

Annex 1: GLA response to MHCLG consultation on strengthening redress in housing

This response outlines the GLA's position on relevant questions in the consultation.

Chapter 3 – Improving in-house complaints handling

Q10 – could more be done to improve in-house complaints handling for housing consumers?

The GLA believes that more should be done to improve in-house complaints handling for housing consumers. For example, it is currently a requirement of ombudsman scheme membership that a letting agent has a clearly-outlined in-house complaints procedure. However, in practice Trading Standards, renters' advice organisations, and others report that those processes are not being advertised clearly to consumers in many cases, and do not exist at all in others. Even where letting agents do have accessible complaints procedures renters have no guarantees that these are robust or follow established best practice.

The GLA welcomes the Government's recently announced proposals to introduce an independent regulator and code of practice for letting and managing agents, including a new system for leaseholders to challenge service charges and a requirement for all letting and managing agents to undertake continuing professional development and training. However, we would also argue that as part of any improvement in letting and managing agent regulation and redress, agents should be required to have a complaints-handling process which has been vetted and approved by the new regulator, which is clearly set out on the agent's website, and which they should be legally obliged to present to prospective tenants or leaseholders prior to the signing of any contracts, or the transfer of any monies. The agent should be required to offer the same approach to their landlord clients.

Overall, the GLA sees mandatory codes of practice as key to preventing complaints in the first place and ensuring that, when they do occur, they are dealt with swiftly and effectively through in-house complaints processes, which should themselves be laid out in the codes of practice or separately mandated. The GLA would urge Government to consider how to implement these kinds of codes of practice more widely. As outlined in our response to the Government's call for evidence into letting and managing agent regulation, the GLA would strongly support the introduction of a single mandatory code of practice for the private rented sector. This should be adopted by the Secretary of State in order to ensure it is enforceable. This could be the benchmark against which the new overarching regulatory body could regulate the industry. Although a PRS Code of Practice already exists, it is currently un-adopted and in any case should be revised, updated and simplified before it can be considered fit for purpose.

There should be maximum time limits for complaints being handled in-house and this should be outlined in mandatory codes of practice. How long this should be is not for the GLA to dictate, but Government should review best practice response times for each tenure and sector, and make this the maximum. This is particularly important in the private rented sector, as private renters' disputes and complaints often involve key repairs – such as broken boilers or serious safety hazards. In addition, private tenancies are typically subject to a high rate of churn. Advice organisations report that it is common for renters to move on before a complaint is resolved, often resulting in them 'cutting their losses' and dropping the complaint.

Private landlords who do not use a letting agent are not required to be members of redress schemes, and the vast majority do not have formal complaints procedures. Since many landlords are simply individuals who own a few properties, it may not be feasible to require them to have a formal complaints process. This is the same situation for freeholders of leasehold properties who do not employ a managing agent. However, this only serves to emphasise the need for robust dispute resolution to be a part of the Government's proposals for improved redress, so that there can be a 'first step' for such renters, landlords, freeholders and leaseholders.

Chapter 4 – Practices and powers

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

Although different sectors will require different, specific redress schemes according to the nature and needs of sectors and their consumers, all housing consumers should expect and receive a consistently professional and robust approach.

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

As stated above, while the details of redress schemes will differ according to the sector, the GLA believes that there are a number of principles that should be universal across these schemes:

- Access to redress should always be free to ensure that financial circumstances do not restrict the ability of consumers to access the redress that they deserve.
- Redress schemes should be supported by mandatory codes of practice wherever possible.
- There should be a maximum limit for redress schemes to investigate complaints and make decisions on compensation and penalties.
- The length of time after which a complaint can be lodged with the redress scheme should be enough time to ensure that consumers have adequate opportunity to seek redress without this having a negative effect on their housing circumstances. For example in the private rented sector a minimum of two years may be appropriate, as private renters have very little security of tenure and no protection from rent increases. Recent legislation to prevent retaliatory eviction, though positive, is complicated, difficult to access and little-understood amongst renters. Many renters may prefer to lodge a complaint against an agent or landlord after their tenancy has ended.

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

The GLA would strongly support the publication of redress scheme decisions in order to aid transparency, accountability and to allow consumers to make informed decisions. For example, the GLA is currently exploring how it can support increased transparency of data in relation to the quality of new build homes in order to support consumer choice, and would see the publication of data relating to redress in this area as supporting this agenda.

In addition, as the Government is aware, the Mayor recently launched his new Rogue Landlord and Agent Checker, which allows enforcement agencies to publish information about landlords

and lettings agents who have been successfully prosecuted and fined. The Checker also brings together in one place a comprehensive list of all agents who have been expelled from redress schemes. It is clearly in the public and consumer interest to allow renters to use such information to make informed decisions. The GLA urges the Government to replicate our approach with any new redress scheme or regulatory framework, as well as with its own national Rogue Landlord Database.

