Housing
Ombudsman Service

Jurisdiction Guidance

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Under para 36 of the Scheme, "the Ombudsman must determine whether a complaint comes within their jurisdiction under the terms of the Scheme". We seek to resolve disputes wherever possible. However, we must be mindful of the limits of our authority and ensure that the complaints that we consider accurately reflect this.

Many jurisdiction decisions will be straightforward, but it is important to note that this can be a complex area of decision making and may not be immediately apparent. We are able to request additional information to ascertain if a complaint is within jurisdiction. Under para 37 of the Scheme "the Ombudsman will make any enquiries that they consider necessary to decide if a complaint comes within their jurisdiction or to resolve a complaint".

There are a number of 'conditions' that must be met in order for us to be satisfied that a complaint is within our jurisdiction: landlord, resident, complaint and discretionary conditions. All must be met if we are to investigate or pursue a resolution.

<u>Early is best</u>

We should be managing residents' expectations from the earliest opportunity (as early as the Enquiry stage) about potential jurisdictional issues with their complaint. We should let them know where we may not be able to consider the complaint, particularly if we think resolution can be obtained elsewhere, and signpost them to relevant organisations as appropriate.

2. Statement of reasons

A complaint will only be duly made to the Ombudsman once we are satisfied that the mandatory jurisdiction grounds are met, and none of the discretionary jurisdiction exceptions apply (i.e. all of the above 5 questions have been answered appropriately).

Where all the relevant grounds are not met, para 38 of the Scheme gives the Ombudsman the authority to decide the complaint as outside jurisdiction and provide a statement of reasons to the parties, prior to it being duly made. The statement of reasons will set out the complaint being raised, a brief summary of events, our jurisdictional decision, and the reasons for the decision.

The following guidance is intended to help caseworkers decide whether:

- a complaint can be duly made to us and can, therefore, be investigated or mediated by us; or
- a complaint cannot be duly made to us and a statement of reasons should therefore be issued.

3. Mandatory grounds

3.1 Landlord conditions - Is the complaint about a member landlord? (paras 4, 5, 7 and 41(b))

Membership of the Scheme is mandatory for 'social landlords' in England, i.e. LHAs and registered providers of social housing (housing associations), plus any other body which was at any time registered with the Regulator of Social Housing (or its predecessor bodies) and which owns or manages publicly-funded dwellings.

Other landlords may join the Ombudsman Scheme on a voluntary basis. Where a landlord is a voluntary member, they may not register all their properties with us so checks will need to be made in relation to the specific address.

Subsidiary companies

We receive some complaints from private companies set up by member landlords. These take many forms, but generally are a limited company set up by a landlord for a specific purpose, often in partnership with others.

What happens if the one part of the landlord organisation is registered, but its subsidiary company is not? The answer will depend upon whether the head landlord is a housing association or an LHA.

- Housing associations – We can look at all complaints, irrespective of rent type (so including market rent), as we have jurisdiction in respect of all their housing activities (paragraph four - *All bodies, other than LHAs, which are or at any time have been social landlords must be members of the scheme ...in respect of all their housing activities).*
- LHAs - For a local authority our jurisdiction only extends to homes provided as

social housing or under a long lease. Some subsidiaries may fall outside of our jurisdiction if they have never provided social housing.

Where the housing provided was originally social housing, or it is let at less than market rent, it is provided as social housing and as such falls within the jurisdiction of the Housing Ombudsman. Currently, complaints concerning properties let at a market rent by an LHA, that have never been social housing, will fall within the jurisdiction of the Local Government and Social Care Ombudsman.

A housing company's Business Plan and/or Terms of Reference will normally set out the arrangements for its ownership and the type of housing it has been set up to deliver. References to intermediate, affordable, ethical rents/housing or shared ownership will indicate housing at less than market rents. However, many housing companies offer a range of letting options and it may be necessary to see the terms of the tenancy to ascertain precisely how the property is let. Checks may also need to be made to ascertain any previous designation of the property ie was it ever social housing?

Example issues

Not all cases are straightforward, for example:

- Voluntary members may not register all properties with us, so we need to check the address is covered;

- Some Arms-Length Management Organisations (ALMOs) are also landlords in their own right, but not necessarily registered providers. ALMOs must join the Scheme for their units which are registered with the Regulator of Social Housing and can join the Scheme as a voluntary member for its units not registered with the Regulator. Otherwise, most ALMOs are managing bodies only.

