

Housing

Ombudsman Service

Housing Ombudsman response to ‘A new deal for social housing’ green paper

Introduction

We welcome the Government’s new vision for social housing. We have focused our response on our area of expertise as the Housing Ombudsman: the effective resolution of complaints. We have used the evidence we see through dealing with complaints, and interactions with residents and landlords, to inform our response.

We are also starting to consult on our corporate plan for the three years 2019-22. Both the plan and this green paper response seek to strengthen our role as the Ombudsman for social housing to improve accessibility and allow faster redress on individual complaints, and to improve complaint handling and housing services more widely. This supports our vision - **Housing Matters: Fairness Matters**.

Our ambitions include a sector wide complaint handling standard to ensure consistency and fairness within complaints procedures, powers to assist residents where there is unnecessary delay, and the ability to investigate individual complaints further to establish if there are potential systemic issues for onward referral to the Regulator.

As the expert in landlord and resident dispute resolution, we believe we are best placed to set the standard for complaint handling in consultation with residents, the sector, and working closely with the Regulator of Social Housing.

We strongly support the removal of the designated persons role to streamline access to the Housing Ombudsman Service. This will ensure that social housing residents are not disadvantaged and that they have unfettered access to an Ombudsman.

We believe we can make a valuable contribution to improving the complaint experience for both residents and landlords and will seek to work with other ombudsman schemes, the Regulator of Social Housing and the advice sector to develop and embed these improvements.

Please note that there is some repetition in our responses to the questions in this document as each answer was written as a stand alone response to the online questionnaire.

6 November 2018

Chapter 1: Ensuring homes are safe and decent

Q2 Should new safety measures in the private rented sector also apply to social housing?

We believe there should be parity in safety requirements between the private and social housing sector.

Consequently, the standard of a decent home should also apply equally. Non-decent homes make up 13% of homes within the social housing sector (2016) compared with 29% in PRS (the Evolving Private Rented Sector - Julie Rugg & David Rhodes).

Q3 Are there any changes to what constitutes a Decent Home that we should consider?

Under the current guidance the definition of a decent home is as follows:

- It meets the current statutory minimum standard for housing - dwellings which fail to meet this criterion are those containing one or more hazards assessed as serious (category 1) under the Health and Housing Safety Rating System (HHSRS).
- It is in a reasonable state of repair
- It has reasonably modern facilities and services
- It provides a reasonable degree of thermal comfort

Both the Decent Homes standard and the HHSRS have brought about improvements to social housing stock. However, complaints about repairs and the condition of property continue to be the most common areas referred to the Housing Ombudsman Service (37% of complaints received in 2017-18 were about responsive repairs, with a further 6% relating to the condition of the property).

This illustrates the gap between residents' expectations as to what constitutes an acceptable repairs service and standard to which a home should be maintained, and landlords' ability to deliver.

There are wide variations as to the offer landlords make to residents in relation to Decent Homes works with some landlords investing above and beyond the basic standard, often involving tenants and offering real choice. But for other residents, no improvements are offered as the minimum standards are met, despite kitchens and bathrooms being over 30 years old. This can lead to frustration with tenants who have taken care of their kitchens and bathrooms seeing those who have not gaining new installations ahead of them. Distinguishing between age and condition can appear to be unfair to residents who expect units to be replaced when they reach a certain age.

Example complaint

Ms C complained about the landlord's decision not to replace her kitchen which, she reported, was older than her neighbours which was scheduled for replacement.

The Decent Homes guidance states that for a kitchen to be deemed in an unreasonable state of repair, it must be over 30 years old and be in a poor condition. A kitchen will not fail the standard by reason of age alone.

The guidelines confirm that a kitchen will only be considered to be in a 'poor condition' if three or more of the following components are in need of major repair or replacement:

- Cold water drinking supply
- Hot water
- Sink
- Cooking provisions
- Cupboards
- Worktops

The Ombudsman found that the landlord had acted appropriately as it had undertaken individual inspections of each of the kitchens in the block to assess the condition. Its response had therefore accorded with the Government guidelines.

The Decent Homes standard sets the lowest acceptable standard across the sector and it is acknowledged to be a very basic standard. The Regulator has not taken action under the consumer standards on Decent Homes to date. We believe the Government should consider raising the requirements needed to meet the standard if serious about improving conditions across the sector, but we acknowledge that there will be financial implications for social landlords as a result.

Q4 Do we need additional measures to make sure social homes are safe and decent?

We believe a minimum standard should apply to shared areas that contribute to a resident's sense of home, such as:

- Lifts
- Communal entrance points and balconies
- External areas, including lighting, bin areas and bin chutes.

Having a problem with housing can impact on every aspect of a resident's life so expanding the standard here would help to improve all aspects of a home.

HHSRS enforcement guidance states: *'Although local authorities cannot take statutory enforcement action against themselves in respect of their own stock they*

will be expected to use HHSRS to assess the condition of their stock and to ensure their housing meets the Decent Home Standard ¹.

In reality, this may mean that residents of Local Housing Authorities experience difficulties if they wish to challenge a decision regarding the condition of their homes - accessing a HHSRS assessment may be difficult and they have no recourse to a second opinion from Environmental Health. When there is a problem, enforcement action cannot be taken, meaning issues may continue for longer than necessary.

