

Written evidence submitted by the Housing Ombudsman [RSH 023]

We welcome the opportunity to respond to this inquiry, and we have focused our response on our areas of expertise as the Housing Ombudsman. We have used the evidence we see through dealing with complaints, and interactions with residents and landlords, to inform our response.

How widespread and serious are the concerns about the quality of social housing?

The Housing Ombudsman's work is rooted in the real-life experiences of residents and our objective is to ensure their complaints are treated fairly, and any lessons arising from them are taken seriously. The Ombudsman handles thousands of complaints each year, and we use these, alongside other sources such as landlord data and resident engagement activity, to identify issues affecting residents. This allows us to share insights on the common issues that drive complaints and may lead to maladministration, using a number of tools including our Spotlight reports.

The number of enquiries and complaints we are receiving has increased substantially in recent years. In 2020-21, complaint volumes far exceeded the previous year, running about 40% higher in the final quarter compared to the previous year. These volumes have increased further this year. Between April-November 2021, enquiries and complaints had increased by 140% and cases for formal investigation have increased by 82%. We expect this trend to continue and is driven by several factors including the introduction of the Complaint Handling Code, increased awareness of complaints and repair backlogs.

In 2020-21, we issued 2,185 determinations, compared to 1,101 determinations in 2015-16. We have also seen a shift in the proportion of cases upheld. In 2020-21, we upheld 49% of cases compared to 30% in 2015-16. This is due to increases in findings of service failure in the complaint categories of responsive repairs and complaint handling.

The most common category of complaint is responsive repairs, which has consistently made up around one third of our total investigations in recent years.

We know that issues relating to the quality of social housing are often driven by factors such as the age and design of buildings, as well as ineffective responses to service requests and complaints.

Our latest Spotlight report focused on the specific issues relating to damp and mould, and the serious impact these issues have on residents' health and wellbeing. We reviewed the real-life experiences of hundreds of residents across 142 social landlords whose cases we have investigated over a two-year period, together with more than 500 responses from landlords and residents to our call for evidence that was conducted using our new powers to investigate beyond the individual complaint.

Our overall maladministration rate was high across these cases at 56%, and it rose to 64% for complaint handling alone. The distress and disruption to the resident was also apparent in many of the cases.

Our report calls for a culture change in the handling issues like damp and mould – encouraging landlords to be more proactive and take responsibility rather than inferring blame. We were clear that the phrase ‘lifestyle choice’ should be banished from the vernacular. Among our 26 recommendations we proposed landlords adopt a zero-tolerance attitude, rather than being fatalistic about damp and mould issues, with a consolidated and comprehensive policy to support their actions.

Other recommendations covered a broad range of issues including communication, strategies, fairness, staff empowerment, skill sets, records keeping, knowledge management, the role of the Ombudsman within the pre-action protocol on housing conditions.

How clearly defined are the roles of the Regulator of Social Housing and the Housing Ombudsman?

The role of the Housing Ombudsman

The Housing Ombudsman is set up by law to look at complaints about the housing organisations that are registered with us. We resolve disputes involving the tenants and leaseholders of 2,230 social landlords (housing associations and local authorities) and our 73 voluntary members (private landlords and letting agents who are committed to good service for their tenants). Our service is free to the 4.7 million households eligible to use it, and our role is set out in the Housing Act 1996 and our Scheme.

In 2020-21, we received 15,914 complaints and enquiries, and closed 16,337. We also determined 2,185 cases in our formal remit and made a total of 3,455 orders and recommendations, an increase of one third compared to the previous year. We further reduced our average investigation time to 5.2 months. This average is measured from the point we receive a complaint and includes the time spent preparing a case for adjudication, such as gathering evidence. The Ombudsman cannot formally investigate a complaint until the landlord has given its final response to the resident.

The Ombudsman is an advocate for fairness in social housing complaints. When we investigate a formal complaint, we determine what is fair in all the circumstances using an inquisitorial approach. This means we are not limited to the issue(s) raised by the resident in their complaint, nor the evidence they have submitted. This approach also recognises the inherent power imbalance that may exist between residents and landlords and can rebuild or strengthen that relationship, unlike more adversarial legal process. We find maladministration where the landlord has failed to comply with its legal obligations, its policies and procedures or unreasonably delayed in dealing with the matter.

