

Communities and Local Government Committee

Oral evidence: Draft Ombudsman Bill, HC 1052

Monday 6 March 2017

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Members present: Mr Clive Betts (Chair); Rushanara Ali; Bob Blackman; Helen Hayes; Melanie Onn.

Questions 1 – 61

Witnesses

[I.](#) Mick King, Local Government Ombudsman.

[II.](#) Denise Fowler, Housing Ombudsman.

Examination of witness

Witness: Mick King.

Q1 **Chair:** Good afternoon. Thank you very much for coming to this one-off evidence session about the draft ombudsman Bill that is before us. You are probably here under slightly less stressful circumstances than your last visit to see us, but thank you for coming. Could you just say, for our records, your name and the name of the organisation?

Mick King: Michael King, Local Government and Social Care Ombudsman.

Chair: Okay. We have just got to record our interests: I am a vice-president of the Local Government Association.

Bob Blackman: I am also a vice-president of the LGA.

Helen Hayes: I employ a councillor in my office.

Q2 **Chair:** Okay, so we have those particular interests on the record. Thank you very much for coming. Obviously, it is an important and significant change for the Local Government Ombudsman service. As an initial starter for us, what do you think about the Bill?

Mick King: I hugely welcome it. It is a wonderful step forward. The proposal to have a single public sector ombudsman first arose seriously about 17 years ago, and it has been in fits and starts ever since. This



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represents, really, a new high water mark in that progress towards a single body. It gives us a once-in-a-generation opportunity to create a 21st-century ombudsman that is designed around the needs of the public rather than designed around service silos.

Q3 Chair: When you came to see us before, I know you said that you had had sight of some of the intended clauses but not the whole Bill. You presumably made some comments about those clauses. Have they been taken on board, or are there things they still need to listen to you on?

Mick King: Absolutely, yes. I would be full of praise, really, for the Cabinet Office officials who worked on the Bill. We first engaged with them around two or three years ago when Robert Gordon's review was taking place. They have been very open in conversation with us about the development of the Bill in the subsequent time. Certainly, you can see that reflected in some of the clauses in the Bill. Some of those are quite detailed issues, but they are technical problems with the current legislation, which they have sought to address in the Bill.

I will give you some small examples of that. At the moment, it is not clear whether we can reopen a case where we think, perhaps, we have made a mistake and we need to put it right. That is clarified in the Bill. It puts in all sorts of provisions to put on a proper statutory footing our ability to work with other national ombudsmen in Scotland, Wales and Northern Ireland. It also addresses other issues. At the moment, someone who has mistakenly gone to court to pursue their case cannot then come to the ombudsman. The new Bill would give us discretion to bring something like that in. In lots and lots of quite subtle ways, the Bill addresses problems in the current slightly outdated legislation.

Q4 Chair: Is there anything that should have been changed that has not been changed? Is there anything that should have been included that has not been?

Mick King: There is some further work to do. Overall, though, I am hugely positive about the Bill. They have done a fantastic job in addressing a whole range of different issues.

One of the areas where I would still have some concerns is around when the ombudsman makes a recommendation. At the moment, there is a quite clear procedure by which a local authority has to consider that recommendation and respond to it. If they do not agree to implement it, there is a procedure for holding them to account for that. At the moment, because they have had to combine a number of different procedures in the legislation with LGO and PHSO, that section looks slightly weaker than I would like to see it. Ideally, we would want a duty on the local authority, or any of the bodies or jurisdictions, to have regard to the ombudsman's recommendation and only to reject that if they had cogent reasons to. That would reflect the situation in current case law. There is some work that could be done to strengthen that part of the Bill.



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As well as any views I have, just in terms of the response we are going to make, at the moment I have not formally responded to the Bill. What I intend to do is wait until Rob Behrens, the new Parliamentary and Health Service Ombudsman, is in post. Hopefully, he and I can do a joint response to the Cabinet Office on the detail of the Bill. In addition to any response we make, though, there is a wider debate about the Bill that is being triggered in the sector. There is a lot of debate around issues that are in the Bill and are not in the Bill, so I very much welcome the session today to start discussing some of those kinds of issues.

Q5 Chair: Just on the point you have raised about having regard to recommendations and having a cogent reason, how can you tell whether a reason is cogent or not?

Mick King: That phrase comes from a judicial review by the Parliamentary and Health Service Ombudsman, which was about under what circumstances it was reasonable for a public body to reject an ombudsman's recommendations. Essentially, the essence of the case law is that a public body cannot just decide it does not like or does not agree with the ombudsman's recommendations. It has to give them proper consideration and it has to take into account a range of things, which are set out in a variety of different pieces of case law, in making that judgment.

For example, if we were to recommend a huge financial sum, if that was going to have a disproportionate effect on the budget of the authority as a whole, that is something it would be reasonable for local authority members to take into account, which we would not necessarily have sight of. There are limited reasons and there is a proper process authorities should go through. At the moment, the spirit of that is not really reflected in the legislation. That is the area that would cause me most concern at the moment.

Q6 Chair: I just have two other issues. Following on from that, should that same requirement apply to private organisations?

Mick King: The challenge with drafting the legislation is obviously that public services are not necessarily all delivered by the public sector these days. The legislation has done a good job in trying to produce a piece of legislation that is future-proofed to try to deal with a wide range of public services, which might be delivered by the public or private sector. In answer to your question, yes, the provisions should apply equally to whichever body is delivering a public service. That is probably something we will return to later in terms of social care and housing.

Q7 Chair: I am sure, yes. Finally, there is an issue that came up in the last Parliament—we talked to your predecessor in the Parliamentary Ombudsman about it as well—and that is the gap that still applies as new ways of delivering services are created. If parents have a concern about the way an appeal to a maintained school has been carried out, they can come to you, ultimately, if they have a complaint that has not been dealt



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with properly. However, if it is a complaint about the way an appeal to an academy or a free school has been dealt with, they cannot go to the Parliamentary Ombudsman; they have to go to the Education Funding Agency. If they do not like the way the Education Funding Agency deals with the matter, they can go to the Parliamentary Ombudsman, but the Parliamentary Ombudsman cannot look at the initial decision by the academy or the free school; it can only look at whether the EFA have handled the complaint about the original decision properly. That is a mess, is it not?

Mick King: It is, absolutely. That is just one of the areas where the way in which public services have evolved over the last 10 or 20 years really cries out for this legislation to be able to fill these gaps. There are a large number of areas where people are caught in exactly the kind of bind you have described, where either they cannot turn to anyone or how they get redress is pretty opaque.

Q8 Chair: When the new Parliamentary and Health Service Ombudsman is in place, is that the sort of issue you are going to go through with him to try to ensure that these gaps are all picked up by yourselves and representations are made? I am sure we will be happy to receive them as well.

Mick King: Absolutely, yes. The question about education is an interesting one. Obviously, the LGO had a pilot jurisdiction for schools complaints more generally for a period of time. One of the wider issues being debated about the Bill in the sector as a whole is whether there is an opportunity within the Bill that we should take to try to fill those gaps in, and whether there should be more of an ambition to try to address those areas of the public sector where there is no complaints system, no independent right of redress to an ombudsman or, as you have described, gaps in that system.

