

# **Over-arching dispute resolution guidance**

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# THE LEGISLATION AND THE SCHEME

The purpose of the Housing Ombudsman is to enable tenants and other individuals to have their complaints about members investigated by a Housing Ombudsman in accordance with a Scheme approved by the Secretary of State.

The Ombudsman's statutory role is set out in S.51 and Schedule 2 to the Housing Act 1996 as amended by ss180 – 182 of the Localism Act 2011, Housing and Regeneration Act 2008, and SIs between 1997 and 2011. Further detail is set out in the [Housing Ombudsman Scheme](#) (2018).

## Section 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.

## Schedule 2

2(1) A scheme shall not be approved for the purposes of the Schedule unless it makes provision for:

(9) A *duty* of the housing ombudsman to investigate any complaint duly made and not withdrawn, and a *power* to investigate any complaint duly made but withdrawn, and where he investigates to make a determination.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.

**\*N.B. Paragraph 10 allows us to propose alternative methods for resolving disputes.** This is discretionary, something that we can do. And it is reflected in paragraph 33 of our approved Scheme:

## “Paragraph 33

The Ombudsman may establish arrangements for resolving disputes with the consent of the parties whether by the use of local resolution, mediation, arbitration or otherwise...”

# ENQUIRY

A DR enquiry is a request for information, assistance or advice **where no formal complaint has been made to the landlord.**

Enquiry activity includes:

- providing information about our service
- signposting for:
  - advocacy and support
  - the appropriate body to deal with the issue
  - or advice on rights
- advice or assistance on making a complaint.

# JURISDICTION TRIAGE

Be fair - treat people fairly and follow fair processes

Some complaints made to a landlord will fall outside our jurisdiction but, in order to meet our dispute resolution principle relating to fairness, we should only rule out cases which would (if validly made) very obviously fall outside our jurisdiction<sup>1</sup>. So, **if we are in any doubt**, provide advice and assistance while making it clear that we are not, at this stage, sure whether we would subsequently accept the case for investigation.

**Remember:** we should not do a detailed assessment at this stage because we are not investigating, but we must ask:

- Is the complaint about a member landlord? (paragraphs 6 and 8)
- Does the complainant fall within a category of a person who can complain? (paragraph 19)
- Does the complaint relate to 'housing activities'? (paragraph 22)<sup>2</sup> **Note: we should not be ruling out cases on the basis of paragraph 23 at this stage.**

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<sup>1</sup> More detailed guidance to be issued on defining and identifying the nature of the complaint.

<sup>2</sup> More detailed guidance to follow: **N.B. we should not be ruling out cases on the basis of paragraph 23 at this stage** (but we may wish to consider managing expectations in relation to para 23 at this stage? To be included in guidance).

# LOCAL RESOLUTION – PRE-ICP

At this stage THO does not have a **duty** to investigate complaints – see paragraph 9 of Schedule 2 to the Housing Act 1996 and paragraph 25 of the Scheme. However THO does have a **power** to promote the local resolution of disputes, including on premature complaints – see paragraph 10 of Schedule 2 to the Housing Act 1996, and paragraphs 33 and 34 of the Scheme.

Our dispute resolution principles:

- **Be fair** - treat people fairly and follow fair processes
- **Put things right**
- **Learn from outcomes**

The principles recognise that resolving complaints early, preferably within the landlord's own process, provides better outcomes for residents and improves relationships between residents and landlords. Our role at this stage is enabling and facilitating. We are not investigating or determining complaints at this stage and are not making findings of fact. We aim to provide support to landlords and residents to use our principles to resolve their disputes within the landlord's internal complaints procedure.

For example by:

- Helping complainants in shaping and forming their complaints to maximise the chance of resolution.  
  
e.g. establishing what their complaint is really about, how it has affected them and what they think would put it right. Signposting to relevant advice agencies or organisations as appropriate, explaining the DR process, emphasising the importance of trying to find an amicable solution if possible.
- Providing **general advice** about the **range of options available** to resolve complaints of the type presented in light of our experience (without giving a decided view on from THO on the merits of the specific case as we will not have investigated the facts at this stage).  
  
e.g. providing guidance on how to make or resolve a complaint, guidance on how HOS works, letting residents know that we can assist with difficulties going through the landlord's complaint procedure but that we cannot investigate until that procedure has been completed, explaining our DR principles
- Managing expectations about likely outcomes and our role and our powers  
  
e.g. explaining when residents can come back to us to ask us to resolve or investigate the complaint if local resolution is not successful, what we will need from them at that point (e.g. copies of communication between complainant

and landlord and landlord's final stage response letter), explaining the powers of the Ombudsman and the range of remedies that might be available.

N.B. We are not investigating at this stage, so are not fact-finding or seeking evidence. Any information that we seek will be limited to that which, for example:

- helps us determine the nature of the complaint
- assists us in helping complainants shape and form their complaints
- allows us to ensure we meet our data handling compliance responsibilities.

# COMPLAINT DULY MADE?

The Ombudsman has a duty to investigate a complaint that is 'duly made' - see paragraph 9 of Schedule 2 to the Housing Act 1996, and paragraph 25 of the Scheme.

