

# **MEMORANDUM OF UNDERSTANDING**

**between**

## **THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN & THE HOUSING OMBUDSMAN**

### **1 Introduction**

The Localism Act 2011 introduced changes to the jurisdiction of the Local Government and Social Care Ombudsman (LGSCO) and the Housing Ombudsman. Consequently, a level of cooperation is required to ensure that their respective roles can be fulfilled effectively and efficiently with a minimal impact on complainants. This Memorandum of Understanding has been drawn up jointly by the LGSCO and the Housing Ombudsman as the basis for such cooperation.

### **2 Statutory Framework**

#### **2.1 Roles**

##### ***LGSCO***

The LGSCO investigates complaints from the public about injustice caused by maladministration or service failure by a local authority or other body within jurisdiction. LGSCO is also the social care ombudsman for England. In this role, LGSCO have jurisdiction to carry out independent investigations into complaints about any matters connected with the provision of adult social care. This is a seamless service covering all types of adult care in the public, private and third sectors irrespective of who funds or arranges that care. The LGSCO can recommend a suitable remedy (which can include financial redress) for any injustice found.

##### ***Housing Ombudsman***

The Housing Ombudsman was set up to look at complaints about the landlords that are registered with it (i.e. members of the Housing Ombudsman scheme which includes all registered providers of social housing and voluntary for-profit members). The Housing Ombudsman focuses on impartial dispute resolution in rented housing, including leaseholders and shared owners. The Housing Ombudsman can assist the parties to reach a local resolution and carries out investigations. The Housing Ombudsman will investigate to

establish what is fair in all the circumstances and can order awards of compensation or other remedies.

## **2.2 Who can make a complaint**

### ***To the LGSCO***

A complaint to the LGSCO may only be made by, or on behalf of, a member of the public or a body of persons other than a local authority or other public service body. Members of the authority concerned cannot normally make a complaint to the LGSCO. Members may only do so if acting as members of the public, e.g. in relation to matters affecting them as users of a local authority service.

### ***To the Housing Ombudsman***

A complaint to the Housing Ombudsman may be made by, or on behalf of, a person or persons who have been in a landlord/tenant relationship with a member or those who have applied for property owned or managed by a member (other than statutory allocations and applications for assistance from people who are homeless or threatened with homelessness).

## **2.3 Summary of jurisdictions**

On 1 April 2013, jurisdiction over new complaints about the provision and management of local authority housing passed from LGSCO to the Housing Ombudsman.

The LGSCO and the Housing Ombudsman have agreed the main categories of complaint which fall within their respective jurisdictions. This list, which will be subject to periodic review, appears on our respective websites and is attached as Annex B.

## **3 Joint working**

### **3.1 Consultation and collaboration between the LGSCO and the Housing Ombudsman**

The Localism Act allows for consultation and collaborative working between the LGSCO and the Housing Ombudsman. It provides that if the Housing Ombudsman forms the opinion that a complaint relates in part to a matter within the jurisdiction of the LGSCO, the LGSCO may conduct an investigation.

The LGSCO has the power to disclose information to a third party (including the Housing Ombudsman) if it is necessary to do so for the purposes of an investigation. This power does not extend to sharing information with the Housing Ombudsman in order to establish what issues have been the subject of a previous complaint, what issues are new and which body has jurisdiction.

At any stage during an investigation of a complaint the Housing Ombudsman may decide that the complaint relates partly to a matter which could be within the jurisdiction of the Local Commissioners. If the Housing Ombudsman so decides, the Housing Ombudsman must consult with the Local Commissioner and may then either:

- Inform the complainant, representative or designated person how to bring a complaint to a Local Commissioner; or
- Conduct an investigation jointly with a Local Commissioner.

Operational arrangements for the handling of complaints are set out in **Annex A** and will be subject to periodic review.

### **3.2 Stakeholder engagement**

A copy of this memorandum will be placed on the LGSCO and Housing Ombudsman websites.

Both parties will discuss and keep under review the appropriateness of other forms of joint working such as joint press articles, joint themed reports, seminars and other forms of stakeholder engagement. The purpose of such work will be to:

- promote a better understanding of jurisdiction
- help ensure appropriate and timely referrals of complaints to the LGSCO and the Housing Ombudsman
- disseminate wider learning from investigations into the interactions between social landlords and local authorities.