Similarly, local authority Environmental Health teams will not always undertake HHSRS assessments of Housing Association stock. The process differs from area to area reflecting the discretion set out in part 2 of the guidance which allows local authorities to take a view on the spread of hazards in their area and to prioritise action on those with the most serious impact on health and safety. Housing Association stock may be viewed as low priority given the expectation on registered providers for their homes to meet the Decent Home Standard and ongoing programmes to bring homes up to the standard. While such an assessment is borne out at a global level, the current guidance can restrict access to an assessment for individual Housing Association residents.

We believe that the HHSRS and methods of assessment and enforcement for residents should be reviewed, ideally in tandem with a review of the Decent Homes standard. We note that the Homes (Fitness for Human Habitation) Bill will go some way to address the inconsistencies across tenures.

¹ Housing Health and Safety Rating System Enforcement Guidance

Chapter 2: Effective resolution of complaints

Q5. Are there ways of strengthening the mediation opportunities available for landlords and residents to resolve disputes locally?

Mediation can provide fast resolution with agreement reached between the parties at a local level, however, it is unlikely to be suitable for every type of complaint. The voluntary nature of mediation means that it should not be a compulsory element of any complaints process. Nor should it be offered as an alternative to an investigation by the Ombudsman. Access to the Housing Ombudsman should never be fettered.

The Housing Ombudsman uses mediation to help residents and landlords reach agreements. Last year we successfully resolved 5% of formal complaints in this way. We intend to start these discussions during the eight-week waiting period in 2019-20 for appropriate cases to facilitate earlier resolution.

Why mediation helps

Having an issue with your home can be upsetting. Before a complaint is made, residents will have requested a service from their landlord and the problem will have remained unresolved. The resident will have been living with this situation every day and, by the time the complaint is made, may be distressed. Social housing residents have limited opportunities to change their provider if they are dissatisfied with the service received. This can add to their sense of frustration. The relationship between the landlord and tenant is ongoing and this can be damaged by delays to effective redress.

There is also a benefit to the landlord in dealing with matters promptly. This can prevent issues escalating, provide valuable insight into whether their services are delivering as expected and, ultimately, develops a healthier relationship and builds trust with their residents.

Consequently, the Housing Ombudsman has always believed that the best way to resolve a dispute is where the landlord and tenant deal with the issue at a local level. Mediation can be useful in achieving faster local resolution, particularly as many of the disputes referred to the Ombudsman involve misunderstandings and failed communication.

As many residents do not like to think of themselves as someone who complains they may prefer to resolve a problem via a process that does not label them as such. Mediation can have a role here.

Mediation plays an important part within the dispute resolution profession and is already adopted by landlords in the resolution of neighbour disputes and anti-social behaviour, with both households being referred to a professional mediator.

Mediation as part of complaints procedures

For mediation to be successful it must be voluntary with either party able to leave at any time, for any reason. There is evidence that the more pressure you put on people to mediate, the less likely they are to settle at mediation. This interpretation is supported by evaluation of court-based mediation schemes offered at Birmingham and Exeter. In Birmingham, the voluntary court mediation scheme offered during 1999–2004 had a 60% settlement rate. In Exeter, where judges put considerable pressure on parties to mediate, the settlement rate was 40%, and only 30% in cases where judges had directly referred cases.²

There are also some elements of landlord/resident disputes that mean mediation may not always be suitable:

- Significant power imbalance between the parties – this can inhibit successful mediation if residents feel less able to participate fully in mediation and/or are dissatisfied with the agreements reached.³
- Independence – one of the core definitions of mediation is that it is offered by a neutral third party. Where mediation providers are funded by the landlord they may not be seen as entirely neutral to residents.
- Complaints where landlord lacks discretion – there may be complaints where the landlord's discretion to reach an agreement is hampered by the involvement of third parties, e.g. where behaviour modification of another resident is required, or where the landlord is not the freeholder.

Mediation will, therefore, not be right for every dispute and it should not be a compulsory element of any complaints process. We would have concerns if all complaints were expected to undertake some form of mediation as part of a landlord's complaints procedure.

We would also be concerned if mediation were perceived to interfere with, or delay, a resident's right to refer their complaint to us. Mediation should never fetter a resident's access to the Housing Ombudsman.

Difficulties

From our experience the following difficulties can arise when the Ombudsman investigates complaints that have sought resolution via mediation:

- Disputes over evidence – the mediation process is confidential and therefore mediation discussions and materials are generally not admissible in any

² <https://asauk.org.uk/archive/alternative-dispute-resolution/adr-research-central-london-county-court-2007>

³ Twisting arms: court referred and court linked mediation under judicial pressure – Hazel Genn et al 2007

subsequent proceedings, including escalation to an Ombudsman, except for the finalised and signed mediation agreement.

- Complaints about the mediation process or mediator – these will fall outside the Ombudsman’s remit as this would not form part of a complaint about the actions of the landlord but is rather about the mediation provider.
- Disputes regarding the terms of the agreement - each party may interpret the meaning of the agreement differently.

If the mediation agreement does fail and a complaint is made to us, this may also lead to the Ombudsman being unable to investigate as the events occurred too far in the past or there is not a clear final outcome to the complaint. These consequences cause further frustration to residents.

Mediation at the Housing Ombudsman Service

We offer opportunities for landlords and residents to resolve disputes using mediation principles and techniques to promote faster resolution at a local level.

When a complaint enters our formal remit, our early resolution procedure provides an opportunity for it to be resolved without the need for a formal investigation. If we consider that the complaint might be capable of resolution, and if both parties agree, we try to find a mutually acceptable outcome. By being conciliatory and inquisitorial in our approach we can help the parties find a longer-lasting solution to the problem and preserve their ongoing relationship.

