

# THE SCHEME





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# INTRODUCTION

The Housing Ombudsman Scheme is approved by the Secretary of State under section 51 of and Schedule 2 to the Housing Act 1996. The Act requires social landlords, as defined by section 51(2) of the Act, to be members of an approved scheme. Others may join the Scheme on a voluntary basis. The purpose of the Housing Ombudsman Scheme is to enable tenants and other individuals to have complaints about members investigated by a Housing Ombudsman. The Scheme comes into effect on 1 April 2018 and replaces the previous scheme which was in operation from 1 April 2013. The role of the Ombudsman is to resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate, as well as to support effective landlord-tenant dispute resolution by others.

## **PART 1**

### **General terms and definitions / Membership / Financing arrangements**

#### The approved Scheme

1. **The Scheme is approved by the Secretary of State under the terms of section 51 of the Housing Act 1996. It also applies to others who apply to join the Scheme and meet the conditions for membership.**
2. **In the Scheme:**
  - a. **‘the Secretary of State’ means the Secretary of State with responsibility for housing;**
  - b. **‘the Ombudsman’ means the person appointed to that office by the Secretary of State;**
  - c. **‘members’ means social and private landlords, lessors, licensors, managing agents, and other providers of housing services which are members of the Scheme either on a mandatory or voluntary basis;**
  - d. **‘social landlords’ has the meaning given by section 51(2) of the Housing Act 1996;**
  - e. **‘registered providers’ has the meaning given by section 80 of the Housing and Regeneration Act 2008 and include for-profit as well as not-for-profit bodies;**
  - f. **‘the Regulator of Social Housing’ has the meaning given by section 92 of the Housing and Regeneration Act 2008.**
3. **The Scheme will normally be reviewed by the Ombudsman every five years, but any proposed changes must be approved by the Secretary of State. From time to time between these formal reviews the Ombudsman or the Secretary of State may propose amendments to the Scheme. Significant amendments may only be**

made following consultation as determined by the Secretary of State.

### Members

4. A person who applies to become a member of the Scheme must do so to the Ombudsman in such form and with such supporting information as the Ombudsman may require.
5. 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.

### Mandatory members

6. All bodies, other than Local Housing Authorities, which are or at any time have been social landlords must be members of the Scheme (which is the only scheme currently approved by the Secretary of State) in respect of all their housing activities. Local Housing Authorities in England which are registered providers of social housing are social landlords and must be members of the Scheme in connection with their housing activities in so far as they relate to the provision or management of social housing. In addition, those Local Housing Authorities must be members of the Scheme in connection with the management of dwellings which they own and let on a long lease.
7. Social landlords who become members of the approved Scheme must give notice of that fact to the Regulator of Social Housing within 21 days of joining.

### Voluntary members

8. In addition to social landlords the Ombudsman may admit to the Scheme other members who meet the conditions of paragraph 5.

### Removal or withdrawal of a member

9. A social landlord may withdraw from the Scheme if it complies with the requirements set out in paragraphs 5 (1) and (2) of Schedule 2 to the Housing Act 1996, and with any conditions that the Ombudsman may require according to the circumstances of each case.
10. A voluntary member may withdraw from the Scheme if it complies with the conditions that the Ombudsman may require according to the circumstances of each case.
11. The Ombudsman may end the membership of a voluntary member if it has not complied with the Scheme or with undertakings given to the Ombudsman as a term of admission.

