

16 April 2018

Social Housing Division  
Ministry of Housing, Communities and Local Government  
Third Floor – Fry Building  
2 Marsham Street  
London, SW1P 4D

Dear colleague,

**Local Government and Social Care Ombudsman's response to the Strengthening consumer redress in the housing market consultation**

**About the Ombudsman**

The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including independent adult social care providers. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services.

We welcome the opportunity to respond to this consultation on how to improve the redress system in the housing sector and support the government's intention to create a simple landscape for complainants to navigate and reduce gaps and overlaps in redress. In formulating our response, we have relied on our extensive experience of investigating housing complaints, both within the context of our current jurisdiction and also prior to the changes to our remit made in 2011.

**Summary of key points**

- We agree that mechanisms for redress should be clear and accessible and have strongly supported the simplification of the redress system across all public services – including housing – through the creation of a single public services ombudsman (PSO) for England. We believe any proposals for change needs to be considered within the context of this wider agenda for reform of the ombudsman landscape.
- While we are committed to ensuring that those seeking to have their housing complaints resolved are not exposed to questions of jurisdictional boundaries, in our experience managing the complexities arising from the current jurisdictional split has proved resource intensive. We are also concerned that reforms introduced through the Localism Act 2011 have created significant gaps in the redress system.
- Any proposals for reform should take into account the important differentiation between the ombudsman approach and that of consumer dispute resolution schemes, as well as the distinction in the nature of different housing complaints. Not all housing complaints

involve a consumer/service provider relationship. The types of complaints we investigate involve legal obligations placed on local authorities in statute.

- We recognise that several of the proposals in the consultation are in their early stages. A number of detailed issues need to be further considered if the government was minded to create a single housing ombudsman. Crucially, we do not believe it would be practical or sensible to separate the independent redress of complaints about local authority's functions for homelessness and housing allocations from our existing jurisdiction.
- We consider that the single portal idea offers a good solution and could be achieved without the need for structural reorganisation or legislative change. Indeed, we would suggest that a common portal and shared first contact service for all social housing complaints could be delivered through LGSCO's dedicated phone and web-based intake team and would be happy to work with government to explore this further. This would take into account that this function is currently being outsourced by the Housing Ombudsman (HO).

### **Our current housing casework**

Of all complaints made to LGSCO in 2016-17, 11.6 per cent were about housing matters. We received a total of 2,103 complaints and enquiries about housing issues and investigated 428 of them. 54 per cent of all complaints we investigated were upheld. The two most common categories among housing complaints were allocations (196 complaints) and homelessness (128 complaints).

Housing complaints are often the subject of public interest reports we publish. Some of our recent reports show the serious injustice that can occur when things go wrong and how important complaints and redress are to identifying failures and improvements in services:

In one recent case against Rother District Council<sup>1</sup>, a woman complained about the council delaying helping her when she was faced with homelessness. She also complained about the quality and location of the temporary accommodation, and that the council cancelled her housing benefit without good reason.

The woman was placed in hotel accommodation in a neighbouring borough, miles away from her former home and GP. During her time living in the hotel room, the woman made regular complaints about the poor state of the accommodation, but the council never informed her of her right to appeal its suitability. We also found fault with the council for not treating her complaint about it cancelling her housing benefit in error as an appeal, leaving her in debt.

We recommended the council apologise to her for these failings and settle any costs arising from non-payment of housing benefit. We also recommended the council undertake a series of procedural improvements learning from this complaint:

- make improvements to its housing service when dealing with enquiries from households facing eviction from private tenancies;

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<sup>1</sup><https://www.lgo.org.uk/decisions/housing/homelessness/16-011-157>

- give urgent attention to providing a supply of temporary accommodation in its area, as it currently only provides temporary accommodation out of its area;
- ensure that homeless households know of their right to request a review and appeal temporary accommodation they consider unsuitable and
- make sure it properly considers all expressions of dissatisfaction with housing benefit decisions.

