

**INDEPENDENT
HOUSING
OMBUDSMAN
SCHEME**

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Introduction

- 1 The Independent Housing Ombudsman Scheme provides for the formation and management by a Company of an Independent Housing Ombudsman service in England. The purpose of the service is to investigate complaints against certain landlords by their tenants and others and to award compensation or other remedy when appropriate, under the terms of the scheme which is approved by the Secretary of State for the Environment.
- 2 All those landlords formerly subject to the jurisdiction of the Housing Association Tenants Ombudsman Service (HATOS) may become members of the approved scheme, as may all registered social landlords including, for example, companies taking transfers of local authority stock. Landlords who are not social landlords may also become members of the scheme and subject to it voluntarily.
- 3 The approved scheme replaces HATOS which will cease to operate on 31st March 1997. All the employees of the Housing Corporation in the service of HATOS who individually consent to do so will transfer by operation of law from the employment of the Housing Corporation to that of the Company for the purposes of the scheme.
- 4 The Ombudsman will take complaints under the approved scheme against member landlords on and after 1st April 1997. Complaints being considered by HATOS at that time will be investigated and determined by the Ombudsman under the approved scheme.

THE APPROVED SCHEME

The approved scheme

- 1 This scheme is approved by the Secretary of State for the Environment under the terms of s.51 of the Housing Act 1996. It applies to social landlords registered, regulated or operating in England. It does not apply to landlords at any time registered with Housing for Wales.
- 2 In the scheme:
 - (a) 'he' and 'his' include 'she' and 'her';
 - (b) 'the Secretary of State' means the Secretary of State for the Environment;
 - (c) 'the Company' means Independent Housing Ombudsman Limited being the company formed to administer the scheme;
 - (d) 'the Board' means the Board of Directors of the Company;
 - (e) 'Member landlords' means landlords which are members of this scheme.

Landlords which are or may become subject to the scheme

Social landlords

- 3 The Housing Act 1996 requires a social landlord to become a member of an approved scheme covering all its housing activities. Social landlords are defined in the Housing Act as:
 - (a) a registered social landlord;
 - (b) a transferee of housing pursuant to a qualifying disposal under s.135 of the Leasehold Reform, Housing and Urban Development Act 1993;
 - (c) a body which has acquired dwellings under Part IV of the Housing Act 1988;
 - (d) any other body which was at any time registered with the Housing Corporation and which owns or manages publicly funded dwellings.
- 4
 - (a) Social landlords which wish to become members of this scheme must apply to the Company in such form and with such supporting information as the Board may require.
 - (b) The Housing Act 1996 requires social landlords which become members of an approved scheme to give notice of that fact to the Housing Corporation within 21 days of joining.

- 5 As a condition of membership of the scheme, a social landlord will:
- (a) agree to be bound by the scheme;
 - (b)
 - (i) establish and maintain a complaints procedure; and
 - (ii) as part of that procedure, inform complainants of their right to bring complaints to the Ombudsman under this scheme; and
 - (iii) publish its complaints procedure and its membership of this scheme, and make information about them available to those entitled to complain.

Voluntary membership of the scheme

- 6 In addition to social landlords which must become members of the scheme, the Board may admit to membership of the scheme a landlord which is not a social landlord (as defined in paragraph 3). Such a landlord must apply to the Company in such form and with such supporting information as the Board may require.
- 7 A landlord which is not a social landlord and which seeks to be admitted as a member of this scheme must satisfy the following criteria:
- (a) it must agree to be bound by the scheme;
 - (b)
 - (i) it must establish and maintain a complaints procedure; and
 - (ii) as part of that procedure, inform complainants of their right to bring complaints to the Ombudsman under this scheme; and
 - (iii) publish its complaints procedure and its membership of this scheme, and make information about them available to those entitled to complain.
 - (c) It must adopt, and publish the fact to all its tenants and applicants for accommodation, one or more of the following codes of practice appropriate to its circumstances. These are codes approved by the Secretary of State for the Environment under s.87 of the Leasehold Reform Housing and Urban Development Act 1993.
 - (i) A code of practice to promote best practice in the management of leasehold residential properties which are specifically designed and designated for retired older people.
 - (ii) A code of practice for residential properties in the private sector where leaseholders/tenants pay a service charge.

- (iii) A code of practice for residential properties in the private sector where tenants pay rent only.
 - (iv) Any other code of practice approved from time to time by the Secretary of State relevant to the management of properties which the landlord wishes to be subject to the scheme.
- (d) It must demonstrate that it has (or will have) and operates equal opportunities policies to ensure that its housing service is delivered fairly and without discrimination, and that they are or will be made available to tenants and applicants for accommodation.
- 8 (a) The Board may refuse membership when the accommodation provided by a landlord which is not a social landlord is substantially different in character from that of social landlords or where for some other reason the business of such a landlord is of a wholly different character.
- (b) As a condition of admitting a landlord to voluntary membership, the Board may accept undertakings from the landlord in respect of changes to its management practice and future compliance with criteria for voluntary membership of this scheme.

Ceasing to be a member landlord

- 9 A social landlord may withdraw from the scheme if it complies with paragraph 5 sub-sections (1) and (2) of Schedule 2 of the Housing Act 1996, and with the provisions of paragraph 10 below.
- 10 Any member landlord may withdraw from the scheme if it complies with the following conditions:
- (a) It must:
 - (i) give at least 6 months' notice in writing to the Ombudsman and to its tenants of its intention and the Ombudsman must not accept further complaints against that landlord after 3 months from the receipt of that notice;
 - (ii) give notice to its tenants in a manner approved by the Ombudsman, stating its reasons.
 - (b) It must give an undertaking, in a form to be decided by the Board:
 - (i) to comply with the Ombudsman's decisions in respect of all outstanding investigations whether or not they are completed by the date of withdrawal; and

- (ii) pay any outstanding sums which the Company may certify as due in respect of its membership of the scheme, whether or not such a certificate is given before membership ceases.
- 11 (a) The Board may end the membership of a member landlord which is not a social landlord but has been admitted to membership voluntarily if it has not complied with the scheme or with undertakings given to the Company as a term of admission. The Board must:
 - (i) give notice to the member landlord that it proposes to end the membership and why;
 - (ii) allow the member landlord to make representations within such a period of at least 28 days as the Board may decide;
 - (iii) consider any representations before reaching a decision on whether to recommend that the membership should be ended.
- (b) If the Board decides to end the landlord's membership, it must give written notice to the member landlord explaining its reasons and:
 - (i) the Ombudsman must take no further complaints from the date specified in the notice;
 - (ii) the Board must take all reasonably practicable steps to bring the fact to the attention of tenants of the member landlord and others entitled to complain about it;
 - (iii) the member landlord must do those things specified in para 10 (b)(i) and (ii) as if it had itself given notice of withdrawal.

People who can use the scheme

- 12 The following people can make complaints on and after 1st April 1997 against member landlords for investigation by the Ombudsman:
- (a) A person who has (or had at the time of the matter complained of) a lease, tenancy, licence to occupy, service agreement or other arrangement to occupy premises owned by or managed by a member landlord.
 - (b) A person who is or was liable to pay (or who at the time of the matter complained of paid) a service charge to a member landlord.
 - (c) An applicant for a property owned or managed by a member landlord.

- (d) A representative of any of the people above who is authorised by them to make and pursue the complaint on their behalf.
- (e) A representative of a person otherwise entitled to complain where the Ombudsman is satisfied in the circumstances that that person cannot pursue the complaint on their own behalf.

What can be complained about

- 13 The Ombudsman will consider complaints about the actions or omissions of a member landlord. The person complaining or on whose behalf a complaint is made must have been adversely affected by those actions or omissions, in respect of their occupation of property, or the delivery of services to them, or in the course of any transaction with the member landlord.
- 14 When investigating a complaint, the Ombudsman is concerned to establish whether the member landlord has been guilty of maladministration which may include, but not exclusively, circumstances where the member landlord:
 - (a) failed to comply with any relevant legal obligations;
 - (b) failed to comply with any relevant codes of practice;
 - (c) behaved unfairly, unreasonably, negligently, or incompetently;
 - (d) failed to apply its own procedures;
 - (e) delayed unreasonably in dealing with the matter; or
 - (f) treated the complainant personally in a heavy-handed, unsympathetic or inappropriate manner.
- 15 The Ombudsman will also consider whether a complaint involves an unresolved dispute between a complainant and a member landlord, whether involving the landlord's maladministration or not, and if it might be resolved and, if so, how.