Q9 Chair: You are going to look at that, and we are going to have a copy of your representations.

Mick King: Absolutely, yes. I am sure that lots of others will be commenting on that as well.

Q10 Bob Blackman: Obviously, you met your performance indicators last year; that is good news. One of the clear concerns is that a large number of people who are complaining to the ombudsman believe that their complaint is not properly understood, and that can lead to a protracted period of investigation or their complaint not even being investigated properly at all. What is going to be the change in experience under the new regime?

Mick King: Following one of the hearings we had before this Committee, we set up a user panel to try to get behind that issue. Sometimes, even when their complaint was upheld, people who came to the ombudsman had a sense of frustration or dissatisfaction that we did not quite deliver the service they anticipated. Why is that?



Partly, it is because the ombudsman is quite an unusual institution in the British justice system. In creating a single organisation, one of the opportunities is that perhaps the organisation will be more clearly recognised and more clearly understood. We will be able to more clearly articulate what it is the ombudsman does. At the moment, that fragmented landscape means we are not speaking with one voice and we are not articulating clearly enough what kind of service you can expect to get when you come to the ombudsman.

Certainly, that is what our research shows as giving rise to a lot of frustration. People expect us to be, perhaps, a consumer advocate or a campaign group on their behalf. Obviously, we are not that. We are absolutely neutral. That is not as well understood as it might be. Hopefully, a new organisation will be able to address that.

- Q11 Bob Blackman:** Generally speaking, you would expect the complainant to have exhausted the complaints process before they approach you, but for many people that is just like drawing teeth. Local authorities in particular just drag out the whole process, hoping the person who is complaining about the service will give up the will to live. Do you see any changes to that?

Mick King: Our research certainly echoes what you say. Our last research showed that the average length of time a complaint is in a local authority before it comes to us is nine months, which is a long time in anyone's world. What the new legislation provides for is quite significant powers and duties for the new body to be engaged in helping to shape the upstream complaints process in local authorities and other public bodies.

For example, there is a duty to provide training. At the moment, LGO provides training. We are one of the few ombudsman schemes who do. But we do that as a discretionary action. There is a duty on the new body to do that. It goes some of the way towards setting the new body up to promote good complaints-handling at an earlier stage. There is a debate, though, about whether it should go further. The Scottish Public Services Ombudsman formally established the Complaints Standards Authority, so he sets the standard for complaint-handling in public bodies in Scotland. Having heard him speak about it, I know he feels that it has been one of the most powerful tools in his armoury. Certainly, in terms of the external debate about the Bill, there are voices saying that, although the powers go a long way down that path, perhaps they should go even further still.

- Q12 Bob Blackman:** One of the areas that is removed in the draft Bill is the so-called MP filter for the Parliamentary Ombudsman. What is your experience of complaints that come via MPs or councillors, which are possibly better constructed before even your complaint-handlers start dealing with them?



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Mick King: A lot of complaints come to us with somebody advocating on behalf of the complainant. MPs and councillors are foremost amongst those people. We find it a very positive experience. The role that MPs and councillors can play in being an advocate or representative of their constituents is a very, very positive one. That does not need to be a formal legal filter, though. That used to exist for LGO. When LGO was set up, there was a councillor filter. That was removed, and it certainly has created no negatives in the kind of relationship we have with elected members.

Q13 **Bob Blackman:** It is not so much the negatives in terms of elected members, but possibly strengthening the case that is presented to you so that you are not spending an awful lot of time trying to get to the bottom of what the complaint is.

Mick King: Certainly, we see that with many MPs' constituency offices; I am sure many of you are familiar with it. Locally elected members will also advocate on behalf of the complainant and will help them to articulate a complaint. It is not just about expressing the complaint more clearly. Sometimes it is about giving somebody the courage and support to complain. Often, people feel reluctant to complain, or they feel there is going to be some sort of reprisal if they make a complaint. That is the other role an MP or councillor can play: to help reassure somebody that they have a right to do this.

Q14 **Bob Blackman:** Do you potentially see, therefore, that you are going to get a lot more complaints from the public? They will be unfiltered complaints, as you said. That will possibly mean you need additional staffing and, certainly, additional thought going into dealing with those complaints.

Mick King: I hesitate in my answer to this, because whenever I try to model changes in complaint numbers I always get it hopelessly wrong. It is one of those things that is virtually impossible to predict in our business. Complaint numbers probably will go up, but it probably will not be dramatic, and it would not necessarily be as a result of the removal of the MP filter. Obviously, that only applies to the parliamentary jurisdiction of PHSO. That is a relatively small part of the new PSO body, which will mainly be local government, health and social care complaints. The removal of the MP filter will not lead to a substantial increase in complaints.

A much more positive experience might happen, though. When we adopted a new jurisdiction for social care about five years ago, our complaints on certain aspects of social care doubled overnight, but it was not due to the expansion in jurisdiction. The initial increase was mainly due to complaints that could have been made to us anyway and were already in our jurisdiction actually getting through to us. Simply by simplifying the system, complaints that are currently getting lost in the system make their way to the right place. The increase in complaints is



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more likely to be through unmet demand that is currently lost in the maze, rather than the removal of the MP filter.

- Q15 **Bob Blackman:** What proportion of complaints do you get through the Local Government Ombudsman supported either by an MP or a councillor at the moment?

Mick King: I am sorry; I do not have those figures.

Bob Blackman: I am sorry. I am springing that on you; I understand that.

Mick King: It is a very familiar sight to see an MP's letter attached to a complaint. I could not put a figure on it, but certainly it is a very common thing for MPs and members to represent their constituents in complaints to us.

- Q16 **Melanie Onn:** While we are talking about complaints, you get about 65,000 enquiries or contacts to the LGO each year, and about 20,000 of those get registered as formal complaints. I just wondered what difference you think the provisions in the draft Bill will actually make to the number of complaints that are received. Will they go up? Will they go down? From what you have said, perhaps the simplification of procedures will mean we see an increase.

Mick King: My guess—as I say, given my track record, it is probably an unreliable one—would be that we will see a relatively modest increase, but that would continue over time as the organisation became better known. That would be primarily driven by complaints that always existed in the system making their way to the right place. That would be my guess.

I am sure we will talk about housing later, but housing is an example of the difference in the numbers of contacts we register on our system. On housing alone, one in 20 of the people who contact us is mistakenly contacting us for the Housing Ombudsman. Last year, 2,500 people contacted us thinking we could help them, and we had to then redirect them to the Housing Ombudsman.

- Q17 **Melanie Onn:** Earlier you mentioned complaints getting lost in the system. You do not think that 45,000 get lost in the system.

Mick King: No, I do not. A lot of those people who are contacting us are maybe looking for Trading Standards or the Financial Ombudsman, so we will direct them to the right place.

I gave the example of social care. In that case, it was private-sector bodies delivering care on behalf of local authorities. They were always in our jurisdiction. As soon as the legislation changed to say that all care was in our jurisdiction, we suddenly saw a huge increase in those complaints, because it became clearer that we could deal with them. We could have dealt with them for 40 years before that. The way in which services are delivered is so complex that often even the staff within



public bodies are not quite sure what the right way is to sort these things out.

