

By email to: housingredress@communities.gsi.gov.uk

16 April 2018

Dear Andrew,

Strengthening consumer redress in the housing market

I am writing in response to the Ministry of Housing, Communities & Local Government's (MHCLG) consultation on strengthening consumer redress in the housing market.

Summary

1. The Ombudsman Association welcomes the Ministry's intention to strengthen and simplify consumer redress across the housing market.
2. It is in the interests of consumers that there should be a single, mandatory, ombudsman covering the private housing sector.
3. Any ombudsman should meet the Ombudsman Association's membership criteria and principles of Good Governance and Good Complaint Handling¹.
4. To be effective an ombudsman needs to work in a well-regulated environment, with clear common standards to measure against, and liaise closely with enforcement bodies.

Background

5. The Ombudsman Association was established 25 years ago and includes as members all major public and private sector Ombudsman schemes and complaint handling bodies in the United Kingdom, the Republic of Ireland, the British Crown Dependencies and the British Overseas Territories.
6. The Vision of the Association is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
7. An Ombudsman helps to underpin public confidence in the institutions that they cover; by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.
8. The Association's membership criteria are recognised by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*², which addresses the point of when it is

¹ www.ombudsmanassociation.org/association-guides.php

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'³.

Section 2: How things work now (Questions 8-9)

9. The overall problem with redress in the housing market is a combination of having multiple competing redress schemes whilst at the same time having gaps in coverage. The result is that for the public it is not clear how, or who, to raise a complaint with, there are gaps in who can access redress, access is sometimes restricted even where redress does exist, and the proliferation of schemes means there are inconsistencies in how complaints are handled.
10. The Ombudsman Association's long-standing position is that people should have access to an ombudsman in all areas of consumer and public services, and that there should be a single ombudsman within a sector.
11. This principle is based on the commonly held position that it is in the interests of consumers for access to redress to be simple and straightforward, and that having more than one ombudsman scheme (or redress provider) within a sector creates consumer confusion and uncertainty.
12. The position that there should only be one redress provider within a sector, and preferably an ombudsman, has been reinforced by a number of recent reports into the redress sector, including the 2017 Citizens Advice report *Confusion, gaps and overlaps*⁴ and the report by MoneySavingExpert⁵ Both reports are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits. The Gambling Commission also reported in 2017⁶ that having multiple redress schemes in their sector caused confusion for the public and did not result in additional benefits, and they recently reiterated their proposal to move towards a single ombudsman for the sector.
13. The solutions therefore are clear and commonly agreed: simplifying redress by having one ombudsman in a sector, thereby making it easier to raise awareness of how to raise a complaint, to have consistency of standards and decision making, and to ensure holistic oversight of issues in that sector to help drive broader improvement.
14. However, an ombudsman is just one piece of the puzzle. Ombudsmen are most effective in sectors where they work closely with a regulator and other accountability bodies. This can be seen for example in the energy sector, where the ombudsman works closely with Ofgem, and in health where the ombudsman works closely with both professional and systems regulators. In order to both improve services and hold organisations to account there needs to be clear common standards and commitments that an ombudsman can then measure organisations against, and effective relationships with regulators and other bodies in place to ensure enforcement.

Section 3: Improving 'in house' complaints handling (Question 10)

15. One of the additional benefits that an ombudsman brings is its role in proactively influencing the service provision and complaints handling of the bodies in its jurisdiction. This can be undertaken through training, producing guidance materials, and providing feedback on patterns in type and numbers of complaints. The further benefit of having a single ombudsman covering an entire sector is that service is available to all providers. This has been done most effectively by the Scottish Public Services Ombudsman through their

³ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

⁴ www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf

⁵ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

⁶ www.gamblingcommission.gov.uk/PDF/Complaints-processes-in-the-gambling-industry.pdf

Complaints Standards Authority role, which is also being adopted in Northern Ireland and in Wales.

Section 4: Practices and Powers (Questions 11-16)