Complaints which the Ombudsman will not consider

- 16 The Ombudsman will not consider complaints which, in his opinion:
 - (a) (i) could still be pursued through the member landlord's complaints procedures unless the member landlord otherwise agrees or there have been, in the Ombudsman's opinion, failures in the operation of those procedures;

- (ii) concern matters which exhausted the landlord's complaints procedures more than 12 months before they were brought to the Ombudsman's attention;
 - (iii) concern matters which were not brought to the attention of the member landlord within a reasonable period, which would normally be within 12 months of the matters arising;
- (b) seek to question or overturn policies which have been properly decided by the member landlord in accordance with appropriate good practice at that time following relevant procedures;
- (c) concern the level and amount of rent or service charge increases. However, the Ombudsman will consider complaints about:
 - (i) the legality and administration of the collection, calculation, application of, accounting for, and communication of any such rents, charges or increases; and
 - (ii) in the case of service charges, the way in which a lease may have been interpreted and the handling of the landlord and leaseholder relationship;
- (d) are disputes between neighbours, but the Ombudsman will consider complaints about how the member landlord has dealt with such a dispute when brought to its attention;
- (e) concern matters where proceedings have been issued or they have already been taken to a court or tribunal, where a complainant will have or has had the opportunity to raise them in the proceedings and where, in the case of proceedings started by a member landlord, the Ombudsman is satisfied that the proceedings are not designed to prevent his investigation of the complaint;
- (f) are matters where the Ombudsman considers it quicker, fairer, more reasonable, and more effective to seek a remedy through the courts, other tribunal or procedure;
- (g) concern the terms and operation of commercial or contractual transactions but not those connected with the complainant's application for or occupation of a property;
- (h) concern terms of employment or other personnel issues, or the ending of a service tenancy following the ending of a contract of employment;

- (i) unless the Ombudsman exercises his discretion in para 12(e), are raised by a complainant not on his own account but on behalf of others without their authority. The Ombudsman may accept an individual's own complaint as a test case if its facts equally affect others. Likewise he may accept one identical complaint from more than one complainant about the same member landlord and about the same estate of homes, without multiple investigations;
- (j) fall properly within the jurisdiction of another Ombudsman, or a regulator such as the Housing Corporation, or are complaints against bodies not included within the scheme;
- (k) are, in the opinion of the Ombudsman, being pursued in an unreasonable manner or are frivolous, vexatious or seek to raise again and unreasonably in the opinion of the Ombudsman, matters which he has already decided upon, or which were previously decided by the Housing Association Tenants Ombudsman or a Local Government Ombudsman.

17 The Ombudsman must determine whether a complaint comes within his jurisdiction under the terms of the scheme.

How the Ombudsman will consider complaints

18 The Housing Act 1996 provides that the Ombudsman must investigate any complaint duly made to him and not withdrawn, and may investigate any complaint duly made but withdrawn.

19 Subject to the scheme, the Ombudsman will decide how to consider and investigate complaints.

20 The Ombudsman will:

- (a) on receiving a complaint first decide, after making any enquiries he thinks necessary, whether it comes within the terms of the scheme. When he is satisfied that it does, the Ombudsman will make any other enquiries he considers necessary;
- (b) subject to the confidentiality rules of this scheme and during the course of his investigation into a complaint, tell the member landlord the nature of the complaint and the allegations and evidence that the complainant may offer. Likewise the Ombudsman may tell the complainant the member landlord's case in reply. The Ombudsman will not be bound by any legal rule of evidence.

- 21 As a result of his enquiries the Ombudsman may reach a preliminary determination on a complaint. If he does so, he must inform the complainant and the member landlord of his preliminary determination in writing and give them an opportunity to make further comments to him on the facts that he has found. The Ombudsman must then consider these further comments before deciding whether to confirm his preliminary determination or modify it; or not to confirm it and continue his investigation.
- 22 At any time during his enquiries the Ombudsman may decide to investigate a complaint by conducting a formal inquiry. If he decides to do this, the Ombudsman will notify the complainant and the member landlord. The Ombudsman will decide the format of such an enquiry but will tell the complainant and the member landlord beforehand what the format will be. At the conclusion of a formal inquiry, the Ombudsman must allow the parties to comment on a draft of the Ombudsman's findings of fact. The Ombudsman must consider these comments before reaching his determination.
- 23 At any time during an investigation or after a formal inquiry has begun, the Ombudsman may, in his discretion, suspend or stop the investigation or formal inquiry if:
- (a) the parties begin litigation on the same matter;
 - (b) there is evidence of fraud or corruption or mismanagement justifying reference to the Housing Corporation or appropriate regulator or enforcement agency;
 - (c) the member landlord undertakes to make substantial redress to the complainant which, in the Ombudsman's opinion, resolves the complaint satisfactorily.
- 24 During an investigation, the Ombudsman may also seek to promote a settlement of a dispute and may propose a way of doing so if he thinks it appropriate. He may suspend an investigation or formal inquiry to help that process.
- 25 At any time a complainant may withdraw the complaint but the Ombudsman must satisfy himself as to the circumstances before stopping his investigation. The Ombudsman may also stop an investigation if he decides that he should not consider the complaint for any of the reasons in paragraph 16.
- 26 The Ombudsman must publish and make available full information about his procedures for carrying out investigations.

Providing information – obligations of member landlords

- 27 When the Ombudsman asks member landlords to do so, they must without charge provide copies of or allow him to examine the following records and documents:
- (a) the general documentation of the landlord's policies and procedures (including its complaints policy and procedure and any arrangements for arbitration or conciliation);
 - (b) any internal files, documents, accounts or minutes of meetings which, in the Ombudsman's opinion, are or are likely to be relevant to the complaint. This includes records relating to similar cases where the Ombudsman needs them to establish consistency of practice;
 - (c) any personal correspondence or personal record relating to the complainant that the member landlord has.
- 28 Without charge and after the Ombudsman has given it reasonable notice, the member landlord must:
- (a) allow the Ombudsman to interview the landlord's staff or board or committee members;
 - (b) require his representative to attend any meetings convened by the Ombudsman;
 - (c) use its best and reasonable efforts to help the Ombudsman get information from third parties who may know about the subject matter of the complaint or from the member landlord's former members of staff;
 - (d) provide such other reasonable help as the Ombudsman may request.

What the Ombudsman can do

- 29 Following his investigation of a complaint, the Housing Act 1996 requires the Ombudsman to determine it by reference to what is, in his opinion, fair in all the circumstances of the case. Giving his reasons in writing, he may:
- (a) reject the complaint;
 - (b) recommend that the member landlord apologise to the complainant;
 - (c) order the member landlord to pay compensation to the complainant;

- (d) order the member landlord or the complainant not to exercise or require the performance of any of the contractual or other obligations existing between them;
 - (e) recommend that the landlord undertakes or refrains from undertaking works or takes or does not take such other reasonable steps to secure redress for the complainant within the legal powers of the member landlord;
 - (f) expel from the scheme a member landlord which is not a social landlord as defined in the Housing Act 1996;
 - (g) order the expelled member landlord to publish that it has been expelled and the reasons for it in a way that the Ombudsman thinks fit.
- 30 Whether or not the Ombudsman decides to reject a complaint, in addition to his determination, he may also recommend:
- (a) changes of procedure by the member landlord arising from the facts disclosed by the complaint;
 - (b) other ways of resolving the complaint that he considers appropriate including mediation or arbitration.

Compliance with determinations of the Ombudsman

- 31 Member landlords are expected to comply with the determination of the Ombudsman following his investigation of a complaint.
- 32 The Ombudsman may require a member landlord to report to him on compliance with a determination in such a way and at such a time as he may specify.
- 33 The Ombudsman will report to the Housing Corporation a member landlord regulated by the Corporation which fails to comply with his determination.
- 34 The Ombudsman will report to the Housing Corporation and the parent member landlord which is regulated by the Housing Corporation an unregistered subsidiary of that landlord which fails to comply with his determinations.
- 35 If a member landlord or former member landlord against whom the complaint was made fails to comply with the Ombudsman's determination within a reasonable time, the Ombudsman may order the member landlord to publish that it has failed to comply, in such a way as the Ombudsman sees fit.