Q18 Melanie Onn: You have had an increase in complaints of around 6% specifically on adult social care. About 13% of all your work is adult social care. Will the merger with the Health Ombudsman affect your social care work?

Mick King: Our work on social care, as you say, has gone up every year since 2010. Sometimes, it has been double-digit inflation. It was 6% last year and, as you say, it is now the biggest area of our work.

This is probably the most enlightened piece of legislation. At the moment, anybody can come to us about any adult social care complaint. It does not matter how it is funded, how it has been arranged or who provides it; it is just a one-stop shop ombudsman service for any social care complaint. In many ways, that is the kind of model we should be building on in creating the new organisation. It should be absolutely based around people's experience of services, rather around the service silos that they are in.

That is really precious to us, and we would not want to lose that in creating the new body. The Cabinet Office absolutely understands that, too. They have gone to great lengths to make sure that the legislation tries to accommodate that jurisdiction, which spans 26,000 bodies in the public, private and charitable sectors. We are probably 80% there in terms of the legislation being able to do that, but one of the other things I will be feeding back is that there are some challenges, still, in the legislation to try to make sure the legislation does not model 20th-century concepts of what the public sector looks like, and is sufficiently flexible to be able to deal with public services delivered in different settings, often at arm's length by private sector bodies. There is a bit more work to do on that.

The same argument would apply to things like housing and education. The old concepts that underpinned PHSO's and LGO's legislation from the 1960s and 1970s need to be refreshed. They need to be repackaged in a way that can deal with very, very creative ways of dealing with public services in the future. In answer to your question, the Bill will enable us to carry on doing our work around social care, but there are a few more tweaks needed to make sure that happens.

Q19 Melanie Onn: What about your relationship with the CQC?

Mick King: That is a really important relationship for us; it is probably our most important stakeholder relationship. We have a very good dialogue with CQC. There are actually two things that will help with that in future. One is that the new organisation will obviously have a combined jurisdiction for health and social care, so in many ways it will mirror what CQC do. That should make it easier to mediate that relationship.



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The other thing, though, is this. One of the key things we do with the CQC is share information about our complaints with them. At the moment, the statutory basis for that is unclear. One of the great things in the Bill is that there is a clause in there that establishes a clear statutory footing for the new ombudsman to be able to share information with the police, regulators and a wide range of other bodies, where it is appropriate. For the first time, we will have a proper statutory footing for that kind of relationship with the regulatory sector. There are some real positives in there around that relationship.

Q20 Helen Hayes: What are you doing internally, within your organisation, to prepare for the merger at the moment?

Mick King: Thank you for asking that. It is probably one of the questions that keeps me awake at night. We have been doing a lot of work over the last two or three years to try to prepare for the convergence of the two organisations. For two years, we ran a joint convergence committee, which was both of the ombudsmen and both of the boards working together. That achieved some really good progress. We set up a joint working team to look at health and social care complaints together. We harmonised a lot of back-office systems: we have the same telephony system and the same information-sharing protocols.

We achieved some good stuff. What that committee's work showed, however, was that you can only go so far. No matter how much goodwill you have, voluntary action is only going to take you so far down the path of convergence. One of the biggest challenges we face is not just getting the legislation right; it is actually getting the transformation process right. What we need is a proper plan for that.

A lot of people talk in terms of a merger. If we think of it in that way, we might end up in the wrong place. LGO and PHSO are currently two very different organisations, which are funded differently and have very different cultures and very different business processes. I am not saying one is right and one is wrong; they are just different. Looking at it as a merger is like if you were to take Aldi and Waitrose, put them together and hope that you end up with a good supermarket. They are two very, very different bodies, as are we.

What we need to do is not think of it as a merger but much more in terms of how we create a new body—a new 21st-century ombudsman that is fit for the future, is sufficiently flexible and draws on the best of both organisations. To do that, we need a clear mandate to make that change, and we need sufficient resources and sufficient time to make that happen.

Q21 Helen Hayes: What sort of timescale would you need to achieve a complete package of a new organisation?



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Mick King: This is something we talked about in the joint boards of the two organisations, and also in meetings of the two ombudsmen and the two chief executives. The last time we debated it, we felt, as a general guide, there should probably be a period of about two years from Royal Assent to legislation to create a new body, if we were going to do that properly. It is not just about creating the new body; because of the quasi-judicial nature of the two organisations, you would also have to manage the legal transition in the two jurisdictions to make sure that was done properly. We think it can be done. It is all achievable, but it needs to be properly timed and properly planned.

Q22 Helen Hayes: What kind of restructuring will be necessary? Will there be redundancies and relocations as part of that process?

Mick King: In launching the Bill, Chris Skidmore was very clear that the motivation for this was around providing stronger democratic accountability. It is not a cost-saving exercise; it is not about trying to slim down the number of public bodies. The motivation for this is very much around how we can provide a better service to the public.

In terms of the transformation that is needed, I could talk about staff terms and conditions and accommodation, but actually they come second. Where we need to start with is a clear vision for what sort of organisation we are trying to create. I say that from the experience of leading some of the change in LGO. We had to make fundamental changes in our organisation five years ago. What we did was start with a vision of what sort of organisation we wanted to create and what sort of organisation we wanted to be at the end of that. We said we wanted to be a lean organisation, one that works at pace, one with very little bureaucracy and hierarchy, and one that really worked on trust and the empowerment of its staff. That was the model we worked to, and everything followed that in terms of our IT and our accommodation. Every single decision flowed from that strategic decision about what we wanted to be.

That is where we have to start with building the new ombudsman. The legislation takes you so far, but we actually need to have a clear sense of what kind of ombudsman we are trying to create. That is where the change starts.

Q23 Helen Hayes: How quickly will the benefits start to become apparent to the public?

Mick King: If we do it right and we do it over the right timescale, the benefits could flow from day one of the launch of the new organisation. What the public should experience is a single ombudsman, a single brand, a single telephone number and a single website. When they have a complaint, they have a single investigator, no matter how complex that is and no matter how many different bodies are involved. That is what we should be aiming to deliver on day one of the new organisation.



If we get it wrong, problems will show pretty quickly as well. As this Committee knows, if an ombudsman scheme starts going wrong, because of the volume of complaints we are dealing with, you can end up having backlogs quite quickly and some significant problems. It is incumbent on us to design it correctly so that when we open our doors, the public have a positive experience.

Q24 Helen Hayes: Is there any case for the Housing Ombudsman to be part of this bringing together of ombudsman services under a single umbrella?

Mick King: I would start answering that question by saying that I recognise that there are some significant differences between the work the Housing Ombudsman does and the more classic kind of ombudsman work that maybe the Parliamentary and Health Service Ombudsman or Local Government Ombudsman do in their core business. That difference is really around the fact that a lot of the bodies that deliver those services are not public bodies. Also, a lot of the work in housing—I say this having previously had that jurisdiction—lends itself much more to a quite quick dispute resolution model, particularly around things like housing repairs.