- Some group structures are formed by bodies which are all registered providers in their own right. Some have a parent body as the registered provider only, with the rest as unregistered subsidiaries.

<u>Managing agents</u>

When a complaint relates to a managing agent, we must establish who is a member of the Scheme; i.e. the landlord, the agent or both. A useful starting point for establishing the nature of the relationship and their relative responsibilities is the management agreement. We can only consider issues that relate to the performance and responsibilities of a member, whether a landlord or agent. Some issues to bear in mind are:

- A member landlord is responsible for the actions of a managing agent whether or not it is a member;
- A member managing agent is not responsible for the decisions or actions of a non-member landlord.

Location of landlord

Occasionally we may receive a complaint from a resident living outside England. Whether the landlord condition is met will depend upon the type of landlord and the location of the landlord. The Scheme states:

"4. All bodies, other than Local Housing Authorities, which are, or at any time have been, social landlords must be members of the Scheme …in respect of all their housing activities.

5. Local Housing Authorities in England which are registered providers of social housing in connection with their housing activities in so far as they relate to the provision or management of social housing. In addition, those Local Housing Authorities must be members of the Scheme in connection with the management of dwellings which they own and let on a long lease."

This mirrors the Housing Act which also only mentions England in relation to LHAs under s51(2) when defining 'social landlord'*:*

- A local authority in England which is a registered provider of social housing
- A private registered provider of social housing.

Both the legislation and the Scheme only restrict location to England in relation to LHAs but makes no reference to the location of the accommodation owned or managed by housing associations. As the legislation is silent, it is arguable that if the landlord is a housing association the complaint will fall within our jurisdiction.

Public Services Ombudsman for Wales (PSOW)

PSOW can only consider complaints about social landlords in Wales. This reflects the Public Services Ombudsman (Wales) Act 2005 which states that the PSOW may investigate relevant action "…in the case of a listed authority which is a social landlord in Wales*….*7 (3) (b)."

Scottish Public Services Ombudsman (SPSO)

SPSO can only consider complaints about social landlords that are registered in Scotland. This involves a landlord's registered office being located in Scotland. (s 57-58 Housing (Scotland) Act 2001).

Implications for HOS if accepted in jurisdiction

- Potential legislative difference between England & Wales/England and Scotland.
- Rights of Welsh nationals in relation to information in Welsh etc.

3.2 Complainant condition - Can the resident bring a complaint to the Ombudsman (paras 25 and 41(a))?

If we are content that the complaint is about a member landlord, we can then go on to consider whether the resident conditions are made out. The following people can make complaints about members:

- a person who has a lease, tenancy, licence to occupy, service agreement or other arrangement to occupy premises owned or managed by a member - para 25(a).
- an ex-occupier, if they had a legal relationship with the member at the time that the matter complained of arose - para 25(a).
- an applicant for a property owned or managed by a member - para 25(b).
- a representative of any of the people above who is authorised by them to make a complaint on their behalf - para 25(c).
- a representative of any of the people above who does not have the capacity to authorise a representative to act on their behalf - para 25(d). The Ombudsman must be satisfied that the representative has the legitimate authority to act on the person's behalf.
- a person with authority to make a complaint on behalf of any of the people above who is deceased - para 25(e).

Where the person is still in occupation it should be relatively straightforward to establish if they are in a landlord/tenant relationship with the member – any arrangement to occupy premises will count – this will include shared owners, tenants, licensees, leaseholders and self-builders. It does not include freeholders or private owners who lease the property to a member landlord.

Where the person is an ex-occupier the Scheme refers to there needing to have been a "legal relationship" at the time the matter complained of arose. To ensure fairness and consistency, "legal relationship" should be taken to have the same extent as applies to current occupiers. Complaints that concern the ending of this legal relationship may also be within the Ombudsman's jurisdiction i.e. events that occurred whilst moving out.

A lease, tenancy, licence to occupy or service agreement all describe a legal relationship between two parties, and so evidence a 'legal relationship'. An 'arrangement to occupy premises' is less clear-cut, but could include a spouse with matrimonial home rights, or other member of the family authorised to live at the property. A person who occupies or occupied the premises unlawfully (e.g. as a sub-tenant of the tenant against the provisions of the tenant's tenancy agreement) is unlikely to meet the resident condition.

Applicants for housing can complain to the Ombudsman, whether or not the application was successful. This includes those applying for shared ownership, tenancies, licenses, leases, and self-build schemes (para 25(b)). Whether the Housing Ombudsman or the Local Government and Social Care Ombudsman considers the complaint will depend on the subject matter of the complaint.

