

Consultation response

Shelter submission to MHCLG

Strengthening consumer redress
in the housing market

FINAL

April 2018

Shelter helps millions of people every year struggling with bad housing or homelessness. We provide specialist advice and support on the phone, face to face and online, and our legal teams can attend court to defend people at risk of losing their home.

However at Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That's why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

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Until there's a home for everyone.

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Shelter

EXECUTIVE SUMMARY

Shelter welcomes the opportunity to respond to this consultation on strengthening consumer redress in the housing market. Everyone should have a home that is warm, safe and secure but all too often this is not the case and every year, Shelter advises millions of people on issues related to their housing, including problems with repairs and poor housing conditions as well as issues with their landlord or letting agent.

In all consumer markets, it is important to have access to simple and efficient ways to resolve issues. However, access to redress is particularly important when it relates to somebody's home. Redress is a key part of enabling people to enforce their rights and ensuring people are able to live in safe and decent conditions.

The complaint mechanisms in housing are currently not fit for purpose. Too often people are left without access to meaningful and timely redress for their housing issues and often fear the consequences of making a complaint. This is particularly an issue for those in the private rented sector (PRS), but as tragically highlighted by the fire at Grenfell Tower, people in social housing can also all too easily have their concerns ignored. Therefore, Shelter supports the Government's intention to improve consumer redress and particularly consideration of how to streamline and standardise redress mechanisms.

Rather than answering every individual question, we have responded to the questions which are most relevant to our clients. Our response is divided into three sections:

- a) The main problems with redress in the housing market – addressing questions 8 and 17
- b) Improving redress in the housing market – addressing questions 10 – 16 and 30 - 31
- c) Redress and the private rented sector – addressing questions 22 – 28

Overall, Shelter makes the following recommendations for strengthening consumer redress:

- **The Government should establish one portal for housing-related complaints so there is a single place for people to complain about any housing issue, regardless of housing tenure or the nature of the issue.**
- **The Government should streamline and standardise redress schemes by creating one ombudsman for each sector of the housing market and ensuring all ombudsman schemes operate to consistent service standards.**
- **All private landlords should be required to join a redress scheme, regardless of whether they employ a managing agent.**
- **The Government should ensure tenants who complain to an ombudsman are protected from retaliatory eviction.**

CONSULTATION RESPONSE

Section 1: The main problems with redress in the housing market

The complaint mechanisms in housing are currently not fit for purpose and too often people are left without access to timely and meaningful redress for their housing issues. We believe there are five main issues with the current redress landscape:

- consumers do not always know they can complain
- a lack of clarity over where to complain
- gaps in redress
- fear of the consequences of complaining
- the limited and varying powers of redress schemes.

Consumers do not know they can complain

Some parts of the housing market operate very differently to other consumer markets and often consumers are not aware that they have options for raising a complaint. In particular, renting is not viewed like other consumer markets, where there is an expected standard of service and consumers are aware that they can complain if this standard of service is not met.

Renters often assume that their only option is to complain directly to their landlord or letting agent and that they cannot complain to anyone above this. Therefore, if a landlord or letting agent will not resolve their issue, renters feel they have very few other options and may not even look for other ways to seek redress.

Lack of clarity over where to complain

Even if consumers are aware that they have options for pursuing a complaint, another barrier to seeking redress is the lack of awareness of specific schemes and clarity about where to complain about a housing issue. According to Ombudsman Services, one-third of people say they have no idea where to go if they want to make a complaint about a housing issue.¹

Depending on the type of housing someone lives in and the nature of their complaint, they may have different options for seeking redress. For example, if someone lives in a private rented property managed by a letting agent, and they are experiencing problems with the agent, then they can complain to one of two letting agent redress schemes, depending on the scheme to which their agent belongs.² However, if the dispute is related to being charged an unfair letting agent fee then they would need to complain to Trading Standards. Or if the

¹ Press Release, [Ombudsman Services](#), 12 March 2018

² Previously there were three letting agent redress schemes, however Ombudsman Services: Property withdrew from the letting agent redress market on 6 April 2018.

dispute is over a deposit, then they would need to complain to the relevant tenancy deposit protection scheme.

At a time when people are already likely to be frustrated, the confusing redress landscape causes further frustration as it can take a significant amount of time to find out where to direct a complaint. Therefore, Shelter recommends the redress landscape should be simplified to make it easy for people to know where to complain.