### **3.3 Communicating with our staff**

Arrangements will be made for communicating the provisions of this memorandum within the LGSCO and the Housing Ombudsman.

## **4 Review**

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

**Signed:**



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Michael King

**Local Government and Social Care Ombudsman**

*A. Keenoy*

Andrea Keenoy

**Interim Housing Ombudsman**

## Annex A – Operational arrangements

### **A1 Types of complaint**

Four types of complaint can be identified as a focus for this Memorandum. These are:

- Those that are made to the wrong party
- Those where the position is unclear
- Those that are for neither party
- Those which may engage the jurisdiction of both parties

### **A2 How complaints are handled**

Both Ombudsmen must take care to avoid making (or appearing to make) jurisdictional decisions on the other's behalf. Often, the Ombudsman receiving a complaint will need to make enquiries to establish sufficient facts to determine which of the above categories a complaint falls into. Before signposting or referring a complaint to the other Ombudsman we should ensure we have enough information to confirm the complaint is not in our own jurisdiction.

If necessary, the Ombudsman making the initial enquiries should contact the other Ombudsman for more information about their approach before signposting or referring a complainant. When deciding jurisdictional matters, LGSCO may need to share complainant personal data with the Housing Ombudsman. If this happens, LGSCO will seek consent from the complainant or the complainant's representative and vice versa.

In order to reach a prompt and clear decision on jurisdiction, it may be necessary for discussions to take place between the LGSCO and Housing Ombudsman. For the LGSCO, Intake Team Leaders and Investigators have the authority to hold those discussions. For the Housing Ombudsman, any member of the dispute resolution team has that authority. In the event that agreement is not reached, or that the position cannot be made clear, the matter should be referred to the nominated officer (currently Nick Evans) at the LGSCO or the nominated Dispute Resolution Manager (currently Esther Grew) at the Housing Ombudsman, or other nominated officers to be agreed.

#### ***Complaints that are made to the wrong party***

The LGSCO and the Housing Ombudsman each have their own arrangements for the receipt of new complaints. Where either party receives, or becomes aware of, a complaint that falls within the jurisdiction of the other party, the complainant will be advised that the

matter is outside jurisdiction but that they may make a complaint to the other party. Contact details for the other party will be given.

### ***Complaints where the position is unclear***

One party may receive a complaint which is unclear, for example in the following ways:

- It is not clear which, if any, body has jurisdiction to deal with the complaint
- It is possible that the other body has previously dealt with a complaint about the same or a similar matter and it is necessary to establish what aspects of the complaint are new

In such circumstances, enquiries will be made of the complainant and/or the other party in order to clarify the position. The processes outlined above in A2 'How complaints are handled' will be followed to seek consent to share information.

### ***Complaints that are for neither party***

The LGSCO and the Housing Ombudsman cannot make complaint decisions on behalf of each other. But they will build up and share knowledge of each other's jurisdiction so that appropriate advice can be given to complainants. Where a complaint is not accepted by one party, it will be open to the complainant to approach the other party which will make its own decision on jurisdiction. But where it is clear that the complaint does not fall within the jurisdiction of either party, the complainant will be given advice about any known alternative avenues of redress.

### ***Complaints which may engage the jurisdiction of both parties***

Some complaints may be sufficiently broad as to fall within the jurisdiction of both the LGSCO and the Housing Ombudsman. In those cases, the LGSCO and Housing Ombudsman will liaise to establish what measures are necessary to ensure that both parties deal appropriately and effectively with the complaint.

Where it is known that a decision on a complaint by one party may have a bearing on the consideration of a complaint by the other party, a case discussion will take place before a final decision is issued. In some cases it may be appropriate for one party to suspend action on an investigation until the other party has reached a view on its own investigation.

Decisions on complaints which fall within the jurisdiction of the LGSCO may only be taken by or with the delegated authority of the LGSCO. Where the Housing Ombudsman has jurisdiction, the decision may only be taken by or with the delegated authority of the Housing Ombudsman. Where there is a joint investigation, a joint decision will be issued, in the form of a joint statement or report.