A family member or friend of the occupier/ex-occupier is *not* entitled to complain

except as a representative of the person in the landlord/tenant relationship (paras 25(c), (d) or (e)).

A resident satisfying these criteria has a statutory right to bring their complaints to the Ombudsman. This right cannot be denied by the landlord and is not lost even if the resident has accepted a payment of compensation from the landlord as 'full and final' settlement of their dispute before bringing the matter to us.

Representatives

Residents are able to appoint representatives to bring complaints on their behalf under para 25(c) of the Scheme. We should always see signed authority from the resident in order to deal with a representative instead. If verbal authority is accepted then a note should be placed on the casefile explaining why this was deemed satisfactory.

A representative may be elected by tenants (for example the Chair of a tenants' association). We will normally still require signed authority from the relevant resident(s) in order to ensure that the representative has the relevant authority in relation to the complaint under consideration and the resident understands that we will be sharing information with the representative. For further information on representatives of multiple residents, see the **Guidance on Group Complaints**.

A resident may be unable to pursue a complaint themselves but not have the capacity to authorise a representative to act on their behalf. We will then need evidence that any representative has the legitimate authority to bring a complaint on their behalf (para 25(d) of the Scheme). This could be a letter from a social worker or confirmation of an appointee or a power of attorney. A common example would be the children of an elderly relative.

Where a resident appoints a representative we will, unless directed otherwise, deal with that person and not the resident. For further information on appointing representatives, see the **Guidance on Authorisation of Representatives**.

Deceased tenants

On the death of a tenant the legal estate rests with the executor of the will or, where the tenant dies intestate (without a will), with the administrator. It is only people operating in those official capacities that can make a complaint to us (para 25(e) of the Scheme). Evidence that an individual has the legal capacity to approach us on behalf of a deceased tenant can be obtained from the grant of probate in the case of an executor, or the grant of administration in the case of an administrator (generally called "grant of representation").

The executor or administrator can appoint a representative to act on their behalf. We will need evidence that the executor/administrator has the capacity to bring a complaint to us as well as signed authority for the representative to act on their behalf.

3.3 Complaint condition - Is the complaint one we can consider (paras 5, 34(a) and 41(d))?

Are the conditions in paras 5 and 41(d) met, i.e.:

- If the landlord is a local housing authority - Does the complaint concern action taken by or on behalf of that authority in its capacity as a registered provider of social housing, and is it action in connection with:
    - its housing activities so far as they relate to the provision or management of social housing? or
    - the management of dwellings owned by the authority and let on a long lease? Or

- For all other landlords - Does the complaint concern the landlord's housing activities?

Local housing authority

…by or on behalf of that authority?

The Ombudsman can consider complaints concerning actions taken by *or on behalf of* the authority. This means that where, for example, a local housing company, a management company, or ALMO is acting *on behalf of* the local housing authority, the actions of that company may well come within the jurisdiction of the Ombudsman.

…in its capacity as a registered provider of social housing

This means that any functions that local authorities have simply because they are local authorities (i.e. irrespective of whether they are also landlords) are not matters that the Ombudsman can consider. For example, complaints that relate to allocations under Part 6 or homelessness applications under Part 7 of the Housing Act 1996. Complaints relating to the local authority's exercise of these duties are likely to fall within the jurisdiction of the LGSCO. For further information on the LGSCO's jurisdiction see the **Memorandum of Understanding with the LGSCO.**

This also rules out of jurisdiction other matters unrelated to social housing, such as action taken in respect of licensing or ownership of housing in its area, for example. As above, the position is the same whether the activities are carried out by the local housing authority itself or on its behalf (e.g. via a local housing company or managing agent).

Where we receive complaints which we consider:

- should have been made to the LGSCO instead;
- may have been better made to the LGSCO instead (but we are unsure);
- do not come within the jurisdiction of either us or LGSCO;
- may engage the jurisdiction of *both* the Ombudsman and LGSCO;

we must follow the applicable procedure set out in the **Memorandum of Understanding with the LGSCO**.

…in connection with its housing activities…

Even if an LHA is acting in its capacity as a registered social landlord there is a further limitation on the jurisdiction of the Ombudsman in that this will only apply if the action is in relation to "its housing activities" so far as they relate to the provision or management of social housing (para 5).

All complaints that do not concern 'housing activities' will fall outside our jurisdiction. Examples of these are included in paragraph 42, i.e. complaints relating to commercial or contractual relationships that are not connected with the complainant's application for, or occupation of, a property (para 42(g)) and complaints that concern employment or personnel issues (para 42(h)).

