

# **MEMORANDUM OF UNDERSTANDING**

**between**

**THE HOUSING OMBUDSMAN**

**and**

**THE REGULATOR OF SOCIAL HOUSING**

## **Purpose**

This memorandum of understanding (MoU) has been agreed by the Housing Ombudsman (THO) and the Regulator of Social Housing (the regulator). It sets out the functions of each organisation and describes the arrangements for cooperation and communication between the two bodies in relation to their respective functions.

While this MoU is not a legal or binding agreement, both THO and the regulator are committed to working to it. Each organisation will take steps to ensure that their staff are aware of what is in the MoU. They will keep staff updated about it, and about the responsibilities it places on each individual member of staff. The MoU will also be made public and placed on THO and the regulator's websites.

## **Roles of the Parties to this Memorandum**

### **The regulator**

The regulator is an executive non-departmental public body of the Ministry for Housing, Communities and Local Government (MHCLG) reporting to Ministers through its Chief Executive as Accounting Officer.

The Regulator of Social Housing is accountable to Parliament for the discharge of functions conferred on it by virtue of Part 2 (regulation of social housing) of the Housing and Regeneration Act 2008.

The regulator must exercise its regulatory functions in a way that minimises interference and, so far as possible, is proportionate, consistent, transparent and accountable. It sets regulatory standards, amplifies these where necessary with codes of practice, and issues other requirements and guidance to registered providers of social housing as necessary.

Mindful of its duty to minimise interference, its fundamental objective of supporting the provision of social housing, and its commitment to proportionate regulation, it takes a co-regulatory approach focused on governance and financial viability. This means<sup>1</sup>

- operating as an assurance-based regulator, seeking assurance from providers as to compliance with the standards. In other words, the onus is on providers to demonstrate their compliance to the regulator. Where the regulator lacks the requisite assurance, this will be reflected in the judgements reached.
- regarding board members and councillors as responsible for ensuring that providers' businesses are managed effectively and that providers comply with all regulatory requirements.

The regulator's approach to consumer regulation is set out in legislation. In line with this it regulates the consumer standards reactively. It does not have a role in monitoring providers' performance on consumer standards. It only uses regulatory and enforcement powers where it judges that there has been a breach of a consumer standard which has or could cause serious detriment, which is the test set out in legislation. In line with its overall regulatory approach it takes a proportionate approach to each case in reaching these judgements. Where the regulator judges that there are reasonable grounds to conclude that the breach of standards has resulted in, or could result in, serious detriment to tenants, it publishes a regulatory notice setting out findings.

The regulator will consider all of the information received through complaints and referrals to determine whether there is evidence of a breach of its regulatory standards. It does not however have a statutory mandate to resolve individual complaints and cannot mediate in disputes between landlords and residents – that is the role of THO.

## **The Housing Ombudsman**

The purpose of THO as set out in the Housing Act 1996 (the 1996 Act), and amended by the Localism Act 2011, is to enable tenants and other individuals to have complaints about member landlords investigated by an independent ombudsman in accordance with a scheme approved by the Secretary of State. Under the terms of the Housing Ombudsman Scheme (the Scheme) approved by the Secretary of State for MHCLG (which took effect on 1 April 2018) the role of THO is to:

- resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate, and
- to support effective landlord-resident dispute resolution by others.

A complaint to THO may be made by, or on behalf of, a person or persons who are or have been in a landlord/tenant relationship with a member of the Scheme, or those who have made an application which if successful would put them in such a relationship.

The 1996 Act provides that a scheme approved by the Secretary of State may be administered either by a body corporate or by a corporation sole. The Housing Ombudsman is a corporation sole, which is a distinct legal entity with legal capacity. Corporations sole do not have a board of directors – that role, function and all property, rights, assets and liabilities are vested in the person who is the corporation sole, in this

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<sup>1</sup> For further details see Regulating the Standards on the regulator's pages of the Gov.uk website

case, the Housing Ombudsman (i.e. THO). THO is solely responsible for the conduct of dispute resolution and the determination of complaints. The personal authority vested in THO is delivered in practice by staff acting under THO's delegated authority; THO and staff are colloquially referred to as the Housing Ombudsman Service (HOS).

Social landlords (primarily housing associations who are or have been registered with the social housing regulator) and local housing authorities are obliged to be members of the Scheme. Additionally, a number of managing agents and private landlords are voluntary members.

## **Working together**

### **Communication and cooperation**

The regulator and THO recognise that a range of issues relating to social housing regulation and complaints are of mutual interest. Rather than seeking to identify all the occasions on which the organisations will need or want to cooperate, the regulator and THO have agreed that they will:

- a) seek to achieve a complementary approach so far as that is consistent with their independent roles;
- b) signpost queries or complaints to the other organisation where appropriate, making sure to explain to the enquirer *why* the other organisation is the appropriate organisation;
- c) meet and communicate regularly – at appropriate levels of seniority, including at operational level – to discuss matters of mutual interest; and
- d) seek to dispel confusion and misunderstandings about the different roles of each organisation where they arise.

# Information sharing

## Legal basis of information sharing

Section 109 of the Housing and Regeneration Act 2008 provides that a public authority may disclose information to the regulator if the authority thinks that the disclosure is necessary for a purpose connected with the regulator's functions. Under the same section, the regulator may disclose information to a public authority (which would include THO) if it thinks that information is necessary either for purposes connected with its own functions or for purposes connected with the public authority's functions. Given that individual complainants can choose to give information directly to either the regulator, THO or both, individual case details may not fulfil the requirements of s109.

Paragraph 46 of the Housing Ombudsman Scheme provides that THO will report a member to any appropriate regulatory agency, if it fails to comply with her determination.

Taking the above into account, the following areas of information exchange have been agreed:

a) THO may disclose information to the regulator where s/he thinks that disclosure is necessary for a purpose connected with the regulator's functions. This may include:

- providing statistical information, anonymised as appropriate, about the types of complaints it has received, highlighting particular themes or patterns arising
- notification by THO of appropriately anonymised information which, following investigation, provides evidence of potential systemic issues relating to a particular provider or providers.

b) The regulator may disclose information to THO where it thinks that disclosure is necessary for a purpose connected with the regulator's or THO's functions. This may include:

- sharing statistical information about types of cases recently processed
- sharing information with THO in relation to actual or contemplated regulatory action where such action may affect the carrying out of THO's functions. The regulator will not generally provide information about specific cases, but may do so (with the complainant's permission in line with Article 6(1)(a) of the General Data Protection Regulations), if considered necessary.

c) The regulator and THO will share at an appropriate stage draft documents (e.g. changes to the regulatory standards/the Housing Ombudsman Scheme) that may affect the exercise of the other's functions; any general developments in the sector which may affect the work of either agency will be likely to be covered in routine discussions.

### **Stakeholder engagement**

Both parties will discuss and keep under review joint working and stakeholder engagement. The purpose of any such work would be to:

- promote a better understanding of the functions and roles of each organisation;
- disseminate wider learning into the interactions between registered providers and residents and the social housing sector as a whole.

### **Review**

Representatives from the regulator and HOS will review the operation of this Memorandum no less than once a year, to ensure that it reflects any developments and changes in working practices.

This MoU was agreed by both parties on 1 October 2018.