Early resolution example (once complaint has completed the landlord’s complaints procedure)

Mr X complained about the way in which the landlord responded to his reports of water penetration and the resulting damage to his living room wall.

Intervention

The complaint progressed through the landlord’s complaints procedure and Mr X received a final response from the landlord offering him £500 compensation.

Mr X remained dissatisfied with the offer and contacted the Housing Ombudsman Service. We contacted the landlord under our early resolution process and discussed Mr X’s case and the reasons he remained dissatisfied. Following our intervention, the landlord confirmed that it would offer an additional £250 compensation for distress and inconvenience and £100 for the level of communication, making a total of £850.

Mr X agreed to accept this offer and that this would resolve the complaint for him.

There is no doubt that using mediation can offer quick redress for residents in some cases. The Ombudsman’s average time to reach a determination under the early resolution approach was 4.2 months in 2017-18. Since we introduced this approach,

we have consistently determined around 5% of our formal complaints in this way. This highlights that mediation is not always appropriate or workable once complaints have entered our formal remit.

In 2019-20, while the designated persons arrangements remain in place (so residents must either seek a referral from a designated person or wait eight weeks before being able to bring their complaint to the Ombudsman), we will start to mediate agreements for suitable cases as soon as the landlord's complaints procedure is completed. This will mean a more streamlined complaints service and faster redress.

Q6. Should we reduce the eight-week waiting period to four weeks, or should we remove the requirement for the 'democratic filter' stage altogether?

We believe that the mandatory democratic filter stage should be removed. Reducing the waiting period would not make these arrangements more effective and would perpetuate the blockage to accessing the Ombudsman. Full removal of the filter will allow faster redress.

Allowing the filter to remain in place would add to the stigmatisation of social housing residents with these being the only group where there are no plans to enable direct access to an Ombudsman.

Removal of the democratic filter would result in increased demand on our service and we would need to employ more caseworkers and increase our subscription rate to keep pace. Nonetheless we believe removal is the right thing to do as it allows residents access to fast and effective redress.

Effectiveness of designated persons

The statutory 'democratic filter' requirement was introduced under the Localism Act 2011 with the intention that local MPs, councillors or tenant panels (designated persons) would be best placed to use their local knowledge to resolve issues affecting residents, as opposed to entering the more time-consuming approach of a formal Ombudsman's investigation.

Apart from tenant panels, these arrangements have largely failed to deliver with 93% of our formal complainants waiting the full eight weeks to access our service last year. This adds further stress and frustration on top of the housing problem they are living with every day. Around half of the respondents to our 2017-18 Business Plan consultation said they found the designated person arrangements confusing and that they added little value. Anecdotally, we understand that few councillors or MPs are aware that they have this role.

Where an MP or councillor has already had some involvement in a complaint acting on behalf of the resident, there can be confusion when the designated person role takes over as this necessitates a shift from advice, advocacy and support to that of an independent and impartial resolver.

For tenant panels, the designated person role is more straightforward if the sole purpose of the panel is to act as a designated person. However, confusion arises for

residents where a tenant panel acts as the final stage in the landlord's complaints procedure, leading them to believe mistakenly that their complaint has completed the democratic filter stage.

Removing the mandatory completion of the democratic filter stage would not prevent successful arrangements from continuing. But it would streamline access to an Ombudsman for those where such arrangements are not adding value and merely serve as a block or delay to accessing our service. It would also allow residents a choice in the route they wish to take to resolve their complaint and remove the current confusion.

Direct access to an Ombudsman

As far as we are aware, social housing residents are one of only two groups which face a barrier to direct access to an Ombudsman, the other being citizens that wish to complain about a government department to the Parliamentary and Health Service Ombudsman (PHSO). These complaints must be referred by a Member of Parliament.

In its 2014 Report, *Time for a People's Ombudsman Service*, the Public Administration Select Committee concluded that the MP referral requirement to access the PHSO '*...disempowers citizens, obstructs access to their rights, and deters people from making complaints.*'

The draft Public Service Ombudsman Bill removes the MP filter leaving social housing residents as the only group where there are no current plans to enable direct Ombudsman access. In a green paper that seeks to tackle the stigmatisation of social housing residents, this is an obvious area for action.

Consequences of designated persons removal

Allowing residents direct access to the Housing Ombudsman Service is a significant step forward and we would welcome this. We expect that this will result in an immediate rise in complaint volumes at the investigation stage, with a lower but ongoing increase as complainants who had previously decided not to pursue their issue due to 'complaint fatigue' will be more inclined to continue. The precise impact on our service in terms of volume and timing is difficult to predict but additional resources will be required to support this increased demand if we are to maintain acceptable case times.

Our Corporate Plan 2019-22 consultation document includes an estimate of the impact removal might have on our subscription rate.

Q7. What can we do to ensure that the 'designated persons' are better able to promote local resolution?

We believe it is time to accept that the designated person role does not work as envisaged, particularly so for MPs and councillors. Rather than a temporary fix to the designated person role while legislation is awaited, we believe MPs and

councillors should focus on helping with constituents' housing issues through advice, advocacy and support, as this will have most impact and their remit here is already widely understood. This will also eliminate the confusion caused for residents when an MP or councillor switches roles from advisor to an impartial resolver as a designated person.

We are developing a range of tools on our website to increase advisors' and representatives' understanding of the complaints process, how the Housing Ombudsman works and how they can operate effectively in their advocacy role. An awareness raising campaign is suggested under question 8 of the green paper. Any such campaign should include details of the advice and support available to residents, as well as directing advisors themselves to the tools available on our website.