- 36 The Ombudsman may himself publish the fact and circumstance of noncompliance by any member or former member landlord, naming the landlord in his annual report or otherwise.

Other means of resolving disputes

- 37 The Ombudsman may establish arrangements for resolving disputes with the consent of the parties whether by the use of mediation, arbitration or otherwise.
- 38 The Ombudsman must publish details of the arrangements for alternative dispute resolution that he offers.
- 39 The Ombudsman may recommend alternative dispute resolution to complainants and member landlords at any time during or at the end of an investigation.

Reports

- 40 The Ombudsman will make an annual report on the work of the service and the administration of the scheme including such summaries of his determinations and any conclusions which he wishes to bring to the attention of a wider audience. He will submit the report to the Board, and the Secretary of State.
- 41 The Ombudsman will publish a report of each investigation which he has concluded by making a formal inquiry. He will send copies to the parties, the Housing Corporation (if the member landlord is regulated by the Corporation) and to the appropriate local housing authority.
- 42 The Ombudsman may from time to time publish other reports arising from his work or research.

Access to information and confidentiality

- 43 The Ombudsman must publish his procedures for giving public access to information held by him, how he handles information he obtains and its confidentiality, and his practice in publishing determinations or reports.
- 44 The Ombudsman must ask a complainant whether or not they consent to:
- (a) the Ombudsman copying the complaint and any supporting documents to the landlord and anyone else involved in resolving the complaint;
 - (b) their personal details being given to any research organisation commissioned by the Ombudsman to carry out surveys into the performance of his service;

- (c) the Ombudsman making information supporting or responding to a complaint available at his discretion to the following people, who will be required as a condition of receiving it to maintain its confidentiality:
 - (i) the parties to that complaint;
 - (ii) others involved in resolving it, such as his mediation or arbitration service;
 - (iii) others carrying out genuine research into the service who agree to abide by the Ombudsman's requirements for confidentiality.
- (d) any other body specified to the complainant providing information to the Ombudsman about the complainant in relation to the complaint.

45 The Ombudsman may include in a determination or report any statements, communications, reports, papers, or other documentary evidence obtained during his investigation. The Ombudsman will decide what detail to include in any determination or report.

46 In publishing any determination or report, the Ombudsman must bear in mind the need to exclude, as far as practicable, any matter which:

- (a) relates to the private affairs of an individual where publication would seriously and prejudicially affect the interest of that individual; and
- (b) relates specifically to the affairs of a member landlord where publication would seriously and prejudicially affect the interests of the landlord unless the inclusion of that matter is necessary for the purposes of the determination or report.

47 In publishing any determination or report, the Ombudsman must maintain, as far as practicable, the anonymity of the complainant and of any third parties. The Ombudsman may name a member landlord against whom a complaint has been made.

48 The Ombudsman must not publish the names of any of the parties who have agreed to a mediation, arbitration, conciliation or other means of settlement of a dispute or, except in a summarised version, any detail of an agreement or arbitration award.

Complaints about the Independent Housing Ombudsman Service

- 49 The Ombudsman must make arrangements for receiving and dealing with complaints from individuals or member landlords about how an original complaint was handled and must publish such arrangements. The arrangements must provide that:
- (a) as far as practicable the complaint is dealt with independently within the Ombudsman's office;
 - (b) an independent Director or Directors of the Board may review how the original complaint was handled, but not the Ombudsman's determination, if the complainant remains dissatisfied;
 - (c) the Ombudsman must publish a summary of the number and nature of any such complaints in his Annual Report.

Management and accountability of the Independent Housing Ombudsman

The Company

- 50 There will be a Company called "Independent Housing Ombudsman Limited" limited by guarantee and not trading for profit.
- 51 The Memorandum and Articles of the Company are appended to the scheme. In addition to any procedures under their terms and the Companies Act, the approval of the Secretary of State will be required under the scheme to any amendments proposed to the Memorandum and Articles which:
- (a) alter the objects of the Company;
 - (b) change the number of Directors;
 - (c) alter the balance between member landlords, tenants and independent Directors or change the requirements for appointing the Chairperson;
 - (d) alter the period for which Directors or the Chairperson may hold office;
 - (e) alter the provisions for a quorum at meetings of the Board or its Committees and sub-Committees.
- 52 The principal purposes of the Company are:

- (a) to administer the scheme;
- (b) to submit amendments of the scheme from time to time to the Secretary of State for approval;
- (c) to appoint the Ombudsman subject to the approval of the Secretary of State;
- (d) to determine the annual budget of the service;
- (e) to decide and collect the subscription from member landlords.

53 The Board must protect and maintain the independence of the Ombudsman and must not play any part in the investigation and determination of complaints submitted to the Ombudsman.

54 The Ombudsman must not be required to report to the Board on any individual complaint made to him or determined by him. But an independent Director or Directors of the Board may under para 49 independently review how an original complaint has been handled, but not determined, by the Ombudsman, or his staff.

Accountability of the Ombudsman

55 The Board must agree with the Ombudsman from time-to-time the performance criteria and targets for his service and must monitor and review its performance against those criteria and targets.

56 The Board must ensure that the Ombudsman has appropriate and adequate resources to enable him to carry out his functions effectively, in a timely manner, and in accordance with this scheme. In this, the Board must have regard to the number of complaints being or likely to be made to him and to the performance criteria and targets agreed by the Board with the Ombudsman.

57 The Board will appoint the Ombudsman to hold office for such a period of not more than four years, with provision for renewal, and on such other terms as it decides, subject to the approval of the Secretary of State to the appointment and its terms.

58 The Ombudsman must not:

- (a) be a member, agent, shareholder or officer of a member landlord;
- (b) during his appointment, take up a co-ownership tenancy or any other form of occupation provided by a member landlord without the consent of the Board;
- (c) act in any professional or advisory capacity for a member landlord or for anybody associated with a member landlord;

- (d) without the consent of the Board be an employee or hold any office or place of profit under a person who provides services or goods to the Company or a member landlord or any person associated with a member landlord.

59 The Ombudsman's appointment must be terminated if:

- (a) the Ombudsman resigns by notice in writing to the Board;
- (b) he is removed from office by the Secretary of State;
- (c) the Board gives notice to the Ombudsman on one or more of the following grounds:
 - (i) any of the circumstances in para 58 of the scheme apply;
 - (ii) grave misconduct, including a serious breach of the Company's Code of Conduct for staff;
 - (iii) gross mismanagement;
 - (iv) because illness has prevented the Ombudsman from carrying out his responsibilities for more than 6 months in any consecutive period of 12 months.

60 The Ombudsman will be solely responsible under the terms of the scheme for conducting investigations and determining complaints.

61 The Ombudsman must report to the Board as it may require on the performance of the service in relation to the administration generally of the casework, the management of its finances, and the meeting of performance criteria and targets.

62 (a) The Board must establish and publish general terms and conditions for the employment of its staff, consultants or agents. These must include arrangements for establishing and reviewing rates of pay, the recruitment, discipline and dismissal procedures, a code of conduct, annual leave and other benefits, and an equal opportunities policy covering both employment and provision of the service.

- (b) The staff, contractors, consultants or agents employed by the Company will be appointed and dismissed on its behalf by the Ombudsman. Within the approved budget and the established terms and conditions of employment, he will decide upon their numbers, terms of service or engagement, including remuneration.

63 The Ombudsman will be responsible on behalf of the Company for the day-to-day administration of the budget, the administration of the scheme, the staff, and

property. The Board will approve the arrangements for the maintenance of banking, investment, accounting, internal audit, insurance and pensions.

- 64 The Ombudsman will not by virtue of his appointment or acting as Ombudsman be an officer of the Company for the purposes of the Companies Acts.
- 65 If the Ombudsman is indisposed or otherwise prevented for whatever reason from carrying out his duties, the Board may appoint any person or people to act as deputy to the Ombudsman for such period and on such terms as it may decide. This appointment will be on the basis that the deputy will act as substitute for the Ombudsman so that the scheme applies to him as if he were the Ombudsman. The appointment and terms will likewise be subject to the approval of the Secretary of State.