### Financing the Scheme

12. The Scheme will be financed by a subscription payable on demand to the Ombudsman by each member or, in respect of Local Housing Authorities only, by grant-in-aid from the Secretary of State.
13. The total amount to be recovered from members who pay a subscription will be decided by the Ombudsman and payable on demand.
14. The subscription will be the amount that the Ombudsman decides is enough to meet all the expenses of the Scheme having taken into account any grant-in-aid from the Secretary of State. The Ombudsman will have regard to forecasts of the likely demand on

**the Scheme and any performance targets, past and future liabilities, and the provision of reasonable reserves.**

- 15. The basic principle for calculating the subscription is that each member must pay an amount decided by reference to the number of units of accommodation covered by the Scheme and which it owns or manages. The unit charge will be calculated by dividing the amount to be recovered by the total number of units of accommodation covered by the Scheme. Each member's subscription will be calculated by multiplying the total number of its units of accommodation by the unit charge.**
- 16. Any increase in the subscription must be approved by the Secretary of State.**
- 17. A member must calculate the number of its units of accommodation in the Scheme on a day to be determined each year by the Ombudsman. The principal officer of the member must certify the number in writing.**
- 18. The subscription will be due and payable on a date specified in the demand. The Ombudsman may require payment of interest calculated at the rate of 2% above the base rate (or its equivalent) of a clearing bank nominated by the Ombudsman from the date that such sums become due until payment.**



## **PART 2 Complaints about members – dispute resolution**

### People who can use the Scheme

#### **19. The following people can make complaints to the Ombudsman about members:**

- a. a person who is or has been in a landlord/tenant relationship with a member. This includes people who have a lease, tenancy, licence to occupy, service agreement, or other arrangement to occupy premises owned or managed by a member;
  - > if the complaint is made by an ex-occupier they must have had a legal relationship with the member at the time that the matter complained of arose;
- b. an applicant for a property owned or managed by a member;
- c. a representative of any of the people above who is authorised by them to make a complaint on their behalf;
- d. a representative of any of the people above who does not have the capacity to authorise a representative to act on their behalf. The Ombudsman must be satisfied that the representative has the legitimate authority to act on the person's behalf; or
- e. a person with the legal capacity to make a complaint on behalf of any of the people above who is deceased.

#### **20. The following people (designated persons) can refer complaints about members to the Ombudsman:**

- a. a member of the House of Commons;
- b. a member of the local housing authority for the district in which the property concerned is located; or
- c. a designated tenant panel for a social landlord.

- 21. The referral of a complaint to the Ombudsman by a designated person must be made in writing.**

What can be complained about

- 22. The Ombudsman will consider complaints about the actions or omissions of a member, which is a Local Housing Authority, in connection with its housing activities so far as they relate to the provision or management of housing and of other members in respect of all their housing activities. The person complaining or on whose behalf a complaint is made must have been, in the Ombudsman's opinion, adversely affected by those actions or omissions in respect of their application for or occupation of property.**

Complaints which the Ombudsman will not investigate

- 23. The Ombudsman will not investigate complaints which, in the Ombudsman's opinion:**
- a. are made prior to having exhausted a member's complaints procedure;**
  - b. are made within 8 weeks of having exhausted a social landlord's complaints procedure;**
    - > unless a designated person has refused to refer the complaint to the Ombudsman or has agreed to the complaint being brought to the Ombudsman and the refusal or agreement is in, or has been confirmed in, writing;**
  - c. concern the operation, process or decisions relating to the designated persons referral system;**
  - d. were brought to the Ombudsman's attention normally more than 12 months after they exhausted the member's complaints procedure;**

- e. were not brought to the attention of the member as a formal complaint within a reasonable period which would normally be within 6 months of the matters arising;
- f. concern policies which have been properly decided by the member in accordance with relevant and appropriate good practice, unless the policy may give rise or contribute to a systemic service failure;
- g. concern the level of rent or service charge or the amount of the rent or service charge increase;
- h. concern matters that are, or have been, the subject of legal proceedings and where a complainant has or had the opportunity to raise the subject matter of the complaint as part of those proceedings;
- i. concern matters where the Ombudsman considers it quicker, fairer, more reasonable, or more effective to seek a remedy through the courts, a designated person, other tribunal or procedure;
- j. concern the terms and operation of commercial or contractual relationships not connected with the complainant's application for, or occupation of, a property for residential purposes;
- k. concern terms of employment or other personnel issues, or the ending of a service tenancy following the ending of a contract of employment;
- l. concern matters raised by a complainant on behalf of another without their authority; unless sub-paragraphs 19 d. or e. apply;
- m. fall properly within the jurisdiction of another Ombudsman, regulator, or complaints-handling body;
- n. are being pursued in an unreasonable manner including frivolous or vexatious complaints;
- o. seek to raise again matters which the Housing Ombudsman, or any other Ombudsman has already decided upon;
- p. are about matters which relate to the processes and decisions concerning a member's governance structures;