Q8. How can we ensure that residents understand how best to escalate a complaint and seek redress?

The green paper sets out the difficulties residents report when seeking to raise a complaint and these mirror our experiences of the procedures in place at some landlords. Key are: commonality/consistency of definition and standards, accessibility, clarity and fairness.

Common complaint definition and complaint handling standard

We believe that a common complaint handling standard should be introduced across the social housing sector, regardless of tenure. This will increase consistency of practice and ensure that residents know what to expect when a complaint is made, irrespective of their landlord. The standard should be reflected in regulation or a mandatory Code of Practice, and the underlying measures of any key performance indicator on effective complaint handling should be drawn from this. The standard should be applied on a comply or explain basis, and landlords should self-assess and report annually against the agreed measures. Our responses to Chapter 3 deal with these issues in more detail.

As the expert in landlord and resident dispute resolution, the Housing Ombudsman is best placed to develop any such standard in consultation with the sector, residents and the Regulator of Social Housing as well as the Local Government and Social Care Ombudsman. This would be a similar role as in other ombudsman schemes where they are designated the Complaints Standard Authority for their jurisdictions. This is also in keeping with our role which includes '*support[ing] effective landlord-tenant dispute resolution by others*'.

The complaint handling standard developed by the Scottish Public Services Ombudsman is set out below by way of illustration:

- A shared definition of what is and what is not a complaint
- A two-stage process where complaints are resolved as close to the frontline as possible
- Frontline resolution of complaints within five working days

- An investigation stage of 20 working days, which provides the organisation's final decision
- Recording of all complaints
- Active learning from complaints through reporting and publicising complaints information

For a complaint handling standard to work, it would need to incorporate a common understanding of what constitutes a complaint, as suggested below:

A complaint is an expression of dissatisfaction or concern by a resident or applicant, however made, whether justified or not, about the standard of service, conduct, actions or lack of actions by their landlord.

Without a clear definition, residents' concerns may not be addressed or recognised as complaints with the consequence that levels of dissatisfaction and frustration for some may continue.

Accessing the complaints procedure

The next step to help residents understand how to escalate a complaint and seek redress is to ensure that landlords have a complaints procedure in place, that this is accessible to residents and that it is easy to use. The procedure should establish effective and transparent processes for the fair and prompt handling of complaints, which should be implemented and maintained.

Complaints procedures and guidance should be available in full on landlords' websites, and via social media (or upon request where a landlord does not have a website). They should also include the right of residents to bring their complaint to our service. The current requirements are set out in paragraph 5 of the Housing Ombudsman Scheme:

Paragraph 5 Housing Ombudsman Scheme

As a condition of membership of the Scheme, a member must:

- a) agree to be bound by the Scheme;
- b) establish and maintain a complaints procedure;
- c) as part of that procedure, inform complainants of their right to bring complaints to the Ombudsman under the Scheme; and
- d) publish its complaints procedure and its membership of the Scheme, and make information about them available to those entitled to complain to the Ombudsman

As part of the scheduled review of the Housing Ombudsman Scheme we will look to strengthen this requirement to better support residents' access to, and knowledge of, such procedures, e.g. a requirement for each landlord's website (where they have

one) to include a link to the Housing Ombudsman Service website and requirements that information should be accessible to meet different needs.

We propose closer working with the Regulator to ensure that Scheme requirements are reflected in their Tenant Involvement and Empowerment Standard or a Code of Practice, and as part of the overall complaint handling standard. Compliance could be enforced through annual landlord self-assessments provided to the Regulator to support key performance indicator reporting, and we will review compliance when considering individual complaints.

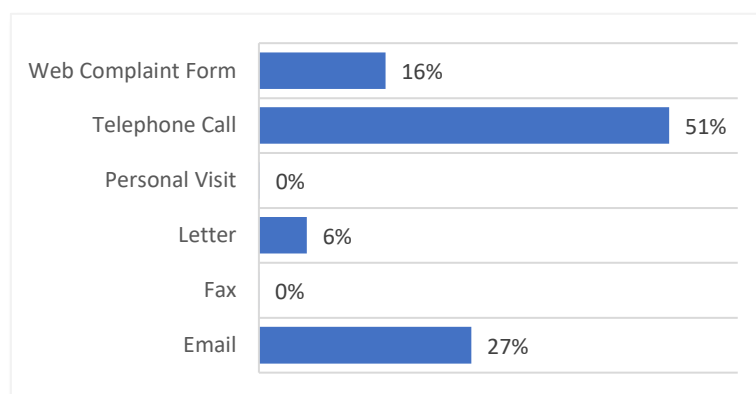
Options to increase residents' awareness also include obligations on landlords to provide details of their complaints procedures in tenancy agreements and through other regular communication channels such as rent statements, gas safety checks, etc. Other correspondence with residents could also provide details of how they can report a problem and make a complaint, whether delivered online or in hard copy.

We would also support an awareness raising campaign for residents on how to access and escalate complaints as proposed in the green paper, and we would be pleased to be involved in this.

Navigating Ombudsman jurisdictions

Once a complainant has exhausted a landlord's complaints procedure and remains dissatisfied, it is not always clear to either the resident or the landlord whether the Housing Ombudsman or Local Government and Social Care Ombudsman (LGSCO) has jurisdiction over the issue. Our corporate plan 2019-22 consultation includes proposals for direct referral arrangements between us and LSGCO so that no matter who a resident contacts, they will reach someone who can help immediately.