Financing the scheme

- 66 The scheme will be financed by a subscription decided by the Board and payable on demand by each member landlord to the Company.
- 67 The total to be recovered by subscription will be the amount that the Board may decide is enough to meet all the expenses of the scheme. The Board will have regard to forecasts of the likely demand on the scheme and the performance targets set by the Board, past and future liabilities, and the provision of such prudent and reasonable reserves as it considers necessary. The Board will publish each year a business plan for the service.
- 68 The Board will make such general administrative arrangements as it considers appropriate for collecting the subscription. The Company may recover sums payable by member landlords as if they were debts due to the Company.
- 69 The Ombudsman will be responsible for preparing the draft annual budget of the service for consideration and approval by the Board.
- 70 The Company must keep and have audited such accounts as are required by the Companies Acts and appropriate good practice.
- 71 The Company's audited accounts must be sent to the Secretary of State.

Calculation and payment of the subscription

- 72 (a) The basic principle for calculating the subscription is that each member landlord must pay an amount decided by reference to the number of units of accommodation covered by the scheme and which it manages.

- (b) The unit charge will be calculated by dividing the amount to be recovered under para 67 by the total number of units of accommodation covered by the scheme. Each member landlord's subscription will be calculated by multiplying the total number of its units of accommodation by the unit charge.

- 73 A member landlord must calculate the number of its units of accommodation in the scheme on a day to be determined by the Board for each year. The principal officer of the member landlord must certify the number in writing.
- 74 The subscription will be due and payable on a date specified in the demand. The Company may require payment of interest calculated at the rate of 2% above the base rate (or its replacement) of a clearing bank nominated by the Company from the date that such sums become due until payment.

Transitional arrangements

- 75 The landlords who are subject to the jurisdiction of the Housing Association Tenants Ombudsman Service (HATOS) may become member landlords of the scheme as registered social landlords within the meaning of the Housing Act 1996. HATOS will cease to operate on 31st March 1997.
- 76 Complaints against social landlords being handled by HATOS on 31st March 1997 will continue to be investigated by the Independent Housing Ombudsman under the terms of this scheme.
- 77 The final annual report of HATOS will be published by the Board.

**COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
MEMORANDUM OF ASSOCIATION
OF
INDEPENDENT HOUSING OMBUDSMAN LIMITED**

(As amended by Special Resolution dated 19 March 2002)

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
MEMORANDUM OF ASSOCIATION
OF
INDEPENDENT HOUSING OMBUDSMAN LIMITED

1. **Name**

The name of the Company is “Independent Housing Ombudsman Limited”.

2. **Registered Office**

The Company’s registered office will be in England.

3. **Objects and Powers**

3.1 The Company’s purposes are:

- (1) to devise and administer a scheme for the investigation of complaints, as required by section 51 and schedule 2 of the Housing Act 1996. The scheme is to be known as the Independent Housing Ombudsman Scheme.
- (2) To devise ad administer schemes for the investigation of complaints and the resolution of disputes between landlords or their agents or representatives and persons who have or are applicants to have a lease, tenancy, licence to occupy, service agreement or other arrangement to occupy residential premises owned or managed by landlords or their agents or representatives or between those who provide or procure the provision of services to the common parts of a building or an estate and persons who occupy residential premises in that building or on that estate with whom they have entered a service agreement in relation to those parts;
- (3) To devise and administer schemes for the investigation of complaints and the resolution of disputes between landlords and their agents or representatives.

3.2 To achieve the above objects only, the Company may:

- (1) appoint and remunerate the independent housing ombudsman, who will have the powers set out in the Independent Housing Ombudsman Scheme;
- (1A) engage and remunerate the independent housing ombudsman in connection with the objects set out in paragraphs 3.1(2) and 3.1(3) hereof;
- (2) engage or employ (including by secondment) any other persons in any capacity in connection with the Company’s objects and to pay salaries, fees or remuneration as it sees fit;

- (3) co-operate with any person on matters concerning rented housing and the settlement of related complaints;
- (4) discharge any of its liabilities and obligations in any way it sees fit;
- (5) levy, charge, collect and receive subscriptions, levies, fees and other payments from persons whether members of the Company or not, and use them to achieve all or any of its objects or to pay its expenses;
- (6) establish, promote or co-operate with any organisations, incorporated or not incorporated, whose objects may seem able to advance any of the Company's objects;
- (6A) acquire and hold all or any part of the share or loan capital or other securities of any other company;
- (7) become a member of, act as or appoint trustees, agents or delegates for any such organisations;
- (8) control, manage, supervise or give financial or other help towards the work of any such organisations;
- (9) set up and maintain any trusts which may help to achieve any of the Company's objects;
- (10) have written and printed or otherwise reproduced and circulated (freely or for payment), periodicals, magazines, books, leaflets or other documents, or films or recorded tapes;
- (11) hold meetings, lectures, seminars and courses either alone, or with or for others;
- (12) encourage and do research relevant to its objects and disseminate the results;
- (13) issue appeals, hold public meetings and take whatever steps may be needed to raise funds for the Company through donations or subscriptions or in any other way;
- (14) acquire property by, for example, buying, leasing, exchanging or hiring it; making any necessary alterations to suit the Company's objects; and, subject to consents required by law, maintain it for the Company's purposes;
- (15) sell, lease or mortgage any of its property or dispose of it in any other way;
- (16) draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other negotiable instruments, and to operate bank accounts;

- (17) borrow, or raise money on any terms and (subject to consents required by law) on any security as it sees fit, as long as the Company does not become involved in any permanent trading activities in raising funds for the Company's objects;
- (18) accept any gift of money, property or other assets, whether subject to any special trust or not, for any of the Company's objects;
- (19) invest any of its money not immediately needed for its objects in or on such investments, securities or property as may be thought fit, subject to any conditions and consents imposed or required by law;
- (20) make any charitable donation, in cash or assets, to advance the Company's objects;
- (21) insure and arrange insurance cover for and to indemnify its officers, servants, voluntary workers, and those of its members from and against all such risks incurred in the course of the performance of their duties, as may be thought fit;
- (22) pay reasonable amounts or premiums, annually or otherwise for or towards the provision of pensions, health insurance and medical expenses insurance for officers or staff who work for the Company;
- (23) pay from Company funds the costs, charges and expenses of forming and registering the Company;
- (24) establish local branches (whether autonomous or not); and
- (25) do anything allowed by law to advance the Company's objects.

4. **Using income and property**

- 4.1 The Company's income and property must be used only to promote its objects. No dividends, bonuses or profit share may be paid or transferred out of Company income or property, directly or indirectly, to members of the Company Provided that nothing shall prevent any payment in good faith by the Company:-
- (1) of reasonable and proper remuneration to the Ombudsman and any member, officer or employee of the Company in return for services rendered;
 - (2) of reasonable and proper expenses incurred by any Director for attending board and other Company meetings;
 - (3) of reasonable and proper rent for premises demised or let or reasonable and proper payment for equipment and services provided by any member of the Company or of its board of directors.

5. **Limited liability**

The liability of the members is limited.

6. **Contributing to the Company's assets**

Every member of the Company undertakes to contribute such amount as may be required (not exceeding £1) to the Company's assets if it should be wound up while he or she is a member, or within one year after he or she ceases to be a member, for payment of the Company's debts and liabilities contracted before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributors among themselves.

7. **Surplus assets**

If, on the winding up or dissolution of the Company, any assets remain after any debts and liabilities have been paid, the assets must be paid to or distributed among the members at the date of the winding-up or dissolution. This will be done in accordance with the Articles of Association but if the Articles do not cover this point, the directors shall decide how the assets will be paid or distributed.

