



Housing
Ombudsman Service

MEMORANDUM OF UNDERSTANDING

between

**THE NEW HOMES OMBUDSMAN
SERVICE**

and

THE HOUSING OMBUDSMAN

Purpose

This Memorandum of Understanding (MoU) has been agreed by the New Homes Ombudsman Service (NHOS) and the Housing Ombudsman (THO).

The MoU is based on the relevant provisions in the Building Safety Act 2022 and the Housing Act 1996, recognising however that the NHOS is a voluntary scheme for the time being.

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. It also clarifies any potential overlap in the jurisdiction of the Ombudsmen to ensure that it is clear to both the NHOS and THO which complaints they will be dealing with.

This MoU is not a legal or binding agreement, however, both NHOS and THO are committed to working in accordance with its provisions. Each organisation will take steps to ensure that their staff are aware of the contents of the MoU. They will keep staff updated about it, and about the responsibilities it places on individual members of staff. The MoU will also be made public and placed on the websites of both NHOS and THO.

Roles of the Parties to this Memorandum

The New Homes Ombudsman Service

The New Homes Ombudsman Service (NHOS) was developed to close gaps in existing redress arrangements for owners of new build homes, primarily freeholders and private leaseholders. The New Homes Ombudsman Scheme has been established as a voluntary Ombudsman scheme by the New Homes Quality Board (NHQB) to provide independent redress for qualifying customers purchasing new homes from developers who are registered as registered Developers with the New Homes Quality Board (NHQB). In due course it is anticipated that the NHOS will be placed on a statutory footing.

The New Homes Quality Code which is owned by the New Homes Quality Board (NHQB), sets out the standards of service which purchasers of new homes should expect from their registered Developers covering the two year period from the reservation or legal completion, whichever is later. Customers can raise a complaint with NHOS in relation to any issue covered by the New Homes Quality Code where the reservation took place after the registered Developer became subject to the jurisdiction of the NHOS.

The NHQB has appointed The Dispute Service under a competitive procurement process to provide the NHOS. The New Homes Ombudsman is responsible for decisions on all complaints but in practice much of this work is delegated to other ombudsmen and casework staff. The Board of NHOS is fully independent of the housebuilding sector and has the primary role of protecting the independence of the NHOS.

Customers do not pay a fee for raising a complaint with NHOS and the scheme is

fully funded by NHQB through a levy on registered Developers.

The Housing Ombudsman

The purpose of THO as set out in the Housing Act 1996, as amended by the Localism Act 2011 and the Building Safety Act 2022, is to enable social housing 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 approved by the Secretary of State, which took effect on 1 October 2022 the role of THO is to:

- resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate, and
- 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. This includes shared owners and leaseholders where the landlord is a member of the Housing Ombudsman's Scheme.

The Housing Act 1996 provides that a scheme approved by the Secretary of State may be administered either by a body corporate or by a corporation sole. The Housing Ombudsman 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 their 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, the latest version of which was published on 9 March 2022.

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

When investigating complaints, THO will have due regard to the law, relevant codes of practice (which includes the New Homes Quality Code), policies and

procedures.

Residents do not pay a fee for raising a complaint with THO and the scheme is fully funded by fees levied on members on 'a per housing unit' basis.

Who can make a complaint

To the NHOS

A complaint to the NHOS may only be made by, or on behalf of, freehold and private leaseholders purchasing new homes from developers who are registered as registered Developers with the NHQB.

Where a social landlord develops or commissions new homes (including for shared ownership/leasehold) other than for freehold sale, and the landlord is a member of THO Scheme, the complaint will fall within the jurisdiction of the THO only. This includes complaints by residents who have a lease of more than 21 years. The complainant should therefore continue to access redress through THO if there are problems, including defects. If such a complaint is made to the NHOS, the NHOS will redirect this to the THO.