More widely, we support the idea of a supplementary portal to signpost any resident to the correct housing sector ombudsman. In advance of this, our corporate plan also proposes a decision tree approach on GOV.UK to help steer residents in the right direction, supplemented by other referral arrangements to mitigate the lack of clear delineation between ombudsman schemes. It is also worth pointing out that the routes residents take to access our service indicate that a single and solely web-based portal may not be appropriate for all residents. This is demonstrated in the graph below of initial contact routes used by residents in 2017-18:



It is also important to note that residents can contact the Housing Ombudsman Service at any point and we do not require the landlord's complaints procedure to be completed before we can help. Resolving complaints locally, preferably within the landlord's own process, provides better outcomes for residents and improves relationships between residents and landlords. We actively engage with the parties through our local resolution work to support these objectives and would strongly resist any portal design that did not support this approach.

Q9. How can we ensure that residents can access the right advice and support when making a complaint?

When there is a problem with someone's home it is vital that this is resolved as quickly as possible. Having an unresolved problem can have a huge impact on how the resident feels about where they live. It can feel inescapable and can affect how a resident interacts with their landlord so by the time a resident makes a complaint they may already be frustrated and distressed. To bring a complaint to your landlord can, therefore, require more support and advice than other types of complaints, particularly for vulnerable residents who may have additional issues to deal with.

Notwithstanding the need for fast and effective redress, it must be recognised that the housing sector is complex with a variety of ways of occupying property with differing tenure rights and responsibilities. Added to the potential additional support needs above, housing complaints can, therefore, be complicated to understand and take time and patience to resolve.

The Money and Mental Health Policy Institute found that one in three people who live in social housing have a mental health problem. In addition, a recent study by MIND, the mental health charity, found that one in three people with mental health problems living in social housing is dissatisfied with where they live and that 43% of people with mental health problems living in social housing have seen their mental health deteriorate as a result of where they live. Residents who contact us can be experiencing high levels of distress, resulting in our staff having to manage threats of suicide, or self-harm, or unacceptable behaviour.

Advice and support can be hard to access with some residents having no advice agencies within their local areas. Residents inform us of problems in accessing face to face advice and we encounter difficulties locating appropriate agencies to signpost residents to in some areas. Furthermore, the Equalities & Human Rights Commission report '*Is Britain Fairer?*' cites a '*marked backwards move*' in justice since 2015, with restrictions on legal aid having severely reduced people's ability to secure redress when their rights are breached.⁴

We believe that the best advice comes from those with relevant knowledge and expertise, and the time to work with residents to fully explore what will resolve the problem. The impact of the changes above mean that the availability of this support has reduced and, as a result, social housing residents turn to family and friends more often.

⁴ *Is Britain Fairer 2018* <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018>

We would like to see more resources directed to increased advocacy and support for social housing residents when they wish to seek redress. We believe these resources would be best directed at advice networks that are already in place and known to residents such as Citizens Advice and Shelter.

Support offered by the Housing Ombudsman

We believe complaints are always best resolved as soon as possible when the issues are far easier to identify and remedy. Consequently, the Housing Ombudsman promotes the local resolution of disputes and offers support and advice to residents while their complaint is still within the landlord's process. This can include giving information about:

- How to make a complaint to a landlord
- The landlord's own procedures
- The role and remit of the Housing Ombudsman Service
- Information about the dispute resolution process
- Details of other Ombudsmen and complaint handling bodies
- Signposting to other agencies who might be able to assist including designated persons
- Discussions about outcomes, solutions and putting things right to help resolve the dispute.

We focus our advice at this stage on what is required to resolve the problem rather than merely explaining the stages of the landlord's complaints process, engaging in constructive conversations that progress matters to an effective outcome.

Our consultation on our next corporate plan proposes a step change in the resources that we dedicate to this work. Along with the earlier mediation work described under question 5, we expect that this will enable far more complaints to be resolved locally and without a formal investigation to everyone's benefit.

Q10. How can we best ensure that landlords' processes for dealing with complaints are fast and effective?

It is of primary importance that all residents can make complaints to their landlord easily and without fear of reprisal. We encourage landlords to adopt a positive complaints culture which regards complaints as opportunities to improve rather than threats. This is central to successful dispute resolution and indicative of a customer-focused organisation which endeavours to achieve service excellence. As many social housing residents have limited opportunities to exercise choice by moving home, complaints can offer one of the best sources of feedback on customer service.

We want resident complaints to be dealt with fairly, swiftly and effectively. Many landlords are already delivering this. Where this is not the case we want extra powers to:

- Help move complaints through the process when stuck etc through a complaint handling failure determination and order
- Compel landlords to provide information within set timescales

- Investigate issues arising from individual complaints to establish if there is a systemic issue we should refer on to the Regulator
- Set a complaint handling standard
- Make determinations of failure if these are not met.

These powers would help improve accessibility and speed up redress for residents.

Valuing complaints

Complaints can be viewed negatively by landlords, with boards and scrutiny mechanisms interpreting high volumes of complaints as indicative of poor service. We believe complaints should be viewed as a positive by allowing an organisation to learn, adding value and development opportunities. They provide landlords with unsolicited feedback from residents on the service that is provided. High volumes of complaints may be a sign that one part of a landlord organisation is not functioning as expected, but it may also indicate that residents are engaged with their landlord, know how to complain and are confident in doing so. The figure that should be of most interest to senior teams and boards is the volume of complaints that are resolved within the landlord's process.

There are many examples of exemplary complaint handling and engagement with residents. Many landlords already use their complaints process effectively and efficiently, but there are others which need improvement.

