

MEMORANDUM OF UNDERSTANDING

between

THE HOUSING OMBUDSMAN

and

THE REGULATOR OF SOCIAL HOUSING

Purpose

This memorandum of understanding (MoU) has been agreed by the Housing Ombudsman (THO) and the Regulator of Social Housing (the regulator). It sets out the functions of each organisation and describes the arrangements for cooperation and communication between the two bodies in relation to their respective functions.

While this MoU is not a legal or binding agreement, both THO and the regulator are committed to working to it. Each organisation will take steps to ensure that their staff are aware of what is in the MoU. They will keep staff updated about it, and about the responsibilities it places on each individual member of staff. The MoU will also be made public and placed on THO and the regulator's websites.

Roles of the Parties to this Memorandum

The regulator

The regulator is an executive non-departmental public body of the Ministry for Housing, Communities and Local Government (MHCLG) reporting to Ministers through its Chief Executive as Accounting Officer.

The regulator is accountable to Parliament for the discharge of functions conferred on it by virtue of Part 2 (regulation of social housing) of the Housing and Regeneration Act 2008.

The regulator is obliged by the 2008 Act to exercise its regulatory functions in a way that minimises interference and, so far as possible, is proportionate, consistent, transparent and accountable. It sets regulatory standards, amplifies these where necessary with codes of practice, and issues other requirements and guidance to registered providers of social housing as necessary.

The regulator takes a co-regulatory approach, which means:

- operating as an assurance-based regulator, seeking assurance from providers as to compliance with its published standards - in other words, the onus is on providers to demonstrate their compliance to the regulator.
- regarding board members and councillors as responsible for ensuring that providers' businesses are managed effectively and that providers comply with all regulatory requirements.

The regulator takes a proactive approach to regulating its economic standards, with a particular focus on governance and financial viability. In line with current legislation the consumer standards are regulated reactively, and regulatory options are limited unless there is both evidence of a breach of consumer standards and evidence that the breach has or could cause serious detriment. The regulator takes a proportionate approach to each case, with a focus on whether there is evidence of a systemic failing by a registered provider. Where the regulator concludes that there is evidence of both a breach of standard and serious detriment, it publishes a regulatory notice setting out findings.

The regulator will consider all of the information received through complaints and referrals to determine whether there is evidence of a breach of its regulatory standards. It does not however have a statutory mandate to resolve individual complaints and cannot mediate in disputes between landlords and residents – that is the role of THO.

The Housing Ombudsman

The purpose of THO as set out in the Housing Act 1996 (the 1996 Act), and amended by the Localism Act 2011, is to enable tenants and other individuals to have complaints about member landlords investigated by an independent ombudsman in accordance with a Scheme approved by the Secretary of State. Under the terms of the Housing Ombudsman Scheme (the Scheme) approved by the Secretary of State for MHCLG (which took effect on 1 September 2020) the role of THO is to:

- resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate, and
- to support effective landlord-resident dispute resolution by others.

A complaint to THO may be made by, or on behalf of, a person or persons who are or have been in a landlord/tenant relationship with a member of the Scheme, or those who have made an application which if successful would put them in such a relationship.

The 1996 Act provides that a Scheme approved by the Secretary of State may be administered either by a body corporate or by a corporation sole. THO is a corporation sole, which is a distinct legal entity with legal capacity. Corporations sole do not have a board of directors – that role, function and all property, rights, assets and liabilities are vested in the person who is the corporation sole, in this case, the Housing Ombudsman (i.e. THO). THO is solely responsible for the conduct of dispute resolution and the determination of complaints.

The personal authority vested in THO is delivered in practice by staff acting under THO's delegated authority; THO and staff are colloquially referred to as the Housing Ombudsman Service (HOS).

Social landlords (primarily housing associations who are or have been registered with the regulator) and local housing authorities are obliged to be members of the Scheme. Additionally, a number of managing agents and private landlords are voluntary members.

The conditions of membership are set out in the Scheme and include a requirement for members to establish and maintain a complaints procedure in accordance with any good practice recommended by THO. Such good practice is incorporated in the Complaint Handling Code issued by THO on 7 July 2020.

Members are also required to inform residents of their right to bring a complaint to THO; to make information about its complaints process and THO easily accessible for those entitled to complain and to manage complaints in accordance with its published procedure or, where not possible, within a reasonable timeframe.

Working together

Communication and cooperation

The regulator and THO recognise that a range of issues relating to social housing regulation and complaints are of mutual interest. Rather than seeking to identify all the occasions on which the organisations will need or want to cooperate, the regulator and THO have agreed that they will:

- a) seek to achieve a complementary approach so far as that is consistent with their independent roles;
- b) signpost queries or complaints to the other organisation where appropriate, making sure to explain to the enquirer *why* the other organisation is the appropriate organisation;
- c) meet and communicate regularly – at appropriate levels of seniority, including at operational level – to discuss matters of mutual interest; and
- d) seek to promote understanding about their respective roles.

Information sharing

Legal basis of information sharing

Under section 109 of the Housing and Regeneration Act 2008, the regulator may disclose information to a public authority (which would include THO) if it thinks that information is necessary either for purposes connected with its own functions or for purposes connected with the public authority's functions.

THO may share a member's complaint handling failure with any appropriate regulatory agency, along with any related details as THO sees fit under paragraph 14 of the Scheme. If the complaint handling failure indicates a systemic issue this may be formally referred.

THO may also report any failure to comply with its determination under paragraph 60 of the Scheme.

THO may conduct further investigation beyond the initial complaint or landlord to establish whether any presenting evidence of service failure is indicative of a systemic failing. Where this is the case the matter will be referred to the appropriate regulatory body under paragraph 50 of the Scheme.

Taking the above into account, the following areas of information exchange have been agreed:

- a) Regular sharing of complaint handling failure orders issued, including reasons and rectification action.
- b) THO will provide details of any non-compliance with the THOs orders including repeated patterns of delay.
- c) THO will refer investigation findings to the regulator where evidence of a systemic issue is found, including anonymised evidence sharing where appropriate.
- d) THO will notify the regulator where a finding of severe maladministration has been made, or where an investigation raises a potential breach of a regulatory standard and will provide appropriately anonymised information.
- e) The regulator and THO may share statistical information about the types of cases handled, anonymised as appropriate.
- f) The regulator will share information with THO in relation to actual or contemplated regulatory action where such action may affect the carrying out of THO's functions. The regulator will not generally provide information about specific cases but where it does, this may include personal data in line with General Data Protection Regulation (GDPR) article 6(1)(e) where processing is necessary for the performance of a task carried out in the public interest or in the exercise of the regulator's official authority or, where relevant, under 6(1)(c) where processing is necessary for compliance with a legal or regulatory obligation.
- g) The regulator and THO may share at an appropriate stage draft documents (e.g. changes to the regulatory standards/THO Scheme) that may affect the exercise of the other's functions; any general developments in the sector which may affect the work of either agency will be likely to be covered in routine discussions.

All information shared above will be in compliance with the Data Protection Act 2018 and the GDPR. For more details about how personal data is processed please see the privacy notices for the regulator and HOS which are accessible online.

Stakeholder knowledge and engagement

Both parties will discuss and keep under review joint working and stakeholder engagement. The purpose of any such work would be to:

- promote a better understanding of the functions and roles of each organisation and emerging issues for the sector;
- disseminate wider learning into the interactions between registered providers and residents and the social housing sector as a whole.

Review

Representatives from the regulator and HOS will review the operation of this MoU on a periodic basis, to ensure that it reflects any developments and changes in working practices.

This MoU was agreed by both parties on 1 September 2020.