coming out the other end is very hard without being a proactive consumer regulator. Having both of those together will be a powerful force for driving change.

Q346 **Chair:** The appalling situation that happened with Clarion at Eastfields was presented to the Committee. Is that an indication that both your organisations failed, or is there a gap in the regulations that means neither of you can properly succeed?

Jonathan Walters: There were lots of very unique or particular features to the Eastfields estate, and it is not something that we see replicated up and down the country. We periodically see these cases, a number of which have been on the news, where tenants have a very poor experience. We think that is absolutely wrong and landlords should be putting it right.

We do not think there is a widespread failure across all 4.4 million homes, but we do think there are pockets of poor performance that need to be addressed.

Richard Blakeway: I was struck that the complaints, including Eastfields, that were on ITV and elsewhere were not coming to us. That is a concern because, although we have had a significant increase in the volume of complaints that we receive, there are people who are not coming to us. That raises questions about whether they are not coming to us because they are not aware of us, because of access issues in the complaints process or because they have made a complaint but it is not progressing. Those are things that we are addressing.

One of the things that is clear to me is that if we simply stopped as an ombudsman at the individual complaint, a huge amount of insight and learning, extending fairness to residents who might not have always complained, will be lost. It is incumbent on us to be proactive as an ombudsman and to move beyond the individual complaint. It is also clear to me that, under the co-regulatory model, landlords can learn a tremendous amount from their complaints to improve their services, their systems and their procedures.

Our starting point as an ombudsman is always going to be with the individual but we move beyond that. The regulator looks at the organisation and the effectiveness of the organisation. In the work that we are doing together, we are making sure that we complement each other so there isn't the gap that you are indicating.

Q347 **Chair:** Is there going to be an unnecessary overlap? The ombudsman, as you say, is now going to look at systemic failings. Is there any point in having the regulator do the same thing?

Richard Blakeway: We bring a unique perspective as an ombudsman, given the insight we have based on the individual experiences. Our starting point is very different from the starting point of the regulator. Our evidence base is different from the evidence base of the regulator,



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which is why the two organisations are complementary. A systemic issue, for me, is a repeated failing. Since I have been ombudsman, we have doubled the number of orders and recommendations we make. We could keep on increasing it, but where do we get to the point at which we are addressing the issues that we repeatedly see in the complaints that we investigate? That is my approach to systemic failings. You can meet the standards, you can achieve the outcomes against the standards, you may not breach the standards, but you can learn. That is why our systemic work is so focused on ensuring that landlords are proactively learning from the complaints they see, which may well always fall below the level of organisational failure or breach of the standards.

Jonathan Walters: I agree. We welcome the reports that Rick and his team have been publishing. It has been useful learning for the sector, and we share that information quite regularly. We are looking at something slightly different. Rick is looking across the sector at particular individual issues, and we are looking at organisations and how they are performing in the round. Those two dovetail together quite nicely.

Q348 **Chair:** So we are not going to see any more Eastfields, then?

Jonathan Walters: It is ultimately for the landlords to put that right, and we have been out—

Q349 **Chair:** But you are responsible for regulating the landlords. These are the frustrations that we have.

Jonathan Walters: We have been out saying to landlords, “How do you know that you do not have an Eastfields? How do you know that you do not have a Croydon? What are you doing? How is the board assuring itself about what is happening with its stock?” That is the right thing for the regulator to do, to hold landlords to account for knowing that and dealing with it.

Q350 **Chair:** So proactive rather than just reactive?

Jonathan Walters: Absolutely.

Q351 **Chair:** When we come to our recommendations as a Committee, are there any key things that you would like to see us recommend that would help you deliver better housing for tenants, which is what we are all here for?

Jonathan Walters: The proactive regulation of putting economic and consumer together is going to be important, and the sooner we can get on with that the better. We are keen to see the legislation passed. I said at the start of my evidence that the powers we have been given in that legislation will help us to do the job properly. That is the thing we are most keen to see to get on and do the job.

Richard Blakeway: Landlords need to think about how they learn from the issues we see, as well as complying with the standards that are produced. I think landlords also need to ensure that they embrace and



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deliver, and that their board is confident they deliver a positive complaint handling culture that improves awareness and access at a local level, as well as achieving earlier resolution of issues.

Q352 **Chair:** Don't you need more powers to do that? Would putting the complaints process on a statutory footing strengthen that approach?

Richard Blakeway: Greater powers in relation to the code and greater powers to promote learning in our orders, not just through recommendations, would certainly help.

Chair: Thank you both for coming this afternoon to go through some quite technical and complicated issues. In the end, it comes back to delivering decent services for social housing residents. Thank you very much.