Problems that arise during the complaints procedure

Our local resolution work promotes effective landlord-resident dispute resolution by providing support whilst a complaint is within a landlord's complaints procedure. This can comprise discussing options for resolution with either party, helping each party understand the view point of the other and managing expectations as to likely outcomes. In 2017-18, we closed 5,467 complaints at local resolution stage (80%).

Local resolution example (whilst complaint is still in the landlord's complaints procedure)

Ms B had complained about damp and mould in her home. In its response to the complaint, the landlord disputed the presence of damp. However, it recognised the presence of mould and advised that this was caused by the resident's poor ventilation of the property. The resident was dissatisfied with this response.

The Ombudsman contacted the landlord to clarify its position on the matter. We set out possible actions for the landlord to take to resolve the dispute, one of which involved engaging an independent consultant to attend the property to assess the mould and possible damp.

Both parties accepted this remedy and came to an agreement on which consultant would be used. The landlord agreed to cover the cost of this and advised that it would follow any recommendations made by the consultant.

Examples of some of the difficulties we encounter are:

- One stage complaints procedures that do not allow for a proper review, do not comply with the rules of natural justice and do not allow residents to challenge or correct evidence relied upon.
- Delayed complaint responses pending completion of the substantive issues, e.g. a complaint is made regarding the length of time that it is taking to complete roof repairs. A holding response is sent and the complaint is not progressed pending completion of the repair. But the repair continues to be delayed causing increased frustration to the resident who now can't get the repair done or the complaint resolved.
- Refusing to deal with certain types of issues as a complaint and a lack of clarity as to how such matters are to be escalated, again causing delay and frustration to residents.

Improvements to support fast and effective landlord redress

Whilst the current system works well in many cases, we believe improvements could be made to prevent the creation of unnecessary difficulty for residents by strengthening our powers.

First, additional powers under the Scheme to enable us to issue a determination of complaint handling failure and order landlords to provide residents with an outcome would assist where a complaint is not being progressed through the landlord's procedure in a timely fashion. Such orders could also be issued where we encounter difficulties in obtaining the evidence required for our investigation following completion of the landlord's complaints procedure. These difficulties cause delay for residents and contribute to the length of time it takes us to complete an investigation.

We would also seek stronger powers to compel landlords to provide us with evidence within certain timescales and face legal action or a report of non-compliance to the Regulator if these are not met. This would create parity between the Housing Ombudsman and the Local Government and Social Care Ombudsman (LGSCO) who has the power to issue a witness summons if evidence is not provided.

The benefits of these changes are:

- Allowing landlords oversight of where and when complaints are not being actively resolved and how frequently this is occurring
- Ensuring residents are able to get an outcome to their complaint within a reasonable timescale
- Refocusing our local resolution work on positive discussions to help resolve the substantive dispute
- Enabling our service to monitor the distribution of such orders and to target our sector engagement work where it is most needed to bring about improvements for residents.

Finally, we will also be seeking stronger powers in relation to potential systemic failures identified through individual complaints. In such cases we would want the

Scheme to be amended to allow us to investigate whether there is evidence of a potential systemic issue and to refer this to Regulator, where appropriate.

We will also be reviewing our Dispute Resolution Principles to assess whether these are still fit for purpose and accurately reflect the need for timely resolution.

Other Housing Ombudsman powers that will facilitate fast and effective landlord redress

As also set out in our response to question 8, the Housing Ombudsman believes that a common complaint handling standard should be introduced across the social housing sector, regardless of tenure. This would increase consistency of practice and ensure that residents know what to expect when a complaint is made.

As the expert in landlord and resident dispute resolution, the Housing Ombudsman is best placed to set this standard in consultation with residents, the sector, the Local Government and Social Care Ombudsman and the Regulator. This role would be equivalent to that of other ombudsman schemes which are the Complaints Standard Authority for their particular jurisdictions. This is also in keeping with our role which includes '*support[ing] effective landlord-tenant dispute resolution by others*'.

The complaints handling standard developed by the Scottish Public Services Ombudsman is set out below by way of example:

- A shared definition of what is and what is not a complaint
- A two-stage process where complaints are resolved as close to the frontline as possible
- Frontline resolution of complaints within five working days
- An investigation stage of 20 working days, which provides the organisation's final decision
- Recording of all complaints
- Active learning from complaints through reporting and publicising complaints information

The Regulator should then require providers to comply or explain how and why their process differs from the standard, allowing flexibility across different landlord types. To support this, we want a power to determine non-compliance where this was established as part of our dispute resolution activity, and to order remedial activity. Repeated findings of non-compliance against a landlord may be indicative of a systemic issue and would be referred to the Regulator.

The standards that currently apply to social housing landlord complaint handling are set out in the Regulator's Tenant Involvement and Empowerment Standard, which is one of four Consumer Standards. Social landlords are required to comply with this and all other regulatory standards. It is important to note that the Consumer Standards are not proactively regulated. We do not believe the standard as currently

worded is sufficient as evidenced by the difficulties residents encounter accessing and escalating complaints.

Tenant Involvement and Empowerment Standard

1.1 Customer service, choice and complaints

1.1.1 Registered providers shall...

b. have an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly.

2.1 Customer service, choice and complaints

2.1.2 Providers shall offer a range of ways for tenants to express a complaint and set out clear service standards for responding to complaints, including complaints about performance against the standards, and details of what to do if they are unhappy with the outcome of a complaint. Providers shall inform tenants how they use complaints to improve their services. Registered providers shall publish information about complaints each year, including their number and nature, and the outcome of the complaints. Providers shall accept complaints made by advocates authorised to act on a tenant's/tenants' behalf.