- q. concern matters which, in the Ombudsman's opinion, do not cause significant adverse effect to the complainant; or
- r. concern matters where the complainant is seeking an outcome which is not within the Ombudsman's authority to provide.

#### How the Ombudsman will consider complaints

- 24. The Ombudsman must determine whether a complaint comes within the Ombudsman's jurisdiction under the terms of the Scheme.
- 25. The Ombudsman must investigate any complaint duly made and not withdrawn, and may investigate any complaint duly made but withdrawn.
- 26. The Ombudsman will decide how to consider and investigate complaints subject to the Scheme taking account of the evidence of service failure presented.
- 27. The Ombudsman may accept an individual's complaint as a test case if its facts equally affect others. The Ombudsman may also accept one complaint from more than one complainant about the same member if the issues and facts are the same, without carrying out multiple investigations.
- 28. The Ombudsman will make any enquiries that the Ombudsman considers necessary to decide if a complaint comes within jurisdiction or to resolve a complaint.
- 29. The Ombudsman will, subject to the Ombudsman's confidentiality policy:
  - a. tell the member the nature of the complaint and the allegations and evidence against it; and
  - b. tell the complainant the member's case in reply.

30. The Ombudsman is not bound by any legal rule of evidence.
31. The Ombudsman will make provision for a review of the Ombudsman's determination of a complaint subject to the parties:
- a. providing new facts and/or evidence; or
  - b. making comments on or challenging the facts and/or evidence on which the Ombudsman made the determination.
32. At any time the Ombudsman may suspend or stop the investigation of a complaint if:
- a. the parties begin litigation on the same matter;
  - b. the member makes redress to the complainant which, in the Ombudsman's opinion, resolves the complaint satisfactorily;
  - c. the Ombudsman considers the complainant has refused an offer which, in the Ombudsman's opinion, resolves the complaint satisfactorily; or
  - d. the Ombudsman decides that any of the reasons in paragraph 23 apply.
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. The Ombudsman must publish details of the established arrangements for alternative dispute resolution.
34. The Ombudsman may at any time promote local resolution of a dispute by either:
- a. referring the complaint back to the complainant and member and/or a designated person; or
  - b. providing assistance to the complainant and member and/or a designated person to resolve the dispute.

35. The Ombudsman may decide to suspend or not to progress an investigation if the Ombudsman thinks there is opportunity to resolve the dispute locally.
36. At any time a complainant may withdraw the complaint but the Ombudsman must be satisfied as to the circumstances before stopping consideration of the complaint.
37. The Ombudsman must publish and make available full information about the Ombudsman's procedures for carrying out investigations.
38. If the complaint is referred by a designated person the Ombudsman must inform the designated person of the result of the investigation and any determination made. Likewise, if the Ombudsman decides not to investigate or to discontinue an investigation the Ombudsman will inform the designated person of the reasons for that decision.
39. At any stage during the investigation of a complaint the Ombudsman may decide that the complaint relates partly to a matter which could be within the jurisdiction of the Local Commissioners. If the Ombudsman so decides, the Ombudsman must consult with a Local Commissioner and may then either:
  - a. inform the complainant, representative or designated person how to bring a complaint to a Local Commissioner; or
  - b. conduct an investigation jointly with a Local Commissioner.
40. If the Ombudsman decides that a complaint already subject to an investigation by a Local Commissioner relates partly to a matter within the jurisdiction of the Ombudsman, the Ombudsman may conduct an investigation jointly with a Local Commissioner.
41. If the Ombudsman conducts an investigation jointly with a Local Commissioner:

- a. the requirements of paragraphs 25 may be satisfied by a report made jointly with a Local Commissioner; and
- b. a joint report must distinguish the determinations of the Ombudsman from other findings or recommendations.