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
ARTICLES OF ASSOCIATION
OF
INDEPENDENT HOUSING OMBUDSMAN LIMITED

1 Meaning of certain words used in the Articles and Interpretation

- 1.1 “the Act” means the Companies Act 1985 as amended and any statutory alteration to that Act.
- 1.2 “Board” means the board of directors of the Company.
- 1.3 A person is regarded as connected with another and therefore called a “connected person” in accordance with the following:
- (a) A person is connected with an individual if he or she is:
 - (i) the individual’s wife or husband ; or
 - (ii) a relative of the individual or of the individual’s wife or husband; or
 - (iii) the wife or husband of a relative of the individual or of the individual’s wife or husband.
 - (b) A person who is a trustee of a settlement is connected with any individual who is its settlor, or with any person who is connected with its settlor, or with a body corporate which is treated as being connected with that settlement under section 681 of the Income and Corporation Taxes Act 1988.
 - (c) Except in relation to acquisitions or disposals of partnership assets under genuine commercial arrangements, a person is connected with any individual with whom he or she is in partnership, or with that individual’s wife, husband or other relative.
 - (d) A company is connected with another company if:
 - (1) the same person controls both companies ; or
 - (2) a person controls one company while persons connected with him or her control the other; or
 - (3) a person controls one company while he or she and persons connected with him or her control the others; or

- (4) a group of two or more persons controls each company and the groups consist of the same people.
 - (e) A company is connected with any person who controls it alone or along with others who are connected with him or her.
 - (f) Any two or more people who act together to gain or exercise control of a company are treated as connected with one another, and with any person who acts on their orders in gaining or exercising control of the company.
- 1.4 In Article 1, “company” includes any body corporate or unincorporated association, but does not include a partnership. “Relative” means brother, sister, ancestor or lineal descendant.
- 1.5 In Article 1, “control” is explained as follows. A person may have control alone or with others, directly or indirectly, by owning share capital, or by voting power or contract, or by some other means. A person who has control over another person:-
- (a) may appoint or remove (or both) all or the majority of the members of the board of directors or other governing body of that person or of any other person who controls that person; or
 - (b) controls, or has the power to control, the affairs and policies of that person or of any other person which controls that person; or
 - (c) is the parent undertaking of that person or of any other person who controls that person; or
 - (d) possesses, or is or will be entitled to acquire:
 - (i) 30 per cent or more of the share capital or issued share capital of that person or any other person which controls that person ; or
 - (ii) 30 per cent or more of the voting power in that person or any other person which controls that person; or
 - (iii) the part of the issued share capital of that person or any other person that would entitle him or her to receive 30 per cent or more of the amount distributed if the person’s whole income were distributed; or
 - (iv) any rights as would entitle him or her to receive 30 per cent or more of the assets available for distribution on the winding-up of that person or any other person which controls that person or in any other circumstances.
- 1.6 “director” means a member of the Board.

- 1.7 “independent director” means a director who is not:
- (a) a member landlord nor a tenant;
 - (b) an employee, officer, member, agent or nominee of a member landlord or a member landlord organisation;
 - (c) an employee, officer, member, agent or nominee of any tenant organisation
- 1.8 “member landlord” means a landlord which is a member of the Scheme.
- 1.9 “member landlord director” means a director appointed in accordance with Article 10.2 who is a member landlord or a member landlord’s employee, officer, member, agent or nominee or an employee, officer, member, agent or nominee of a member landlord organisation.
- 1.10 “member landlord organisation” means any organisation having as its principal object the promotion and representation of the interests of social landlords.
- 1.11 “Ombudsman” means the independent housing ombudsman who shall have the functions, duties and powers set out in the Scheme.
- 1.12 “Scheme” means the scheme approved by the Secretary of State under section 51 of the Housing Act 1996 and administered by the Company.
- 1.13 “Secretary of State” means the Secretary of State for the Department of the Environment or such other ministry or governmental agency or department to which the functions powers and duties of the Department of the Environment pursuant to the Housing Act 1996 shall be devolved.
- 1.14 “tenant” means a tenant, lessee, licensee, or occupier of premises owned or managed by a member landlord.
- 1.15 “tenant director” means a director appointed in accordance with Article 10.2 who is a tenant or an employee, officer, member, agent or nominee of a tenant organisation.
- 1.16 “tenant organisation” means any organisation having as its principal object the promotion, protection and representation of the interests of tenants as herein defined, and/or other tenants, lessees, licensees and occupiers of premises owned or managed by landlords.
- 1.17 “in writing” includes printing, lithography, photography and any other way of making words legible.

1.18 Words and expressions used in these Articles mean the same as in the Act.

2 Objects

The Company is established for the objects stated in the Memorandum of Association.

3 Members

3.1 The Company proposes to register with four members, but the Board may, from time to time, register an increase of members.

3.2 The subscribers to the Memorandum of Association (as long as they remain directors) and anyone else the Board regards as suitable for membership will be members of the Company. In admitting people to membership, the Board must take account of the Scheme's objects and the interests of tenants, member landlords and the public.

3.3 The Board has absolute discretion to allow any member to retire as long as afterwards at least two members remain.

3.4 Any member who stops being a director must immediately retire as a member of the Company and the Board may invite a director to replace him or her as a member.

4 General meetings

4.1 Each year the Company shall hold an annual general meeting in addition to any other meetings held in the year. The Company shall specify the meeting as an annual general meeting in the notices calling it. Not more than 15 months may pass between one annual general meeting and the next. The Company shall hold its first annual general meeting within 18 months of its incorporation. The Board shall decide when and where to hold the annual general meeting. If a general meeting is not an annual general meeting, it shall be called an extraordinary general meeting.

4.2 The Board may decide to call an extraordinary general meeting at any time. Extraordinary general meetings shall also be called in response to a requisition as provided by the Act. If the Board does not comply with a requisition, the people making the requisition may call an extraordinary general meeting themselves, as provided by the Act. If there are not enough Board members within the United Kingdom to form a quorum, any Board member or any two members of the Company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.

5 Notice of general meetings

- 5.1 At least 21 clear days notice in writing shall be given for every annual general meeting (and for any other meeting called to pass a special resolution). For every other general meeting, at least 14 clear days' notice in writing must be given. The notice shall state the place, the day and the time of the meeting. It shall also state the general nature of any special business. Notice shall be given to any person entitled by Article 5.2 to receive such notice. If a meeting is called at shorter notice than specified above, it will be treated as being properly called if:
- (a) in the case of an annual general meeting, its calling is agreed by all the members entitled to attend and vote; and
 - (b) in the case of any other meeting, its calling is agreed by a majority of the members entitled to attend and vote and representing at least 95% of the total voting rights at that meeting of all the members.
- 5.2 Notice of general meetings shall be given to all members of the Company, members of the Board and the auditors for the time being of the Company.
- 5.3 A notice may be given to a member personally or by post. If sent by post, it shall be sent to the member at his registered address in the United Kingdom or to any other address within the United Kingdom that the member has given the Company for this purpose. Evidence that an envelope containing a notice was properly addressed, prepaid and posted will be conclusive proof that notice was given. Unless there is proof to the contrary, a notice will be treated as having been given 48 hours after the envelope containing it was posted. If any person entitled to receive notice does not receive it or by mistake is not sent it, the proceedings at that meeting will be valid.
- 6 **Proceedings at general meetings**
- 6.1 The business to be done at an annual general meeting must include:
- considering the accounts and balance sheets; considering reports from the Board and the auditors; appointing auditors and fixing their fees.
- 6.2 Before a meeting can do any business, there must be a quorum of members present at the time when the meeting proceeds to business. A quorum is three. If, within half an hour from the appointed starting time, a quorum is not present, the meeting, if requisitioned by members, must be called off; any other meeting must be adjourned to the same day, time and place in the next week, or to any other day, time and place decided by the Board.
- 6.3 The chairperson of the Board shall chair every general meeting. If there is no chairperson of the Board or if he or she is not present within 15 minutes after the appointed starting time or is unwilling to act, the members of the Board who are present shall elect one of the independent directors to chair the meeting.