The Housing Ombudsman also has the power to support effective dispute resolution by others. This allows us to be proactive and to encourage good practice across the sector. We promote higher complaint handling standards at a local level through our Complaint Handling Code and through our enquiries and dispute support team, where we offer help and advice to thousands of residents each year who are trying to make or progress a complaint with their landlord.

The Complaint Handling Code was introduced in July 2020. It encourages greater access to and awareness of the complaints system, greater consistency, and faster resolution of complaints. There has been positive engagement with the Code since its launch. We asked all member landlords to self-assess against the Code, report the outcome to their governing body and publish the assessment, including any adjustments to policy and practice. In 2020-21, there were 20,405 views of the Complaint Handling Code webpage on our site and 2,412 downloads of the self-assessment form.

We issue Complaint Handling Failure Orders where the landlord fails to progress a complaint following our intervention. Introduced on 1 January 2021, as part of our revised Scheme, if a landlord fails to comply with an order may take the complaint into formal investigation. We publish a quarterly report on these orders.

Our revised Scheme, which came into effect in September 2020, includes the power to investigate beyond an individual complaint or landlord where there may be a potential systemic issue(s). We can also refer these to the Regulator of Social Housing.

The aim is to promote organisational learning and best practice. We do this in a variety of ways, both through our work at dispute resolution, and through wider thematic work. This includes our Spotlight reports, quarterly publication of complaint handling failure orders, and our special publications on severe maladministration cases.

We are sharing more information with landlords and residents in order to promote transparency and learning. For example, our annual landlord performance reports on complaints we have received during the year, allow landlords to consider their approach, alongside peers, and identify any areas for service improvement. We also publish all our casework on our website, uploading these on a fortnightly basis.

Our relationship with the Regulator of Social Housing

The roles of the Housing Ombudsman and the Regulator of Social Housing are distinct and complementary. Unlike the Regulator, we investigate individual complaints to establish if there is maladministration on the part of the landlord, while the Regulator investigates potential breaches of the regulatory standards. We share our data and individual case findings with the Regulator to supplement their own evidence base.

We work closely with the Regulator on areas that affect residents, and we have clearly defined our relationship through our Memorandum of Understanding (MoU). Under our MoU we share information, such as draft documents and statistical information where appropriate; refer individual cases where there is severe maladministration; share our publications and respond to data requests. We also hold regular meetings to discuss significant case decisions, emerging trends and issues of common interest.

Does the current regime allow tenants to effectively resolve issues?

We believe that early, local resolution is key to positive complaint handling, prevents issues from escalating, and restores the relationship between residents and landlords. The Ombudsman cannot formally investigate a dispute unless a landlord has been given the opportunity to handle the complaint themselves and therefore having strong local complaint handling is essential. Our Complaint Handling Code helps to promote high-quality complaint handling by landlords, as well as greater access to and awareness of the complaints system, better consistency, and faster resolution of complaints.

The Code is the most comprehensive guidance on complaints handling that there has been for the social housing sector. We ask landlords to self-assess against it, take that self-assessment through governance and publish the outcome. There has been a high level of engagement with the Code and, in some cases, we are aware landlords asked resident groups to review of their self-assessment which we welcome.

Whilst we cannot formally investigate complaints until the landlord has responded, a unique aspect of our service is our dispute support work. Each year we handle thousands of enquiries and complaints, offering help and advice. This may be to advise someone how to make a complaint to their landlord through to helping a resident to progress a complaint if their landlord is not responding. This support means we are able to close around 80% of the complaints we handle without a formal investigation. There has been increasing demand for this service over recent years which reflects the pressures and loss of advice services elsewhere.

In some instances, we issue Complaint Handling Failure Orders to landlords if we consider the complaint is not being progressed effectively. We publish these orders quarterly, identifying the landlord, and will engage further with the landlord if we see repeated failure orders being issued.

We also produce guidance where our casework presents issues in complaint handling. We have published guidance for landlords not to close the complaints process prematurely if there is a disrepair claim under the pre-action protocol. We also published guidance on effective correspondence including referral to the Ombudsman. We are proactive in addressing local complaint handling issues and believe this is having an impact.

We welcome the proposal to remove the designated persons role, announced in the social housing White Paper, which we believe will allow for swifter resolution of complaints.