…so far as they relate to the provision or management of social housing

Under section 68 of the Housing and Regeneration Act 2008. "Social

housing" is

a. low-cost rental accommodation (namely: made available for below the market rent to people whose needs are not adequately served by the commercial housing market); or
b. low-cost home ownership (namely: shared ownership, equity percentage arrangements or shared equity trust which is made available in accordance with rules designed to ensure it is made available to people whose needs are not adequately serviced by the commercial housing market).

So, for complaints relating to the actions of local housing authorities (except in relation to long leases), the Ombudsman only has jurisdiction where the complaint relates to accommodation which falls within the above definition of social housing.

<u>What is a long lease?</u>

A long lease[1] includes a lease granted in pursuance of Part 5 of the Housing Act 1985 (right to buy). All actions taken by or on behalf of the authority in connection with the management (but not sale) of a local housing authority's accommodation let on a long lease are covered.

[1] (3) … 'long lease' means —
(a) a lease granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;
(b) a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease; or
(c) a lease granted in pursuance of five of the Housing Act 1985 (the right to buy) [, including a lease granted in pursuance of that Part as it has effect by virtue of section 17 of the Housing Act 1996 (the right to acquire)]

If a complaint relates to the way a local authority is dealing with a right to buy application the complaint should be made to the LGSCO or the Residential Property

Tribunal.

What are “housing activities”?

Although the Ombudsman has wider jurisdiction over housing associations then LHAs, the action or omission must have been in respect of “housing activities” for the Ombudsman to be able to investigate the complaint. Largely this encompasses activities that arise due to a landlord/resident relationship and whilst the member is discharging a landlord function. We must be satisfied that, on the face of it, the complaint concerns the relevant ‘housing activities’ standard for each type of landlord.

Adverse effect

The person complaining (or on whose behalf a complaint is made) must have been, in the Ombudsman’s opinion, adversely affected by those actions or omissions in relation to their right (or application) to occupy their home (para 34(a)).

We make a judgement on the facts as presented as to whether the resident has been personally affected by the action or omission they are complaining about. This decision will be made prior to the complaint being duly made.

There has to be a link between the subject matter of the complaint and the complainant. If, on the face of the complaint brought to us, there is no apparent link there will be no adverse effect.

This element of the complaint condition refers to adverse effect that has already occurred, rather than the risk of potential adverse effect in the future. We would not therefore generally consider a complaint regarding a change in landlord’s practice which *may* have an adverse effect when implemented.

Where we have concerns as to whether there has been an adverse effect, we should ask the complainant to explain the effect that the matter has had, and if necessary, provide evidence to support that assertion. This may include deciding whether it would be fair and reasonable to rely on the discretionary ground in paragraph 42(n) of the Scheme when we are deciding whether the complaint is duly made.

4. Discretionary grounds – Para 42

Once satisfied that the landlord, resident and broad complaint conditions are met, the Ombudsman must consider whether any of the discretionary jurisdiction exceptions apply to the complaint. Only once this has been done can a complaint become duly made and accepted for further assessment (for mediation or investigation).

Our aim is to consider all complaints, but we need to be sure that we are the best organisation to resolve the dispute. We have authority to rule a complaint outside jurisdiction if the subject matter of the complaint does not meet the mandatory conditions set out above.

Para 42 of the Scheme sets out a number of circumstances where, whilst the complaint meets the necessary conditions, it is still not appropriate for the

Ombudsman to investigate. Ultimately para 42 adds further depth to paras 34(a) and 41(d) (complaint conditions). It sets out the circumstances when, although a complaint falls within the definition of 'housing activities' it may nevertheless be a matter that we cannot consider. It also refines our understanding of what is outside the scope of 'housing activities'.