To THO:

The following people can make complaints to the Ombudsman about members:

- a person who is or has been in a landlord/tenant relationship with a member landlord, (including those members who are considered to be “developers” under the Building Safety Act 2022). 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 and social housing tenants who occupy new build homes. 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;
- an applicant for a property owned or managed by a member;
- a representative of any of the people above who is authorised by them to make a complaint on their behalf;

This means that, as well as considering complaints from tenants, THO can also accept complaints from leaseholders and shared owners. The only category of homeowner who is not eligible to bring a complaint to THO about a member landlord are those who own the freehold of their home – these complaints are dealt with by NHOS. In the event that THO receives a complaint and considers that it would be better dealt with by the NHOS, THO will redirect the complaint.

Working together

Communication and information sharing

NHOS and THO recognise that there may be areas of mutual interest where sharing insights and data at an organisation level could help to identify repeated service failures that may support referral to a governing, or other appropriate regulatory, body to improve effectiveness at an individual developer or sector-wide basis. NHOS and THO have agreed that they will:

- a) meet and communicate every six months at Head of Service level or above to discuss matters of mutual interest, including insights and data; and
- b) seek to promote understanding about their respective roles.

To support effective communication and information sharing at an operational level, a single point of contact will be identified by each organisation.

Four categories of complaint can be identified as a focus for this MoU, the last of which is only expected to occur in limited circumstances. These are:

- Those that are made to the wrong party
- Those that are for neither party
- Those where jurisdiction is initially unclear or misunderstood
- Complaints which engage the jurisdiction of both parties (this MoU clarifies the jurisdiction of both parties as set out above in the section on 'Who Can Make A Complaint' and further below).

Complaints that are made to the wrong party

NHOS and THO each have their own arrangements for the handling of new complaints. Where either party receives, or becomes aware of, a complaint that falls within the jurisdiction of the other party (as set out in legislation and clarified in this MoU), the complainant will be advised as soon as possible that the matter is outside the party's jurisdiction and that they may make a complaint to the other party. In providing this information, the Ombudsman will make sure to explain to the enquirer *why* the other organisation is more appropriate to handle the complaint and provide contact details for the other party. The parties may also make a direct referral with the complainant's consent, where appropriate, and an acknowledgement will be sent to the referrer and the complainant within 15 working days.

Complaints that are for neither party

NHOS and THO cannot make decisions for the other party on which complaints that party will accept. Neither party should therefore make a determination on the jurisdiction of the other, however, where a complaint is not accepted by one party the complainant may approach the other party for it to decide whether it can accept the complaint for investigation.

Where it is clear that the complaint does not fall within the jurisdiction of either party, the complainant will be given advice about any known alternative avenues of redress.

Complaints where the jurisdiction is initially unclear or misunderstood

One party may receive a complaint which is initially unclear as to which organisation has jurisdiction to handle the complaint. In such circumstances, enquiries will be made of the complainant to clarify their position and liaison will take place between the single points of contact to confirm which organisation has jurisdiction

It may also become apparent during an investigation that a complaint initially thought to be within the party's jurisdiction falls within the jurisdiction of the other party. In such circumstances, the complaint will be directly referred to the other organisation after discussing with their point of contact to confirm the position in relation to the complaint.

Cooperation and complaints which engage the jurisdiction of both parties

As this MoU clarifies the jurisdictions of THO and NHOS, the parties do not envisage cooperation during an investigation will be required often. However, if a case were to engage both parties' jurisdictions, NHOS and THO will agree an approach to deal appropriately and effectively with their respective aspects of the complaint on a timely basis.

In the event that either party receives a new category of complaint which potentially engages the jurisdiction of both parties and which has not yet been addressed by this MoU, the parties agree that they will consult together to decide how to deal with the complaint. The parties will also consider what revisions, if any, are required to the MoU to set out the jurisdiction of the parties on the category of complaint.

Information sharing

NHOS and THO agree to share personal information with each other only with the explicit consent of the complainant that such data is shared.