What the Ombudsman's investigation seeks to establish

42. When investigating, the Ombudsman is concerned to establish whether the member has been responsible for maladministration (which includes a finding of service failure) which may include, but not exclusively, circumstances where the member:

- a. failed to comply with any relevant legal obligations;
- b. failed to comply with any relevant codes of practice;
- c. failed to apply its own procedures;
- d. delayed unreasonably in dealing with the matter;
- e. behaved unfairly, unreasonably, negligently, or incompetently;  
or
- f. treated the complainant personally in a heavy-handed, unsympathetic or inappropriate manner.

What the Ombudsman can do following investigation

43. The Ombudsman will determine complaints by what is, in the Ombudsman's opinion, fair in all the circumstances of the case. The Ombudsman's determinations may reject the complaint or make orders or recommendations including that the member:

- a. apologise to the complainant;
- b. pay compensation to the complainant;
- c. performs or does not perform any of the contractual or other obligations existing between the member and the complainant;

- d. **exercises or does not exercise any of the rights existing between the member and the complainant;**
- e. **undertakes or refrains from undertaking works;**
- f. **takes such other reasonable steps to secure redress within the legal powers of the member.**

#### Compliance with determinations of the Ombudsman

- 44. **Members are expected to comply with the determination of the Ombudsman following the Ombudsman's consideration of a complaint.**
- 45. **The Ombudsman may require a member to report to the Ombudsman on compliance with a determination in such a way and at such a time as the Ombudsman may specify.**
- 46. **The Ombudsman will report a member to any appropriate regulatory agency and/or the board, committee or scrutiny panel of the member, if it fails to comply with the Ombudsman's determination.**
- 47. **The Ombudsman may order a member or former member which fails to comply with a determination to publish that it has failed to comply, in such a way as the Ombudsman sees fit.**
- 48. **The Ombudsman may publish the fact and circumstance of non-compliance by any member, or former member naming the member in the Ombudsman's annual report or elsewhere.**

#### Providing information – obligations of members

- 49. **The Ombudsman may ask a member to provide information that is, in the Ombudsman's opinion, relevant to the complaint. The member must provide copies (without charge) or allow examination of the following records and documents:**



- a. the landlord's policies and procedures;
- b. any internal files, documents, correspondence, records, accounts or minutes of meetings, in hard copy or electronic form. This includes records relating to similar cases where the Ombudsman needs them to establish consistency of practice.

50. When the Ombudsman gives reasonable notice the member must (without charge):

- a. allow the Ombudsman to interview the member's staff or board or committee members;
- b. require a representative to attend any meetings convened by the Ombudsman;
- c. use its best and reasonable efforts to help the Ombudsman get information from third parties who may know about the subject-matter of the complaint or from the member's former members of staff; and
- d. provide such other reasonable help as the Ombudsman may request.

#### Publication of reports of investigations

- 51. The Ombudsman will make an annual report on the discharge of the Ombudsman's functions and the administration of the Scheme. The Ombudsman will publish the report to the Secretary of State who in turn will lay the report before Parliament.
- 52. The Ombudsman may from time to time publish other reports arising from the Ombudsman's work or research including such summaries of the Ombudsman's determinations and any conclusions which the Ombudsman wishes to bring to a wider audience.