Matters excluded by para 42 therefore fall into three categories:

Effective complaint Handling	**Complaint does not meet complaint conditions (not within paras 5, 34(a) and 41(d))**	**Within housing activities but not necessarily for HOS**
Complaints made prior to completion of the internal complaint procedure (ICP) – 42(a)	Concern terms & operation of commercial/contractual relationship not connected to application for, or occupation of property for residential purposes – 42(g)	Complaint concerning level of rent or service charge or level of increase – 42(d)
Brought to attention of HOS more than 12 months after end of ICP - 42(b)	Concern terms of employment, personnel issues or ending of service tenancy following ending of contract of employment – 42(h)	Matters where a complainant has or had the opportunity to raise subject Matter of the complaint as part of legal proceedings – 42(e)
Not brought to attention of LL as formal complaint within reasonable period (12 months) – 42(c)	Fall properly within the jurisdiction of another Ombudsman, regulator or complaints-handling body – 42(j)	Consider it quicker, fairer, more reasonable or more effective to seek a remedy through the courts, othertribunal or procedure – 42(f)
Complaint concern matters raised on behalf of another without their authority - 42(i)	Complaint relates to processes and decisions concerning governance structure – 42(m)	The complainant is seeking an outcome which is not within HOS authority to provide – 42(o)
Being pursued in an unacceptable manner – 42(k)	Complaint concerning matters which do not cause significant adverse affect – 42(n)	Complaint concerning matters which do not cause significant adverse affect – 42(n)
Seek to raise again matters which HOS or any other Ombudsman has already decided upon – 42(l)		

Health warning: The guidance given on the discretionary areas is simply that. The examples of issues to be considered are only guidance. They are not checklists and do not establish rules to be followed in decision making.

4.1 Effective complaint handling

The sub paragraphs identified in the table ensure that: cases are dealt with fairly by allowing landlords the opportunity to respond; we only consider current complaints; and complaints are pursued in a timely and reasonable manner. It provides a number of discretionary reasons where we may decide that a complaint is outside jurisdiction on the basis of complaint handling.

Has the complaint exhausted the landlord's internal complaint procedure (para 42(a)?

The landlord should have the opportunity to address a complaint under its own ICP before we consider it. This is vital to our consideration of a complaint as it is the landlord's responses to the initial incident and throughout the ICP that are under investigation. If there is no response, there is little to investigate.

Normally, exhausted means the ICP has been completed. We have discretion over whether we think the ICP has been exhausted, taking into account any failures in the operation of those procedures and any issues of fairness to the resident or landlord. We therefore have discretion to intervene early and accept a complaint as duly made if the landlord fails to deal with the complaint in a timely fashion.

Similarly, if a matter has been to court or is the subject of court proceedings, we may consider the ICP to be exhausted, as it would not be appropriate for the matter to be considered within the ICP when the court will be making the ultimate decision.

Generally, we will ensure that we only investigate complaints that were taken through the landlord's ICP. If a resident raises an issue that has not been considered through that procedure, either because they did not raise it at the time or because the issue occurred after the ICP was completed, we must consider whether we will deal with the matter.

If we conclude that we will not deal with it, the resident will be advised that they should pursue the matter through the landlord's ICP in the usual way. If, however, we decide to exercise our discretion and accept the complaint, we should first ask the landlord whether it would prefer to look at the matter through the ICP. We may wish to promote the use of our triage and mediation process to resolve such complaints.

We also recognise that landlords may engage in other procedures for considering complaints, for example, a complaint may be considered as part of the Pre-Action Protocol for Housing Conditions Claims. There are situations when a complaint is considered outside of the landlord's complaints team, for example, by the landlord's legal team or its solicitors. In the interests of fairness to both the landlord and the resident we have discretion to accept a landlord's final position on the complaint in a letter from its legal team or solicitors. An acceptable final decision letter may also be the landlord's response to the tenant's Letter of Claim under the Pre-Action Protocol for Housing Conditions Claims.

Therefore, if the matter has been considered by the landlord's legal team or solicitors and the resident has been provided with a final letter in respect of the complaint, we may consider the complaints process to be exhausted as the landlord has already considered the issues of complaint and set out its final response.

We will only exercise this discretion in complaints that are not the subject of court proceedings but which the resident wishes to refer to the Ombudsman. We will communicate our intention to accept a legal letter as the landlord's final position in relation to the complaint and will consider any request from either the landlord or the complainant for the complaint to be concluded differently.

There may also be cases where we identify other issues about which the resident has not directly complained. We will need to ascertain whether the newly identified matter is intrinsic to the main substance of the complaint and therefore it is fair for us to consider the matter when investigating. Alternatively, we may wish to bring the matter to the landlord's attention through the use of our recommendations.

Were time limits complied with?

Para 42(b) - A resident normally has twelve months from receiving the landlord's final decision to bring the matter to the Ombudsman. Ignorance of the existence of the Ombudsman is not normally a good reason for delay. However, we have discretion to consider complaints that are brought to us outside that time frame. The major issue to consider here is: why wasn't the complaint brought to us sooner?

