

5 November 2018

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

Dear colleague,

## **Local Government and Social Care Ombudsman’s response to ‘A New Deal for Social Housing’ Green Paper**

### **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. Our jurisdiction covers investigating complaints about some of local authority’s housing functions, such as their housing allocation and homelessness functions. In this submission, we have responded to issues raised in chapter 2 of the Green Paper where we believe our experience was most helpful<sup>1</sup>.

### **Summary of key points**

- We strongly support the removal of the Housing Ombudsman’s (HO) current ‘democratic filter’. This would help deliver increased accessibility and a faster and more effective redress system for social tenants. It would also help align processes between HO and LGSCO, thereby creating greater opportunities for joint working in overlapping areas of jurisdiction.
- We have drawn upon our experience of our jurisdiction over private care providers to recommend where similar approaches could be adopted to improve redress within the social housing sector – for example, considering the benefits of a statutory requirement for landlords to signpost to the Ombudsman or steps to strengthen transparency and accountability of landlords in relation to their complaint handling.
- We welcome the Government’s plans to gather evidence on how the current allocations framework is operating. Common faults we identify in the complaints about housing

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<sup>1</sup> Our previous response to the wider consultation on proposals to improve housing redress can be found on our website <https://www.lgo.org.uk/assets/attach/4343/MHCLG%20-%20consultation%20strengthening%20consumer%20redress%20in%20housing.pdf>

allocations we investigate include failure to update an application after a change in circumstances, wrongly removing housing applications from the register, poor handling of requests for medical priority, providing poor advice, not notifying applicants of changes to the scheme, not considering exceptional circumstances or inconsistent decision-making by council's partners in how they deal with housing applicants.

### **Removal of the 'democratic filter'**

We strongly support the full removal of the 'democratic filter'. Its abolition would eliminate the barrier social tenants currently face in accessing redress and also help speed up the complaints process. The existence of the filter has introduced considerable delay, with the vast majority of social tenants bringing a complaint to the HO wait the full eight weeks before accessing the HO service after completing the landlord's complaint process. In our experience of complaints that come to us, we have seen instances showing a lack of understanding among councillors about their role as 'designated persons'<sup>2</sup>.

The current filter imposes a restriction on access by social tenants to independent redress which is out of step with most other areas of public services. Crucially, this additional barrier was not part of the redress framework prior to the transfer of jurisdiction of social housing complaints from LGSCO to the HO in 2011 (LGSCO's own 'councillor filter' was removed back in 1988). The removal of the filter would enhance opportunities for joint working between the HO and LGSCO in overlapping areas of jurisdiction by ensuring processes for approaching either ombudsman are more closely aligned.

Direct access is also generally seen as an essential feature of a modern ombudsman institution – this was recognised by the Government in committing to remove the existing MP filter for bringing non-NHS complaints to the Parliamentary and Health Service Ombudsman (PHSO) through the proposed Draft Public Services Ombudsman Bill<sup>3</sup>. Therefore, abolishing the 'democratic filter' would align with the Government's direction of travel for modernising the ombudsman sector.

It is also important to recognise that tenants would still be able to approach the ombudsman with the support of an elected representative or any other advocate if they choose to do so. The removal of the filter would not in any way prevent the involvement of or positive role local MPs, councillors or tenant panels (designated persons) can play in resolving disputes locally or assisting residents to bring a complaint to the HO.

### **Signposting to the Ombudsman**

We welcome the Green Paper's focus on potential options to improve awareness among tenants of their options for escalation if they are dissatisfied with their landlords' handling of a complaint. Within the context of our jurisdiction over private care providers, we have called for the introduction of a statutory requirement for providers to signpost to LGSCO as a way of ensuring care users are aware of their ability to seek redress and know how to make complaints and escalate them where necessary. We believe there could be equal merit in considering the benefits of mandatory signposting for landlords to the HO to improve awareness among tenants of how to raise complaints. Such a duty already exists for

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<sup>2</sup> <https://www.lgo.org.uk/decisions/other-categories/councillor-conduct-and-standards/16-011-153>

<sup>3</sup> <https://www.gov.uk/government/publications/draft-public-service-ombudsman-bill>

example in the legal or financial sectors. Introducing such a statutory requirement for social landlords could help ensure tenants are given clear information about their right to seek redress when complaints are not resolved locally.

### **Landlords' local complaint handling**

The Green Paper seeks views on how to improve transparency and consistency in the way in which the outcomes of landlords' complaint handling are reported. Reflecting again on our experience relating to our jurisdiction over private care providers, we have previously argued a reporting requirement for providers to provide a data return to the regulator (CQC) and ourselves would help shine a spotlight on local complaints handling and support accountability and scrutiny at a local level. We believe such a measure could also be replicated within the social housing sector and could provide reliable and comparative data on local complaints outcomes.