The consultation highlights parts of our existing jurisdiction in relation to housing, but does not reflect its full extent. We can consider complaints about local authorities' housing allocation schemes and their homelessness functions. In addition, we can also consider complaints that relate to the duties and powers of local authorities to protect tenants in privately rented accommodation. This allows us, for example, to investigate:

- complaints about a local authority's response to problems with disrepair in private rented housing or if that does not meet health and safety standards
- complaints about how a local authority has dealt with issues of harassment or wrongful eviction by a private landlord
- complaints about how a local authority acted in response to reported excessive noise or anti-social behaviour by neighbours (unless it is a dispute between a tenant and social landlord in which case complaints would need to be brought to the HO).

Our experience of handling housing complaints is that these complaints are often multi-faceted. It is often the case that a housing complaint is also about another local authority function or service. For example, a housing complaint could require an investigation of the local authority's environmental health department. There is also increasingly overlap between housing and other public services, such as where members of the HO scheme also deliver care services which would bring them within our jurisdiction. A further example is that of complaints about disabled adaptations which straddle housing, health and social care. Any reform would need to take into account these factors when looking at how redress across the housing sector should be configured to ensure a coherent overall framework.

The case below illustrates the benefits for complainants that flow from our ability to offer holistic redress for complaints that involve housing along with other issues:

In one recent homelessness case against Bristol City Council<sup>2</sup>, we found that a family, including children with disabilities, shared a single hotel room for more than three years because the council did not treat their housing and homelessness applications properly.

We found fault with the way the council handled it handled the family's attempts to register a housing application, for failing to take a homelessness application, and for trying to charge them the full cost for storing their belongings while they were living in hotel accommodation.

The family, which includes two children with visual impairments, first called on the council for help when they were evicted from their private tenancy flat. They had to remain in

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<sup>2</sup> <https://www.lgo.org.uk/information-centre/news/2018/apr/homeless-family-left-to-live-in-hotel-rooms-for-three-years-by-bristol-city-council-ombudsman-finds>

single hotel rooms with no cooking facilities, often having to move from rooms and hotels at short notice. The council did not step in to help even when the father told it the family had a new baby with disabilities.

A number of council departments were aware of the family's problems, including Children's Services, but nothing was done about their housing situation until the Ombudsman got involved.

We were able to investigate all aspects of the family's circumstances as part of the complaint, rather than just the council's handling of the family's housing situation. In particular, we found Children's Services were at fault for failing to carry out a full assessment of the children's situation sooner, and for failing to address the accommodation needs of the children.

### **Improving local complaints handling**

We see championing best practice and driving improvements in complaint handling across the authorities and providers within our jurisdiction as an integral part of our current role. We are pleased to see the acknowledgement in the consultation about the guidance, advice and training we provide to councils in support of local complaints handling. In 2016-17, we trained over 1,200 council and care provider staff on effective complaint handling.

The consultation seeks views on whether more could be done to improve local complaint handling on housing. In this context, there is merit in considering the work done by the Scottish Public Service Ombudsman (SPSO) in setting common standards for complaints handling in its role as a Complaints Standards Authority. There is consideration currently underway in Wales and Northern Ireland around giving this role to their own public services ombudsmen. This is something we have previously called for and strongly support and would welcome in order to formalise and strengthen our role in this area (or to confer such a duty to a future Public Services Ombudsman in England).

### **Overlaps and gaps in the current landscape**

We welcome that consideration is being given to how to fill gaps in redress in the housing sector. We would encourage the government to revisit the Localism Act 2011 changes in light of their impact on the overall framework for redress in this sector. Before the transfer to the HO of some landlord-tenant disputes, we were in a position to investigate complaints about all administrative activities of local authorities, including those which involve their function as landlords. Following the 2011 changes, local authority tenants need to take complaints about their landlord to the HO, which can only consider a complaint if there is a direct landlord-tenant relationship.

