



**Strengthening consumer redress in the housing market
A Consultation**

**CONSULTATION RESPONSE
April 2018**

ABSTRACT

This document contains TAROE Trust's formal response to the Ministry of Housing, Communities & Local Government (MHCLG) consultation: 'Strengthening consumer redress in the housing market - A Consultation'.

OVERALL POSITION STATEMENT

As a national tenant charity, working primarily for the interests of tenants living within the regulated housing sector, TAROE Trust strongly supports the primary aims of this consultation:

- consumers have swift, effective routes to complain when things go wrong;
- that they know where to go;
- arrangements for redress are clear about what they can expect.

The focus of our response will be upon tenants living within the regulated housing sector, since this accords with TAROE Trust's charitable aims and objectives. It is also our primary area of expertise.

The key points that we would advocate in relation to the redress options available to tenants are as follows:

- a single housing ombudsman service has the potential to simplify redress options available to tenants;
- those redress routes also require simplification to make it easier for tenants to achieve appropriate redress;
- there should be no deterioration in the levels of service and resources available for tenants covered by an existing Ombudsman service;
- the scope of the Ombudsman services should extend beyond determinations of maladministration, with powers being vested in an Ombudsman service that permits recommendations to be made relating to matters of policy and good practice where existing arrangements have the potential to result in manifestly unfair outcomes for tenants;
- there is a need for funding for a national tenant organisation to advise and support tenants on their rights of redress and signpost them to an Ombudsman when appropriate.

SPECIFIC CONSULTATION QUESTIONS

About You

Q1: Are you responding

- On behalf of an organisation?

Q2: If you are an individual, in which capacity are you completing these questions? (please tick one)

Not applicable.

Q3: If you are an organisation, which of the following best describes you?

- A charity dealing with housing issues

Q4: Have you ever made a complaint relating to the renting, selling or purchasing of your property, or relating to the management or maintenance of a property in which you are a renter or leaseholder?

Not applicable. TAROE Trust regularly supports tenants living within the regulated housing sector to achieve redress to their housing related complaints. This includes support to access the Housing Ombudsman service where appropriate.

Q5: If you have complained about the renting, management, selling or purchasing of your property, who did you complain to? (Tick all that apply)

Not applicable

Q6: Have you used any of the following housing redress schemes (as a consumer or organisation) in the past five years? (tick the one that you used most recently) If not move to question 9

- The Housing Ombudsman

Q7: If you answered Q6, how would you rate the service that you received out of 10? (With 1 being very poor and 10 being exceptional) Please give details – for example how helpful was the organisation at resolving the problem.

Not applicable.

It should be noted that TAROE Trust considers the Housing Ombudsman service to be a highly valuable service for tenants living within the regulated housing sector to achieve appropriate redress.

We would not wish for any changes introduced to the arrangements for customer redress across the housing sector to reduce the level of services and resources currently available to the Housing Ombudsman for this sector, which is already under considerable pressure. These pressures have increased in part, in our view, as a result of the weakening of the regulation in this sector in recent years. The current regulatory framework means that customer standards are not proactively

regulated, with intervention only arising in extreme situations when the 'serious detriment' threshold has been breached.

Q8: What do you consider to be the main problem with redress in the housing market, if any (tick up to three):

- ✓ **It is not clear how to raise a complaint**
- ✓ **It is not clear who to raise a complaint with**
- ✓ There are gaps in redress
- ✓ **It takes too long to get a decision or a complaint resolved**
- ✓ Not everyone has the same access to redress
- ✓ When decisions are made they are not enforced
- ✓ Worried about the consequences of complaining

All of the above listed matters are relevant (top x3 highlighted in bold).

In addition, there are a broader range of changes that are required in relation to the current Housing Ombudsman service within the regulated sector to bring about adequate access to redress for tenants, which include the following:

- a widening of the remit of the Housing Ombudsman Service for those that are entitled to access the service beyond tenants to include:
 - shared owners
 - leaseholders (including tenants that have exercised the Right to Buy and are obliged to continue to pay service charges)
- a widening of the scope of the Housing Ombudsman Service beyond the narrow definition of complaints resolution to contravention of the existing Tenant Involvement and Empowerment Standard
- Extension of the scope of the Housing Ombudsman Service to make determinations not just on whether policies and procedures have been followed, but also:
 - whether policies and procedures currently being operated are appropriate to the circumstances;
 - whether tenants (and other service users) were effectively involved in shaping those policies and procedures.