Para 42(c) - A resident is expected to bring their complaint to the attention of the landlord within a reasonable time of the problem occurring. This is normally within 12 months. In considering whether the time taken was reasonable we need to consider such issues as:

- does the landlord stipulate a time limit in its complaints process?
- is the time limit reasonable or overly restrictive?
- why wasn't the complaint brought in a reasonable time?

Concern matter raised on behalf of another without their authority - para 42(i)

We must be satisfied that any representative has the authority of the resident to bring the complaint to us. This can generally be satisfied by the resident signing a complaint form to authorise the representative.

Complaints pursued in an unacceptable manner - para 42(k)

We will not consider complaints that we consider are being pursued in an unacceptable manner, either with us or with the landlord. This includes frivolous or vexatious complaints. When making this decision we would consider the case in the context of our **Unacceptable User Actions Policy**.

Complaints which seek to raise again matters which the Ombudsman (or any other ombudsman) has already decided upon - para 42(l)

We will not consider complaints where the complainant is seeking to raise again matters which the Housing Ombudsman or any other Ombudsman (such as the LGSCO) has already decided upon. This can include attempts to:

- re-define issues or complaints to encourage us to re-consider, or
- re-present as a new complaint issues that were integral but peripheral to a previous complaint.

4.2 Complaint does not fall within complaint condition (paras 5 and 34(a))

These are complaints that do not concern a landlord's housing activity, or in case of a LHA, its housing activity in so far as it relates to the "provision and management of social housing or long leases". In addition, there must also be evidence of an adverse effect in relation to the occupation of the home.

Most are self-explanatory i.e. we do not look at terms of employment as this would not fall within a landlord's housing activities. Similarly, if Mr X wishes to complain that the lift is not working in a neighbouring block, there would be no adverse effect to Mr X in relation to his occupation of property. There would, however, be adverse effect caused to the neighbour should they wish to bring a complaint or ask Mr X to act as their representative.

Commercial relationships - para 42(g)

We can only consider complaints that relate to a landlord's housing activities. We therefore need to ensure that we only consider complaints that concern actions/omissions taken by the provider of housing in its role as a landlord. A useful question to consider is: if the landlord did not let out properties, would this arrangement be one it would still have entered into? Examples include:

- a landlord rents out shop space to a retailer
- a contract that is not directly linked to the accommodation, for example a garage rented on a licence agreement, not related to any tenancy
- properties let to the landlord by an individual

Employment matters – para 42(h)

We will not deal with complaints relating to employment issues. If a resident is employed by the landlord, we will consider whether their tenancy is linked to their employment, e.g. a live-in warden or scheme manager. In which case even a complaint about tenancy issues could be considered an employment matter.

Other Ombudsman, complaints-handling bodies or regulators – para 42(j)

We will not consider complaints that fall within the jurisdiction of another Ombudsman, complaints-handling body (such as the Information Commissioner) or other regulator (such as the Regulator of Social Housing). Appropriate referral will depend on the specific complaint.

We will consider complaints about a local authority's landlord function. This means that complaints about a local authority's relationship as landlord to its tenants or

leaseholders will be considered by us rather than the LGSCO. The LGSCO consider complaints about local authorities' wider activities, for example in discharging their statutory duties in homelessness. There are areas where there may appear to be some overlap between the jurisdiction of the two Ombudsmen.

Potentially the most complex element of this sub-paragraph relates to complaints that fall under the jurisdiction of the LGSCO. Staff are encouraged to discuss any jurisdiction concerns with the LGSCO under the terms of the **Memorandum of Understanding**.

Complaints relating to processes and decisions concerning a member's governance structures – para 42(m)

We will not consider complaints which relate to the processes and decisions concerning a member's governance structures. If the complaint is about matters which relate to the governance structure of a private registered provider, then the resident can be referred to the Regulator of Social Housing. This includes whistle- blowing. We must bear in mind that some complaints that appear to relate to tenant involvement and empowerment may be about governance.

Significant adverse affect – para 42(n)

The resident must have been 'adversely affected' by the actions or omissions of the member. However, the Ombudsman will need to be satisfied that the extent of the adverse affect or detriment is significant otherwise we will not consider the complaint. When determining how significant the adverse affect is we will take into account the circumstances of the case as well as the adverse affect claimed. We will need prima facie evidence that the service failure claimed has materially affected the complainant leading to injustice, hardship, distress, loss, inconvenience.