The current situation has left some complainants with no options for redress and created gaps which did not previously exist. In particular, there are no longer any means of redress for legitimate housing management complaints where the tenure of the complainant's property is not relevant to the issues being complained about. This means that complaints from a private owner or tenant in relation to, for example, disrepairs/leaks from a neighbouring council property, the conduct, such as antisocial behaviour or sub-letting, of a neighbouring council tenant or boundary disputes involving a neighbouring council tenant fall

outside our jurisdiction and also cannot be considered by HO since they are not made by a tenant.

Following the implementation of the Localism Act 2011, we have put in place arrangements for signposting between our services and joint investigation of complaints by ourselves and the HO. We have also agreed a memorandum of understanding with the HO<sup>3</sup>. Examples of complaints which cross our respective jurisdictional boundaries include for example complaints about a landlord which also include elements of antisocial behaviour, housing benefit, housing allocations or disabled facilities grants. That said, a number of structural barriers such as the 'democratic filter' which the HO operates remain, which pose significant practical limitations in terms of being able to offer a seamless complaints service.

Our experience of resolving housing related complaints indicates significant confusion persists about the appropriate route for redress in this sector. In 2016/17, we were contacted by about 2,400 people with a housing complaint which we then had to redirect to the HO. Of those, there were about 1850 phone calls which we referred to HO, compared to only about 700 calls referred to the Parliamentary and Health Service Ombudsman (PHSO) for the same period. These figures suggest there is currently three times more confusion around housing matters than there is around health issues.

The current jurisdictional split between us and the HO creates fragmentation and makes it the system harder to navigate. Where there are overlaps between our role and that of the HO, such as in the area of housing allocations, we believe it is not reasonable to expect members of the public to be able make complex determinations about where to direct their complaint.

We are not in a position to comment more widely on the other issues raised in the consultation around ways to address the current gaps in protection that affect buyers of new homes, tenants of private landlords or leaseholders. However, when looking at any changes there is an important distinction to take into account between the nature of relationship of tenants in local authority or other social housing, which is more akin to a public service relationship that characterises the complaints that LGSCO or PHSO can consider, and the more transactional nature of a relationship that defines, for example, the purchase of a new home. There is also a clear distinction between the role of public interest ombudsmen such as LGSCO or PHSO and those of consumer dispute resolution schemes.

### **Practices and powers of schemes**

The consultation raises the question whether greater consistency is needed or desirable in relation to practices adopted by different schemes. We strongly agree that people who wish to complain to an ombudsman scheme or redress provider need to understand how their complaint will be handled and what they can expect, and there are obvious attractions in greater harmonisation across schemes. At the same time, there are likely to remain certain areas where a difference in approaches is justified.

Accessibility: We agree it is important for ombudsmen to remain free of charge to people bringing complaints and to also ensure that complainants have an opportunity for their complaints to be resolved quickly at the local level. Referral to the ombudsman is the final

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<sup>3</sup><https://www.lgo.org.uk/assets/attach/2201/LGO%20HOS%20MoU%20%202017.pdf>

stage and should only be necessary when local routes for redress have been exhausted. As acknowledged in the consultation, complainants can bring a complaint directly to us once they have complained to the authority or provider first. However, we can exercise discretion to take a complaint before local resolution has been exhausted where appropriate.

As a matter of principle, we believe it is right for members of the public to have direct and unfettered access to an ombudsman whilst still being able to seek support from their councillor, MP or other advocate. Like the equivalent provisions of the MP filter for PHSO, the requirement for complaints to the HO to be referred by a designated person can result in a delay or a barrier to access to the ombudsman and we would suggest there is a strong case for its removal.

Moreover, an essential element of making the complaints system accessible is ensuring that users of a service know about their right to complain to the provider and their right to seek the view of an independent ombudsman. In our capacity as the social care ombudsman, we have called for a statutory requirement for all providers to signpost to the ombudsman, as in, for example, the financial or legal sectors. This would ensure the public are aware of their right to complain when services fail and they are not satisfied with local complaints handling.