## Access to information and confidentiality

53. **The Ombudsman must publish the procedures for giving public access to information held by the Ombudsman, how the Ombudsman handles information obtained and its confidentiality, and the Ombudsman's practice in publishing determinations.**
54. **The Ombudsman may include in a determination any statements, communications, reports, papers, or other documentary evidence obtained during the Ombudsman's investigation. The Ombudsman will decide what detail to include in any determination.**
55. **In publishing any determination, the Ombudsman must maintain, as far as practical, the anonymity of the complainant and of any third parties, and must exclude any matter which relates to:**
  - a. **the private affairs of an individual where publication would seriously prejudice the interest of that individual; and**
  - b. **the affairs of a member where publication would seriously prejudice the interests of that member unless the inclusion of the matter is necessary for the purposes of the determination.**
56. **The Ombudsman may name a member against which a complaint has been made.**
57. **For the purposes of the law of defamation absolute privilege attaches to any communication between the Ombudsman and any person by whom or against whom a complaint is made under the Scheme.**

## **PART 3 The Ombudsman's appointment, role and responsibilities / Scrutiny of the Scheme / Complaints about the Scheme**

### Appointment, terms & termination

58. **The Housing Ombudsman is a corporation sole.**
59. **The Secretary of State will appoint the Ombudsman on such terms as the Secretary of State thinks fit.**
60. **The Ombudsman must not, during the appointment as Ombudsman:**
- a. **be an agent, shareholder or officer of a member;**
  - b. **take up a tenancy or any other form of occupation provided by a member without the consent of the Secretary of State;**
  - c. **be an employee of or act in any professional or advisory capacity for a member; or**
  - d. **without the consent of the Secretary of State, be an employee or hold any office or place of profit under a person who provides services or goods to a member or any person associated with a member.**
61. **The Ombudsman's appointment must be terminated if the Ombudsman resigns by notice in writing to the Secretary of State.**
62. **The Secretary of State may give notice to, and terminate the appointment of, the Ombudsman, including on the following grounds:**
- a. **grave misconduct;**
  - b. **gross mismanagement;**

- c. because illness has prevented the Ombudsman from carrying out their responsibilities for more than 6 months in any consecutive period of 12 months; or
  - d. any of the circumstances in paragraph 60 apply.
63. If the Ombudsman is indisposed or otherwise prevented for whatever reason from carrying out their duties, the Secretary of State may appoint any person or people to be Acting Ombudsman for such period and on such terms as the Secretary of State may decide. This appointment will be on the basis that the Scheme will apply to the Acting Ombudsman as if the Acting Ombudsman were the Ombudsman.

#### Responsibility for dispute resolution and determining complaints

64. The Ombudsman will be solely responsible for the conduct of dispute resolution and the determination of complaints under the Scheme.

#### Responsibility for the administration of the Scheme

65. Prior to the start of each financial year, the Ombudsman will publish a business plan including projected annual budget, performance criteria, and targets. The Ombudsman must have regard to the number of disputes being or likely to be submitted and to the proposed performance criteria, and targets, and the need to have appropriate and adequate resources to enable the Ombudsman to carry out their functions effectively, in a timely manner, and in accordance with the Scheme.
66. The staff, contractors, consultants or agents employed by the Ombudsman will be appointed and dismissed by the Ombudsman. Within the approved budget and the established terms and conditions of employment, the Ombudsman will decide upon their numbers and terms of service or engagement, including remuneration, taking into account the annual Treasury guidance on public sector pay.

### Audit and advice to the Ombudsman

67. **The Ombudsman must appoint, following consultation with such persons as the Ombudsman considers necessary and with the approval of the Secretary of State, an Audit and Risk Committee. The Committee will scrutinise aspects of the operation of the Scheme as set out in its terms of reference in the Framework Document for the Housing Ombudsman.**
68. **The Housing Ombudsman shall prepare annual accounts in accordance with the Accounts Direction approved by HM Treasury.**
69. **The Ombudsman may from time to time decide, following consultation with such persons as the Ombudsman considers necessary, to appoint a Panel of Advisors. The Panel will assist the Ombudsman in such matters as the Ombudsman considers relevant and as set out in its terms of reference in the Framework Document for the Housing Ombudsman.**

### Complaints about the Service

70. **The Ombudsman must make arrangements for receiving and dealing with complaints from individuals or member landlords about how an original complaint against a member landlord was handled within the Scheme, and must publish such arrangements.**







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