There are some differences, but as I say, in LGO we are used to doing housing repairs and complaints about local authorities. You can do them alongside more serious and detailed complaints. We also have some experience already of dealing with tens of thousands of non-public-sector bodies within our jurisdictions, so both of those differences are ones that can be overcome.

To answer your question directly, though, on whether housing should be included, my personal view is that, yes, it should be. I say that for three reasons. We are still four years on from the changes in our jurisdictions. There is still significant public confusion about who to turn to. I mentioned some figures earlier on. If you look at our phone calls alone, last year we got 1,790 phone calls that we had to redirect to the Housing Ombudsman. That compares with 591 for the Parliamentary and Health Service Ombudsman. Actually, there is three times more confusion around housing than there is around health. That is still a problem.

The second area is that there are some significant structural problems that make it quite difficult to have a seamless complaints service in the current situation. There are two reasons for that. One is the fact that if you want to go to the Housing Ombudsman, you have to go through a designated person or you have to wait eight weeks to make your complaint. That is in stark contrast to what we were talking about earlier in terms of the removal of the MP filter and the removal of barriers to accessing the ombudsman, which is set out in the Bill.

The second structural problem is the fact that the changes made four years ago effectively disenfranchised a lot of people from being able to make a complaint. If you are a homeowner or if you are in private rented



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accommodation and you want to make a complaint about a housing management matter, you effectively now have nowhere to turn. You might want to complain about your neighbour's conduct. If your neighbour is a tenant, you might want to complain about their conduct. You might want to complain about antisocial behaviour or boundary issues. Five years ago, you would have been able to bring all of those to LGO; we would have been able to investigate those. Now, we cannot look at them because the housing management function is outside our jurisdiction and the Housing Ombudsman cannot look at them because there is no tenancy relationship between those persons. Actually, you have a structural problem there, which needs to be addressed.

The third reason that it should be within scope comes back to the discussion about what sort of ombudsman we are trying to create and why we are doing it. If we are trying to create a joined-up service, where people only have to turn to one organisation and do not have to figure out the gaps, then there are so many examples of areas which overlap in our jurisdictions here, areas with serious issues, that we have to consider bringing housing in.

In terms of some of those issues, I have been doing a series of presentations to care providers over the last few weeks. A number of them who are housing providers and care providers have come up to me saying, "Why do I need to talk to two different ombudsmen who work in two different ways? This is a real challenge for me." There are things like housing applications. If you are applying in one way, you come to the LGO to complain; if you are applying in another way, you go to the Housing Ombudsman to complain. It is a bit of a difficult ask for the public to try to figure that out.

There are also issues in some fairly serious areas of complaint, like disabled facilities grants and antisocial behaviour. There are significant overlaps between our role and the Housing Ombudsman's role. I have certainly seen complaints where the fragmentation of that has been used by public bodies to try to pass the buck. I saw a complaint a few years ago where somebody was assessed to be in need of the disabled-facilities grant. The local authority assessed their need and said, "Yes, you need one, but housing is provided over there by a social housing provider, so it is nothing to do with us". That kind of fragmentation is exactly what a single public sector ombudsman should be there to try to address.

Going back to one of the initial questions about whether we would uphold more complaints and whether we would find more problems, we will not find more problems. However, a joined-up approach on areas like antisocial behaviour and health and social care would have benefits. We are already seeing that where we take up that joined-up approach, we are much better at holding to account the right part of the system. When we look at things individually, it is very easy for people just to blame each other. When we look at the system as a whole, we can do a root



cause analysis of where the problem has happened, and we can get to the bottom of the issue much more strongly.

I do not underestimate the problems of bringing housing or things like schools within jurisdiction; the challenge there is to try to make sure the legislation is sufficiently future-proof to deal with a whole range of different public bodies. Certainly, on the question of housing, my personal view is that it should be within scope. I would be very happy to work with Denise and her successor to try to make sure we can make that work, if that were the view of Parliament.

- Q25 **Chair:** I am just looking for one point of reassurance. One of the really good innovations the LGO has done in the last few years is thematic reporting, where you get a number of different issues raised with several local authorities who are all not tackling them very well; you set those out and look at what could be done to improve the service delivery in the first place, or the way the complaints are dealt with, secondly. Are you going to be able to continue with those? They are really useful, and that is something local authorities ought to be welcoming as well.

Mick King: Certainly, as LGO we are continuing with them. We have a forward programme. We know the next two we are doing. We have one on school transport coming up soon and one on education, health and care plans.

Chair: I would be interested to read that, given the problems I have seen with those.

Mick King: In terms of the new body, we have talked about this with the Cabinet Office. Obviously, both we and PHSO really value that work we do. Where we can see patterns and trends, we can feed that back to the sector to hopefully avoid the same problems occurring again. It comes back a little bit to the discussion we had earlier about the reporting and compliance provisions within the Bill. We are nearly there, and there is sufficient latitude within the Bill to be able to continue doing that.

Broadly, the answer is yes. For me, there seems to be a slight confusion about the purpose of different reports in the Bill as it is drafted at the moment. We could use some clarification about which reports are there for information and to share the lessons learned, and which reports are there to highlight non-compliance. There is probably a little bit of clarification required around that. However, broadly the answer is yes. The Bill will allow the new body to do that kind of information-sharing.

- Q26 **Chair:** If there is any doubt as to whether it needs to be slightly tweaked, could we have information about that? It is a really important service that needs to be maintained.

Mick King: Certainly, yes.

Chair: Okay, thank you very much for coming to give evidence this afternoon.



Mick King: Thank you for inviting me.

Examination of witness

Witness: Denise Fowler.

Q27 **Chair:** Good afternoon. Perhaps you could just introduce yourself and give your name and your title, please.

Denise Fowler: I am Denise Fowler, and I am the Housing Ombudsman.

Q28 **Chair:** Thank you very much for coming. First of all, do you feel a bit left out in the cold, as though nobody loves you anymore, as everyone is getting on with this great marriage and you are left on the sidelines?

Denise Fowler: No, it is fine. I have been having a very nice time consulting with the sector about my business plan for next year at the moment. I am feeling very loved at the moment, actually. Yes, it is fine.

Can I just apologise? I have had the most awful cold and I am just getting over it, so I am going to be drinking throughout, if that is okay.

Chair: Okay. There is nothing stronger than water available, unfortunately.

Denise Fowler: No. Obviously a brandy would be lovely, but meanwhile I will just stick with this.

Q29 **Chair:** You do not get the same privilege the Chancellor will get on Wednesday. Just leading on from that remark, the Housing Ombudsman is obviously not included in the legislation as written, but there is a provision to come, which one of my colleagues will be exploring with you in a minute. Why is the Housing Ombudsman so different from the PHSO and the LGO that they are being treated differently by this legislation?

Denise Fowler: We have a different history. We are just not a typical public sector ombudsman. Both the Parliamentary Ombudsman and the Health Service Ombudsman, which were subsequently joined, and the Local Government Ombudsman have a long history as public sector ombudsmen investigating public authorities performing public functions, whereas the Housing Ombudsman's history is in relation to landlord and tenant functions, largely dealing with the contractual relationship between landlords and tenants.