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

The GLA does not have specialist knowledge in this area so it would not be appropriate to suggest a time frame. However, Government should ensure that any timescale it does decide upon should ensure that consumers get access to the redress to which they are entitled, including what may sometimes be significant financial compensation, without an unnecessary delay.

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

As outlined above, it should be a mandatory requirement for all letting, managing agents and landlords to provide consumers with details of how to access redress at the point of entering into a contract. This would help to ensure consumers are better informed of their rights up front. In addition, the Government should commit resource to publicising the work of any new housing redress body and ensuring it has an accessible online presence, as well as other options for digitally excluded consumers. Overall, the most important way to ensure the scheme is accessible is to ensure the process of seeking redress is clear, simple and rapid.

Q16: What kind of sanctions should a redress scheme have access to?

The GLA supports the creation of a formal, empowered, fully resourced redress scheme. This could be modelled on the existing powers of the Housing Ombudsman which the GLA views as comprehensive on paper. Any sanctions should provide enough of a deterrent to encourage a step-change in the consumer experience of housing in the UK. The sanctions should include (but not be limited to): financial awards; expulsions from the scheme; the power to enforce decisions; and the power to refer to enforcement agencies.

However, the GLA would strongly encourage the Government to undertake independent evaluation of redress provision across the UK and internationally to determine what the most appropriate and effective suite of powers may be.

Chapter 5 - Addressing the gaps

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

The GLA agrees with the Government's analysis of the three main gaps in redress at present: buyers of new build homes; tenants of private landlords; and leaseholders. Our specific response to each of these issues is outlined in the questions below.

However, in addition to the points outlined in answer to the questions below, we also wish to highlight issues with two existing routes for redress for housing consumers.

First, there are inconsistencies between the three letting agent redress schemes (which will soon be two when Ombudsman Services withdraws from complaints handling). For example, not

all of these schemes publicly display lists of expelled agents and in any event the fact that there is more than one redress scheme is likely to be confusing for consumers. Having multiple schemes also means that there is no central list of expelled agents (other than the Mayor's Rogue Landlord and Agent Checker in London) for current and prospective tenants to review. There is a similar issue with regard to deposit protection where there is no central website consumers can use to check if their deposit is protected.

Second, it is currently unnecessarily complicated for social housing residents to access the Housing Ombudsman, as they must first make complaints through their landlord, and if they are not resolved they must take their complaints to the Ombudsman via a 'designated person' (an MP, local councillor, or tenant panel) or wait eight weeks after the end of the complaints procedure to refer their complaint directly. We would urge Government to streamline the process for individual complaints, so that residents can take their complaint directly to a redress scheme more quickly and without having to go through a 'designated person'.

In addition, the Social Housing Regulator will only take regulatory action in relation to consumer issues if the test of 'serious detriment' is met. We are concerned this sets the bar too high to effectively consider consumer standard complaints from tenants or their representatives, meaning that vital issues such as tenant involvement get insufficient attention. Of the 1,050 consumer standard complaints received by the HCA in the two financial years to 2016, only 10 resulted in findings of 'serious detriment'¹. In his draft London Housing Strategy, the Mayor is calling on Government to review the test of 'serious detriment' to ensure increased investigation by the Social Housing Regulator of resident complaints and to ensure it increases its work on enforcing consumer regulation in the social housing sector.

The consultation asks if there are any voluntary or sector-led initiatives that could address these gaps. The GLA's view is that across the various existing redress schemes, industry bodies and deposit protection schemes there is a great deal of knowledge and expertise available to facilitate an effective consumer complaint system. However, without a central, properly resourced enforcement body with a clear code of practice, the benefit of these individual offers is diluted to the point where there is at present no consistent, reliable access to redress for consumers. As such, the GLA would not recommend an attempt to plug gaps in redress with voluntary or sector-led initiatives, but instead urges the Government to take a strategic approach and set up a new structure to improve access to independent redress. A single housing ombudsman would be the best way to deliver this.

Buyers of new build homes

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

The GLA supports the recommendation of the APPG for Excellence in the Built Environment that purchasers of new homes should have access to an ombudsman scheme to seek redress when things go wrong. This will also ensure that homebuilders and warranty providers are encouraged to deliver a higher quality service, meaning that future housing development should be of a higher quality with fewer problems from the outset.

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

¹ HCA, 'Consumer Regulation Review 2015/16', 2016

The GLA would like the Government to create a new, streamlined single ombudsman scheme for housing redress, however within that there should be different departments dealing with different housing tenures. This should be a statutory body.

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

The GLA believes that transparency in data and information is key to ensuring a better experience for housing consumers, by enabling them to hold those building, letting and managing their homes to account and to make informed choices. The work of a new redress scheme delivered through a single ombudsman in supporting buyers of new build homes would benefit from transparency of data more widely, for example through a requirement for homebuilders to publish data on the levels of defects within their new homes, as is done in the Netherlands. This should ensure that consumer choice drives improvements in construction standards, thus decreasing the number of new home owners who have issues with defects in the first place.