Gaps in redress

A third barrier is that some consumers are not covered by any redress schemes and this is particularly an issue in the PRS. For tenants who have properties managed by a letting agent, they are likely to be covered by a letting agent redress scheme. However, private renters whose property is managed by their landlord will not have access to an independent redress scheme, unless their landlord has voluntarily chosen to become a member of the Housing Ombudsman Service or one of the letting agent redress schemes. As a result of this, a recent Citizens Advice report highlights that, while there are 4.8 million privately rented dwellings in England, fewer than 24,000 of them are covered by alternative dispute resolution for disrepair disputes, as it is landlords who are ultimately responsible for repair issues.³

Without access to an independent redress scheme, tenants whose housing is managed directly by a landlord are even more reliant on overstretched local authorities or a complex and costly court process to resolve any disputes with their landlord.

Fear of the consequences of complaining

One of the biggest barriers to redress in the housing market is that people in rented accommodation often fear negative consequences if they complain. This is particularly an issue in private renting. After the fixed-term of a tenancy ends, landlords can issue a section 21 notice requiring possession, without having to provide any grounds of wrong-doing on the renter's part and eviction from a private (assured shorthold) tenancy is now the single biggest cause of homelessness, accounting for 78% of the rise in homelessness since 2011.⁴

In a market where there are simply not enough homes to go around, renters are easily replaceable; landlords know this and so do renters themselves. Even with the introduction of legislation to protect tenants from retaliatory eviction (in some circumstances), tenants living in the worst conditions and with the fewest options – for example, those on housing benefit – are reluctant to make a complaint about their landlord, fearful of eviction or a rent increase and knowing they can ill-afford to find a new tenancy if their existing one ends. In Shelter's most recent private renters' survey, over one-quarter of tenants who had a complaint serious enough to report, did not complain to their local council because they were

³ Citizens Advice, [It's broke. let's fix it](#), July 2017

⁴ DCLG (2017) Live tables on homelessness

worried about their landlord or agent finding out or worried about them putting up the rent or evicting them as a consequence.⁵

A reluctance to complain can also be an issue for social renters, particularly since the deregulation of social housing has given social landlords the discretion to use fixed term tenancies.⁶ There is a danger that tenants will be reluctant to demand repairs or better customer service because of a fear, real or perceived, that this will influence the outcome of their forthcoming tenancy review. Newspaper reports, after the Grenfell fire, suggested some tenants had been threatened with legal action after complaining about fire safety and responses such as this are likely to dissuade people from complaining.⁷ This issue could be further exacerbated, if the Government brings in regulations under the Housing and Planning Act 2016, to mandate fixed term tenancies in social housing.

If redress is to be effective, then consumers need to have the confidence that they can complain without fear of negative consequences, which could potentially result in them losing a home.

Limited and varying powers of redress schemes

Finally, the limited and varying powers of redress schemes mean that it is often questionable whether complaining to a redress scheme or ombudsman will deliver the resolution that people need, when they need it.

Firstly, the powers of the different ombudsman schemes are currently variable, impacting on the extent to which they can offer a remedy for a consumer's complaint. The letting agent redress schemes can make binding decisions on their members, requiring them to pay compensation or put something right and ultimately expel a member if they do not comply with a decision. However, other ombudsman schemes do not have the power to make their decisions binding on their members. The Housing Ombudsman can recommend steps for a social landlord to resolve an issue and pay suggested compensation but these decisions are not binding, so they rely on the landlord agreeing to comply with the decision (although the majority of landlords do comply).

Research into alternative dispute resolution highlights how consumers are often highly dissatisfied with the remedy offered at the end of the complaints process. One of the key sources of dissatisfaction is when the remedy is not delivered in a timely manner and this is then not followed up on by the ADR scheme.⁸

Secondly, consumers normally have to wait a significant period of time before they can complain to an ombudsman. For example, to complain to the Housing Ombudsman a social tenant must exhaust their landlord's complaints process and then either find a designated person, such as an MP, to refer the complaint or wait 8 weeks before they can complain directly to the Ombudsman. Even once a complaint has been registered with the Ombudsman, it takes an average of 8.3

⁵ YouGov survey of 3,978 private renters in England, online, weighted, August 2017

⁶ Shelter, [Local decisions on tenure reform](#), July 2012

⁷ News release, [The Mirror](#), June 2017

⁸ Citizens Advice, [Confusion, Gaps and Overlaps](#), April 2017

months for the Housing Ombudsman to resolve cases in their formal remit.⁹ These time delays limit the ability of an ombudsman to provide a remedy in a timely manner and may make people question the value of complaining.