- 6.4 If no independent director is present, willing and able to take the chair within 30 minutes after the appointed starting time, the members of the Board who are present shall elect one of themselves to chair the meeting.
- 6.5 The chairperson may adjourn a meeting if this is agreed and a quorum is present. The chairperson shall adjourn the meeting if the meeting directs him or her to do so. Only business left unfinished at the last adjourned meeting may be considered at the new meeting. If a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given in the same way as for the original meeting. If a meeting is adjourned for less than 30 days, there is no need to give notice of the new meeting or the business to be done at it.
- 6.6 If a resolution is put to the vote at a general meeting, it shall be decided by a show of hands unless a poll is demanded when or before the result of the show of hands is declared by the chairperson. A poll can properly be demanded by:
- (a) the chairperson; or
 - (b) at least two members who are present; or
 - (c) one or more members present at the meeting who represent at least 10 per cent of the total voting rights of all the members who have the right to vote at the meeting.
- 6.7 Unless a poll is properly demanded, any of the following declarations by the chairperson which are recorded as a minute of the meeting will be conclusive proof that:
- (a) a resolution has been carried; or
 - (b) a resolution has been carried unanimously; or
 - (c) a resolution has been carried by a particular majority; or
 - (d) a resolution has been lost.
- Proof of the number or proportion of votes recorded will not be needed.
- 6.8 The demand for a poll may be withdrawn.
- 6.9 If votes are equal, whether on a show of hands or on a poll, the chairperson of the meeting is entitled to a second or casting vote.
- 6.10 A poll demanded to elect a chairperson or to adjourn a meeting shall be taken immediately. A poll demanded on any other question must be taken when and how the chairperson decides. Business may still continue to be done if it is not the

subject of the poll. The result of the poll will be treated as a resolution of the meeting.

- 6.11 Subject to the Act, a resolution in writing signed by all the members who are entitled to receive notice of general meetings (or, if they are organisations, their authorised representative) is as valid and effective as if it had been passed at a properly called and held general meeting. Any such resolution may consist of two or more duplicate documents, each signed by one or more members.

7 **Votes of members**

7.1 Every member has one vote.

7.2 A member is entitled to vote at any general meeting as long as he or she does not owe money to the Company.

8 **Representations of organisations : voting at meetings**

Any organisation which is a member of the Company may authorise any person to act as its representative at any meeting of the Company. This person is called a representative. The organisation's committee or other governing body must pass a resolution to appoint a representative, who can then exercise the same powers on behalf of the organisation as if it were an individual member.

9 **Directors**

9.1 There must be at least four directors and a maximum of twelve.

9.2.1 The Company shall pay to each Director a fixed fee of £2,000 per year, and to the Chair a fixed fee of £4,000 per year, by way of remuneration in consideration of any and all activities which those Directors and the Chair shall undertake on the Company's behalf, or such higher amount as the members may determine from time to time by ordinary resolution of the Company.

9.2.2 Each Director shall also be entitled to be paid all reasonable vouched expenses that he or she properly incurs in relation to his or her attendance at Board meetings, general meetings of the Company, or any other meetings in connection with the business of the Company that he or she shall be required to attend

9.2.3 The sum payable under 9.2.1 shall be paid quarterly in arrears in each year on or before 30th June, 30th September, 31st December and 31st March and all vouched expenses as shall be payable under sub-paragraph 9.2.2 shall be paid as and when convenient to the Administration of the Company.

9.2.4 A director who ceases to hold office during the course of a year shall be entitled to receive without deduction, that quarterly payment of the fixed remuneration referable to the quarter in which he or she ceases to hold office.

9.3.1 Subject to the Act:

- (a) a director shall not be a party to, or have any other interest in, a transaction or arrangement with the Company or a transaction or arrangement in which the Company is otherwise interested.
- (b) a director shall not have an interest (even as an employee) in any corporate body promoted by the Company or in which the Company is otherwise financially interested.

9.3.2 For the purposes of this Article, the interests of a person who is a connected person of a director shall be deemed the interests of that director.

9.3.3 A director shall not vote at any meeting of directors on any resolution in which he or she has a direct or indirect interest and which is material. The same applies to any resolution which may put him or her in a conflict (or may reasonably be considered to do so) with the Company's interests or the Scheme's interests. A director who may not vote must not be counted in the quorum.

9.3.4 There are several exceptions to the above rules on conflict of interest, as follows:

- (a) A director who is an employee, consultant, officer or agent of a university, higher or further education corporation or any other body, will not be regarded as having a conflict of interest if that organisation is doing or has commissioned research into the Scheme, social housing or anything else relevant to the Scheme or the Company.
- (b) A member landlord director will not be regarded as having a conflict of interest solely by being a member landlord or an employee, officer, member, agent or nominee of a member landlord or a member landlord organisation.
- (c) A tenant landlord will not be regarded as having a conflict of interest solely by being a tenant or an employee, officer, member, agent or nominee of a tenant organisation.

10 **Appointment and rotation of directors**

10.1 The first four directors shall be the subscribers to the Memorandum of Association of the Company. Subject to Article 3, they will hold office for one year from the date of incorporation.

10.2 The Board will appoint any other directors in accordance with criteria and rules that it establishes from time to time, and in accordance with any codes of practice which shall apply to public appointments. In appointing directors, the Board must bear in

mind the need to achieve a balance of appropriate skills and backgrounds, so that with the exception of the first four directors, so far as practicable at all times:

- (a) one third of the Board must be tenants, or employees, officers, members, agents or nominees of a tenant organisation. They will be called tenant directors.
- (b) one third of the Board must be member landlords or employees, officers, members or agents of member landlords or employees, officers, members, agents or nominees of a member landlord organisation. They will be called member landlord directors.
- (c) one third of the Board must have surveying or legal skills, knowledge and expertise in social housing issues, experience of consumer affairs, or represent the wider public interest. These directors will not be tenants or member landlords and will be called independent directors.

10.3 No appointment may exceed three years. A director may be appointed for a second time, but again this cannot exceed three years. No-one may be appointed for more than two consecutive terms as a director.

10.4 When appointing directors, the Board shall bear in mind the need for continuity and orderly retirements.

10.5 The Board may appoint any person as a director to fill a casual vacancy but the proportions set out in Article 10.2 must be respected so that the total number of Directors shall not at any time exceed any maximum number of directors fixed in accordance with these Articles. Any director appointed to fill a casual vacancy must retire at the next annual general meeting.

10.6 The Company may remove a director before the end of his or her period of office, despite anything stated in these Articles or in any agreement between the Company and the director. The Company may remove the director by passing an ordinary resolution of which special notice has been given in accordance with section 303 of the Act. A director removed in this way may not be reappointed at a general meeting unless the Board recommends it.

11 **Borrowing powers**

The Board may exercise all the powers of the Company to borrow money; mortgage or charge the whole or any part of its undertaking and property and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party.

12 **Powers and duties of the Board**

- 12.1 The Board shall manage the business of the Company. The Board will pay all the expenses of forming the Company. The Board may exercise all the Company's powers unless they are required to be exercised by the Company in a general meeting or by the Ombudsman. Such a requirement may be imposed by the Act, by these Articles, by the Scheme or by any regulation made by the Company in a general meeting. If a general meeting lays down a regulation, the regulation cannot invalidate any previous action of the Board.
- 12.2 All cheques and other negotiable instruments will be drawn and signed as the Board decides from time to time. All receipts for money paid to the Company will be accepted and endorsed as the Board decides from time to time.
- 12.3 The Board shall make sure that proper minutes are kept of:
- (a) all appointments of officers;
 - (b) the names of directors present at each Board meeting; and
 - (c) the proceedings, resolutions, orders and business done at Board and general meetings.

13 **Disqualification of directors**

- 13.1 A director is disqualified and ceases to be a director if he or she:
- (a) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (b) becomes prohibited from being a director by an order made under section 295 of the Act; or
 - (c) becomes incapable because of mental disorder, illness or injury of managing and administering his property and affairs; or
 - (d) resigns by giving the Company written notice; or
 - (f) is directly or indirectly interested in any contract with the Company, and fails to declare the interest to the Company; or
 - (g) if the Board has adopted a code of conduct for directors, fails to comply with it in any material respect; or
 - (h) (being an independent director) becomes a member landlord or a tenant or an employee, officer, member or agent of a member landlord or an

employee, officer, member, agent or nominee of a member landlord organisation or a tenant organisation; or

- (i) being a member landlord director) ceases to be a member landlord or an employee, officer, member, agent or nominee of a member landlord or a member landlord organisation; or
- (j) (being a tenant director) ceases to be a tenant or an employee, officer, member, agent or nominee of a tenant organisation; or
- (k) has been absent from two consecutive Board meetings without the Board's consent and without good cause, and the directors resolve that he or she be disqualified.

13.2 A director shall retire at the end of the period of his or her appointment unless the Board resolves that he or she remains a director for a further period not exceeding three years.