Under our next corporate plan, we will take a proactive approach by setting out our view of a best practice complaint handling standard and assessing landlords' against this in advance of regulatory and Scheme changes.

Other Housing Ombudsman activities to support fast and effective landlord redress

We are currently developing tools and guidance for residents to promote a common understanding of what a complaint is and what to expect when making a complaint to a landlord or the Housing Ombudsman Service. We are also developing standard letters and templates for landlords to use to ensure clear communication with residents during the complaints process, and we intend to publish our decisions in full on our website by the end of 2012-22. This will provide a resource that both landlords and residents will be able to search and use as reference material, as well as increasing their understanding and knowledge of how we work.

We currently undertake sector engagement work where we support landlords to improve their complaints handling through various activities. This is a limited resource that can best be engaged with senior management buy-in. As part of our next corporate plan, we will work with a small sample of landlords where we can have the most impact, agreeing a bespoke programme of work and measuring the outcomes achieved. We will use the new powers to identify and target our sector engagement work at landlords with a high volume of complaint handling failure orders on either individual complaints or with regard to the standard.

We also recognise that improvements are needed in the length of time that it takes us to complete our own investigations and we continue to work to reduce the average length of time it takes for a case to complete our process. We are currently consulting member landlords on this as part of our corporate planning activities.

Q11. How can we best ensure safety concerns are handled swiftly and effectively within the existing redress framework?

The current system for raising concerns regarding safety issues involves residents sharing their concerns with their landlord and other relevant bodies e.g. Environmental Health Offices, the Health and Safety Executive, the Fire Service, etc. Improvements in access and signposting are required to ensure that all residents can refer safety concerns, regardless of tenure, and are aware of who to contact.

Residents may contact the Housing Ombudsman at any point. When a resident contacts us with a safety concern, we initially assess what immediate action is needed and signpost them to the most appropriate agency.

Our complaint investigations assess situations retrospectively and can provide assurance or help to identify where failings in a single complaint may be indicative of a wider issue impacting a wider group of residents.

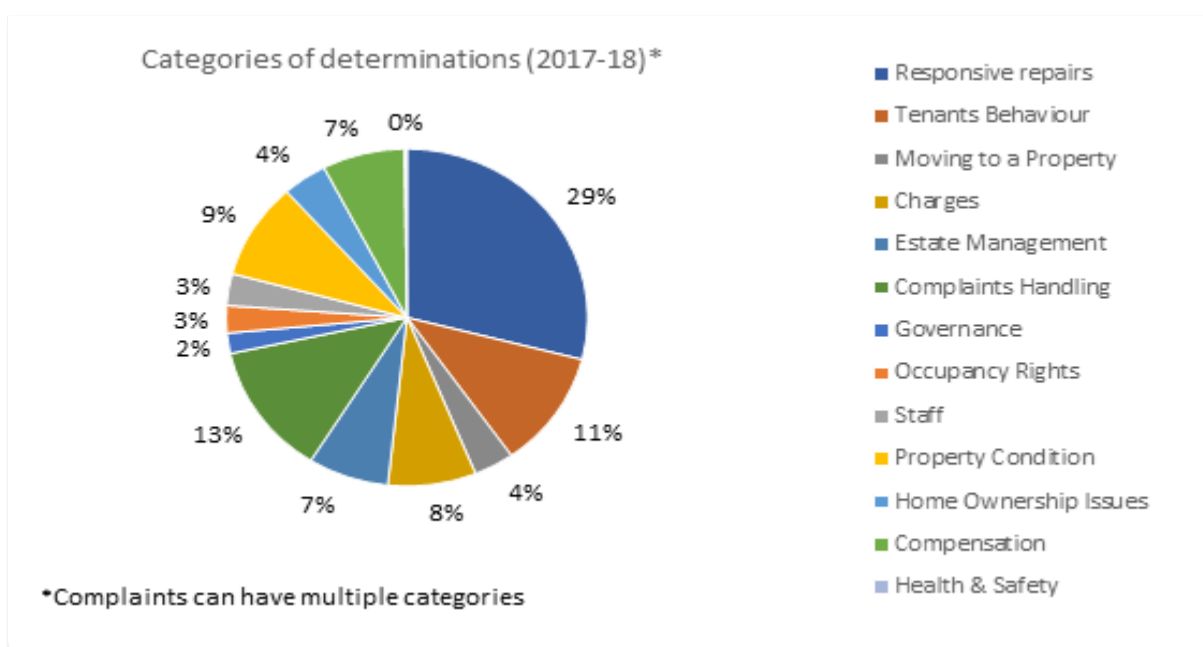
To support this activity, we want to amend our Scheme to allow us to initiate and conduct investigations into whether a potential systemic issue exists where concerns have been identified through an individual complaint. When a systemic issue is suspected, this will then be referred to the Regulator. This will allow us to help more residents by looking at the issue across the landlord organisation.

Chapter 3: Empowering residents and strengthening the Regulator

A strong Regulator of Social Housing, working closely with the Housing Ombudsman, can only be of benefit to residents. Our response has focused on where the Regulator of Social Housing's role overlaps with complaint handling as this is our area of expertise.