Timeliness: We strongly agree with the need for redress to be timely and complaints to be handled in a swift fashion. Last year, we exceeded our time targets for the speed of our investigations, with 79 per cent of investigations completed within 13 weeks (against a target of 65 per cent) and 92 per cent of investigations completed within 26 weeks (against a target of 85 per cent)<sup>4</sup>. The determination of complaints should as speedy as it is reasonable to expect given the complex issues that may require investigation. Within the context of our jurisdiction, what often drives some of this complexity is the need to apply an extensive body of law and statutory guidance to establish where fault has occurred, such as in cases whether there has been a failure to provide help when threatened with homelessness or secure temporary accommodation. Conversely, it would be reasonable for consumers to expect for redress to take less time for simpler issues that are more transactional in nature.

Enforcement powers: The consultation refers to the potential introduction of binding powers for ombudsman schemes or redress providers. We do not believe such a move would be desirable. We consistently achieve high compliance rates with the recommendations we make. While we do not have powers to compel an authority to implement our recommendations, in practice almost always act on them. The risk of negative publicity, along with the scrutiny of democratically elected members, ensures that local authorities rarely refuse to comply. We find that this arrangement works well and is consistent with the principle of maintaining local accountability, however we are aware that there be other considerations at play in other areas of housing that are covered in the consultation. Moreover, there is currently no maximum value in terms of the financial remedies we can recommend. Our flexible approach allows us to adapt the redress provided to suit individual circumstances and would not wish to see such a limit introduced.

Data and transparency: Transparency is already at the heart of our current approach. We publish details of all complaint decisions on our website and were the first public sector ombudsman in the UK to publish such comprehensive information. Moreover, we also

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<sup>4</sup><https://www.lgo.org.uk/assets/attach/4141/60152%20HC%20181%20Web%20Accessible%20FINAL%2017.8.17.pdf>

publish thematic reports where we see systematic issues, which support transparency, accountability and local service improvement. Most recently, we published a thematic report into local authorities' continued use of bed and breakfast accommodation for homeless families<sup>5</sup>. Since 2015, we have published 19 public interest reports where we investigated housing complaints which uncovered issues of wider public interest. Going forward, we also plan to report a broader range of data about the complaints we investigate, which focuses on remedies we recommend, and in particular, service improvements achieved as a result of our investigations.

We believe that the ombudsman model has many benefits, for example the inquisitorial nature of the process is well-suited to deal with asymmetries of information and power and so is likely to produce fairer decisions. Also an explicit part of this model is also the ability to provide effective remedies including, where appropriate, providing systemic remedies and to use the intelligence from complaints to help improve public services. That said, this does not mean it is necessarily the right model of redress across all the types of housing complaints covered in the consultation and we can certainly see the argument that an alternative consumer dispute resolution model may be more appropriate in some cases.

### **Single portal and ombudsman proposals**

We strongly support the simplification of the redress system in England and have been strong advocates of this through the creation of a single public services ombudsman (PSO). Draft legislation paving the way towards this was published by government back in 2016. Importantly, the draft PSO bill included a provision to move responsibility for social housing complaints from the HO to the PSO, subject to secondary legislation at a future date.

A single PSO for England would provide redress about the provision of public services which is increasingly becoming more diverse and crosses boundaries. As mentioned already, complaints are rarely confined to administrative or other sector boundaries. Housing is no exception to this, with social housing providers for example increasingly engaged in the provision of care services. Our position remains that PSO should have a broad reach, which also covers social housing complaints, in order to provide a seamless service to both complainants and the organisations complained about. This would help provide a unified, consistent and comprehensive service and address the current systemic confusion that exists where services overlap sectors.