4.3 Within housing activities but not necessarily for HOS

These are the more contentious jurisdiction decisions. Much will depend upon the outcome a resident is seeking and whether this is one that the Housing Ombudsman is best placed (or able) to deliver. Our starting point is that we rule complaints in jurisdiction where possible:

Policies

Broadly speaking, it is for a landlord to set its own policy direction and the processes and procedures that it expects its staff to follow. We will not look at complaints that

rely upon our reviewing and revising a landlord's policy. Our role when investigating is to look at whether a landlord's actions were compliant with the policy and procedures in place.

We will therefore always consider complaints that concern the application of a policy in the particular circumstances of the complaint. We may also consider the extent to which a policy complies with the law, regulations or good practice in place at the time

of the complaint.

We will not look at complaints that solely concern the existence of a policy or the wording of a policy, unless there is evidence that the policy/wording in question gives rise to a systemic service failure.

Level of rent/service charge – para 42(d)

Given the wording of the Scheme we have no discretion to consider complaints that, in our opinion, concern the level of rent/service charge or the level of any increase. We do however encourage staff to look behind such complaints to understand what the concern with the rent is and whether this gives rise to a complaint that we could assist with. For example, where the level of rent is disputed due to the poor condition of the property.

Where a complaint is purely expressed in terms of the level of service charge or rent this may be a matter for the First Tier Tribunal – Property Chamber (FTT). However, this depends on the tenancy type and rent review clause. Do not automatically refer the complaint to the FTT.

We may, however, look at complaints that relate to the collection of rents or service charges, their calculation or how this information was communicated.

Examples of the types of issues we may consider include (but are not limited to):

- Errors in the accounts
- Content and timeliness of information provided
- The decision to stop providing or to introduce a service
- The methodology used to calculate charges
- The method of deficit recovery
- Timescales to demand charges
- How payments into sinking funds have been planned and calculated
- Failure to apply refunds
- Failure to consult/inadequate consultation carried out

Could the complaint be dealt with by the FTT?

Many service charge complaints can also be considered by the FTT and may, therefore, be outside our jurisdiction under para 42(d). If, taking into account paras 42(e) and (f) we can only consider limited aspects of the complaint, it may be appropriate to determine the entire complaint as outside jurisdiction.

We should consider referral to the FTT if:

- the complaint relates to the reasonableness of the charges, or
- the complaint alleges the failure of statutory requirements, or
- a determination of the complaint would be reliant on determination of a contested legal issue.

Applications can be made either before or after service charge costs have been

incurred. There is no time limit on when an application can be made although the tribunal has discretion to decide how far back the matter will be considered. NB: The FTT has no authority to consider charges that have been accepted by the resident.

We must also consider whether the resident has the standing to take their complaint to the court or the FTT.

Liability to pay a service charge

The FTT can make determinations on all aspects of the liability to pay a service charge, including by whom, to who, how much and when a service charge is payable. In order to decide liability a tribunal also decides whether service charge costs have been reasonably incurred and, if so, whether the standard of any services or works for which the costs are charged is reasonable.

Auditing of accounts

The FTT is better placed than us to examine service charge accounts in detail. Hence it may be appropriate to decide a complaint is outside jurisdiction where, for example, the resident is alleging that sinking fund contributions have not been properly accounted for or where the resident is alleging that there are extensive and ongoing errors in the accounts.

Circumstances of the resident

In considering whether a complaint is better dealt with by the FTT we can consider the circumstances of the resident. Although the FTT is less formal than the courts, the onus is on the resident to gather and present the evidence and arguments in support of their case. The process therefore differs significantly to how we consider complaints, which is far less onerous on the resident. Although it is not a requirement to have legal representation at a tribunal hearing, in reality applicants often arrange legal representation particularly in complex disputes. This can be expensive and landlords will have access to legal representation.

Additionally, when taking a case to the FTT the resident is obliged to pay an application and hearing fee, although these fees may be reduced or waived where a resident is in receipt of welfare benefits.

Regardless of the circumstances (in relation to their ability to pursue a complaint with the FTT or the court) of the resident we cannot consider a complaint if it falls outside jurisdiction under para 42(d).

Does the complaint concern the standard of the service provided?

Whilst we can consider complaints about the standard and frequency of a service being provided by a landlord, our assessment of this issue would focus on the terms of the service specification, whether a landlord has adequate monitoring arrangements in place and what these reveal. We cannot determine whether the service itself is ‘reasonable’, how many times contractors should attend or whether the service

provides value for money. In these cases, it may be more effective for the matter to be taken to the FTT, as the tribunal can provide an expert opinion on the reasonableness of the service and will also, if necessary, inspect the premises.