For a complaint to be duly made it must be possible to say "yes" to the following questions:

1. Have we established that the complaint has exhausted the landlord's complaint procedure (paragraph 23(a))? **N.B.** Where a landlord is not progressing a complaint properly through a complaints procedure we may decide that the procedure has been "exhausted".
2. Have eight weeks passed since the complaint procedure was exhausted? (paragraph 23(a)) **or** has a designated person either referred, or refused to refer, the case or agreed that the complaint should be brought to the Ombudsman and confirmed this in writing? (paragraph 23 (b))
3. Do we have sufficient detail of the complaint?

In line with our strategic objective to deliver an accessible, high quality and timely complaints handling service, **we will proactively monitor complaints which have completed the landlord's complaints procedure.**

We will make contact with complainants at the eight week stage to see if their complaint has been resolved or, if not, to ask them whether they wish their complaint to be investigated, unless:

- the complainant has already notified us that they wish to withdraw their complaint, or
- a DP notice in the meantime has brought the start date forward.

***What is the "duly made date" for recording purposes?***

**As above, if it is possible to say 'yes' to the three questions, and the complainant confirms that they wish their complaint to be investigated then the complaint has been duly made. For recording purposes, the date on which the last of these things happens is the duly made date.**

# JURISDICTION

The Ombudsman must determine whether a complaint comes within their jurisdiction under the terms of the Scheme (paragraph 24).

Upon receipt of a complaint the jurisdiction questions we must ask, **in the following order**, are:

1. Is the complaint about a landlord who is a member of the Scheme<sup>3</sup> (paragraphs 6 and 8)
2. Does the claimant fall within the categories of person who can bring a complaint to the Ombudsman<sup>4</sup>? (paragraph 19)
3. Is the complaint one we can look at (paragraph 22)?
  - If the landlord is a LHA: does the complaint concern its **housing activities** in relation to the **provision or management or housing**<sup>5</sup>, or
  - For all other landlords: does the complaint concern **(all) the landlord's housing activities**<sup>6</sup>?
4. On the face of it, is there evidence that the actions or omissions complained about have caused an **adverse effect**<sup>7</sup> to the complainant in respect of their right (or application) to occupy their home (paragraph 22)?
5. Do any of the discretionary jurisdiction grounds apply (paragraph 23)<sup>8</sup>? **The onus is on the Ombudsman to investigate, rather than to find issues outside jurisdiction, therefore our default position should be to investigate cases where possible and not to rule matters outside jurisdiction unless they clearly fall outside.**

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<sup>3</sup> Further guidance to be provided

<sup>4</sup> Further guidance to be provided

<sup>5</sup> Further guidance to be provided, including examples.

<sup>6</sup> Further guidance to be provided, including examples.

<sup>7</sup> Further guidance to be provided

<sup>8</sup> Further guidance, on the application or not of each of the "discretionary jurisdiction grounds" listed at paragraph 23(a)-(r), to be provided.

# OPTIONS FOR RESOLUTION POST-ICP

## (1) EARLY RESOLUTION

## (2) INVESTIGATION

Parties will be able to opt to engage in an alternative, pilot, process for resolving the dispute – early resolution - in respect of any complaint which is duly made on or after 1 April 2016.<sup>9</sup>

Giving options is about empowering the parties to the dispute to make a choice and be proactive in the resolution of that dispute.

Both parties must agree to the option of resolution with intervention, otherwise the case will go forward for investigation.

### EARLY RESOLUTION

This option will be time limited – initially up to two months from the date on which the offer is accepted (subject to possible extension depending on pilot experience). If the parties accept the offer on different dates, the two month period will start from the date on which the second party accepts the offer.

There is no investigation by HOS with this option but we will work with the parties during the two month period to agree amicable solutions wherever possible.

During the two month period we will offer the parties focussed support, exploring options for resolution based on our experience of complaints handling.

**If the complaint is resolved within the two months**, a determination will be issued by the Ombudsman reflecting the terms of the resolution including any expectation on compliance with that determination.

**If the complaint is not resolved within the two months**, the case will go forward for investigation (see below). Note: At this point it may be possible, depending on the circumstances of the case and the evidence already obtained etc, for the Ombudsman to make a determination.<sup>10</sup>

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<sup>9</sup> See separate guidance on “complaint duly made?” – the duly made date is the point at which cases enter our formal remit.

<sup>10</sup> Active monitoring of outcomes of such cases to take place during pilot and to inform dynamic guidance.

## INVESTIGATION

If one or both of the parties to a dispute rejects the resolution with intervention option, or, having chosen resolution with intervention their complaint is not resolved via that process, the Ombudsman will investigate the complaint.

Any evidence and information already made available to the Ombudsman will be considered within the investigation.

The investigation will be deemed to have commenced from the duly made date.<sup>11</sup>

### ***Why opt for early resolution?***

There are good reasons for the parties to agree to pursue this option, for example:

- It is a formal process but can be done quickly, usually within two months.
- It is about identifying the matters still in dispute between the parties at the end of the ICP.
- The parties, together with the Ombudsman, explore the range of possible interventions to facilitate the resolution of the dispute.
- The determination issued (under paragraph 33 of the Scheme) records the terms of the agreed way forward to resolve the dispute and allows the Ombudsman to ensure both parties comply with that determination (in accordance with para 44 of the Scheme).

### ***Managing the intervention***

We will act in the context of the terms of the Scheme, the Ombudsman's role, the dispute resolution principles and the quality standards. We will take whatever action is appropriate to help resolve the dispute, bearing in mind proportionality.