When assessing the consultation proposals, it is important to understand that while they helpfully illustrate some of the current problems in the housing sector, what we need is a new and future-proofed framework for redress across the ombudsman sector as a whole, rather than seeking to remodel the system in one market sector alone. We also note the approach taken in Scotland, Wales and Northern Ireland where housing complaints sit within the remit of their respective public services ombudsmen. There may well be scope to streamline redress across the private housing sector given the existence of multiple redress schemes at present, although we do not have views on what configuration this should take. Beyond that, we believe change should only be pursued within an overarching strategy for reform, in the context of the public services ombudsman sector as a whole. We would

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<sup>5</sup><https://www.lgo.org.uk/assets/attach/4235/FINAL1.pdf>

therefore welcome clarity from government about the impact of these proposals on its ambitions for future reform of the ombudsman landscape.

The consultation puts forward a spectrum of proposals, ranging from consolidation of existing schemes to other options that would make it easier for complainants to navigate the system, such as a single portal. We believe there is merit in the single portal proposal which could be achieved without the need for structural reorganisation or legislative change. We would propose developing a common portal and shared first contact service for all social housing complaints based on the LGSCO dedicated phone and web-based intake team and would be happy to explore further with the government.

We share the concern expressed in the consultation that the current housing landscape is complex given that redress responsibilities are split across various bodies and that there could be gains to be made from simplification. We do not wish to advocate the preservation of any of the existing redress bodies for their own sake and there may well be alternative configurations that would combine some of the existing schemes whose remits currently cover some aspects of housing.

However, rather than starting from the principle of how many ombudsmen/redress schemes there should be as an end in itself, we believe the focus should be on what the right model is for different housing issues and from that would flow conclusions about how the system can best be configured to deliver the desired outcome. The consultation covers a wide range of housing matters, which may lend themselves to different models of redress. At its simplest, some complaints are about a relationship based upon a consumer transaction between a customer and a service provider, where disputes often require a more consumerist ADR approach to resolution. At its most complex, other complaints are about a relationship where there is an imbalance of knowledge and power and where disputes concern the provision of statutory entitlements, often to the most vulnerable in society. In such cases, recourse to an independent and impartial ombudsman scheme is required to deliver justice.

When it comes to our own jurisdiction, what is at issue for example in complaints about homelessness or housing allocations is a local authority's compliance with its legal obligations. We would argue therefore the primary consideration of any future configuration of the redress needs to be a clear understanding of differences in the type of redress model that different housing issues may require. Based on this, we see little imperative for potentially detaching the housing functions of local authorities that currently fall within our jurisdiction from our remit.

There is an additional point of distinction that needs to be taken into account in considering what a future configuration might look like. Reform should not be by default along a consumerist approach to redress. Instead, it needs to recognise that as an ombudsman we are part of the warp and weft of public accountability and democratic scrutiny, holding bodies to account in the public domain and is feeding back lessons to improve public services. It is having this authority to remedy both the injustice caused to individuals by the actions of public services and to tackle the wider injustices that may occur by requiring service improvements where the strength of the ombudsman approach lies. Whether through delivering training to complaints handlers to improve local complaint handling; publishing thematic reports to encourage service improvements or working with elected representatives to place complaints at the heart of scrutiny systems, we focus our efforts on maximising the

value of complaints in ensuring that public services meet and respond to the needs of their users.

A further point we would make is that we also strongly encourage proper consideration be given to the need to avoid further fragmentation of how local authority complaints are dealt with. As referred to earlier, many of the housing complaints we deal with are multi-faceted which would justify us continuing to retain our jurisdiction over these areas, rather than them being transferred to any new body.

Lastly, consideration should be given to the use of the ombudsman brand. If the new body were to be called an ombudsman, it should be in accordance with and meet the Ombudsman Association's Principles of Good Governance which are independence; openness and transparency; accountability; integrity; clarity of purpose; and effectiveness.

We hope our response is helpful and would welcome the opportunity to work closely with the ministry as any proposals are developed further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. King', with a stylized flourish at the end.

**Mr Michael King**

**Local Government and Social Care Ombudsman**