Initially, we were quite firmly in the private sector and then obviously, after the Localism Act in 2011, we took on the jurisdiction of dealing with local authority landlords. Still, as Michael said, we are largely around the housing management function. I completely acknowledge what he has said about the legislation, the Localism Act. There are issues there about the boundaries of that jurisdiction. There was a spike of enquiries for us when that legislation first went through, as people tried to adjust to what we did and what the Local Government Ombudsman did.



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Those have reduced, year on year, and they are continuing to reduce, but we did still have 2,200 last year. There were 2,700 the year before. There was a huge number—it was about 6,000; I cannot remember the exact number—the year before that. They have gone down each year, but it is still the case that there are overlaps around issues like allocations, where we do get cases where we work with the LGO and we have an MOU. The history is simply that the Local Government Ombudsman and the Parliamentary and Health Service Ombudsman were very much public-sector ombudsmen and we do not come from that background.

We also work quite differently in the way that we deal with complaints. We have a strong history of local resolution. The Local Government Ombudsman used to do more local resolution, but it is fair to say they are now pretty much a top-tier redress scheme. The Parliament and Health Service Ombudsman is very much a top-tier redress scheme.

Under the terms of the Housing Ombudsman scheme, we have a dual role. We both resolve disputes involving members of the scheme, including making awards of compensation and other remedies, where appropriate, and we support effective landlord-tenant dispute resolution by others. That is not just about training and improving complaint-handling. That is actually intervening at all stages of the complaints process to try to resolve complaints early. 83% of the complaints we deal with are resolved before a formal investigation. That is quite a big difference in approach, and it is something that neither landlords nor tenants would want us to change. In any new system, we would want to try to see that that was preserved.

We are also, of course, funded by the sector on a per-subscription basis. Landlords pay that charge, but it is funded by tenants out of their rent, which means that we see ourselves as being very much accountable to the sector. I have just completed a consultation with the sector as to what people want from the business plan next year. We have gone out to a series of meetings with tenants' organisations and with landlords to ask people what they want from us for next year, which is quite different, I think, and quite helpful. There are a range of other things that we do. Our remedies are a bit different, and certainly quite different from what is proposed for the PSO. I can make any order or recommendations that are fair or reasonable in the circumstances of the case, and currently we have 97% compliance with those. Overall, during the year it is likely to be 100%, but it is 97% within three months, so that is quite high.

- Q30 **Chair:** Looking at going forward, you talked about the historical differences in how the services have originated, but the Local Government Ombudsman now deals with a large number of private sector social care homes and services, and individuals can go to make a complaint with the ombudsman even when they are not receiving public funds. That is a totally private sector service, but the ombudsman is still there for redress. Why is that different fundamentally and in principle



from housing rights?

Denise Fowler: It is not. It is by far the closest analogy and we talked to the LGO when they were setting that up about how we worked and how it linked to us. It is the closest analogy. When I responded to the consultation the first time around, I did not say that we necessarily should not be in, but I said there were four criteria that I thought would be the criteria that should apply if we were going to be part of a public services ombudsman scheme.

Chair: This is clause 26, is it?

Denise Fowler: Just generally in terms of whether or not we should be part of a public services ombudsman scheme. It comes down to what we see as a public service, and there are two potential definitions of a public service. One is this idea of a public sector ombudsman considering when a public sector organisation is carrying out public functions, even if those are then carried out by a private sector organisation on their behalf; or it could be public services in the wider sense that we all now think of when we think of things that are essential to all of us, and that could cover housing, social care, water or energy. It could cover a much wider range of services and, in that sense, I do not think a number of people in my sector would be so worried about being seen to be part of a public services ombudsman.

Part of the concern that came back when the consultation went out last time was just the sense that it was local government, central Government, the health service and housing, as if it was about public authorities. Certainly housing associations very strongly guard the fact that they are part of the private sector, even if they are doing an essential service, in that sense of a public service, and there is something very strong about it. In the sense of a public service, I can see an argument for us being part of a multi-functional public service.

However, one thing that is very valuable in our service at the moment is that accountability to both landlords and tenants, and that engagement with people to say how we should run that service. Having an accountable person for the sector, a Housing Ombudsman and expert staff, is really useful. I am not sure that the Bill as it is currently drafted, which talks about a functional and resource strategy, is sufficient to ensure that each area has that expertise and accountability. I would also want to make sure that we could continue this innovative approach to complaints resolution, including local resolution.

- Q31 **Rushanara Ali:** I will start by picking up on this point that you make about housing associations considering themselves as private sector, having recognised and acknowledged that they have a public function and they are in receipt of billions of pounds of public money. Can you elaborate on that, because I find it quite alarming that that is how they want to be perceived and perceive themselves? I will come on to why I think it is very relevant to the role of an ombudsman.



Denise Fowler: That is a debate that is going on at the moment. I know that the Government are moving towards reducing regulation with a view to moving housing associations more firmly into the private sector, and that is a political debate that will continue. Not all of our housing associations are in receipt of huge amounts of public funds. Some are very small. Some of them have maybe 50 or 60 houses. We have 2,500 associations. There are the very big ones—there is one now that has 125,000 properties—right down to small almshouses, and it is a really wide range of properties. We also have some private sector properties.

In the longer term, I would like a Housing Ombudsman to cover the private sector. I do not see any reason, when we looked at housing complaints and if we saw public services in terms of housing services, why a Housing Ombudsman could not cover large-scale landlords, the build-to-rent landlords, above a certain number of landlords, for example. If we are having a consideration about which housing complaints and which tenants should have access to a Housing Ombudsman, that debate should be part of that discussion. At the moment, the Bill as drafted assumes that we are only dealing with social housing complaints, which is quite a narrow remit, whereas the aim of the current ombudsman has been to leave it as wide as possible, so that as many people as possible could have access to the scheme.

Rushanara Ali: So your issue is with the definition—

Denise Fowler: Of social housing complaints. I want it to be as broad as possible, so that as many people as possible are involved.

Q32 **Rushanara Ali:** That is reassuring. The second question I had was the point about who you see yourself being accountable to. You mentioned that because the landlords pay—

Denise Fowler: Both. I really like the fact that I see myself as accountable to Parliament: I lay my annual report and accounts to Parliament, I am sponsored by the Department for Communities and Local Government, I do a quarterly report to them and I have my KPIs. I also like this additional level of accountability whereby I have just done a consultation and I say to the sector, “What do you think?”

Q33 **Rushanara Ali:** Do you see any situations where there is a conflict of interest between being accountable to the sector and being accountable to the public—the tenants, if you like, whether they are private or public?

Denise Fowler: I include the tenants in the sector. One of the things that, for example, a Tenants and Residents Association said to me is, “Make sure that when you are counting those responses, you recognise that tenants are less likely to respond to you than the landlords, so it is not a numbers game”. I said, “I am absolutely clear about that. I know that. I will be giving additional weight. I will make sure that I am taking into account what the tenants are saying,” recognising that landlords are well organised and are much more likely to be responding to me. I have



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to make sure that I am really weighing up what tenants' organisations, in particular, are saying to me, because I recognise they will be speaking on behalf of a number of tenants who will not feel as confident about responding to me. One of the things we did was go around to the Tenant Participation Advisory Service regional events and speak to individual tenants about what they thought about our plans going forward, in order to do that.