Q9: Which solutions below do you think would best improve redress in the housing sector (please pick up to three)

- ✓ Better awareness from consumers of how to raise complaints
- Improvements to the working of existing redress schemes e.g. more timely complaint handling
- Better enforcement of redress scheme decisions
- Schemes all operating to the same criteria/standards
- A code of practice for all housing providers (e.g. landlords, agents, housing associations,

- developers) on complaints handling
- ✓ Streamlined redress provision in housing (see question 30)
- ✓ Other [please explain]

Whilst we always recommend that tenants seek to achieve a resolution to their complaints directly with their landlord in the first instance, we would like to see all landlords be required to proactively promote the housing redress options available to tenants. This includes supplying details on redress options at every new letting, and whenever a tenant is making a complaint. The service should also be clearly publicized and promoted on a landlord's website (where they have one).

We believe that the National Tenant Organisations are well placed to inform, direct and support tenants pertaining to their housing redress options. This is a function frequently undertaken by TAROE Trust (normally on a voluntary basis due to limited funds).

Under the existing Housing Ombudsman scheme, the current designated persons / 8-week period seems to cause unnecessary delays and confusion and should be abolished. In many areas there are no established tenant bodies who tenants can raise their complaints with. MPs and Councillors are overwhelmed with work, and often their office simply forwards the matters back to the landlord.

Q10: Could more be done to improve in house complaint handling for housing consumers?

- ✓ Yes [please explain]

TAROE Trust believes that the existing Housing Ombudsman service has achieved a good balance in the division of resources and services between dispute resolution and sector development. The latter works in a preventative way to improve service provision and landlord complaints handling. This could be used as an exemplar across the wider housing sector.

TAROE Trust also welcomes the Housing Ombudsman service's focus on local based and early resolution of complaints wherever possible. This frees up resources to focus on the most complex cases.

There is already a lot of information and case studies published on the Housing Ombudsman website. This is a good resource for landlords, in addition to the sector development work that it provides to landlords directly.

Unfortunately, those landlords that will readily review case studies and welcome guidance and support from the Housing Ombudsman, are likely to also be the landlords that are more concerned with delivery of a good service to their tenants.

Finally, more detailed guidance on good practice could be supplemented by basic minimum standards with which all registered landlords must comply. In particular, this relates to the adoption of maximum complaint resolution timescales (i.e. 8 weeks, unless otherwise mutually agreed between both parties) at which point tenants could seek external redress from an Ombudsman. The powers vested in the Ombudsman should therefore also extend to determinations on the

appropriateness and effectiveness of a landlord's complaints resolution processes.

Q11: Are there common practices that housing consumers and businesses should be able to expect from a redress scheme, or do different sectors in housing require different practices?

✓ Not sure

Generally, the principles applicable to the effective resolution of complaints are universal and should therefore apply across all tenures / sub-sectors of the housing sector. As a result, it should be feasible to establish basic minimum standards, such as maximum timescales for dealing with complaints (see response to Q12 below for full list).

TAROE Trust's primary focus is upon the regulated housing sector. As such, we strongly believe that there should be no cost barriers to tenants seeking redress from an Ombudsman scheme. We also believe the existing funding mechanism for the Housing Ombudsman, via a levy from rent paid, should be maintained. This allows tenants to benefit from a service which is free at the point of access to the Ombudsman scheme.

However, we recognise that there are risks and complications for other parts of the housing sector and it may be necessary for those areas to operate different arrangements so as not to destabilise the market and/or create unfair outcomes for landlords, particularly where they have very modest portfolios. In this instance, it might be appropriate to introduce minimum thresholds below which payment is on a per case basis.

