



THE SCOTTISH
HOUSING
REGULATOR

MEMORANDUM OF UNDERSTANDING

BETWEEN

**SCOTTISH PUBLIC SERVICES
OMBUDSMAN**

AND

THE SCOTTISH HOUSING REGULATOR

April 2011

MEMORANDUM OF UNDERSTANDING

between

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

and

THE SCOTTISH HOUSING REGULATOR

1. Introduction

The purpose of this Memorandum is to set out the functions of the Scottish Public Services Ombudsman and the Scottish Housing Regulator and to describe the arrangements for co-operation and communication between the two bodies in relation to handling complaints and the promotion of good administrative practice.

2. Functions of the Parties to this Memorandum

2.1 SPSO

The Scottish Public Services Ombudsman ("SPSO") has the functions set out in the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act"). The SPSO can consider complaints from members of the public who claim to have sustained injustice or hardship as a result of maladministration or service failure on the part of an authority within the SPSO's jurisdiction, providing that the matter complained about is one which the SPSO is entitled to investigate. Schedule 2 of the 2002 Act lists the authorities that come within the jurisdiction of the SPSO ("listed authorities"). This list includes Registered Social Landlords (RSLs), local authorities and the Scottish Housing Regulator ("SHR"), as an Executive Agency of the Scottish Government.

The functions of the SPSO include raising awareness of its service, promoting good administrative practice by Scottish public services and leading the development of simplified and standardised complaints handling procedures across the public sector. The SPSO aims to work in partnership with public services across Scotland to help prevent complaints from arising and to help public services to improve their complaint handling processes.

2.2 The SHR

The Scottish Government set up the SHR as an executive agency to exercise the regulatory powers in the Housing (Scotland) Act 2001. Its purpose is to regulate to:

- protect the interests of current and future tenants, and other service users;
- ensure the continuing provision of good quality social housing in terms of decent homes, good services, value for money and financial viability; and
- maintain the confidence of funders.

The Housing (Scotland) Act 2001 introduced a single regulatory framework for the regulation and inspection of both RSLs and local authorities ("regulated bodies"). This responsibility, which the SHR carries out on behalf of Scottish Ministers, covers all of the activities of RSLs and the landlord, factoring and homelessness functions of local authorities. The SHR carries out this role by:

- Setting registration criteria and approving registration of RSLs;
- Agreeing national Performance Standards for social landlords and homelessness functions in Scotland;
- Assessing the performance of RSLs and engaging with RSLs to ensure performance is improved;
- Dealing with matters and issues raised by or about RSLs including complaints raised by service users and others (unless there is a more appropriate route such as the SPSO);
- Collecting and publishing a range of performance, financial and statistical information about the RSL sector;
- Intervening and taking statutory action where performance is poor.

3. Requirements relating to Complaints

3.1 SPSO

Section 22 of the 2002 Act (Information about right to make a complaint) requires a listed authority (which includes the SHR and all bodies regulated by the SHR) to take reasonable steps to publicise the application and effect of the 2002 Act, including in particular, the right conferred by the 2002 Act to make a complaint, the time limit for doing so and how to contact the SPSO. This information must be included in, or provided with, any document published by the listed authority that contains information about the services it provides to members of the public, or about how it deals with complaints. The information must also be included in any response to a complainant who may be entitled to complain to the SPSO.

3.2 The SHR

Performance Standards require all regulated bodies to have a well-publicised complaints procedure. This procedure should clearly state the responsibilities of the regulated body in dealing with complaints and must also make it clear when a complainant may have recourse to the SPSO. When assessing the performance of regulated bodies, the SHR will check that the body has a complaints procedure and that this procedure is working effectively. The SHR will also take the nature of any complaints and the way they have been handled into account when assessing a regulated body's performance. The SHR will inform the SPSO if it finds that complaint handling by a body is inadequate through any regulatory engagement or activity.