13.3 A director must retire at the end of any second or extended appointment.

14 **Board meetings**

14.1 The Board may decide when and where to hold its meetings and how to conduct them. The Board may decide to adjourn its meetings. The Board may decide to hold some, or all of a Board meeting in public. Decisions at Board meetings must be taken by a majority vote. If votes are equal, the chairperson has a second or casting vote.

14.2 A director may call a Board meeting at any time. The Company Secretary must call a Board meeting on receiving a request for one from a director. A director need not be given notice of a Board meeting if he or she is out of the United Kingdom at the time.

14.3 The quorum for doing business at a Board meeting is three : one independent director, one member landlord director and one tenant director; unless the Board agrees a different quorum which nevertheless will provide that an equal number of independent directors, member landlord directors and tenant directors be present.

14.4 The Board may act even if directorships are vacant. However, if the number of directors falls below the number that would provide a quorum at its meetings, the Board may act only to increase the number of members to provide a quorum or to call a general meeting.

14.5 The Board may elect one of its independent directors as chairperson. If the chairperson has not arrived in the meeting within five minutes after the appointed

starting time, the directors may choose one of the independent directors who is present to chair the meeting.

- 14.6 The Board may delegate any of its powers to committees consisting of any of its directors that it thinks fit. A committee must consist of one third independent directors, one third member landlord directors, and one third tenant directors. A quorum for committee meetings is one from each class of directors. Any committee must comply with any regulations laid down by the Board, and shall report all its acts and proceedings to the Board as soon as is reasonably practicable.
- 14.7 A committee shall elect an independent director to chair its meetings. If it does not, or the chairperson has not arrived within five minutes after the appointed starting time of the meeting, the members who are present shall choose one of the other independent directors present to chair the meeting. If there is no other independent director present, the meeting shall be terminated. 14.8A committee may meet and adjourn as it thinks fit. Decisions must be taken by majority vote of those present. If votes are equal, the chairperson has a second or casting vote
- 14.8 The Board shall appoint a committee called the Budget Committee to consider a draft budget prepared by the Ombudsman for each financial year of the Company, in accordance with the Scheme. When it has approved the budget, the committee must submit it to the Board for approval. The budget shall cover the same periods as the Company's accounting reference periods.
- 14.9 Everything done by a Board or committee meeting or by a director (even if later it is discovered that a director involved was not properly appointed or was disqualified) will be as valid as if that director had been properly appointed and was qualified to be a director.
- 14.10 A resolution in writing, signed by all the directors who are entitled to receive notice of a Board meeting, is just as valid and effective as a resolution passed at a Board meeting that is properly called and held. The resolution may consist of several copies of a document each signed by a director or directors.

15 **Ombudsman**

The Board shall appoint an independent person as Ombudsman, as required by the Housing Act 1996 and the Scheme.

16 **The Company Secretary**

- 16.1 Subject to section 283 of the Act, the Board shall appoint a Company Secretary. The Board shall decide the payment for, and conditions of, the appointment. The Board may remove the Company Secretary. A director may not be paid a salary as Company Secretary.

16.2 If the Act or these Articles requires or authorises something to be done by or to a director and the Company Secretary, it cannot be properly done by one and the same person.

17 **Accounts**

17.1 The Board shall make sure that accounting records are kept to comply with sections 2 and 222 of the Act.

17.2 Accounting records shall be kept at the registered office of the Company or, subject to Section 227 of the Act, at any other place which the Board thinks fit. The directors, Company Secretary and Ombudsman always have the right to inspect the accounting records.

17.3 Members who are not directors do not have any right to inspect the Company's accounting records or other Company documents unless:

- (a) the law gives that right; or
- (b) the Board authorises inspection on whatever reasonable terms and conditions it sees fit; or
- (c) a general meeting authorises inspection.

17.4 In accordance with sections 238 to 242 of the Act, the directors shall arrange for income and expenditure accounts, balance sheets, any group accounts, and reports to be prepared and laid before the members at a general meeting. At least 28 days before the date of the meeting, the Company must send a copy of these documents, any annexes required by law, the Board's report, and the auditor's report, to every member of the Company and every holder of its debentures. This Article does not require the documents to be sent to any person of whose address the Company is unaware or to more than one of the joint holders of a debenture. A copy of the audited accounts, approved in the general meeting, shall be sent to the Secretary of State as soon as practicable after they have been approved.

18 **Audit**

Sections 384 to 392 of the Act govern the appointment and regulation of auditors.

19 **Dissolving the Company**

Clause 7 of the Memorandum of Association applies to these Articles as if it was part of these Articles.

20 **Rules or byelaws**

From time to time (and subject always if required by law to the approval of the Secretary of State), the Board may make and amend any of its rules, byelaws and codes of conduct

as necessary or convenient for the Company's proper management and the operation of the Scheme.

**SECTION 51 AND THE SECOND SCHEDULE
HOUSING ACT 1996**

THE HOUSING ACT 1996

Housing complaints

51.

- 1 The provisions of Schedule 2 have effect for the purpose of enabling tenants and other individuals to have complaints against social landlords investigated by a housing Ombudsman in accordance with a scheme approved by the Secretary of State.
- 2 For the purposes of that Schedule a 'social landlord' means-
 - (a) a registered social landlord;
 - (b) a transferee of housing pursuant to a qualifying disposal under section 135 of the Leasehold Reform, Housing and Urban Development Act 1993;
 - (c) a body which has acquired dwellings under Part IV of the Housing Act 1988 (change of landlord: secure tenants); or
 - (d) any other body which was at any time registered with the Corporation and which owns or manages publicly-funded dwellings.
- 3 In subsection (2)(d) a 'publicly-funded dwelling' means a dwelling which was-
 - (a) provided by means of a grant under-
 - (i) section 18 of this Act (social housing grant), or
 - (ii) section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985, or section 29 or 29A of the Housing Act 1974 (housing association grant); or
 - (b) acquired on a disposal by a public sector landlord.
- 4 The Secretary of State may by order add to or amend the descriptions of landlords who are to be treated as social landlords for the purposes of Schedule 2.
- 5 Before making any such order the Secretary of State shall consult such persons as he considers appropriate.
- 6 Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 2

SOCIAL RENTED SECTOR: HOUSING COMPLAINTS

Social landlords required to be member of approved scheme

1.

- 1 A social landlord must be a member of an approved scheme covering, or more than one approved scheme which together cover, all his housing activities.
- 2 If a social landlords fails to comply with the duty imposed by this paragraph, the Secretary of State may apply to the High Court for an order directing him to comply within a specified period and the High Court may, if it thinks fit, make such an order.
- 3 Nothing in this Schedule shall be construed as restricting membership of an approved scheme to social landlords.

Matters for which scheme must provide

2.

- 1 A scheme shall not be approved for the purposes of this Schedule unless it makes provision for-
 1. The establishment or appointment of an independent person to administer the scheme.
 2. The criteria for membership for-
 - (a) social landlords under a duty to be members of an approved scheme, and
 - (b) other persons.
 3. The manner of becoming or ceasing to be a member.
 4. The matters about which complaints may be made under the scheme.
 5. The grounds on which a matter may be excluded from investigation, including that the matter is the subject of court proceedings or was the subject of court proceedings where judgement on the merit was given.
 6. The descriptions of individual who may make a complaint under the scheme.

7. The appointment of an independent individual to be the housing Ombudsman under the scheme.
 8. The appointment of staff to administer the scheme and to assist the housing Ombudsman and the terms upon which they are appointed.
 9. A duty of the housing Ombudsman to investigate any complaint duly made and not withdrawn, and a power to investigate any complaint duly made but withdrawn, and where he investigates to make a determination.
 10. A power of the housing Ombudsman to propose alternative methods of resolving a dispute.
 11. The powers of the housing Ombudsman for the purposes of his investigations, and the procedure to be followed in the conduct of investigations.
 12. The powers of the housing Ombudsman on making a determination.
 13. The making and publication of annual reports by the housing Ombudsman on the discharge of his functions.
 14. The manner in which determinations are to be-
 - (a) communicated to the complainant and the person against whom the complaint was made, and
 - (b) published.
 15. The manner in which the expenses of the scheme are to be defrayed by the members.
 16. The keeping and auditing of accounts and the submission of accounts to the Secretary of State.
 17. The making of annual reports on the administration of the scheme.
 18. The manner of amending the scheme.
- 2 The Secretary of State may by order amend sub-paragraph (1) by adding to or deleting from it any item or by varying any item for the time being contained in it.
 - 3 An order under sub-paragraph (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Approval of scheme, or amendment, and withdrawal of approval

3.