Q12: If you believe there should be common practices that consumers should be able to expect from a housing redress scheme, what should they include? (pick as many as relevant)

- ✓ Rules relating to the types of issues consumers can complain about
- ✓ Rules relating to the timeframe in which consumers can complain to a provider
- ✓ Policies to support awareness raising
- ✓ Timeliness of complaint handling
- ✓ Cost to consumers
- ✓ Compensation levels
- ✓ Codes of practice specific to the sector
- ✓ Cost to members/ payment structures
- ✓ Transparency of decisions
- ✓ All apply

Q13: Do you think that a redress scheme should publish decisions and the number of complaints relating to different providers? Please explain why.

✓ Yes

Additional transparency is recommended for the following purposes:

- It will support enforcement against landlords
- It will highlight where practice is considered unacceptable (particularly where it is also published alongside good practice)
- It would help to rebuild trust and confidence amongst tenants that their concerns will be addressed, and action taken where they pursue redress from an Ombudsman service

There could be benefit in highlighting the different landlords that have received adverse findings from the relevant Ombudsman. TAROE Trust appreciates that this is a difficult and sensitive issue. However, the “naming and shaming” of landlords who fail to resolve complaints satisfactorily, and tenants’ complaints are subsequently upheld by the Ombudsman service, might take their approach to complaints management more seriously if they are towards the bottom of any published performance league tables.

The above publication could also result in reduced numbers of complaints being brought to the relevant Ombudsman service as landlords take greater efforts to ensure complaint issues are taken seriously and resolved locally.

In TAROE Trust’s response to the Housing Ombudsman’s consultation in 2017/18, we predicted that there would be a continued increase in the number of complaints being brought to the Housing Ombudsman service. We attributed this to the move to ‘back-stop’ regulation. This, alongside the wider shift to digital platforms of service delivery, are resulting in a weaker tenant voice across the regulated housing sector, and it is therefore of little surprise to have seen the caseload continue to grow, as we predicted. Indeed, we have previously called for an increase in the Housing Ombudsman service levy and we would reiterate these calls again in relation to the regulated housing sector where fees as a percentage of the tenants’ rents allocated to the levy remains minimal.

Q14: What is a reasonable time frame for a redress scheme to deal with a complaint?

- Less than 2 weeks
- More than 2 weeks but less than a month
- More than a month but less than six weeks
- More than six weeks but less than two months
- More than two months but less than three months
- 3-6 months
- 7-12 months
- More than 12 months
- It depends on the complexity of the case

Ultimately, TAROE Trust appreciates that some complaints may be highly complex in nature. There can also be challenges in obtaining the full suite of information required to reach an informed judgement.

However, we have separately called for the introduction of a requirement for all Registered

Providers within the regulated housing sector to be required to resolve complaints within an 8-week timeframe (this is the good practice period required by the Financial Ombudsman and was a period proposed previously for the housing sector by the Housing Ombudsman and Audit Commission). Much of the information required should have already been collated for the landlord to reach an informed decision. It is therefore reasonable for the Ombudsman service to review complaints referred to them within a three month period.

Q15: How should a redress scheme support consumers to access its scheme?

As a national tenant charity, TAROE Trust routinely supports tenants in the regulated housing sector to resolve complaints directly with their landlord. Where this is not possible, we provide signposting and support for tenants to access an Ombudsman service. These services are usually provided on a voluntary basis. This is not an acceptable position (arrangements exist for advice and support to be available through a funded service for leaseholders). We therefore believe that a national tenant body should be properly funded to provide much needed advice and support to tenants on their redress options. TAROE Trust would like to call for funding, either directly from the resultant Ombudsman service as a proportion of the levy received, or for Government to require an additional levy to be paid by landlords in the regulated housing sector to safeguard these valuable services for tenants. Many of the tenants that make use of TAROE Trust's services are unaware of the existence or role of an Ombudsman service and are often not otherwise involved with their landlord's services or engagement systems (where these are in place). Much of this work assists those within the "marginalised majority" who have found themselves having received services that they are dissatisfied with but are unaware of where or how they can seek redress.