When a complaint enters our formal remit, following an investigation, the Ombudsman can order a landlord to take action on the substantive issue. Our approach is inquisitorial, and we base our decisions on what is fair in the circumstances. Our orders are binding and can include actions such as requiring landlords to pay compensation, make an apology or carry out a repair. Through our recommendations, we promote learning from our decisions to encourage landlords to improve their approach. This helps to ensure the resident's experience is heard and taken seriously, extending fairness to improve the experience of other residents, not just those who have complained.

Our unique and independent perspective as an Ombudsman means we are able to share learning and recommendations on issues that drive complaints to our service. We are also producing insight and best practice where we can see common areas for improvement on both the substantive issue and complaint handling. We expect landlords to use the learning from our Spotlight reports and guidance, which are based on an analysis of internal data and our related casework, to improve their services and complaint handling.

It is essential that residents know they have a right to bring their complaint to the Ombudsman and how to get in touch. We have worked hard to increase awareness of our service through the publication of our decisions, insight and learning, as well as our proactive outreach programmes, including regional 'Meet the Ombudsman' events. We have set up a Resident Panel, providing an opportunity for residents to be involved in the development of our service as well as giving us direct feedback on their experience of using our service. Membership is made up of residents from diverse group of residents from across the country.

Although our recent complaint volumes show there has been a transformation in awareness of our service, we remain concerned that there may be individuals or groups who face various accessibility barriers. This may include residents who do not have access to the internet, or where English is not their first language. A major strand of our work in our corporate plan is to promote accessibility and awareness, which will include examining our data to identify any under-represented groups and identifying specific actions to improve accessibility for these residents.

Do the regulator and ombudsman have sufficient powers to take action against providers?

Our revised Scheme, introduced in September 2020, has strengthened our role, in particular supporting the Complaint Handling Code, issuance of complaint handling failure orders and ability to investigate potentially systemic issues.

When we find maladministration, the Ombudsman can order remedies to restore the resident to the position that they would have been in, had there not been a failure in service by the landlord.

Our orders are binding and can include actions such as requiring landlords to pay compensation, make an apology or carry out a repair. We have a range of powers in our Scheme that we actively use to encourage compliance with our orders. Compliance with our orders is high, with 99% of orders during 2020-21 complied with within three months.

We may also make recommendations, and these are not binding, where we identify ways in which landlords could improve their approach to prevent potentially reoccurring issues, such as by reviewing a policy, improving a system, or training staff. In 2020-21, we made 3,455 orders and recommendations, comprising of 2,079 orders and 1,376 recommendations.

In addition to our powers, we also use transparency as a key tool to promote a positive complaints culture that includes accountability and learning from complaints; and publish decisions every two weeks as well as specific reports.

We welcome the Government's commitment, set out in the Social Housing White Paper, to keeping our powers under review and considering ways to strengthen them. It is clear from work with our Resident Panel, as well as investigating individual complaints, that residents value us promoting learning and improvement from complaints alongside the resolution of individual cases. Where we find maladministration, there may be important lessons for the landlord to consider, as the events that led to service failure could be repeated. The significant and sustained increase in complaints suggests learning from service failure needs to be a higher priority.

Our service is rooted in the real-life concerns of residents and we believe there are ways our powers could be strengthened to ensure these are taken seriously and promote learning.

We believe both our Code and best practice, together with recommendations for service improvement following a formal investigation into an individual complaint, could be given greater weight, potentially in statute. This would help to improve the experience of residents, extend fairness to residents who may not complain and potentially reduce complaints.

Putting the Code on a statutory footing would reinforce the importance of compliance with the Code and, where we see landlords not engaging with it, give us a stronger basis to swiftly engage with them and, if necessary, escalate our concerns. Giving some of our recommendations the same weight as orders, would drive wider improvement in complaint handling and service delivery. It would also strengthen our remedies in individual decisions relating to factors that may have contributed to service failure and allow us to monitor compliance.

We welcome the Department's engagement with these suggestions following the publication of the White Paper.

Will the reforms proposed in the social housing White Paper improve the regime and what progress has been made on implementing those reforms?

Our role as an Ombudsman has transformed in recent years, and we are now more agile, proactive and responsive to sector developments. We examine beyond the individual complaint and its handling, and we promote transparency, accountability and learning, demonstrating the difference complaints can make to improving services. A key part of this development has been the creation of our revised Scheme and the publication of our Complaint Handling Code. We want to continue to develop this work, building on our relationship with landlords to encourage a positive complaints handling culture.