### **Housing allocations complaints**

Our jurisdiction includes complaints about housing allocations. During the year 2017/18 we received 875 complaints and enquiries about housing allocations. Where we carried out a detailed investigation, we found fault in 53% of cases. In 2016, we published a thematic report<sup>4</sup> which highlighted the main areas of fault we have identified in our investigations which include:

- delay dealing with an application, a change in circumstances or a request to review a local housing authority's decision
- decisions which are not in line with the local housing authority's allocation scheme
- failure to take relevant information into account in reaching a decision, for example medical evidence provided by a housing applicant
- failure to notify an applicant of their right of review against decisions affecting their application
- removing a housing application from the register or reducing an applicant's priority without giving proper consideration to the applicant's circumstances

We continue to see problems like these as illustrated by recent cases referenced below (links to the full decision statements are included for further detail).

**Case reference:** [16 004 527](#) The council's allocation scheme was not clear on how it assessed overcrowding. It caused injustice to the complainants as it was not possible for them or the Ombudsman to assess if they had the correct priority or if they had missed the opportunity of rehousing. It refused a right of appeal when it did not increase their priority when the complainant's mother joined the household. The problems in the policy might have affected other applicants. The Council has agreed to rewrite its policy.

**Case reference:** [16 018 674](#) The council failed properly to apply its allocations policy and considered issues that were not part of the policy. It wrongly reduced the complainant's housing priority. The council failed to provide evidence it had properly considered all the reasons the complainant put forward when she asked for a review of her housing band.

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<sup>4</sup> <https://www.lgo.org.uk/assets/attach/2678/FR%20-%20Full%20House%20housing%20allocations%20Jan%202016.pdf>

**Case reference:** [17 010 706](#) In this case, we found the council fettered its discretion when it decided the complainant could not join its housing register because of housing debts and that it failed to consider his individual circumstances. We recommended the council train officers in the use of discretion when applying its policy.

**Case reference:** [17 011 207](#) The complainant and their family resided in a two-bedroom private sector flat which was overcrowded. The council accepted the family lacked one bedroom however according to its policy they were awarded no housing priority and were found ineligible to join the housing register. This was despite also accepting that one of the daughter's medical conditions were sufficient to warrant medium health and wellbeing priority. We found the council's policy was flawed in that it unfairly disregarded the medical circumstances of applicants in the family's position when deciding eligibility. Following our investigation, the council agreed to review its housing allocations policy to ensure that all applicants receive reasonable preference for housing if they are overcrowded and have medical and welfare needs.

**Case reference:** [17 014 309](#) The complainant was removed from the housing register as council deemed her to no longer meet the 'local connection' criteria requiring applicants to have lived within the city continuously for five years. The complainant sought a review of the council's decision explaining the reason she had to leave the city was as a result of domestic violence. The council informed the complainant that none of the prescribed exceptions or exemptions in its policy applied in her case. Following our investigation, the council accepted there was fault in the way it had carried out the review in the complainant's case. It had applied its policy in a fashion that had fettered its discretion.

**Case reference:** [17 004 419](#) In this case the council delayed processing a housing change of circumstances form, failed to properly consider a medical assessment, gave the complainant wrong information, failed to tell him about his right to seek a review, issued an inappropriate complaint response and delayed backdating his priority.

**Case reference:** [17 001 604](#) The council was at fault for failing to properly consider the complainant's applications to receive additional medical priority. There was also considerable delay in processing her application.

**Case reference:** [17 011 642](#) The complainant approached the Ombudsman as the council was refusing to add his children to his housing application. While the council accepted the children live with him, it requested he must obtain a residency order before agreeing to include the children for re-housing. We found this was fault as the council was not acting in accordance with its policy by putting conditions on a parent that are too onerous or expecting them to engage in an expensive legal proceeding, which may not be in a child's best interest, just to satisfy a housing application.

**Case reference:** [17 013 909](#) The complainant argued the council did not award medical rehousing points and did not tell him of his right of review. We found fault in that the council failed to demonstrate how it had considered the medical reports that were provided by the complainant. Also, the council provided misleading information about seeking a review.

Our experience of handling housing complaints is that such complaints are multi-faceted. A complaint about housing allocations can also involve another local authority function or service, as illustrated by the example below which cuts across both social care and housing:

**Case reference [15 020 256 and 16 005 249](#)** We found fault in how the county council and the borough council failed to support the complainant to move out of residential care to live independently in the community with appropriate support. The county council delayed considering all the options available to meet his needs and failed to undertake mental capacity assessments, while the borough council delayed in dealing with his housing allocation.

We hope our response is helpful and would be happy to discuss any element of this submission in more detail.

Yours sincerely

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

**Michael King**

**Local Government and Social Care Ombudsman**