In addition, all landlords should be required to widely publicise their membership of an Ombudsman scheme, as well as the options available to accessing this service, as set out elsewhere in this consultation response.

Q16: What kind of sanctions should a redress scheme have access to? (tick all that apply)

- ✓ Financial award up to £25,000
- ✓ Financial award greater than £25,000
- ✓ Expulsion from scheme (**subject to commentary below**)
- ✓ Power to make decisions binding
- ✓ Referral to enforcement agent/ regulators
- ✓ A range of options depending on the type and size of provider
- ✓ Other [please list]

If the Ombudsman service is to establish effective redress for tenants, access to a broad range of enforcement powers should be available to the Ombudsman service. However, the use and application of these powers will need to be applied appropriately and proportionately.

Expulsion from the scheme for instance should not be permitted for Registered Providers within the

regulated housing sector, and instead severe breaches would warrant regulatory intervention from the RSH.

Where there is not a regulator in place, membership of an Ombudsman scheme may come to represent a market-based requirement that distinguishes between reputable and non-reputable landlords. As such, expulsion may be an appropriate sanction. This only applies where membership is voluntary. Where a mandatory registration scheme is introduced (which we would support), expulsion is not likely to be feasible.

Due regard also needs to be given to ensure that tenants seeking redress from an Ombudsman service have access to relevant levels of protection. Many tenants fear raising complaints against their landlord due to potential retaliatory action, and possibly eviction, taking place. Consideration needs to be given to ensure tenants can receive adequate protection and for the scope of the Ombudsman's powers to consider this within an overall determination.

Q17: Have you encountered any gaps between different issues, ombudsmen and redress schemes in terms of their areas of responsibility?

✓ No

This is because the focus of TAROE Trust's activities is upon the regulated housing sector only.

Q18: Should purchasers of new build homes have access to an ombudsman scheme?

Q19: Is there an existing ombudsman scheme that is best placed to deliver this? If so which?

Q20: Should this body be statutory?

Q21: Aside from the issues discussed in section three of this document, are there other things we should be considering to ensure that complaints are dealt with swiftly and effectively by homebuilders?

Q22: Should the requirement for private landlords to belong to a redress scheme apply to all private landlords?

The questions 18-22 above are beyond the scope of TAROE Trust's activities.

Q23: Who is best placed to provide a redress scheme for private landlords?

- The existing redress schemes in the private rented sector
- The tenancy deposit schemes
- A new ombudsman, such as a single housing ombudsman
- Other [please explain]

This is predominantly outside the scope of the work of TAROE Trust. However, it should be noted that access to the regulated housing sector (versus the private rented sector) for many households is dictated by local supply and demand. The discharge of local authority housing responsibilities could see many tenants, often in extreme housing need and with additional vulnerabilities, housed within the private rented sector. There is a need to improve standards in this area through greater

regulation. The movement to a Single Ombudsman system would help to improve learning, redress and best practice for tenants living within the private rented sector. Any steps to extend the current Housing Ombudsman service, operating in the regulated housing sector, must not reduce the overall level of resources and expertise available for the current scope of the Housing Ombudsman service.

Q24: How should redress scheme membership for private landlords be costed?

- A flat rate (and how much do you think it should cost?)
- A tiered system according to the number of properties a landlord lets?
- A pay per complaint system
- Don't know/This question isn't relevant to me

There may be some benefit in exploring the application of arrangements in the regulated housing sector. For instance, the operation of a tiered system according to the number of properties a landlord lets. However, due to the large number of small landlords in operation, it might be more cost effective to apply a threshold (e.g. 20 properties), below which, landlords only pay on a per complaint system where findings are in favour of the complainant.

Q25: How should the requirement to be a member of a redress scheme be enforced and by whom? And are there any other markets we can learn from in order to ensure compliance by a large number of small scale providers?

In relation to the regulated housing sector, there is a need for a close interface to be maintained with the Regulator of Social Housing (RSH). There is already a Memorandum of Understanding in place to cover existing arrangements. This will need to be reviewed in the event of a Single Housing Ombudsman being created, additional scope of coverage of the Housing Ombudsman service being accepted and implemented, and in response to calls for a strengthening of the regulatory standards applicable to Registered Providers, particularly in relation to the Tenant Involvement and Empowerment and other consumer related standards.