- Q34 **Rushanara Ali:** Are you concerned about some practices of removing influence of tenants on the boards of housing associations, especially where their status is changing or they are being absorbed into larger ones?

Denise Fowler: I have not commented on individual practices, because I think that is for the regulator to say how practices are and what governance works. What I have said in more general terms is that when you are redesigning services, when people are under pressure, one of the best ways of avoiding large numbers of complaints is to engage tenants in the redesign of services. If people feel that they own the changes, they are much less likely to complain. That is just common sense, and I do not want to just sound like I am a complete champion for Tpas, but organisations like Tpas have been involved in setting up ways in which that can happen and can support people.

- Q35 **Rushanara Ali:** Can you tell us a bit more about the arrangements you now have for co-ordinating with other ombudsmen?

Denise Fowler: The two types of organisation we work most closely with are the Local Government Ombudsman—and we have already talked about the numbers that we transfer to and from—and the property redress scheme. We do more referrals to the three property redress schemes than we do to the LGO each year, and that is increasing. As private rented housing becomes more and more important in this country, we get more people contacting us to ask whether or not they can deal with a complaint. As those property redress schemes' influence in the sector is increasing, as all tenancies that are covered by a property agent have to be covered by the redress scheme, we can then refer quite a lot of those cases to one of the property redress schemes. As a result of that, we did a joint event this year in the House of Lords to publicise that fact. This year, I think 681 referrals were passed to one of the three property redress schemes. We have an MOU with the Local Government Ombudsman and we are looking to see if we need to do one with the property redress schemes, or whether our current arrangements are sufficiently clear.

- Q36 **Rushanara Ali:** What will you do in terms of the level of complaints? What effects will the merger have in terms of addressing the Housing Ombudsman's work and level of complaints? You mentioned the number is declining; do you see continued improvement going forward?



Denise Fowler: That is going to depend on the practical issues that Mick was talking about. One of the things we see in some of the big mergers that have happened in the housing sector is that any merger takes a lot of time and energy for the organisations concerned. I suppose we would just have to make sure that our issues do not get lost in that, because we will be outside, at least initially, and we will need to be asking who is going to be responsible for managing any memorandum of understanding during that time.

One of the things that I was arguing for initially in any public services ombudsman that was set up was clear leadership for each of the individual functions: a local government ombudsman, a health ombudsman, a parliamentary ombudsman within that new organisation. If there was a local government ombudsman within that new organisation, I would be saying to them, "Can we make sure that we still have arrangements for the transfer of complaints to and from? What is going to be your procedure in relation to complaints?" because the Bill assumes there is one approach for all types of complaints and my experience, certainly with housing, is that that is not the case. We do not even find that we have necessarily the same approach exactly to all kinds of housing complaints. The approach we take to a case involving an almshouse is going to be different from one that involves one of these very big associations. You could not have the same approach to a housing complaint as to one in health or one in local government. I would like to know how that leadership is being done, how we would work against each other and how we would find it.

Q37 **Rushanara Ali:** Just to be clear, are you saying that the transition towards being part of a merger, whenever that is, is something you would support, taking into consideration the points you have made, or not?

Denise Fowler: I am assuming that the initial merger would probably not include us. I am saying that when that merger was being established, with the arrangements for us in terms of a memorandum of understanding, we would need to make sure that those arrangements were given—

Q38 **Rushanara Ali:** Given what you said at the beginning and what was said in the previous session about some of the complexities around housing, just to be clear, do you think it is the right thing to do, to be part of a merger at some point in the future, or should it be something quite separate?

Denise Fowler: It depends on how the organisation works. I am suggesting that a model that is based purely on a top-tier redress model of dealing with complaints would not work for housing complaints. It may be that the Bill could be redrafted to allow for different types of complaints, and for different processes for different types of complaints, and could make provision for there to be clear leadership of those



complaints and different functions with expert staff within the organisation. That was one of the criteria that I said in the first place.

Q39 Rushanara Ali: In terms of your current powers as well as the provisions likely to be available, do you feel you have enough teeth now? Going forward, what kind of powers would you want to have that you cannot see at the moment?

Denise Fowler: I have spoken to the Department about some changes to the existing scheme. One of the areas that we have been looking at is around the designated persons issue. This Bill takes away a mandatory requirement for an MP filter and the same approach should be adopted in relation to our designated persons filter. My experience is exactly the same as Mick's. We have some very good MPs, councillors, tenants and panels who are great in taking forward issues and helping to resolve complaints following a landlord's complaints procedure. We have a lot of other instances where it is just a block to getting the case to us, and that can be quite frustrating for complainants, who feel that they have to wait a period of time. If they cannot find someone to refer the case to us, they then wait eight weeks. They then feel that they have waited those eight weeks before we pick it up and they add that on to the time that they feel we have taken in dealing with their case, and that is not helpful.

Q40 Rushanara Ali: I have experienced that myself. With a lot of activity, a lot of time has been lost, and there are still about 90-odd complaints outstanding with the ombudsman, so I fully support that. Are there any other powers that you feel are needed, going forward, that would address the specific needs of the housing—

Denise Fowler: In terms of my existing powers?

Rushanara Ali: Existing, but also what would it look like? Given the nature of both social and private housing, and some of the issues—in some cases serious—around negligence and danger, which many of us have seen with our constituents when it comes to our attention, do you feel that the proposals are going to be adequate whenever that merger happens? What would be your additional wish list, if you like?

Denise Fowler: If we were going to look at what a multifunctional public services ombudsman would look like if it did include housing, my preference would be for one that had a chief ombudsman with ombudsmen reporting to it from each of the relevant sectors. I would want to look at what the relevant powers would be for a Housing Ombudsman. I like the fact that our scheme is flexible enough to move with the times. At the moment, my scheme is not set out in legislation, so you can say that that scheme can change. The Minister can approve a new scheme in relation to that scheme of complaints, depending on how things move on, so that if it is decided that there is a need to do more in terms of the scheme of housing complaints in the private sector, for example, that could come before Parliament or before a Minister.



Drafting that is flexible enough to recognise that kind of change has been very useful, rather than setting in stone, "All complaints will always be investigated in this way and cover these issues. This is what you mean by a social housing complaint. This is what you mean by a health complaint."

We have lost some of those things from our old scheme. Some of the things that Mick was talking about used to be covered in the old Housing Ombudsman scheme. It is not only the legislation that has changed. Our old Housing Ombudsman scheme used to allow, for example, antisocial behaviour by neighbours to be covered; that was lost under the old scheme, so some things could be brought back in. There are different ways of managing these issues. What is needed is a debate about how we do it. My key criteria are around leadership for each area and accountability to each area.

Q41 Rushanara Ali: I have one more quick question before my colleague comes in, which is about serious detriment and also the division between the HCA and what you do. I have been at the receiving end, with hundreds of complaints to do with Circle Housing, which got taken over by Clarion and now has been taken over by some other housing association. I lose track of how many takeovers—

Denise Fowler: It is Clarion now; it was Circle.