Matters where a complainant has or had the opportunity to raise the subject matter of the complaint as part of legal proceedings – para 42(e))

Legal Proceedings can be started by 'issuing' proceedings. The issuing of proceedings involves filing details of the claim, such as the Claim Form and Particulars of Claim, at court. The court will then serve this on the defendant for them to answer to.

A threat of possible court action, such as a Notice Seeking Possession (NSP) or Notice to Quit (NTQ) is not legal action but may be an indication that a landlord is intending to take legal action. A threat of possible court action is not, in itself, legal action and will not normally take a matter outside our jurisdiction. Following pre- action protocols, such as the Pre-Action Protocol for Housing Conditions Claims, does not constitute legal proceedings and would not take the matter outside jurisdiction. We should ensure that parties are made aware at the earliest opportunity that we may not be able to investigate if proceedings are started.

Where a complaint has been the subject of legal proceedings, it will not be considered by the Ombudsman. Similarly, if the legal proceedings related to a different matter and the resident could have sought to counterclaim in court in relation to the matter they are complaining about, we may decide not to consider either matter. This is because they had the opportunity to do so.

When considering evidence of legal proceedings we will need to consider whether the resident will have (or had) the opportunity to raise the subject matter of the complaint as part of the legal proceedings. For example, a resident who has been taken to court for rent arrears but has come to the Ombudsman with a repairs complaint that relates to the same period – it may have been possible for the repairs to have been raised with the court as a counterclaim to the rent arrears. We will always need to satisfy ourselves that such an opportunity existed.

So, if possession proceedings were commenced, we may need to ascertain the ground that possession was sought under and whether this was a discretionary ground that allowed the court to take all factors into account, or a mandatory ground, where the court would have little discretion if the ground was made out. We will need to consider the nature of the complaint and whether it was fair to expect this to be raised as part of the ongoing legal proceedings. We will also need to consider whether it is fair to the landlord for the Ombudsman to look at the complaint given the court proceedings.

The Ombudsman considers it quicker, fairer, more reasonable, or more effective to seek a remedy through the courts, other tribunal or procedure – para 42(f)

It is our role to determine complaints by what is fair in all the circumstances, and when investigating we seek to establish whether a landlord failed to comply with any relevant legal obligations or code of practice. We must also consider whether it behaved

unfairly, unreasonably, negligently, or incompetently. It is not, therefore, appropriate for us to decide a matter is outside jurisdiction simply because the case could be considered by a court.

There will however always be a small number of cases where either the assessment of fairness is so intrinsically linked to a binding legal decision or requires a level of expertise that we are unable to provide. When considering this aspect of jurisdiction, it may help to consider what exactly the resident is seeking and whether we can provide this resolution. We may consider that a complaint is better dealt with by the court if its resolution requires:

- *a definitive or binding ruling* - This could include a ruling on the interpretation of an occupancy agreement. We may decide a complaint is outside jurisdiction if it concerns the interpretation of an occupancy agreement that is silent on the issue in dispute or contains ambiguous or conflicting information. Our role is limited in these situations; although we can express a view on such a matter our decision is not legally binding on the parties involved and could potentially be subject to challenge. However, we may be able to consider the terms of an occupancy agreement or the provisions of relevant legislation where these are clear or are not in dispute.

- *consideration of disputed or technical evidence* - Expert evidence is sometimes needed where the dispute involves very technical matters. During tribunal or court proceedings the parties to the dispute are able to call expert evidence. We cannot provide an expert opinion in this way. Examples include where there is a dispute about the extent of the works required/whether the works constitute a repair or an improvement.

As stated above, we may consider that a complaint would be better dealt with by the court or the FTT if it relates to service charges and is not already excluded under para 42(d).

Complaints that seek to challenge court decisions should always be referred back to court. The Ombudsman does not have authority to amend or overturn a decision of the court.

<u>The resident is seeking an outcome which is not within the Ombudsman's authority to provide – para 42(o)</u>

We will not consider complaints where the resident is seeking an outcome which is not within the Ombudsman's authority to provide. Examples include:

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- requiring another person (not a member) to either do something or not do something
- disregard or enforce the terms of the lease/tenancy
- legal sanctions against a landlord.

Policy/guidance management:

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Date of next review	06/12/2025
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Data Protection Assessed? (Y/N)	No
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2	06/10/2024	KMT	Update to the Scheme paragraphs to reflect the revised Scheme.