We will provide an independent and impartial consideration of the complaint by looking at the circumstances of the dispute, including:

- identifying what is outstanding following exhaustion of the complaints process including any redress the landlord has offered as a means of resolving the dispute
- what any such offer intends to address and what the complainant remains dissatisfied with and why.

We will decide whether any offer made by the landlord resolves the complaint satisfactorily, including deciding whether the complainant has refused a reasonable offer (paragraph 32).

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<sup>11</sup> See "Complaint Duly Made?" guidance.

The following are some factors to take into account when considering if an offer is reasonable:

- Redress for any failings
- Restoring a complainant's position
- An apology
- An explanation for what happened
- A mistake corrected
- Compensation
- A change in the way a person or organisation behaves
- A promise that a person or organisation will/will not do something.

If the outcome of the early resolution process is agreement between the parties, then the Ombudsman will make a determination **which reflects the terms on which agreement was reached.**

A determination is a formal decision on a complaint made under the Ombudsman's statutory duty. All determinations are made under delegated authority of the Ombudsman and must be made strictly in accordance with the terms of the Scheme and the quality standards.

Our determination will clearly:

- Reference the specific, relevant paragraph of the Scheme
- Set out the background to reaching resolution
- Explain why we think the offer resolves the dispute based on the particular circumstances of the complaint. This is in accordance with the Ombudsman's statutory duty to determine complaints by reference to what is, in their opinion, fair in all the circumstances of the case.
- Set out the agreement reached and the expectations on both parties to comply<sup>12</sup>.

**See Appendix for example docs for managing the process**

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<sup>12</sup> See separate guidance on orders, recommendations and compliance.

## Authority for early resolution option

Section 51(1) gives effect to the provisions of Schedule 2 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.

### **Schedule 2 to the Housing Act 1996**

**(1)(A) A scheme shall not be approved for the purposes of the Schedule unless it makes provision for...**

**(9) A *duty* of the housing ombudsman to investigate any complaint duly made but 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.**

N.B. Paragraph 10 of Schedule 2 allows us to propose alternative methods for resolving disputes. This is discretionary, something we can do.

Paragraph 33 of the Scheme confirms:

### **“Paragraph 33**

**The Ombudsman may establish arrangements for resolving disputes with the consent of the parties whether by the use of local resolution, mediation, arbitration or otherwise...”**

Our approach will also allow us to align our activities with Article 9 (“Fairness”) of the ADR (Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013).

# INVESTIGATION

The Ombudsman has a duty to investigate a complaint that is 'duly made' - see paragraph 9 of Schedule 2 to the Housing Act 1996, and paragraph 25 of the Scheme, and under paragraph 26 of the Scheme he can decide how to consider and investigate complaints subject to the Scheme.

## **"Paragraph 26**

**The Ombudsman will decide how to consider and investigate complaints subject to the Scheme taking account of the evidence of service failure presented."**

An investigation is *not* carried out by default. Investigation will take place only if:

- early resolution is not accepted by the parties to the dispute; or
- agreement cannot be reached via the early resolution process.

# FINDINGS AND DETERMINATIONS

A determination is a formal decision on a complaint made under the Ombudsman's statutory duty. All determinations are made under the delegated authority of the Ombudsman and must be made strictly in accordance with the terms of the Scheme.

The Scheme requires the Ombudsman to determine whether a complaint is in jurisdiction (paragraph 24). The initial determination of every complaint is therefore whether or not it is in jurisdiction.

The determinations subsequently available to complaints that are duly made and are within jurisdiction are:

- Case withdrawn – paragraph 36
- Case investigated – no maladministration or maladministration options (service failure/ maladministration/ severe maladministration - paragraph 42(a)-(f)).
- Findings of systemic failure<sup>13</sup> would come under a determination of maladministration under paragraph 42, rather than being a determination in their own right.
- No further investigation because the Ombudsman considers offer of reasonable redress (paragraph 32 (b) and (c))
- Case resolved with intervention (paragraph 33). Cases resolved following the new early resolution procedure will include the terms of the agreement in the determination.

All determinations following investigation must be supported by 'findings'. Findings are **an assessment of the facts** established from the evidence in terms of the law, policy and procedure, good practice, or the conclusions drawn (on the basis of the established facts) that lead to 'the determination'.

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<sup>13</sup> Further guidance on the identification of systemic failure to be provided.

# REMEDIES, COMPLIANCE AND ENFORCEMENT

A key aspect of the Ombudsman's role is to provide a remedy to the maladministration or service failure identified. A range of possible remedies are available that can be applied in any case which can include financial or non-financial redress.

The legislation which describes our powers and discretion in relation to orders and recommendations is set out in Schedule 2 to the Housing Act 1996 and paragraph 43 of the Scheme.

The legislation and the Scheme provide the Ombudsman with a wide range of discretion in the types of orders and recommendations that can be made. Each case is decided on its own merits so orders and recommendations must be tailored to suit the individual circumstances of the case.

Our over-arching Principles for Remedy are informed by our close working with the Public Services Ombudsman Group, and our approach is based on our Dispute Resolution principles and Core Values, as follows:

## ***Principle 1: To put things right***

Where possible the remedy should restore the individual to the position that they would have been in had it not been for the maladministration or service failure identified. However, the consequences of maladministration or poor service cannot always be rectified or a situation reversed. In this case alternative ways of "putting things right" should be considered<sup>14</sup>.