Rushanara Ali: Sorry, it is Clarion now; there was some other one in between. The tenants have had to go through an almighty battle, working with myself and councillors. It has been two years. This is a classic example of responsibility falling between stools, and even when serious detriment has been ruled, when there has been a merger it has been removed. It has happened again, and there are still some 100 complaints outstanding. My office has received some 30 complaints since Clarion has taken over. I have a meeting coming up, but it is just not working. One of the things we experience is that the HCA says, "We can only do this. Our remit is over here. The ombudsman needs to act." You go to the ombudsman and the ombudsman's powers are quite limited, so people are caught in the middle. This is something for you to take away, so that you can think about how to address these problems.

Denise Fowler: There are some things under way. In terms of our relationship with the regulator, some of the stuff that we do is not public, but under the current scheme, my powers under—I am going to get the paragraph wrong—I think paragraph 46 are to report cases to the regulator if there is an issue of non-compliance with my determination. I just said earlier that I do not have a problem with non-compliance with my determination. The problem is, of course, by the time you get to a determination that is a quite a long way down the line, so one of the issues is whether or not there should be powers earlier on in the case.

At local resolution, we are offering advice and guidance before we have looked at the merits of the case. We are supporting people, so there is



not really a case for me to report that there is necessarily something happening, but what I can do is give general data and information about the number of cases that I have coming in. I could give general data and information to the HCA and we do that, but we are doing a memorandum of understanding at the moment with the HCA.

- Q42 **Rushanara Ali:** It is the non-compliance issue that needs to be looked at, because you are relying on vulnerable tenants, often, to mount challenges with their councillors and MPs, and those things do not always come together. They do not have legal advice and support; they have nothing, and they are up against powerful housing associations now who consider themselves private and who behave like private companies, as Clarion has done. I am hoping that they will act differently, but the culture of these institutions is changing as they grow. The powers, if you like, of citizens are very uneven compared to these bigger institutions whose status is changing and, as you say, they are under lots of pressures as well. That is the area that we need to focus our minds on, as is how to do preventative work.

Denise Fowler: The eight-week wait is an issue, but we are looking at both of those issues. Perhaps on that particular issue we should talk separately outside.

- Q43 **Rushanara Ali:** Yes, sure. It is for the record and for some insights for you to take away, because it is hundreds, and it is two years; it is not two months. There are also some issues about how the system gets played because of the mergers. Mergers in themselves are not a problem; they can be a good thing. We have been told by the Minister and others that this could be a good thing, because Circle's record was so risible, but that is not where we are and we need the ombudsman to have stronger powers in order to take action.

Denise Fowler: Once we get to the point of a determination, as I say, we have pretty much 100% compliance, so I am not sure that it is an issue about our powers once we get to that point. The question is about making sure that we get the complaints through, supporting people to get the complaints, giving people confidence that they can come to us. One of the other issues is making sure that people know that having gone to the regulator is not enough, and they also might need to come to us, and that we are there to provide that individual redress. I recognise that there is an issue about communication. It is not all about which ombudsman you go to; it is also about what the regulator does and what we do.

Rushanara Ali: Yes, sure, but in this case they have come to you. There are 93 or so outstanding complaints still on your books, so that is not where the problem lies. I am going to hand over to Melanie.

- Q44 **Melanie Onn:** I wanted to ask about how many complaints you deal with on an annual basis. I was looking on your website, and it is not easy to find that information, is it?



Denise Fowler: We put it all out last year in our annual report.

Q45 **Melanie Onn:** It is in your annual report, which is not easy to find.

Denise Fowler: We have an exemption now from the Department, and we are getting a new website, which will help. We get 16,000 complaints and enquiries; about 6,000 of those translate to complaints, and it is about 1,500 that go through to formal investigation.

Q46 **Melanie Onn:** Do you think that you have done enough to demonstrate the effectiveness of the organisation as it stands?

Denise Fowler: We have made huge strides. The feedback from landlords and from tenants has gone up massively during that time. It is very positive and exceeds the level of the outcomes. For example, we uphold about 37% of complaints in the final outcomes and that is because the majority of them are resolved before then, and yet "Did we treat you well?" is above 70%. That is really positive. People think that we do a really good job, and it was not there when I started in March 2015. It has consistently gone up in the time that I have been there, so yes. I am not saying there is not more we can do, and Rushanara has given me examples of things that we could do more, but, for example, in the first year that I was here, 59% of cases were done within the first year; last year, it was 95%; this year it will be 100%.

Q47 **Melanie Onn:** How do I find out how my local housing association is performing?

Denise Fowler: At the moment, we do not do league tables of the 2,500, partly because the numbers are small for individual tables, apart from the Clarions. We could get statistically significant data for a few large associations, but because there are so many, some of them are so small that with the number of complaints, you would get something that looked huge but was out of kilter, so we do not publish those at the moment. However, we are looking, this year, to give each of the associations that have over a certain number of complaints a benchmark report against the average. We can certainly talk to them and say, "Are you happy for your local MP to have this?"

Rushanara Ali: That would be helpful.

Denise Fowler: We can certainly talk to them about it. That was one of the things we talked about, and all of the associations that we talked to and the local housing authorities said that that kind of benchmark report would be very helpful for them. It is quite a basic thing, but it talks about things like how many complaints you have per thousand and how many of them move between local resolution and final resolution.

Whether it is in a multifunctional organisation or in an individual organisation, what you need is people who understand the sector and who understand how you help people at the bottom level. It cannot all be about the top tier, because you will lose the vulnerable complainants



as they go through the system; they will not make it up to the top tier. It is not just about how you make people join up at the top. It is about how you help the complainants at the bottom, and how you make sure they can get through the system properly. We know all those complaint procedures, so we can help people through them. What we are really interested in is how many of those complaints are resolved without needing a formal investigation, and that is the mark of a good landlord. When we get a lot of complaints through, so they are obviously open and accountable and they are letting people complain to us, but then they are resolved quickly, that is often a sign of someone who is good.

- Q48 **Rushanara Ali:** It was just in relation to making sure the data is available to us. At the moment, if you get one-off cases when you have thousands of different issues you are dealing with, you cannot necessarily see the patterns quickly. However, if we can find early warning systems so we can have a conversation with the ombudsman and so on, that can be very helpful and, again, you never quite know how serious a problem is until somebody has pulled together a campaign. That happened with me in my constituency where, to begin with, it was a handful of cases and I was writing to the housing association and trying to get responses and then, suddenly, I was invited to a meeting in a market, and 200 people turned up. They were elderly, very vulnerable, lots of different kinds of complex needs. That was a big shock to me. They had not all contacted me, because people do not necessarily know that they should contact their MP either. Therefore, if we can have ways of getting data and support to people quickly, that would be great.