The charter for social housing residents: social housing white paper, published in November 2020, recognises and supports the changes to the Scheme, and also contains new measures to strengthen our role further. We have made significant progress against implementing the reforms announced in the White Paper, and will continue to drive for high standards of complaint handling through our 2022-25 corporate plan. This includes a wide range of new activities, including further expanding our work on formal investigations, more work to raise awareness and accessibility of complaints, more strategic engagement with landlords where we see issues at local resolution, and promoting landlord learning through a new Centre for Learning.

Below is a summary of progress made on both implementing our own strands of work, including the Code, as well as the specific reforms set out in the White Paper.

Setting high standards for complaint handling

Introduced in July 2020, our **Complaint Handling Code** is a framework which helps to promote high-quality, timely complaint handling by landlords and a positive complaints culture. It aims to achieve greater access to and awareness of the complaints system, greater consistency, and faster resolution of complaints. Specific features of the Code include the following:

- New standards for high-quality complaint handling, promoting greater access and consistency.
- Universal definition of a complaint
- Two-stage process and maximum timescales for landlords
- Resident review
- Demonstration of learning in Annual Reports

We ask landlords to self-assess their approach and procedures against the Code and send that assessment to their governance and publish it.

Our Scheme also allows the Ombudsman to issue **Complaint Handling Failure Orders** to ensure landlords comply with conditions set out in the Code. Reasons for CHFOs to be issued include:

- In relation to failings in an individual case where the Ombudsman has taken reasonable steps to seek engagement from a landlord, but the resident remains unable to progress a complaint through the landlord's process
- On an individual case where the landlord has failed to provide information, including evidence of compliance with our orders, to the Ombudsman as requested

There has been overwhelming support for the Code which is seen as driving improvement and consistency across the sector. In their responses to our annual landlord survey, landlords told us they have made the following improvements as a result of the Code:

- Reviews of complaints policies and service standards.
- Better monitoring and reporting of complaints to governance.
- Introduced or improved customer feedback mechanisms.
- More effective staff structures with more resources for complaints.
- Shorter complaints procedures with faster turnaround.
- Introduced or improved 'learning from complaints' processes.
- Complaints awareness campaigns for residents.
- Staff training based on the Code and self-assessment

Impactful investigations

At the heart of our work as an Ombudsman are our formal investigations. Over the last year, we issued a total of 3,455 orders and recommendations following our investigations, representing a 32% increase from 2019-20. An Ombudsman's investigation can have profound impact, both putting something right for the resident if it has gone wrong and encouraging organisational learning by the landlord to improve services and prevent future failure. We publish our investigations on our website, uploading these on a fortnightly basis. Where we have found **severe maladministration** in a case, we publish a special report for all landlords to allow them to reflect on the circumstances of the case and consider their own policies and procedures in the light of our findings. We ask the relevant landlord to share the learning they have taken from the case with us and publish that alongside our report. The number of severe maladministration findings has increased this year compared to preceding years.

Encouraging learning

Our **Spotlight reports** build a picture of the quality of residents' homes, identify root causes of issues and promote good practice and learning. Through our quarterly **Insight reports**, we also share learning from our casebook, as well as details on the volumes of enquiries and complaints received, their categories, the types of orders we have made following an investigation and other relevant data.

We also deliver **webinars** aimed at landlord staff to help them improve their complaint handling practices. In 2020-21 we delivered 85 training events to landlords

and residents on complaint handling, which reached 2,500 landlord staff and residents. We also cover a range of relevant topics through a regular series of **podcasts**.

Under our revised Scheme, we can conduct investigations into potential systemic and thematic issues. In March 2021 we published our **systemic framework** setting out how we look beyond an individual dispute to identify key issues that impact on residents and landlords' services. The framework enables the Ombudsman to examine and respond to issues and themes arising in the sector, including through Spotlight reports. This allows us to extend access to fairness for all residents, regardless of whether they have complained.

Quicker resolution of complaints

We are also making progress on reducing our **average case times**, with a significant improvement from previous years. In 2015-16, the average investigation time was around 12 months, with 59% of cases determined within 12 months. In 2020-21, the average investigation time was 5.2 months, with 100% of casework determined within 12 months for the second year running. The average investigation time is measured from the point we receive a complaint and includes the time spent preparing a case for adjudication, such as gathering evidence.