## ***Principle 2: To be open and accountable***

We will act in an open and transparent way. We will be accessible, ensuring information is made widely available using multiple channels. The Ombudsman will be open and clear about the reasons why they have applied a certain remedy.

## ***Principle 3: To be empowering***

We will take a holistic view of remedies. The Ombudsman will take into account what each party feels would resolve the dispute and will seek to encourage them to reach their own agreement but, ultimately, the Ombudsman will decide what is an appropriate remedy, within the scope of her remit, in a particular case.

## ***Principle 4: To be fair, reasonable and consistent***

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<sup>14</sup> Guidance setting out a framework for our discretionary decisions and enabling a consistent approach to be taken when considering the appropriate remedy - to be provided.

The Ombudsman will seek fair, reasonable and consistent outcomes. They will treat each case individually and ensure the remedy is fair when considering the specific circumstances of the case by:

- focussing on the individual, taking into account the person and their circumstances
- ensuring decisions are based on the evidence and facts of the case so they are free from bias and impartial
- ensuring consistency with previous decisions, whilst recognising that each case is different
- being clear where responsibility lies for any action
- taking into account the impact of the action or behaviour of the complainant, as well as the landlord.

***Principle 5: To be proportionate***

The Ombudsman will ensure the remedy is an appropriate one – fair and proportionate in all the circumstances and having particular regard to the severity of the maladministration or service failure identified.

***Principle 6: To monitor and ensure compliance***

Our Scheme expressly articulates the expectation on member landlords to comply with our orders and recommendations (paragraph 44). We will monitor compliance on all cases where we make orders and will take enforcement action to ensure compliance. Enforcement action can take different forms and the type of action to be taken will depend on the parties involved, the nature of the orders and any reasons for non-compliance. Where possible we will also add value by looking beyond the circumstances of the individual complaint to consider whether anything can be improved in terms of process and systems. We will encourage the parties to have a positive approach to resolving complaints and consider ways in which the relationship between the landlord and resident can be improved.

**ORDERS: are only made in relation to a determination of maladministration and will therefore only follow an investigation (they will not be made in relation to a determination following early resolution).**

**RECOMMENDATIONS: are an opportunity to support effective landlord-tenant dispute resolution and promote service improvements.** Recommendations can look beyond the individual complainant's circumstances and consider whether anything can be put right in terms of processes and systems. Recommendations can be used where no maladministration or service failure has been identified but the investigation has highlighted opportunities for service improvement. They also provide an opportunity to improve the landlord and tenant relationship.

**Examples of types of orders and recommendations<sup>15</sup> we can make**

- Apology - in writing or in person, corporate responsibility – not an individual

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<sup>15</sup> Detailed guidance on the range of possible orders and recommendations to be provided.

- Specific action - practical measures which can be taken (or cease to be taken) to remedy the situation
- Compensation<sup>16</sup> – numerous factors to be considered when assessing whether compensation would be appropriate. We will also benchmark our levels of compensation against other Ombudsmen.
- Landlords' policies and procedures - particularly useful to consider orders in this area if systemic or potential systemic issues are identified.

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<sup>16</sup> Guidance on compensation to be reviewed and revised, including review of benchmarking against compensation levels of other Ombudsman.

# ORDERS AND RECOMMENDATIONS

The Ombudsman's powers and discretion in relation to orders and recommendations are set out in paragraph 7 of Schedule 2 to the Housing Act 1996, and paragraphs 43-48 of the Scheme.

## **The approach**

The Scheme expressly articulates the expectation on member landlords to comply with our orders and recommendations (paragraph 44).

We believe we have a high level of compliance with orders and recommendations, but in future we will monitor compliance on all cases where we make orders and will take enforcement action to ensure compliance.<sup>17</sup>

Any action taken by the Ombudsman to ensure that the member landlord complies with our orders and recommendations is "enforcement action". Enforcement action can take different forms and the type of action to be taken will depend on the parties involved, the nature of the orders and recommendations and any reasons for non-compliance.

Enforcement action covers a wide spectrum of activities, ranging from a telephone call to publication of findings or expulsions from the scheme.

## **Enforcement action**

Moderate enforcement action includes:

- Telephone call to remind the member of their required action
- Writing to the landlord contact
- Escalating the enforcement by writing to a senior member of staff, chief executive or governing body

Serious enforcement action includes:

- Escalation to the board or other governing body
- Reporting the failure to comply to the regulator
- Publishing the case on our website
- Requiring the landlord to publish the case
- Publishing the case in the national or housing press
- Expelling the member landlord from the scheme

**N.B. Any decision to take serious enforcement activities will be made by the Ombudsman.**

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<sup>17</sup> Guidance to be provided covering our monitoring policy and action to be taken in the case of non-compliance with orders.

# REVIEW

## **“Paragraph 31**

**The Ombudsman will make provision for a review of the Ombudsman’s determination of a complaint subject to the parties:**

**Providing new facts and/or evidence; or**

**Making comments on or challenging the facts and/or evidence on which the Ombudsman has made the determination.”**

Reviews of determinations reflect the principles of natural justice and demonstrate fair process.

They will be carried out by a manager from a different team who has not been involved in the original decision.