12. Do the proposed key performance indicators cover the right areas? Are there any other areas that should be covered?

We believe that the key performance indicators detailed in the green paper broadly cover the correct areas as they reflect the types of complaints that are made to the Housing Ombudsman Service. This is illustrated in the table below which sets out the categories of complaints we received last year:



We are particularly interested in how performance would be measured against the effective complaint handling key performance indicator. A high number of complaints does not necessarily mean that the service provided to residents is poor, it may simply show engaged residents who know how to complain and are seeking to drive service improvements. Similarly, a very low number of complaints could mean satisfied residents, but it may also indicate a landlord that does not recognise or register complaints. We would not wish to see complaints driven underground as reporting high complaint volumes was seen to be indicative of poor performance.

It is clear from the resident comments set out in the green paper that the current complaints requirements set out in the Tenant Involvement and Empowerment Standard do not go far enough. Residents are unaware of their rights in relation to complaints and are not confident that they can use the processes in place without fear of retaliation. In addition, each landlord has developed its own complaints

process and residents do not understand why there is such diversity. This makes cross-sector comparison and assessment. We are also frequently asked by landlords for guidance on their complaint procedures and what these should contain.

We propose a universal complaint handling standard, applied on a comply or explain basis. This should provide the basis for the underlying measures of success against any key performance indicator on the effective handling of complaints. With 20 years' experience of complaints in the social housing sector, the Housing Ombudsman Service is best placed to set the complaint handling standard. We would work closely with the Regulator, landlords, residents and the Local Government and Social Care Ombudsman to develop this.

Q13 Should landlords report performance against the key performance indicators every year?

From our experience, dips in landlord complaint handling performance, for whatever reason, can be noticed within a relatively short timescale and certainly within a year. We would, therefore, support annual reporting to avoid problems going unnoticed for too long.

We would use the membership requirements set out in paragraph 5 of the Housing Ombudsman Scheme to monitor compliance in relation to individual complaints, alongside new complaint handling failure determinations. This would allow us clear insight into a landlord's complaint handling and action to be taken when this is not effective. Where appropriate, we would refer cases to the Regulator.

Q14 Should landlords report performance against these key performance indicators to the Regulator?

We believe landlords should provide this information in a self-assessment style exercise to the Regulator to inform its work on consumer standards.

Q17 Is the Regulator best placed to prepare key performance indicators in consultation with residents and landlords?

We believe the Regulator should develop, in consultation with the sector, the key performance indicators. However, where there are subject experts in particular areas, these organisations should take the lead, and work with Regulator to agree the measures.

We believe the Housing Ombudsman should set the complaint handling standard in consultation with landlords, residents, the Regulator and the Local Government and Social Care Ombudsman, and that this should then form the basis for the underlying measures of the effective complaint handling performance indicator.

Q18 What would be the best approach to publishing key performance indicators that would allow residents to make the most effective comparison of performance?

The housing sector is complex with varied providers with differing aims and objectives. Using a blanket league table approach may miss the detail of the

specialisms and would not reflect other contextual or geographic factors. It may also further stigmatise social housing residents living in accommodation provided by a lower ranking landlord. We believe a 'close neighbour' compare function would enable a more nuanced insight for residents to reflect the specialisms or other common contexts that operate across the sector and allow for more meaningful comparisons.

Currently the information that landlords are required to provide to their residents under the Tenant Involvement and Empowerment Standard is based on complaint volumes and outcomes. Where residents are dissatisfied with the outcome, they will then bring their complaint to our service. We hold data on volumes, outcomes and timely compliance with orders made. This is important data to consider when forming a holistic picture of a landlord's complaints handling performance. We will start to publish this data on our website and, once any key performance indicators are developed, we would be happy to work with the Regulator to consolidate reporting in one place to benefit residents.

Q29 Does the Regulator have the right objective on consumer regulation? Should any of the consumer standards change to ensure that landlords provide a better service for residents in line with the new key performance indicators proposed, and if so how?

We believe the *Tenant Involvement and Empowerment Standard* should change to include a complaint handling standard once developed, with annual reporting requirements and proactive regulation.

We would use the membership requirements set out in paragraph 5 of the Housing Ombudsman Scheme to monitor compliance on individual complaints and utilise new complaint handling failure determinations, when appropriate. This would allow clear insight into a landlord's complaint handling and allow action to be taken when this is not effective, including onward referral to the Regulator.

Q30 Should the Regulator be given powers to produce other documents such as a Code of Practice, to provide further clarity about what is expected from the consumer standards?

We believe the Regulator should have this power as it may be necessary to amplify or specify certain regulatory requirements and this would provide a suitable vehicle.

Q31 Is "serious detriment" the appropriate threshold for intervention by the Regulator for a breach of consumer standards? If not, what would be an appropriate threshold for intervention?

We believe the serious detriment threshold is too high a bar to achieve the green paper's ambition of accessible, faster, effective redress across the sector as action to improve this will only occur in the most extreme circumstances. For example, we referred a landlord to the Regulator following sustained issues with the quality of their complaint handling and its failure to act, particularly in relation to repairs but the Regulator judged that there was no serious detriment to the residents and could not take further action.

We believe the threshold should be set at a systemic level. We are proposing new powers to allow the Housing Ombudsman to investigate to ascertain whether an issue identified in an individual complaint, is potentially systemic. Following investigation, the Ombudsman would be able to order the landlord to remedy any issues identified and to refer any systemic concerns, or failure to comply to the Regulator.

Additional Housing Ombudsman powers to make complaint handling failure determinations may also result in potential referrals to the Regulator if the landlord did not comply with orders to improve or we judged these were systemic.

We would also like to highlight that clarification over our respective remits related to complaints would be helpful as part of any other amendments to the Regulator's powers. We believe we should be the only body that acts on individual complaints and that the Regulator should focus on systemic issues with more referrals from us.