In order to drive up standards, ombudsman and redress schemes need to have the resources to deal with complaints in a timely manner and sufficient powers to deliver a meaningful resolution. In Shelter's most recent private renters' survey, 14% of renters who had a complaint serious enough to report, chose not to report it to their local authority, because they did not feel it would make any difference.¹⁰ If redress schemes are going to help drive up standards, then consumers need to be confident that complaining will lead to a resolution.

Section 2: Improving redress in the housing sector

There are clearly a range of problems with the current redress mechanisms for resolving housing disputes and Shelter welcomes the Government's intention to strengthen consumer redress. In order to do this, the Government should both streamline redress provision, so it is easier for consumers to access, and standardise the powers and practices of redress schemes, so that all consumers have access to meaningful and timely redress.

Streamlining redress provision in housing

There is a clear need for redress provision in housing to be streamlined and simplified so that it is easier for consumers to know where to go to complain. **Therefore, Shelter would strongly support the establishment of one portal for housing-related complaints so that there is a single place for people to complain about any housing issue, regardless of housing tenure or the nature of the issue.**

As well as creating a single front door for making complaints, the Government should simplify the redress schemes operating behind it. **Shelter recommends that behind the portal there should be one ombudsman scheme for each sector of the housing market.** For example, one for the private rented sector, one for the social sector, one for home owners and one for leaseholders.

The advantage of this approach is that these schemes could potentially build on the expertise of existing redress schemes already in the market, who have experience of dealing with these issues. For example, the private rented sector scheme could be delivered by one of the three letting agent redress schemes or one of the tenancy deposit schemes, who already have experience of delivering dispute resolution for private renting issues.¹¹ Similarly, an ombudsman for the social sector could build on the work of the Housing Ombudsman, which already helps to resolve disputes for social tenants, and the Local Government and Social Care Ombudsman, which provides redress for those applying for social housing or homelessness assistance.

⁹ Housing Ombudsman, [Consultation to inform our plans for 2018-19](#), November 2017

¹⁰ YouGov survey of 3,978 private renters in England, online, weighted, August 2017

¹¹ Assuming Ombudsman Services: Property would be interested in re-entering the market.

Shelter would not oppose a single housing ombudsman, but given the complexities of housing law and the range of potential issues across the sectors, it would need to have specialist teams for dealing with different housing issues.

Shelter does not support there being multiple schemes for the same type of housing issue, as we do not see any advantage to competition between the schemes. This is because it is difficult for redress schemes to compete in a way which would benefit both those who are members of the scheme and those who may complain to the scheme. For example, if there are multiple PRS schemes trying to attract landlords to register with them, then they will try to make their scheme seem most attractive to landlords. However, any benefits to landlords (e.g. lower membership prices or very small percentage of complaints against landlords upheld), are unlikely to benefit tenants who need to make a complaint. To prevent there being any unintended consequences from competition, there should be a single scheme for each part of the housing sector.

As part of streamlining the redress system, consideration needs to be given to how an ombudsman scheme for each sector fits with other routes for resolving housing disputes, including the role of local authorities and the court and tribunal system. **A key function of the complaints portal should be to quickly notify consumers if an ombudsman cannot deal with a complaint and make consumers aware of alternative routes for resolving their issue, with details of any sources of advice or assistance with making their complaint.**

Standardising powers and practices of redress schemes

Wherever possible ombudsmen schemes should be operating to clear and consistent standards across all housing sectors. In particular, all schemes should be free for consumers and should operate to the same accessibility standards. As part of this, **all consumers should be able to complain directly to the ombudsman**, without needing to rely on their complaint being referred by a designated person, as is currently the case for the Housing Ombudsman.