Q26: What should the penalty for initial non-compliance be? If a financial penalty, what would be an appropriate level of fine? (tick as many as appropriate)

- Financial penalty [please give details on suggested level of fine in the box below]
- Criminal offence
- Banning order
- Loss of right to evict tenants under Section 21
- Civil sanction such as improvement notices or enforcement notices
- Other [Please explain]
- Don't know/This question isn't relevant to me

Q27: How can Government best ensure that landlords are aware of their requirement to belong to a redress scheme?

In relation to Registered Providers (focus of TAROE Trust), membership of the Housing Ombudsman scheme is already mandatory.

Q28: Are there any other voluntary or medium term measures that could be implemented to improve redress for tenants in the private rented sector ahead of any legislative changes?

Not applicable.

Q29: Do you think that freeholders of leasehold properties should all be required to sign up to a redress scheme?

✓ Yes

Q30: Should we streamline redress provision in housing, and if so, what would be the most effective model? Please explain below what you see as the benefits and challenges of the options.

✓ Yes - One single ombudsman scheme covering housing issues

As stated elsewhere, any streamlining of the Ombudsman arrangements should not be at the detriment to the overall level of resources available to existing Ombudsman schemes. For TAROE Trust, this particularly relates to the Housing Ombudsman. We recognise that streamlining could result in overall economies of scale being achieved (e.g. back office functions) and also enhance cross-tenure learning. Any extension must ensure that there is no erosion of focus and/or resources for regulated housing related services as a consequence of the extension. Some thought may be required to the ring fencing of resources to ensure that the levy paid by landlords from tenants' rents in the regulated housing sector remain for the benefit of tenants living within the regulated housing sector.

TAROE Trust frequently experiences contact from tenants who are unclear as to whether they are currently living within a home that is within the regulated or private rented sectors. This is part is aggravated by the issues that exist when people find themselves in acute housing need, and housing allocations can be made across tenures on the basis of local availability and demand.

Access to a Single Ombudsman scheme would allow for tenants to access redress regardless of their tenure. It would then be simpler for the Ombudsman to filter and allocate such complaints internally. This will prevent issues from "falling between the cracks in the system".

The resultant Ombudsman scheme should be established as an *independent* body, and not operate as a non-departmental public body (NDPB). This would receive additional confidence from tenants in the decision-making of the service and move it outside of direct political direction.

Q31: If you ticked 'Yes' to one ombudsman or one portal above then which areas of redress should be incorporated? [Please tick any areas you believe should be included and explain any reasons for inclusion or exclusion]

- ✓ Social housing tenants
- ✓ Private rented sector tenants
- ✓ Leaseholders with a private sector freeholder
- ✓ Leaseholders with a social housing provider as freeholder
- ✓ Purchasers who have bought a new build home
- ✓ Purchasers and sellers of existing homes
- ✓ Park home owners
- ✓ Persons approaching their Local Authority for homelessness advice
- ✓ Persons applying to a local authority for social housing
- ✓ Persons applying for a tenancy with a housing association

CONTACT INFORMATION

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FURTHER DETAILS ON TAROE TRUST

TAROE Trust is a charity formed in 2013 out of the former national tenant representative organisation, Tenants and Resident Organisations of England (TAROE). It has been established to further charitable objects which can be summarised as follows:

- The relief of financial hardship by providing free advice and assistance on housing issues to persons who would otherwise be unable to obtain it.
- To promote social inclusion for the public benefit among people who are excluded from society or part of society by:
 - Providing advice and assistance and building capacity on housing matters
 - Working to promote the needs of people who are socially excluded and to raise awareness of those needs among housing providers, service agencies and the general public
 - Researching links between housing and social exclusion and publishing the useful results thereof
- To develop capacity and skills among members of socially and economically disadvantaged communities which evidence deprivation in such ways that they are better able to identify, and help meet, their needs in housing related matters in particular and to participate more fully in society.