- 1 An application to the Secretary of State for approval of a scheme shall be made in such manner as the Secretary of State may determine, and shall be accompanied by such information as the Secretary of State may require.
- 2 If it appears to the Secretary of State that the scheme-
 - (a) provides for the matters specified in paragraph 2, and
 - (b) is a satisfactory scheme for the purposes of this Schedule, he shall approve the scheme.
- 3 An amendment of an approved scheme is not effective unless approved by the Secretary of State.

Sub-paragraph (1) applies in relation to an application for approval of an amendment as it applies to an application for approval of a scheme; and the Secretary of State shall approve the amendment if it appears to him that the scheme as amended meets the conditions in sub-paragraph (2).

- 4 The Secretary of State may withdraw his approval of a scheme.
- 5 If the Secretary of State proposes to withdraw his approval of a scheme, he shall serve on the person administering the scheme and on the housing Ombudsman under the scheme, a notice stating-
 - (a) that he proposes to withdraw his approval,
 - (b) the grounds for the proposed withdrawal of his approval, and
 - (c) that the person receiving the notice may make representations with respect to the proposed withdrawal of approval within such period of not less than 14 days as is specified in the notice;and he shall, before reaching a decision on whether to withdraw approval, consider any representations duly made to him.
- 6 The Secretary of State shall give notice of his decision on a proposal to withdraw approval of a scheme, together with his reasons, to every person on whom he served a notice under sub-paragraph (5).

- 7 Withdrawal of approval by the Secretary of State has effect from such date as is specified in the notice of his decision.
- 8 Where the person administering a scheme is given notice of a decision to withdraw approval of the scheme, he shall give notice of his decision to every member of the scheme.

Notice to be given of becoming a member of an approved scheme

4.

- 1 A social landlord who-
 - (a) becomes a member of an approved scheme, or
 - (b) is a member of a scheme which becomes an approved scheme,shall within the period of 21 days beginning with the date of becoming a member or, as the case may be, of being informed of the Secretary of State's approval of the scheme, give notice of that fact to the Corporation.
- 2 The Corporation, on receiving the notice, shall record his membership of an approved scheme.
- 3 A person who fails to comply with sub-paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Proceedings for such an offence may be brought only by or with the consent of the Corporation or the Director of Public Prosecutions.

Withdrawal from approved scheme

5.

- 1 A social landlord wishing to withdraw from membership of an approved scheme shall send notice of his proposed withdrawal to the Corporation.
- 2 The notice shall specify-
 - (a) the housing activities in relation to which he is subject to investigation under the scheme,
 - (b) the approved scheme or schemes of which he is also a member or will, on his withdrawal, become a member, and

- (c) under which scheme or schemes the housing activities mentioned in paragraph (a) will be subject to investigation after his withdrawal.
- 3 If the Corporation is satisfied that withdrawal by the landlord from the scheme will not result in a failure to comply with his duty under paragraph 1, it shall confirm the landlord's withdrawal from the scheme.
- 4 If the Corporation is not so satisfied, it shall withhold confirmation of the landlord's withdrawal from the scheme; and the landlord shall continue to be a member of the scheme and bound and entitled under the scheme accordingly.

Register of approved schemes

6.

- 1 The Corporation shall maintain a register of schemes approved by the Secretary of State for the purposes of this Schedule and of the social landlords who are members of those schemes.
- 2 The Secretary of State shall give notice to the Corporation-
 - (a) when he grants or withdraws his approval of a scheme, and
 - (b) when he approves an amendment of a scheme, and he shall supply the Corporation with copies of any approved scheme or any amendment to a scheme.
- 3 A member of the public shall be entitled, upon payment of such fees as the Corporation may determine, to receive a copy of an approved scheme and a list of the social landlords who are members of it.

Determinations by housing Ombudsman

7.

- 1 A housing Ombudsman under an approved scheme shall investigate any complaint duly made to him and not withdrawn, and may investigate any complaint duly made but withdrawn, and where he investigates a complaint he shall determine it by reference to what is, in his opinion, fair in all the circumstances of the case.
- 2 He may in his determination-

- (a) order the member of a scheme against whom the complaint was made to pay compensation to the complainant, and
 - (b) order that the member or the complainant shall not exercise or require the performance of any of the contractual or other obligations or rights existing between them.
- 3 If the member against whom the complaint was made fails to comply with the determination within a reasonable time, the housing Ombudsman may order him to publish in such manner as the Ombudsman sees fit that he has failed to comply with the determination.
- 4 Where the member is not a social landlord, the housing Ombudsman may also order that the member-
- (a) be expelled from the scheme, and
 - (b) publish in such a manner as the housing Ombudsman sees fit that he has been expelled and the reasons for his expulsion.
- 5 If a person fails to comply with an order under sub-paragraph (3) or (4) (b), the housing Ombudsman may take such steps as he thinks appropriate to publish what the member ought to have published and recover from the member the costs of doing so.
- 6 A member who is ordered by the housing Ombudsman to pay compensation or take any other steps has power to do so, except that a member which is also a charity shall not do anything contrary to its trusts.

Publication of determinations, &c.

8.

- 1 A housing Ombudsman under an approved scheme may publish-
- (a) his determination on any complaint, and
 - (b) such reports as he thinks fit on the discharge of his functions.
- 2 He may include in any such determination or report statements, communications, reports, papers or other documentary evidence obtained in the exercise of his functions.
- 3 In publishing any determination or report, a housing Ombudsman shall have regard to the need for excluding so far as practicable-

- (a) any matter which relates to the private affairs of an individual, where publication would seriously and prejudicially affect the interests of that individual, and
- (b) any matter which relates specifically to the affairs of a member of an approved scheme, where publication would seriously and prejudicially affect its interests, unless the inclusion of that matter is necessary for the purposes of the determination or report.

Absolute privilege for communications, &c.

9.

For the purposes of the law of defamation absolute privilege attaches to-

- (a) any communication between a housing Ombudsman under an approved scheme and any person by or against whom a complaint is made to him,
- (b) any determination by such an Ombudsman, and
- (c) the publication of such a determination or any report under paragraph 8.

Appointment and status of housing Ombudsman

10.

- 1 Where an approved scheme provides that it shall be administered by a body corporate, that body shall appoint on such terms as it thinks fit the housing Ombudsman for the purposes of the scheme and the appointment and its terms shall be subject to the approval of the Secretary of State.
- 2 Where an approved scheme does not so provide-
 - (a) the housing Ombudsman for the purposes of the scheme shall be appointed by the Secretary of State on such terms as the Secretary of State thinks fit,
 - (b) the Secretary of State may by order provide that the housing Ombudsman for the purposes of the scheme shall be a corporation sole, and
 - (c) the staff to administer the scheme and otherwise assist the Ombudsman in the discharge of his functions shall be appointed and employed by him.

- 3 The Secretary of State may at any time remove from office a housing Ombudsman (whether appointed by him or otherwise).
- 4 A housing Ombudsman appointed by the Secretary of State or otherwise shall not be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown or as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local, and any property held by him shall not be regarded as property of, or held on behalf of, the Crown.

Subscriptions payable in respect of approved schemes

11.

- 1 Members of an approved scheme shall pay a subscription, calculated as set out in the scheme, to the person administering the scheme.
- 2 If a social landlord fails to comply with his duty under paragraph 1, the Secretary of State may determine-
 - (a) which approved scheme or schemes he should have joined, and
 - (b) what sums by way of subscription he should have paid, and may require him to pay those amounts to the person administering the scheme or schemes.
- 3 The person administering an approved scheme may recover sums payable under sub-paragraph (1) or (2) as if they were debts due to him.
- 4 The Secretary of State or the Corporation may pay grant and provide other financial assistance to-
 - (a) a body corporate administering an approved scheme, or
 - (b) in a case where paragraph 10(2) applies, to the housing Ombudsman under an approved scheme.

for such purposes and upon such terms as the Secretary of State or, as the case may be, the Corporation thinks fit.