Sanctions

It is important that an ombudsman can impose meaningful sanctions when complaints are upheld and **Shelter would support ombudsman having access to financial sanctions of up to £25,000.** The level of sanctions imposed should be proportionate to the nature of the complaint, however the threat of a sanction from the ombudsman should provide an incentive for issues to be resolved promptly in the first place. As well as imposing financial sanctions and providing compensation, the ombudsman should also have powers to compel organisations to change a decision, remedy a default (e.g. by making a repair) or offer an apology.

Ombudsman schemes should be **empowered to make their decisions binding on the person or organisation who is the subject of the complaint**, although there may still need to be some form of review process if someone is unhappy about the ombudsman's decision. Consumers (i.e. those who make the original complaint) should also retain the right not to accept the ombudsman's decision so they can pursue the complaint through other channels if they choose.

Sanctions will only be meaningful if there is a **mechanism through which they can be enforced.** This mechanism may vary for different sectors, however in the

private rented sector, failure to comply with an ombudsman decision, within a given time period, should be a banning order offence and an ombudsman should have the power to refer a landlord or agent to the relevant local authority. The local authority will then have the option to apply for a banning order from the First Tier Tribunal.¹²

Timeliness

The Government should ensure that any ombudsman can **deal with complaints in a timely manner**. This will necessitate their having sufficient resources to deal with the complaint. The exact timescales for dealing with a complaint may depend on the complexity of the issue, however Shelter recommends that the majority of complaints should be dealt with in under six weeks. The Government should closely monitor the time taken to deal with complaints and take action if an ombudsman is taking significantly longer than this.

Transparency:

To help drive up standards within the housing industry, any ombudsman should be required to be open and transparent – they should **publish their decisions, the number of complaints about different issues and the time taken to deal with complaints**. Publishing this data will not only help to hold the ombudsman to account but will also help to identify systemic issues in the housing market, which policy-makers can seek to address. On occasion this could include publishing a policy report highlighting a systemic issue, such as the Local Government Ombudsman report on gatekeeping.¹³ The ombudsman should also have a role in referring to the relevant regulator or other enforcement body (such as a local authority) if they identify consistently poor practice.

Section 3: Redress schemes and private landlords

As outlined in Section 1, there is currently a significant gap in the availability of redress for private tenants and therefore, Shelter strongly welcomes the Government's commitment to requiring all landlords to be covered by a redress scheme.

Shelter urges the Government to consider the following key factors involved in introducing redress for private landlords.

Who needs to register

The requirement for private landlords to belong to a redress scheme should apply to all private landlords, not only those who do not use an agent to provide full management services. An agent providing full management services will still need the landlord to respond and agree before the majority of issues can be resolved. Therefore, even if an agent is providing excellent

¹² The Housing and Planning Act 2016 provided local authorities with the power to apply for banning orders against rogue landlords and letting agents and to enter their name in the database of rogue landlords and letting agents.

¹³ Local Government Ombudsman, [Homelessness: How councils can ensure justice for homeless people](#), July 2011

customer service, their ability to resolve a problem may depend on the landlord and consequently it may be the landlord from whom the tenant needs redress.

A good example of this is issues related to disrepair, as the landlord is ultimately responsible for fixing the majority of repair issues. For example, if a boiler needs replacing, the letting agent will be unable to do this without the permission of the landlord. If the tenant has to wait a long period of time without heating or hot water, before the boiler is replaced, they may wish to complain but ultimately it is the landlord who has caused the delay, rather than the agent.

Agents and landlords may argue that if a landlord is not complying, an agent could dis-instruct themselves resulting in the landlord needing to register independently with a scheme. However, whilst this may offer some protection to agents from unfairly being the subject of a complaint, this approach is unlikely to help tenants achieve timely resolution for an issue. The process of an agent de-instructing themselves and the landlord then registering independently with a redress scheme is likely to cause further delay in reaching a resolution for the tenant. Therefore, if the Government's aim is to strengthen redress for consumers, it is essential that all private landlords are required to register independently with a redress scheme.

Suggested model for the redress scheme

In order for an ombudsman to be able to hold a private landlord to account, there will need to be **clear standards to which landlords are expected to be operating**. Shelter recommends that, as part of becoming a member of the ombudsman service, landlords should be required to have a written complaints process, which they are required to share with a tenant, and which sets out how they will respond to issues and within what timescale. This should also signpost tenants to the complaints portal, so that tenants know where they can go to complain if they do not feel their complaint has been dealt with satisfactorily. The ombudsman or the Government may wish to issue guidance for landlords on how they should deal with complaints, to help set the standards for how landlords are expected to respond.