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

Stakeholder knowledge and engagement

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

- promote a better understanding of the functions and roles of each organisation
- help ensure appropriate and timely referrals of complaints
- disseminate wider learning from investigations into the interactions between each scheme's members

Review

Representatives from NHOS and THO will review the operation of this MoU every three years or after a significant change in legislation, policy or practice in either party to ensure that it reflects any developments and changes in working practices.

This MoU was agreed by both parties on 20 November 2023.

Annex A

Complaints referred to the New Homes Ombudsman Service

NHOS deals with complaints from individuals buying or intending to buy a new home for their own occupation from a registered developer. They will primarily be freeholders and private leaseholders. Where the registered developer is a member of the Housing Ombudsman scheme and the purchase is leasehold or shared ownership, complaints relating to the registered developer fall within the exclusive remit of THO.

NHOS will accept complaints from consumers about breaches of the New Homes Quality code which covers

1. Selling a new home

- 1.1 Sales information and marketing
- 1.2 Describing a new home
- 1.3 No high pressure selling techniques
- 1.4 Part exchange and assisted move schemes
- 1.5 Considering vulnerable customers
- 1.6 Customer service standards and training
- 1.7 Legal and other advisers, commission and inducements for goods and services

2. Inspection and completion

- 2.1 Early bird arrangements
- 2.2 Reservation agreements
- 2.3 Cancellation after the cooling off period
- 2.4 Cancellation by the developer
- 2.5 Pre contract of sale
- 2.6 Contract of sale
- 2.7 Keeping the customer informed and pre completion inspection checks
- 2.8 Changes, agreement to substantial changes, and termination of contract for unacceptable changes
- 2.9 Complete new home
- 2.10 Legal completion
- 2.11 Incomplete and ancillary works
- 2.12 Repayment of financial deposits

3. After sales, complaints management and the New Homes Ombudsman

- 3.1 After sales service
- 3.2 After sales issues and complaints management
- 3.3 Snagging period and resolution of snagging issues
- 3.4 Complaints process
- 3.5 Referral to the New Homes Ombudsman Service
- 3.6 Resale

Annex B

Complaints referred to the Housing Ombudsman

The Housing Ombudsman scheme covers all social landlords and voluntary for-profit members where there is a landlord/tenant relationship. Jurisdiction extends to all housing activities other than for local authorities where it covers the provision and management of social housing. Its jurisdiction includes leaseholders and shared owners where the landlord is a member of the Scheme, including where the member has developed or commissioned new homes.

Leasehold services

Shared ownership and sales processes for leasehold properties owned by housing associations

Shared ownership staircasing for properties owned by housing associations

Full ownership and sales processes for leasehold properties owned by housing associations

Right to buy and right to acquire for tenants of housing associations

Repair responsibilities under the lease

Mortgage rescue schemes

Leasehold services provided by the landlord

Moving to a property

Transfer applications that are outside Housing Act 1996 Part 6

Type of tenancy offered

Mutual exchange

Decision to renew a fixed tenancy

Decants (including those that are dealt with via the local housing authority's allocation policy)

Mobility Schemes

Rent and service charges

Rent or service charges

Occupancy rights under a lease

Terms and conditions of occupancy rights

Succession

Assignment

Ending a tenancy (e.g. notice periods)

Abandonment of property

Possession proceedings

Property condition – repairs and improvements

Condition of the property when first let (e.g. void works)

Responsive repairs

Planned maintenance or cyclical works

Improvement works carried out by landlord or tenant

Rechargeable repairs

Disabled adaptations

Tenant behaviour

Anti-social behaviour
Noise nuisance
Harassment

Estate management

Cleaning or repairs of communal areas
Boundary issues
Grounds maintenance
Parking linked to occupancy agreement
Use of communal areas

Complaint handling

The landlord's handling of a complaint in their complaint process, including delays

Compensation

Home loss or disturbance payments
Improvements carried out by the tenant
Payment for damage to property or tenant's belongings
Discretionary payments