16. The Association strongly believes that there should be increased harmonisation of powers and processes between ombudsman schemes in different sectors. Our membership includes ombudsman operating in both the public and private sectors, and in various countries and territories, and our common membership criteria of Independence; Fairness; Effectiveness; Openness & Transparency; and Accountability⁷ apply to them all.
17. Members of the public should expect a similar level of service regardless of which sector they complain about. In 2017, after a public consultation, we launched our Service Standards Framework⁸ which sets out the public commitments and service standards that can be expected when using the services of an ombudsman.
18. Free, direct and immediate access to an ombudsman if the organisation does not resolve the complaint promptly is an accepted and essential feature of an ombudsman scheme. At the moment tenants of social landlords in England do not have direct access to an ombudsman, having to either wait 8 weeks after the landlord's final decision or use the 'democratic filter' system to access the ombudsman. This restriction on access is as damaging as having no access at all.
19. An ombudsman should have a range of options open to them with regards to their decisions, from recommendations to undertake training or change policies to awarding financial redress. They should have the power to share information with regulators and other bodies. The consultation mentions the possibility of expelling a business from the scheme. This is only relevant in sectors where membership is voluntary or multiple providers operate. As membership should be mandatory, any serious issues such as non-compliance should be passed to the relevant regulator / enforcement body to take appropriate action.
20. It is accepted that, in the private sector, an ombudsman's decision is binding on the organisation complained about (if the complainant accepts the decision) and this is reflected in our membership criteria. In the public sector decisions are not binding but the process of parliamentary / democratic scrutiny ensures non-compliance is rare. In both scenarios it is important that the routes for enforcement of decisions, through the regulator or the courts if necessary, are clear.
21. It is a key element of an ombudsman scheme that as well as providing individual redress they should also share information wherever possible to help the wider sector learn from complaints handling and to improve the provision of services. Transparency is one of our key membership criteria and the publication of information about decisions and the performance of individual companies and sub-sectors is an important tool to drive improvement in conjunction with regulators and policy makers.
22. Complaints should be dealt with in a timely manner and as swiftly as possible. Different complaints will have different complexities, meaning that whilst some concerning relatively simple transactions may be resolved in a matter of days, more complicated issues may require up to 6 months to resolve. All ombudsman schemes should publish and report against the targets they operate to.
23. Accessibility is another key element of an ombudsman scheme. Ombudsman should proactively raise awareness of their services and ideally there should be a requirement on those in their jurisdiction to signpost to and inform consumers of their right to take their complaint to the ombudsman, as in, for example, the financial sector.

⁷ www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

⁸ www.ombudsmanassociation.org/docs/OA17%20Service%20Standards%202017_Final.pdf

Section 5: Addressing the gaps (Questions 17-29)

24. There are numerous gaps and overlaps in the existing redress landscape, several of which are identified in the consultation paper, including in relation to new build, complaints about freeholders, private landlords and park home residents.
25. The Association strongly believes that people should have access to an ombudsman in all areas of consumer and public services, including all those areas mentioned above and in the consultation paper. There should be a requirement, underpinned by statute if necessary, to be a member of an ombudsman scheme in order to deliver the Ministry's vision of strengthened redress for consumers.
26. A single ombudsman scheme would be best placed to provide redress for the private housing sector. Whilst there are existing ombudsman schemes operating in sub-sections of the housing sector, statutory underpinning would make it easier to operate a broader, effective, mandatory scheme. In advance of any legislative changes, policy and regulatory action could be taken to reduce the number of redress schemes currently operating and to require letting agents or private landlords to register and comply with certain standards (as MHCLG have started to do). Further consideration could also be given to exploring the introduction of a 'single portal' for all housing related complaints, including those outside the scope of this consultation, such as those that sit within the jurisdiction of the Financial Ombudsman Service, the Legal Ombudsman, and the Waterways Ombudsman.
27. As mentioned above, the creation of a single ombudsman will not in itself solve the problems with redress in the housing sector. Enforcement and compliance will need to be undertaken by regulators and other enforcement bodies, so work should be progressed on reform of the regulatory landscape and consideration of a licensing or registration system to operate in tandem with an ombudsman.

Section 6: Creating a single housing ombudsman service

28. As stated above, the Ombudsman Association's long-standing position, supported by current thinking in consumer policy, is that there should be a single ombudsman within a sector. The more difficult question to answer can be in trying to define a sector. In doing so it is most appropriate to consider the thinking and perception of the consumer / citizen, rather than that of the industry, Ministry, or existing redress bodies.
29. It is clear that the private housing sector, including new build, estate agents, landlords and others, is a single sector and as such there should be one ombudsman covering all aspects of it.
30. Taking into account the corresponding activity underway to create a single public services ombudsman (for Westminster / England), and the proposals to include social housing in that body, similar to the approach taken in Scotland, Wales and Northern Ireland, suggests that the nexus around issues such as homelessness, universal credit, and social housing might warrant social housing not being included in the remit of a single private housing ombudsman, but rather in that of a single public services ombudsman.
31. As the consultation paper notes, housing issues that are dealt with by redress schemes in other sectors, such as those around new homes warranties (the Financial Ombudsman Service), conveyancing (the Legal Ombudsman), or the issue of residential moorings (the Waterways Ombudsman) are not included in the remit of this consultation. Yet those complaints are as much about someone's home as complaints about an estate agent or a landlord.
32. There is ample evidence that the 'complaints maze' across the public and consumer landscape is impenetrable for the ordinary citizen and that a single portal for all complaints, akin to the e-People system in South Korea⁹, could be the answer. If MHCLG were to take

⁹ www.epeople.go.kr/jsp/user/on/eng/intro01.jsp

this forward for the housing sector, either as an interim or long-term solution, we would recommend engaging with other stakeholders and considering drawing it as broadly as possible to be a genuine portal for all housing related complaints, including those mentioned above that are dealt with in other sectors, or even to consider a still more ambitious single portal for complaints more broadly.

33. It is worth reiterating that whilst the introduction of a single portal would greatly improve issues around signposting, it would not address the many criticisms of having multiple redress providers within a sector. Real improvement to consumer redress in the housing sector can only be achieved if there is a single ombudsman scheme with a holistic jurisdiction and overview of the issues in the sector working effectively with the regulators / enforcement bodies to drive improvements.

The Association would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Donal Galligan', written in a cursive style.

Donal Galligan
Director, Ombudsman Association