In addition to demonstrating fair process our reviews:

- identify and assess any new evidence against our findings and determination, particularly seeking to identify if we have misinterpreted the law; considered irrelevant evidence, or failed to consider relevant evidence.
- put right any incorrect findings or inappropriate decisions in our determination.
- provide further explanation/clarification of the Ombudsman’s role, and methodology (DRPs) to promote understanding of the outcomes by either party.
- manage risk, for example; the risk of an incorrect or illegal decision, or the risk of judicial review.

Complaints about the Ombudsman’s handling of a complaint are usually dealt with separately from a review of our determination. However, if it is appropriate we can respond to a complaint and review a determination by way of the same response.

# DISPUTE RESOLUTION PRINCIPLES

## Introduction

The DRPs are a distillation of the Ombudsman's experience of resolving disputes and reviewing complaint handling procedures over many years.

*Who are the principles for?*

The principles have been developed for four key stakeholder groups:

Internal – the principles apply to the Ombudsman's team. We should apply them in our own work.

Landlords – the principles are a good practice guide for landlords to apply in their own complaint handling. If they do, they are more likely to be successful in resolving disputes at an early stage, fostering better relationships and saving resources.

Tenants – the principles show tenants what they can expect from their landlord when they raise a complaint. (They can also help tenants understand how they can influence the way in which their complaints are handled.)

Designated persons – the principles provide a good practice guide which designated persons can apply to assess a landlord's complaint handling. Applying the principles in their own consideration of complaints can also help the designated person to be more effective at resolving complaints.

*How does the model work?*

There are only three principles driving effective dispute resolution:

- Be fair – follow fair processes and treat people fairly
- Put things right
- Learn from outcomes

Effective dispute resolution through application of any complaint handling process requires the right organisational cultural conditions. Unless they exist, no amount of process engineering or staff training will achieve the DR principles. A positive complaints culture is central to successful dispute resolution.

Complaint handling processes should support delivery of the principles and vice versa.

The behaviour of everyone involved in complaint handling processes will affect their success.

Although the three principles themselves are simple, applying them effectively requires consideration of culture, process and behaviour.

## Culture

- A positive complaints culture which regards complaints as opportunities not threats is central to successful dispute resolution, and indicative of a customer-focussed, learning-centred organisation which endeavours to achieve service excellence.
- Effective governance in respect of complaints handling forms the bedrock of a positive complaints culture. It provides leadership in complaint management and sets clear objectives for driving change leading to service improvement.
- Top-down commitment and focus on outcomes and learning from complaints. Senior management support and adequate complaint management resourcing demonstrate that the organisation is sincere about resolving problems promptly.
- Openness and accountability are key to ensuring accessibility of procedure and managing complainant expectations throughout the process, whilst recognising corporate responsibility for decision making within the process.
- Understanding the purpose of the complaints handling process is crucial to reaching resolution at the earliest appropriate opportunity.
- Individuals need to understand their role and responsibilities within the process and understand the importance of principles of customer care, in order to make decisions and resolve disputes effectively.
- People require the skill, ability and support to exercise discretion in complaint handling to reach a fair outcome in individual cases.
- Acknowledging the importance of diversity ensures fair treatment irrespective of the complainant's background or circumstances.

*How is 'culture' relevant for the four stakeholder groups?*

### Internal

- Our commitment to a culture that supports a positive attitude to resolving disputes is reflected in our mission, vision and values.

### Landlords

- We encourage landlords to aspire to a positive complaint culture – we seek opportunities to promote such a culture and the benefits it can bring. For example, more focussed use of resources and less waste, better relationships with tenants, improved services and a better working environment.

### Tenants

- Scrutiny and tenant panels can hold landlords to account – their actions and behaviours will also impact on the complaint handling culture.

- All tenants have a part to play in contributing to the culture and it will help them to do this in a positive way if they have realistic expectations of their landlord.

#### Designated persons

- Can consider a landlord's cultural attitude towards complaints if reviewing its complaint handling.
- We encourage designated persons to consider how the final five bullets may apply to their own consideration of complaints.

### **BE FAIR**

#### Follow fair process

- A user focussed complaints handling process with a clear commitment to maintaining privacy and confidentiality places the complainant at its heart.
- Well-publicised, with clear information provided as to what complaints will be considered and what the complainant can expect from the process makes it both accessible and transparent.
- An ordered sequence of steps which allow for flexibility and exercise of discretion to resolve the complaint differently, where this would produce a fairer outcome.
- It should be clear who is responsible for decisions at each stage of the process and there should be an express right to challenge those decisions.
- Transparency of timescales encourages prompt complaint management in addition to managing complainant expectations of the expected length of time before decisions will be made.
- In order to increase accessibility there should be the opportunity to make complaints in person or in writing. Assistance to use the process where appropriate is desirable, with special needs such as advocacy accommodated.
- Complaint outcomes should be clear, evidence-based and rely on the facts of the particular case to minimise the risk of unwittingly applying hindsight or prior knowledge to presenting issues.
- Processes should comply with legal and regulatory requirements, and with rules of natural justice, such as being free of bias, offering a right to be heard and giving clear reasons for decisions.

### *How is 'fair process' relevant to the four stakeholder groups?*

#### Internal

- Our dispute resolution process, service user standards and policies and our casework quality standards are designed to ensure that we follow a fair process in considering complaints.

#### Landlords

- We expect landlords to have and to follow a fair process for handling complaints.

#### Tenants

- Scrutiny and tenant panels can hold landlords to account for their complaint handling processes.
- Complainants can expect their landlords to have and to follow a fair process in considering their complaint.