A private rented sector ombudsman would be most valuable to private tenants if it can offer **timely alternative dispute resolution for ongoing issues between landlords and tenants**. Therefore, Shelter recommends that a tenant should be able to refer certain complaints directly to the ombudsman, if a landlord has not provided an adequate response to their complaint within 14 days of raising the complaint. By offering a free dispute resolution service, the ombudsman could provide tenants with an alternative to going to court or relying on their local authority, who may not have the resources to deal with their issue.

This form of dispute resolution could be used for a range of issues including repair issues, low level harassment or problems with a tenancy agreement. More serious complaints are likely to need to go through the court process or to a local authority. For these lower-level issues, a redress scheme could offer quicker, simpler and more cost-effective redress for tenants and help prevent complaints escalating, leading to a breakdown of the landlord and tenant relationship. This would reduce pressures on local authorities and the court system, although tenants must retain the right to use the court process if they are still dissatisfied or unhappy with the ombudsman's decision.

The effectiveness of any redress scheme for the private rented sector will rely on tenants being willing and able to complain, without fearing the consequences. **Therefore, tenants who complain to a redress scheme should be offered protection from retaliatory eviction.** Shelter recommends that once a redress scheme has accepted a tenant's complaint (following an initial consideration which would suggest there is some basis for the complaint), landlords should be prevented from issuing a section 21 (no-fault eviction) notice until at least 6 months after the complaint is resolved and any remedy has been received by the tenant.

Shelter also recommends that tenants should be entitled to deduct any compensation awarded by the ombudsman from a future rent payment. This would give tenants greater control over when they receive the compensation and would mean the tenant would not have to wait for the landlord to comply with the ombudsman's recommendation.

Membership requirements

Costs

Shelter would suggest there is a tiered system where landlords pay a membership fee in accordance with the number of properties they let. Landlords who have complaints upheld against them should also pay a contribution towards the redress scheme's costs for investigating the complaint, proportionate to the amount of work involved for the ombudsman.

Enforcement of the requirement to be a member of a redress scheme

Local housing authorities should be responsible for enforcing the requirement to be a member of a redress scheme, as they already have a range of enforcement responsibilities against private landlords. If the ombudsman receives a complaint about a landlord who is not registered with them, then they should refer to the relevant local authority. Given the number of private landlords, this would be a significant additional responsibility for local authorities and the Government should ensure they have sufficient resources to meet the additional burdens.

Initial non-compliance with the requirement to become a member of a redress scheme should be subject to a financial penalty of £5,000 and the loss of the right to evict tenants under the section 21 procedure, until the landlord has complied. Failure to comply following the awarding of an initial penalty, should be a banning order offence.

Ensuring all landlords are aware of the requirement to belong to a redress scheme will require a significant communication campaign. In addition to Government communications, the Government could ask buy-to-let lenders and letting agents to ensure this requirement is included in all their communications with landlords. Local authorities could also include being a member of a redress scheme as a condition of their licensing schemes. Tenant awareness will also be important, partly so that tenants are made aware of their right to make a complaint to an ombudsman and also because tenant expectations can play a role in raising awareness with their landlords.

Other measures for improving redress

In addition to extending redress to private landlords, Shelter welcomes the Government's support for the Homes (Fitness for Human Habitation and Liability for Standards) Bill as it passes through Parliament. **As well as supporting the Bill, we urge the Government to consider reinstating Legal Aid for disrepair issues and for early advice about problems arising in the landlord and tenant relationship.** These measures are fundamental for helping to address the power imbalance between landlords and tenants and reinstatement of Legal Aid would enable tenants to seek advice and where necessary, enforce their rights to a safe and decent home through the courts. Further information about this can be found in [our submission](#) to the Community and Local Government Committee's PRS Inquiry.

For more information please contact:

Rhea Newman

Policy Officer

Email: Rhea_Newman@shelter.org.uk

Tel: 0344 515 2037

Vicky Pearlman

Policy Officer

Email: Vicky_Pearlman@shelter.org.uk

Tel: 0344 515 2045

Shelter
88 Old Street
London
EC1V 9HU