Where either Ombudsman forms the opinion that a joint investigation is required, they will seek consent from the complainant or the complainant's representative in accordance with paragraph 10A (2), schedule 2 of the Housing Act 1996 (as amended by the Localism Act 2011).

## Annex B

### Complaints referred to the Housing Ombudsman

Unless stated otherwise the Housing Ombudsman considers complaints about housing associations, local housing authorities and voluntary for-profit members of its Scheme.

#### Leasehold services

- Shared ownership and sales processes for leasehold properties owned by housing associations
- Shared ownership stair-casing for properties owned by housing associations
- Full ownership and sales processes for leasehold properties owned by housing associations
- Right to buy and right to acquire for tenants of housing associations
- Repair responsibilities under the lease
- Mortgage rescue schemes
- Leasehold services provided by the landlord

#### Moving to a property

- Transfer applications that are outside [Housing Act 1996 Part 6](#)
- Type of tenancy offered
- Mutual exchange
- Decision to renew a fixed tenancy
- Decants (including those that are dealt with via the local housing authority's allocation policy)
- Mobility Schemes

#### Rent and service charges

- Rent or service charges

#### Occupancy rights

- Terms and conditions of occupancy rights
- Succession
- Assignment
- Ending a tenancy (eg notice periods)
- Abandonment of property
- Possession proceedings

#### Property condition – repairs and improvements

- Condition of the property when first let (eg void works)
- Responsive repairs
- Planned maintenance or cyclical works
- Improvement works carried out by landlord or tenant
- Rechargeable repairs
- Disabled adaptations

## **Tenant behaviour**

- Anti-social behaviour
- Noise nuisance
- Harassment

## **Estate management**

- Cleaning or repairs of communal areas
- Boundary issues
- Grounds maintenance
- Parking linked to occupancy agreement
- Use of communal areas

## **Complaint handling**

- The landlord's handling of a complaint in their complaint process, including delays

## **Compensation**

- Home loss or disturbance payments
- Improvements carried out by the tenant
- Payment for damage to property or tenant's belongings
- Discretionary payments

## **Complaints referred to the Local Government and Social Care Ombudsman**

Unless stated otherwise the Local Government and Social Care Ombudsman considers complaints about local authorities.

## **Housing allocations under [Housing Act 1996 Part 6](#)**

- Applications for re-housing that meet the reasonable preference criteria (dealt with by the local housing authority or any other body acting on its behalf, which could include a housing association). Includes complaints about:
  - Assessment of such applications, the award of points, banding or a decision that the application does not qualify for reasonable preference
  - Operation of choice based lettings schemes and about the suitability of accommodation offered under those schemes.

## **Homelessness under Housing Act 1996 Part 7**

- Applications for assistance under the homelessness legislation (dealt with by the local housing authority or any other body acting on its behalf, which could include a housing association). Includes complaints about:
  - Homelessness advice and homelessness prevention activities
  - How applications are dealt with and decisions about eligibility for and allocation of interim and temporary accommodation.

## **General housing advice**

- General advice from the local authority about housing options

- Handling of reports from tenants of private landlords about unlawful eviction, harassment, disrepair and other matters

### **Housing benefit**

- Handling of applications for housing benefit

### **Housing improvement grants**

- Applications for mandatory and discretionary housing improvement grants. Includes complaints about:
  - Provision of advice, processing of applications, preparation of schedules of work, payment of grant and other decisions on grant eligibility and entitlement
  - Actions of social services occupational therapy services with regard to assessment and eligibility for disabled facilities grant

### **Antisocial behaviour**

- Antisocial behaviour which does not fall within the remit of a social landlord.

### **Environmental Health Services**

- Reports of statutory noise and other nuisance to environmental health services
- Actions/decisions made by Environmental Health Services

### **Sale or disposal of land on housing estates**

- Applications or requests to buy parcels of land owned by local authorities
- Sales processes for properties owned by local authorities
- Right to buy and right to acquire for tenants of local authorities
- Requests from local authority tenants or leaseholders to purchase extensions such as hall/loft/basement space

### **Planning and building control at properties owned by a social landlord**

- Applications for planning permission
- Planning enforcement
- Applications and enforcement under the building regulations

### **Delivery of adult social care services, including that done by registered social landlords**