

Memorandum of Understanding

Between the Scottish Public Services Ombudsman and the Scottish Housing Regulator

March 2015

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1. Introduction

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

Each organisation will take steps to ensure that their staff are aware of what is in the MoU. They will keep staff updated about it, and about the responsibilities it places on each individual member of staff.

This MoU aims to help achieve the statutory functions, objectives and responsibilities of both organisations by:

- securing co-operation and the exchange of information between the SPSO and the SHR subject to any legal constraints, including the need to respect personal or commercial confidentiality;
- fostering mutual understanding and effective relations generally between the two bodies;
- securing consistent treatment of matters which affect them both;
- ensuring an open and transparent relationship between the organisations.

2. Functions of the parties to this memorandum

2.1 SPSO

The 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 by an authority within the SPSO's jurisdiction. The matter complained about must also be one that 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'). Complaints to SPSO need to first have been made to the listed authority concerned and have completed their complaints process.

The SPSO is also responsible for 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 SHR

The Scottish Housing Regulator is an independent regulator of social landlords in Scotland. It is a non-ministerial department, directly accountable to the Scottish Parliament. The SHR Board of non-executive members leads the organisation by setting its strategic direction and ensuring that it achieves its statutory objectives and delivers its functions effectively and efficiently.

The Housing (Scotland) Act 2010 sets out SHR's statutory objective to safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords.

The Act requires SHR to monitor, assess and report regularly on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate. SHR will also keep a publicly available register of social landlords.

The Act gives SHR a range of regulatory powers to deliver its statutory objective. It can:

- use its inquiry powers to obtain the information and assurance it needs from landlords, assess risks and investigate problems;
- monitor and report on landlords' performance in achieving the outcomes and standards in the Scottish Social Housing Charter;
- set standards and outcomes which landlords should aim to achieve, and publish these in a Scottish Social Housing Charter;
- use its intervention powers to secure landlord improvement and protect the interests of tenants, homeless people and other service users;
- require RSLs to seek its consent to certain types of organisational change and disposals; and
- set registration and de-registration criteria for RSLs.

3. Requirements relating to complaints

3.1 SPSO

Section 16A of the 2002 Act requires listed authorities to have in place a complaints procedure which complies with the Complaints Handling Principles approved by Parliament in February 2011. Section 16B allows the Ombudsman to publish a model complaints handling procedure (model CHP) for bodies under his jurisdiction. Subsequent sections deal with how a listed authority would be informed that such a procedure applies and the enforcement action the Ombudsman may take in the event of non-compliance. Section 16G places obligations on the Ombudsman to share best practice and to monitor complaint handling trends.

Section 22 of the 2002 Act (Information about right to make a complaint) requires a listed authority to take reasonable steps to publicise the application and effect of the 2002 Act. It includes 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 SHR

The Scottish Government's Social Housing Charter sets the standards and outcomes that all social landlords should aim to achieve when performing their housing activities. The Charter requires landlords to manage their businesses so that tenants and other customers find it easy to communicate with them and get the information they need about how and why it makes decisions and the services it provides. This outcome covers the approach the landlord takes to dealing with and managing complaints. SHR's role is to monitor and assess landlords' performance against Charter outcomes. SHR will use a variety of approaches to do this and will work with SPSO to monitor compliance with and performance against the SPSO Model CHP for registered social landlords. SHR will inform the SPSO if it finds through any regulatory engagement or activity that, complaints handling by a body is inadequate.

4. Complaints about listed authorities

In general, 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 an RSL. Any concerns related to improper conduct by local authorities should be raised with Audit Scotland.

SHR will make arrangements to enable and assist tenants to tell it about significant performance failures by their landlord (this will not be for individual complaints). SHR has set out how tenants can tell it about significant performance failures on its website and in a leaflet. It will consider the information provided by tenants as part of its assessment of landlords' achievement of the Charter and in the SHR's regulatory assessment of risk. SHR will keep its arrangements for tenant concerns under review and may issue further guidance as necessary..

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

An agreement has also been reached between SHR and the charities regulator, OSCR. This sets out how complaints about RSLs which are also charities will be

handled.

5. Complaints about SHR and complaints handling requirements

SHR is listed in schedule 2 of the Scottish Public Services Ombudsman Act. 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 SHR. 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 Director of Strategy and Communications of SHR will be the liaison person for complaints received by SPSO about SHR. The SPSO Act 2002 sets out the obligations that SPSO are under when considering and investigating complaints.

As a listed authority, SHR Complaints Procedure must be in line with any model complaints handling procedure issued by SPSO and notified to them. SHR published a complaints process in line with a CHP notified to them on June 2014. SPSO will provide advice on request on the implementation of this model.

6. Consultation and co-operation

SPSO and 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, SPSO and 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. Sharing information

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

SPSO will assist SHR, wherever possible, in discharging its regulatory function. SPSO will regularly provide statistical and qualitative information about complaints relating to the RSL sector and the landlord and homelessness functions of local authorities to SHR. However, legislative restrictions relating to confidentiality and disclosure of information put limits on the information that can be shared. SPSO will only provide qualitative 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.

This MoU may be supplemented by a separate information sharing or complaints handling agreement which will set out detailed arrangements where appropriate.

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

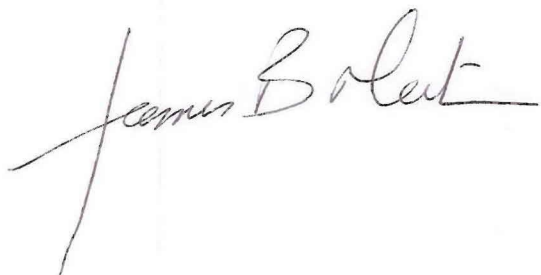
10. Monitoring and reviewing this memorandum

The named contacts with responsibility for co-operation over this MoU will liaise as required to carry out day to day business. Either party may suggest amendments to the MoU.

SPSO and SHR's representatives will meet at least annually to review the operation of this MoU. Any changes arising from proposed Bills affecting SPSO's or SHR's jurisdiction will be addressed as part of this review.

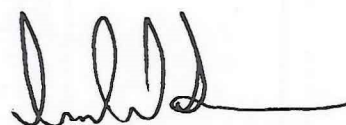
Where either party identifies problems in operating this MoU, it will seek to resolve them quickly and informally. If this is not possible then the Ombudsman and the Chief Executive of SHR will take responsibility for achieving a mutually acceptable resolution. Their decision will be final.

Signatures to the Memorandum



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