Tenants of private landlords

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

The GLA supports the principle of all private landlords being required to join a redress scheme, including those who let their properties directly to private tenants. In addition, we would not support an exemption for those landlords who use an agent to manage the property. This is because it is often unclear in a dispute between tenant, landlord and agent who is at fault. For example, letting agent representatives tell us that landlords often give managing agents instructions that go against the tenant's interests. For instance, the agent requests funds to make an urgent repair and the landlord refuses, or the agent informs the landlord that the property must be licensed and the landlord does not do so. In such cases it would seem appropriate for the landlord and potentially the agent to be required to give account to the redress scheme. However, it may be appropriate to explore a discounted redress scheme membership for landlords who rent their properties through professional agents.

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

The GLA suggests that the Government creates a new, streamlined single ombudsman scheme for housing redress, however within that there should be different departments dealing with different housing tenures and providers. There is considerable expertise within the existing private rented sector redress and deposit protection scheme sector, and any new structure should seek to take advantage of and assimilate this expertise.

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

The GLA would urge the government to look at examples from other industries broadly made up of small traders to find best practice on how such industries distribute the cost of regulation and redress. This should be part of a clear, fully costed business plan for the new single housing ombudsman service. However it would seem appropriate for all landlords to pay into the system in some form as part of wider efforts to professionalise the sector.

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

The GLA would strongly urge the Government not to place the burden for enforcing new redress requirements on already overstretched local authority private sector housing and Trading Standards teams. Instead, the GLA, when responding to the recent consultation on further regulation of letting and managing agents, expressed its support for a fully resourced and independent regulatory body to be set up by Government. We welcome the recent announcement that this regulator will be established. The GLA would strongly urge this body to work with local authorities and take referrals from them, but should not be dependent on them for resources. If local authorities are expected to take on additional duties policing and enforcing redress scheme membership, this must come with a commensurate increase in resources and funding from central Government.

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

The GLA would suggest that a financial penalty and loss of right to use Section 21 eviction notices would be an appropriate penalty for non-compliance. However, the penalty should be high enough to act as a serious deterrent. The GLA suggests this should be somewhere in the range between £5k and £30k, commensurate with similar penalties for landlords and letting agents.

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

The GLA is aware of the considerable difficulties in communicating and implementing changes in legislation that affect landlords, due to the lack of information about who is renting out property in the UK. As set out in the Mayor's draft London Housing Strategy, the Mayor strongly supports the creation of a new, light touch national register of landlords. Such a register would make the administration of new initiatives like mandatory redress considerably easier as it would allow Government to communicate updates to all registered landlords simultaneously. At the same time a register would also improve transparency and accountability for tenants. The roll out of new initiatives on mandatory redress for landlords, as well as further letting and managing agent regulation would be an ideal opportunity to announce the creation of such a register

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

The Government could work with the Housing Ombudsman to encourage landlords to join this scheme in the meantime, on the promise that their memberships will be passported to whatever new entity is established. However, the GLA would encourage the Government to bring new legislation into effect as soon as possible

Leaseholders

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

The GLA supports the introduction of a requirement for freeholders of leasehold properties to sign up to a redress scheme. This will not only offer redress to leaseholders whose freeholder does not employ a managing agent, but will also address challenges in situations where it is unclear whether the managing agent or the freeholder is accountable for services to a leaseholder.

Chapter 6 - Creating a single housing ombudsman service

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

The GLA is strongly supportive of the introduction of a single ombudsman scheme covering housing redress issues. In order to safeguard existing expertise and avoid duplication of past work, this new ombudsman should incorporate existing ombudsman and redress schemes where appropriate, but it would involve creating new pools of expertise where particular groups of consumers are being included in a redress scheme for the first time, for example for buyers of new build homes. While there might be clear internal structures which delineate according to sector and tenure, consumers should be able to access redress through a single, easy to find and use portal, which directs them to the appropriate support depending on their situation. The new approach should also include provision of dispute resolution and adjudication services.

However, where existing redress and ombudsman schemes are incorporated into a new single scheme, the opportunity should be taken to tackle weakness or areas for improvement in these existing structures. For example, as outlined in our response to question 17, the GLA believes that the process for making individual complaints to the existing Housing Ombudsman should be streamlined, so that residents can take their complaint directly to a redress scheme more quickly and without having to go through a 'designated person'. This and other issues with existing redress and ombudsman schemes should be addressed as part of the process of developing any new single scheme, to ensure that it is fit for purpose and delivers the required step change in experience for housing consumers.

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

The GLA believes that a new single ombudsman should provide redress for the following sectors and tenures:

- Social housing tenants
- Private rented sector tenants
- Leaseholders with a private sector freeholder
- Leaseholders with a social housing provider as freeholder
- Purchasers who have bought a new build home
- Purchasers and sellers of existing homes
- Park home owners