Denise Fowler: The other thing that has come out of consultation that has been very helpful is that as the sector is evolving, we have to change our approach. We cannot see it anymore in this context of 2,500 associations. There are some at the top that are so huge now that we have to think about that differently. They are skewing the average, and they are just so big that we have to think about engaging with those organisations differently and drill down into the information about what is going on in those organisations differently. We have to have key points of contact within our organisation for those organisations to say, "We are seeing a pattern here," and then it is, I guess, a conversation about who else we engage with about the patterns we are seeing. Clearly, we have to engage with the regulator about any patterns that we are seeing. I guess there is then a question about whether it is our role to engage with politicians about that, or whether it is a step too far for us.

- Q49 **Rushanara Ali:** Somebody needs to, because, to be honest, we are all having to put plasters on the wound and we cannot be the complaints departments of housing associations that are properly funded. MPs just do not have the resources to do that. If we had some information sharing exercises that were appropriately set up, then we could do much more preventative work. Otherwise you end up—and I am not alone in this; other colleagues have faced it—in situations where it is so dire, and we do not have direct powers. It is only when you threaten to go to the



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press and put cameras on your constituents' faces, who are vulnerable and for whom, frankly, that is the last thing they need, that something happens, and that cannot be allowed to continue.

Denise Fowler: It should not need to, because if we have the information, we can get things—

Q50 **Chair:** Some information from you would be really helpful—and maybe the LGO thematic reports about where there are particular challenges. Maybe it is more than one organisation not behaving properly. There is a challenge around some of the very large organisations becoming increasingly remote from the properties they manage, and that is a challenge as well, where the management services are just not on the doorstep anymore.

Denise Fowler: The theme would be repairs quite often, because 37% of our cases are about repairs, so it is not just a type of complaint; it is more subtle than that. In some of these cases, if you looked at the association as a whole, it does not look like there is a pattern. I should say there are only 61 of us, and there is one person who does all our analytics, so this is not straightforward or easy at all, either. One of the issues we have is about what we can do. I do not want to over-promise, but we can do some basic information. We can do something against averages.

Q51 **Rushanara Ali:** Is there a system where you can fine housing associations who keep failing, like energy companies get fined?

Denise Fowler: That would be a regulatory thing, not us. Our role is to give individual redress for the individual tenants.

Q52 **Rushanara Ali:** Yes, but how do you trigger action where it is failing—where your intervention is failing, too?

Denise Fowler: If we identify severe maladministration, or if we see a pattern, we can give that information to the HCA, who are looking at governance. They are top-down; we are bottom-up. We are looking at that individual tenant. If that individual tenant's repairs are not being done and they need compensation, that is our role. However, if we are seeing a number of tenants with the same issue, then what we would do is either we can publish—or require the association to publish—or we can refer it to the HCA, but I am not the regulator.

Rushanara Ali: Sure, no. It is just in the sense of how we get information.

Q53 **Chair:** Looking to the future now, there are two issues about how things might shape up. Clause 26 gives the list of things that have to be done by Ministers if they decide to incorporate you into the scheme. Are you satisfied with those requirements, or do you think they should be extended in some way?



Denise Fowler: I am not satisfied with the requirements of either clause 26 or clause 8 and schedule 4, because they split the requirements for local housing authorities and for other complaints. From what I said earlier, we should be thinking about an approach to housing complaints across the board. We should be thinking about what approach should be taken about how these complaints should be handled: should there be a separate function for them, should there be someone who is accountable for them, what kind of processes should apply to them, and what consultation should apply to the sector before any such provision is suggested?

Q54 **Chair:** I think that is in there, is it not?

Denise Fowler: The consultation under clause 8 and schedule 4 is simply with the PSO itself, which I do not think is adequate. Under clause 26, it is with me or my successor, the Housing Ombudsman, the board, the Public Accounts Committee, the regulator of social housing, and any other persons who appear to the Minister to have an interest in the proposed regulations.

Q55 **Chair:** It would be very difficult to exclude the sector from that, would it not?

Denise Fowler: It would be. You would hope that the Minister would realise that tenants and landlords were—

Chair: Okay, but you might like that—

Denise Fowler: Specifically, yes. Any members of the existing scheme.

Q56 **Chair:** I heard what you said about the way in which disputes are resolved slightly differently, maybe, in the housing sector, and that is something you want to see allowed for in the new legislation. Also, with this business of extending the remit of the Housing Ombudsman, do you want to see it extended across the private rented sector? Is that the ideal?

Denise Fowler: It is something that should be considered. In terms of this Bill, there should be a consideration about which housing complaints are we talking about, or provision should be made in the Bill to allow it to be flexible enough for housing complaints not to be set in stone in primary legislation.

Q57 **Chair:** By regulation you could expand that, yes, okay. There are some classic problems, are there not, like shared ownership, where you try to get a resolution of the repair issue and it depends who is doing the repair— whether it is the tenants getting it from the landlord, or they are doing it themselves as in an owner-occupier bit? One bit can come to you but the other bit cannot, in a sense.

Denise Fowler: Under the terms of the lease, it is the leaseholder who is responsible for doing repairs, but shared ownership leaseholders are covered by our scheme. The really odd thing at the moment is that for



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housing associations, all their housing activities are covered by our scheme, including market rented accommodation, but for local authorities' local housing companies, all of their properties are covered by our scheme except those that are market rented, which are covered by the Local Government Ombudsman. That is simply an anomaly within the legislation in the way that it was drafted. It is not intentional at all. It just is the way that it was drafted and it was just missed, I think, the first time around.

Q58 Chair: A mistake was made in the drawing up of the lease in the first place.

Denise Fowler: I do not think it was ever envisaged that local housing companies would provide market rented properties when the Localism Act went through.

Q59 Chair: This is another example: say a mistake was made by a local authority in drawing up a shared ownership scheme for a particular property, would that be a complaint to the Local Government Ombudsman?

Denise Fowler: In terms of drafting a complaint about—

Chair: No, just drafting the documents that someone signed in the first place. Someone is going into shared ownership; the documents are drafted, and a mistake is made by the council's solicitors. Where would that complaint go? Would it go to the Local Government Ombudsman or to yourself, because it would be covered as a shared ownership scheme by the local authority?

Denise Fowler: I do not know. I would have to think about that. It would probably be the Local Government Ombudsman.

Q60 Chair: It is just another example of a problem. Could you put in writing to us your concerns about how, if things moved forward with regard to incorporating the Housing Ombudsman, you would like your concerns about process incorporated and reflected, and how you would like an extension of remit to be accommodated in the legislation to allow that flexibility? Both those points would be very helpful to the Committee, and would give some reflection about the way that information could be given. That is separate from the legislation, but could be done anyway.

Denise Fowler: Essentially, I am saying the same things that I said in the initial consultation, but taking it a bit further.

Q61 Chair: The last question is: if this may happen in the future, why are you going to have a successor appointed? We know you are leaving and moving on, so would it not be a logical point to say, "Hold on a minute. Why do we need to replace you if a merger is due?"

Denise Fowler: This is not going to happen immediately. Legislation does not happen like that, and this work is important; it needs to continue. Tenants need their complaints dealt with. Rushanara has just



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explained why this is important. We have just done our consultation with the sector. This is really important work.

Chair: Okay. I just wanted to get it on the record, because somebody might think this is an easy option to save a few thousand. Thank you very much for coming, and for going through that list of issues, and we look forward to the further information being sent to us.