#### Designated persons

- Can consider whether or not the landlord has a fair complaint process (and whether that process was fairly followed) when considering a complaint.
- We encourage designated persons to consider how the features of a fair process apply in making their own consideration of complaints more effective.

#### **BE FAIR**

##### Treat people fairly

This means;

- respecting diversity
- being free from prejudice
- taking each complaint on its facts
- taking into account the person and their circumstances but
- behaving consistently
- taking responsibility for resolving the dispute
- escalating the complaint if appropriate
- keeping confidentiality and respecting privacy.

### *How is 'treating people fairly' relevant to the four stakeholder groups?*

#### Internal

- Our values, diversity policy, quality standards, service user standards and policies and our casework competencies are all designed to ensure that we treat people fairly when considering complaints.

## Landlords

- We expect landlords to treat complainants fairly.
- Landlords are entitled to balance the needs of complainants with the needs of employees – with fair management of expectations and behaviours if they become unreasonable.

## Tenants

- Scrutiny and tenant panels can hold their landlord to account for the way it treats tenants and complainants. They should also ensure that they treat both the landlord and the complainant fairly when considering complaints.
- Complainants can expect to be treated fairly when they raise a complaint.
- Complainants should be aware that their landlord is entitled to manage their expectations and that if their behaviour is considered unreasonable, their landlord is entitled to treat them differently when handling their complaints.

## Designated persons

- Designated persons can have regard to the way in which a landlord treats the complainant when they consider a complaint. They may also have regard to whether or not the complainant has reasonable expectations, and whether their behaviour in pursuing the complaint has been reasonable.
- DPs should treat both the complainant and the landlord fairly when they consider complaints.

### **PUT IT RIGHT**

- Effective dispute resolution requires a process designed to resolve complaints, rather than one which acts as either a series of stages a complainant must complete in order to approach the Ombudsman, or a barrier to complaints. Efficient complaint handling can prevent unnecessary and resource-intensive escalation.
- Resolution of the complaint should comply with law, policy and good practice and restore the parties to their position prior to any service failure.
- Financial compensation should be made if the complainant's position cannot be restored.
- Manage expectations - do not promise anything that can't be delivered or would cause unfairness to other service users
- Recognise that resolving the dispute is the first step to repairing and rebuilding the landlord and tenant relationship.
- Look beyond the circumstances of the individual complainant and consider whether anything needs to be 'put right' in terms of process or systems.

## *How is 'putting it right' relevant to the four stakeholder groups?*

### Internal

- Our focus on local resolution reflects our support for landlords putting it right as soon as possible within their own procedures.
- Our process is designed to ensure that landlords remain responsible for the solutions that will put things right, even if we are involved.

### Landlords

- Landlords' complaints handling procedures should demonstrate that their purpose is to resolve disputes and restore the complainants' position in the event of anything going wrong.
- Landlords remain responsible for ensuring that things are put right, even if we have to intervene.
- Landlords are entitled to manage complainants' expectations about what is feasible in terms of putting things right.

### Tenants

- Scrutiny and tenant panels have a role in ensuring that the landlords complaint handling process is effective in putting things right.
- Complainants can expect their landlord to try to put things right if they have investigated a complaint and found that something has gone wrong.
- If a complainant does not think that things have been put right they are entitled to ask for their complaint to be escalated.
- Complainants should be aware that there are sometimes limits to what a landlord can do to put things right, for example for legal or financial reasons.

### Designated persons

- Designated persons can have regard to whether the landlord has made a genuine effort to put things right. They can also consider whether or not the complainant has reasonable expectations and how well they have been managed.
- We encourage designated persons to consider how the principle of 'putting things right' can also apply in making their own consideration of a complaint more effective.

## LEARN FROM OUTCOMES

- Ensure systems are in place for recording and analysing lessons learnt from complaints, for reporting purposes and to facilitate changing policy and improving service delivery.
- Review lessons identified from complaints and inform the complainant of changes made as a result of them to demonstrate commitment to resolving disputes and excellence in customer care.

*How is 'learning from outcomes' relevant to the four stakeholder groups?*

### Internal

- Our new process, casework management system and performance management framework are being designed to ensure that we identify and record the outcomes of the work that we do.
- We are developing systems that will allow us to capture the lessons to be learnt from our consideration of complaints and complaint handling processes. We are putting in place mechanisms to ensure that those lessons are shared with our stakeholders.

### Landlords

- We expect landlords to demonstrate improvements in their complaint handling that evidences a commitment to learning from complaints.
- Landlords should communicate with their tenants and complainants about the changes they make as a consequence of complaints.

### Tenants

- Scrutiny and tenants panels have a role in ensuring that lessons are learnt from complaint handling and that systems are in place to allow service delivery improvements to be made.

### Designated persons

- Designated persons can have regard to whether or not a landlord shows evidence of applying learning from complaint handling to improve their service delivery.
- They may also wish to consider the extent to which the effectiveness of their own complaint handling can be improved in the same way.

# QUALITY STANDARDS

## Introduction

The Ombudsman has legal authority over tenants and landlord members. Reliance on that authority is not our preferred way of relating to our stakeholders. We will be more effective in achieving our primary outcomes if tenants, landlords and designated persons respect us and the work that we do.

To ensure the respect of our customers all our interactions must be of a high standard.