We look forward to **removal of the designated persons role**, announced in the White Paper, which will allow for swifter resolution of complaints. Currently, residents can bring their complaint to the Housing Ombudsman once the landlord's internal complaints procedure has been exhausted and either eight weeks have passed, or they have referred their complaint to the Housing Ombudsman via a designated person (MP, local councillor, or designated tenant panel). Our experience has been that the eight-week wait can act as an unnecessary barrier for residents, and we strongly supported its removal from the legislation supporting our scheme.

Transparency

In December 2020 we **published landlord performance data** for the first time, and we have also started **publishing all decisions** on cases we investigate, which is a major step in increasing our transparency. We also publish quarterly reports on the CHFOS that we issue. These contributed to a 130% increase in webpage views on our website in 2020-21.

In order to improve transparency of our own service and hold ourselves to the same standards we apply to landlords, we appointed our first **Independent Reviewer of Service Complaints** in 2021. The remit of the Independent Reviewer is to look at complaints received about our own service and provide recommendations for improvement.

The White Paper announced a new **Access to Information Scheme** for housing associations. While progress on this work is dependent on statutory change, we are working with the Department to deliver appeals under this scheme.

Visibility and resident voice

We recruited a **Resident Panel** to enable a stronger resident voice in the development of our work. Initially planned to have 100 members, the level of interest was so high that we set up a pool of over 600 residents. So far, the Panel has input into the development of our 2022-25 Corporate Plan, and taken part in special interest discussions on awareness raising, service development and learning.

To help raise awareness of our service, we have initiated quarterly '**Meet the Ombudsman**' events, hosted by landlords across the country, where residents are invited to discuss our recent work and ask questions.

What changes, if any, should the Government make to the Decent Homes Standard?

We welcome the Government's review of the Decent Homes Standard, which we believe needs to be strengthened and expanded to reflect current issues affecting residents. The Housing Ombudsman sits on the Government's sounding board on the Decent Homes Standard review, and we will be setting out our broad views on the Standard, based on our unique perspective as an Ombudsman. Our observations so far include the following:

- We believe that there should be an awareness raising exercise around the Decent Homes Standard, and that residents should have access to clear accompanying guidance which sets out the framework of the Standard and how it should work for residents.
- There is a need for better alignment of the various pieces of legislation and guidance available, such as the Homes (Fit For Human Habitation) Act, as well as building safety and electrical safety guidance.
- We believe that methods of assessment and enforcement should be in scope of the review of the Decent Homes Standard.
- Vulnerabilities should be fully incorporated into the Decent Homes Standard.
- The presence of damp and mould has a serious impact on health and wellbeing. We strongly believe that the Decent Homes Standard should clearly stipulate that properties should be "free from damp" at the beginning and throughout the lifetime of a tenancy.
- We believe a minimum standard should apply to communal spaces which include lifts, communal entrance points and balconies, external areas such as gardens, including lighting, bin areas and bin chutes.

What challenges does the diversification of social housing providers pose for the regulatory system?

The challenges of diversification apply not only to regulation but also to the fairness of residents' access to redress. The diversification of social housing providers reflects the increasing complexity of the housing market. The boundaries between social and private both in terms of tenure and provider are less distinct. This can cause confusion when it comes to navigating routes to redress. For example, we are increasingly seeing that some member landlords are using various Special Purpose Vehicles to enter into joint ventures with the private sector. Whilst this is a housing activity of the social landlord, the right to redress is not always clear to the resident. We are also aware that not all providers of exempt accommodation are regulated nor fall under our remit despite often housing vulnerable residents.

In addition, there are long-standing concerns over the ability of all residents to access housing redress, specifically in the private rented sector. For social housing residents, the Housing Ombudsman is free, and can be accessed without the need for legal representation. Although a number of private landlords have joined our scheme as voluntary members, the majority of residents in the private rented sector do not have access to alternative dispute resolution. We believe it is important that more people are able to access housing redress, and that the routes to redress are clear, accessible and can be used by residents without fear of reprisal. We believe fairness should be extended to more residents so they can benefit from the better redress outcomes that an Ombudsman provides, and that redress through a single ombudsman should be explored.

December 2021