4. Complaints about Listed Authorities

In general, the SPSO considers individual complaints that cannot be resolved through the complaints procedure of a listed authority. The SHR will not normally intervene in complaints between an individual and a regulated body. However, if the SHR is notified of a very serious allegation against a regulated body, it may carry out an initial investigation to determine whether it needs to take any action and will investigate allegations of improper conduct in relation to a RSL. Any concerns related to improper conduct by local authorities should be raised with Audit Scotland.

It is noted that the SHR and the Care Commission have an agreement relating to complaints about housing support. It has been agreed that the Care Commission will take responsibility for first line investigation of all complaints about housing support services.

An agreement has also been reached between the housing regulator and the charities regulator OSCR. This sets out how complaints about RSLs which are also charities will be handled. This agreement takes account of the functions which have been delegated to the housing regulator under the Charities and Trustee Investment (Scotland) Act 2005.

5. Complaints about the SHR

The SHR Service Charter states that complaints can be made in person, in writing, by telephoning, by emailing any member of the SHR staff or by completing the online complaints form. The complaint is passed to the Head of Policy and Corporate Services who will ensure that the complaint is investigated fully and resolved as quickly as possible. The SHR will acknowledge the complaint within eight working days and send a full response within 20 working days.

As an Executive Agency of the Scottish Government the SHR is under the jurisdiction of the SPSO. Therefore, the SPSO may investigate a complaint made by a member of the public that they have sustained injustice or hardship as a result of maladministration or service failure on the part of the SHR. The SPSO will not usually consider a complaint until the complaints process of a listed authority has been invoked and exhausted.

It has been agreed that the Head of Policy and Corporate Services of the SHR will be the liaison person for complaints received by the SPSO about the SHR. If the SPSO, after considering a complaint about the SHR, decides not to conduct an investigation, it must send a statement of reasons to the SHR (amongst others). After conducting an investigation of a complaint, the SPSO must send a report of the investigation to the SHR (amongst others) and the report must be laid before the Scottish Parliament.

6. Consultation and Co-operation

The SPSO and the SHR agree that where the functions and actions of one body affect the functions and actions of the other, they will consult and co-operate together in order to fulfil their respective functions as fully, effectively and efficiently as possible. This co-operation will include the sharing of appropriate information and maintaining effective communication where this will inform and improve the work of each party.

Within available resources, the SPSO and the SHR will invite representation from the other party to project teams, work groups etc where both parties believe there would be advantage in joint working. The two parties will encourage formal and informal contacts between their staff to raise awareness of the roles, responsibilities and methods of working of each.

7. Exchange of Information between the Parties

The SHR will advise the Ombudsman in writing or by email about RSL new registrations, de-registrations and removals and RSL name changes.

The SPSO will assist the SHR, wherever possible, in discharging its regulatory function. The SPSO will provide statistical and qualitative information about complaints relating to RSL sector and the landlord and homelessness functions of local authorities on a regular basis to the SHR. However, legislative restrictions relating to confidentiality and disclosure of information put limits on the information that can be shared. The SPSO will only provide information relevant to any regulatory engagement or activity if it has particular concerns, or evidence of good practice relating to a complaint or complaint handling.

8. Public Information and Information to Other Organisations

Before issuing any guidance, publicity and information to the public or other organisations about any aspect of their current or proposed functions relating to complaints, each party will consider the extent to which it would assist the other in the effective and efficient discharge of its functions if mention were made of that organisation and its functions. Where relevant and possible, each party will invite the other to participate in any conferences, seminars or workshops it organises.

9. Liaison Meetings

SPSO and the SHR's representatives will meet at least six monthly to consider matters of mutual interest arising from their respective functions.

10. Monitoring and Review of this Memorandum

SPSO and the SHR's representatives will meet at least annually to review the operation of this Memorandum of Understanding. Any changes arising from the new Housing (Scotland) Bill or from proposed Bills affecting the Ombudsman's jurisdiction will be addressed as part of this review. Where problems in the operation of this Memorandum are identified by either party they will seek to resolve them quickly and informally. If this is not possible then the Ombudsman and the Chief Executive of the SHR will take responsibility for achieving a mutually acceptable resolution. Their decision will be final.

Signatures to the Memorandum



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