Maintaining the quality of our work also mitigates the risk of challenge to our decisions.

The standards:

- apply to all casework
- define our expectation of the quality of casework
- reflect the role and remit of the Housing Ombudsman
- provide a consistent framework for decision-making
- provide a framework for development, improvement and measurement of the quality of dispute resolution.

## What defines our quality?

Ombudsman's role:

- Inquisitorial
- Fair
- Impartial
- Expert
- Transparent (clear, explained, reasoned)

Natural justice:

- The bias rule – the decision maker must not have a personal interest in the decision they are making and must not prefer one person over another when they are making a decision (impartiality).
- The hearing rule – no one should be condemned unheard. Hearings must be fair.
- The evidence rule – decision must be based on evidence, taking into account all relevant considerations, not taking into account irrelevant considerations. Decision maker must be acting to their proper purpose. Decision must not be unreasonable.

Judicial review (grounds for):

- Illegality – decision by the wrong person, an error in fact of law, powers used for a purpose other than that envisaged by law, ignoring relevant considerations, taking into account irrelevant considerations, fettering discretion.
- Irrationality – proportionality.
- Procedural impropriety – breach of statutory procedures, breach of natural justice (bias, fair hearing, failure to give reasons, breach of legitimate expectations).

Our core values and behaviours:

### **We will act fairly and impartially**

Fairness and impartiality is central to all we do. We are committed to acting without discrimination or bias, fairly and ethically at all times and implementing fair systems and processes.

### **We will be open and accountable**

We act in an open and transparent way. We are accessible, ensuring information is made widely available using multiple channels. We create a climate of support and accountability which helps us to be open to challenge and scrutiny, answerable for our actions, and to take individual and collective responsibility. We are held to account by Parliament, government, our customers and other stakeholders for the quality of our service and for delivering on our commitments.

### **We will empower and respect those we work with**

We respect and value those we work with. We respect the skills and experience of others. This helps us to offer the right level of support and guidance to empower those *we work with*, *enabling responsibility to be taken, informed* decisions and choices to be made and high standards to be achieved.

### **We will be proactive and take responsibility for achieving results**

We take a *proactive* approach, *taking responsibility* to deliver the best results we can and to achieve our goals. We are always striving to exceed expectations and targets.

### **We will work as One Team within HOS and collaboratively with others**

We work together as one team to a shared vision, common goals and targets. We maintain consistency in our actions, messages and behaviours. We work with others, nurturing a collaborative approach, respecting others' views and sharing ideas.

### **We will be curious, always seeking to learn and improve**

We learn from outcomes to make continuous improvements. We ask probing questions invite and act on feedback and are consistently striving to learn and improve, seeing learning as central for improvement.

These factors are reflected in the quality standards – and also in our key result areas and competencies.

## QUALITY STANDARDS

Standard		Factors
1	<b>Ombudsman's role</b>	<ul style="list-style-type: none"> <li>• In accordance with scheme, manual and process</li> <li>• Intervention is proportionate</li> <li>• Approach is inquisitorial</li> <li>• Facts are established on basis of evidence</li> <li>• Objective analysis and evaluation of evidence</li> <li>• Clear conclusions based on balanced assessment</li> <li>• Authorities/ standards referenced and assessed</li> <li>• Risk to reputation is identified and assessed</li> </ul>
2	<b>Communication</b>	<ul style="list-style-type: none"> <li>• Professional and respectful</li> <li>• Neutral tone and language</li> <li>• Logically structured</li> <li>• Jargon free</li> <li>• Style appropriate to audience</li> </ul>
3	<b>Customers</b>	<ul style="list-style-type: none"> <li>• Manage expectations</li> <li>• Needs identified and addressed</li> <li>• Identify clear outcomes</li> <li>• Identify and articulate options</li> <li>• Keep informed and what happens next</li> </ul>
4	<b>Decisions</b>	<ul style="list-style-type: none"> <li>• Decision is clear and explained</li> <li>• Decision is based on evidence</li> <li>• Evidence is referenced in decision</li> <li>• Consequences of decision identified</li> <li>• Impact of decision on outcome is assessed</li> </ul>
5	<b>Administration</b>	<ul style="list-style-type: none"> <li>• Audit trail of decisions is on file</li> <li>• Database protocols are followed</li> </ul>

# APPENDIX

## EXAMPLE DOCUMENTS FOR MANAGING THE PROCESS

### 1. FACTSHEET EXPLAINING OPTIONS

#### OPTIONS FOR RESOLUTION

##### Early resolution or investigation

As of 1 April 2016, parties will be able to choose whether they want to opt to have their case determined under our new pilot process, **early resolution**.

By giving the parties options, we are empowering them to be proactive in the resolution of that dispute.

**Note:** Both parties must agree to the option of early resolution, otherwise the case will go forward for investigation.

#### EARLY RESOLUTION

This option will be time limited – initially up to two months from the date on which both parties accept the offer<sup>18</sup>.

There is no investigation by the Ombudsman with this option but we will work with the parties during the two month period to agree amicable solutions wherever possible.

During the two month period we will offer focussed support, exploring options for resolution based on our experience of complaints handling.

**If the complaint is resolved within the two months**, a determination will be issued by the Ombudsman reflecting the terms of the resolution including any expectation on compliance with that determination.

**If the complaint is not resolved within the two months**, the case will go forward for investigation (see below). Note: At this point it may be possible, depending on the circumstances of the case and the evidence already obtained etc, for the Ombudsman to make a determination.<sup>19</sup>

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<sup>18</sup> The two month period starts from the date on which the final party accepts the offer.

<sup>19</sup> Active monitoring of outcomes of such cases to take place during pilot and to inform dynamic guidance.

## INVESTIGATION

If one or both of the parties to a dispute rejects the option, or, having chosen early resolution their complaint is not resolved, we will investigate the complaint.

Any evidence and information already made available to us will be considered within the investigation and the investigation will be deemed to have commenced from the duly made date.<sup>20</sup>

### ***Why opt for early resolution?***

There are good reasons for the parties to agree to pursue this option, for example:

- It is a formal process but can be done quickly, usually within two months
- It is about identifying the matters still in dispute between the parties at the end of the ICP
- The parties, together with HOS, explore the range of possible interventions to facilitate the resolution of the dispute.
- The determination issued (under paragraph 33 of the Scheme) records the terms of the agreed way forward to resolve the dispute and allows the Ombudsman to ensure both parties comply with that determination (in accordance with para 44 of the Scheme)

### ***Managing the intervention***

We will act in the context of the terms of the Scheme, the Ombudsman's role, the dispute resolution principles and the quality standards. We will take whatever action is appropriate to help resolve the dispute, bearing in mind proportionality.

We will provide an independent and impartial consideration of the complaint by looking at the circumstances of the dispute, including:

- identifying what is outstanding following exhaustion of the complaints process including any redress the landlord has offered as a means of resolving the dispute,
- what any such offer intends to address and what the complainant remains dissatisfied with and why.

We will decide whether any offer made by the landlord resolves the complaint satisfactorily, including deciding whether the complainant has refused a reasonable offer (paragraph 32).

The following are some factors to take into account when considering if an offer is reasonable:

- Redress for any failings
- Restoring a complainant's position
- An apology

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<sup>20</sup> See "Complaint Duly Made?" guidance.

- An explanation for what happened
- A mistake corrected
- Compensation
- A change in the way a person or organisation behaves
- A promise that a person or organisation will/will not do something.

If the outcome of the early resolution process is agreement between the parties, then the Ombudsman will make a determination which reflects the terms on which agreement was reached.

Our determination will clearly:

- Reference the specific, relevant paragraph of the Scheme
- Set out the background to reaching resolution
- Explain why we think the offer resolves the dispute based on the particular circumstances of the complaint. This is in accordance with the Ombudsman's statutory duty to determine complaints by reference to what is, in his opinion, fair in all the circumstances of the case.
- Set out the agreement reached and the expectations on both parties to comply<sup>21</sup>.

### **Authority for early resolution option**

Section 51(1) gives effect to the provisions of Schedule 2 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.

#### **Schedule 2 to the Housing Act 1996**

**(1)(A) A scheme shall not be approved for the purposes of the Schedule unless it makes provision for...**

**(9) A duty of the housing ombudsman to investigate any complaint duly made but 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.**

N.B. Paragraph 10 of Schedule 2 allows us to propose alternative methods for resolving disputes. This is discretionary, something we can do.

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<sup>21</sup> See separate guidance on orders, recommendations and compliance.

Paragraph 33 of the Scheme confirms:

**“Paragraph 33**

**The Ombudsman may establish arrangements for resolving disputes with the consent of the parties whether by the use of local resolution, mediation, arbitration or otherwise...”**

Our approach will also allow us to align our activities with Article 9 of the ADR (Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013).

## **2. EXAMPLE CONFIRMATION OF ACCEPTANCE LETTER (FOR COMPLAINANT)**

Dear XXXX

### **Complaint ref - XXXXXX**

Following our telephone conversation, I confirm that you have accepted the offer to work with your landlord to seek an agreed early resolution to your dispute with our intervention and support.

I enclose a factsheet setting out the details of this approach. As a first step, we need to find out:

- what remains in dispute now that the landlord's complaint procedure has come to an end; and
- what you think should be done to put the remaining issues right.

Please let us know your views on this as soon as possible. You can write, email or call us. We may also ask to see other correspondence that you have relating to the issues still in dispute. Please note that the information you provide will be shared with your landlord as part of the process. If you have any questions about this process, or would like to speak to someone about the information that we require, please contact the Dispute Resolution Team on 0300 111 3000.

Once we have heard back from you, we will contact your landlord and start to explore the options for resolution with you both.

### 3. DETERMINATION

Dear

**Complaint ref- xxxxxx**

Under the paragraph 33 of the Scheme this is the Ombudsman's determination of your dispute with xxx following our intervention.

Summary of facts/dispute/intervention

[text]

The Determination

[text]

Recommendations, compliance date

[text]

The Ombudsman would like to thank you for participating in the early resolution process. Your complaint has now been resolved with our intervention and you have agreed to the settlement upon which the Ombudsman's determination is based. Subject to compliance with the Ombudsman's determination, this case is now closed.

If you wish to seek a review of this decision you can write to the Housing Ombudsman, but consideration will normally only be given to new facts and evidence or to comments on the facts and evidence on which your agreed settlement was reached, and on which we relied.

The determinations are not for publication and will remain confidential to all the parties directly involved in the dispute. The Ombudsman may, however, publish a short digest of the case: if so we will not make reference to names, addresses or other details which may help third parties identify you or the landlord.

Yours sincerely