



All-Party Parliamentary Group for Alternative Dispute Resolution (ADR)

MINUTES: How can Ombudsman services be made more effective? Lessons for the housing sector

Date: Tuesday 17th July
Time: 15.00-17.00
Venue: Committee Room 18, Palace of Westminster, London SW1A 0AA

Parliamentarians

John Howell (Chair, APPG for ADR)
Kevin Hollinrake (Chair, APPG for Fair Business Banking)
Yvonne Fovargue (Chair, APPG for Consumer Protection)
Lord Best (Vice-Chair, APPG for Excellence in the Built Environment)
Alberto Costa (Member, APPG for ADR)
Lord Lytton (Former Member, Built Environment Select Committee)

Apologies: Christina Rees MP

Witnesses

Anthony Abrahams (Director-General, Chartered Institute of Arbitrators)
John Bryant (Policy Leader, National Housing Federation)
Martin Burns (Head of ADR, RICS)
David Connolly (Interim Housing Ombudsman, The Housing Ombudsman Service)
Katrine Sporle (Property Ombudsman, The Property Ombudsman Service)
Poppy Terry (Senior Public Affairs Officer, Shelter)

Session 1: The effectiveness of ombudsman services

Witnesses: Katrine Sporle (*The Property Ombudsman Service*)
Anthony Abrahams (*Chartered Institute of Arbitrators*)
Martin Burns (*Royal Institution of Chartered Surveyors*)

1. Introduction to the proceeding by the Chairman – John Howell MP

2. The Property Ombudsman Service – Katrine Sporle

Ms Sporle explained how TPOS covers 95% of sales and 85% of lettings complaints in the PRS, with over 27 years' experience in the market. She emphasised the scale and complexity of the sector and stated that in her mind it's clear separate bodies are required for the private and social sectors (with close collaboration between them).

Ms Sporle identified the three requirements consumers need from any redress scheme: **independence, fairness and impartiality and a clear outcome**. In her view the system of housing redress is not broken – it was highlighted that TPOS made redress awards totalling £1.3 million last year – but there are gaps in the system and more work is needed to make the process work better for consumers.

3. Chartered Institute of Arbitrators – Anthony Abrahams

Mr Abrahams echoed several of Ms Sporle's points, adding that effective redress schemes must balance three different objectives: **certainty, efficiency, and affordability**. He posited the hypothetical example of student accommodation disputes to highlight how interpretations of the division of rights and responsibilities in the housing market can vary considerably, posing problems for redress mechanisms. In effect, the efficacy of ombudsmen services can be thought of **Chartered Institute of Arbitrators (CI Arb) serves as the Group's secretariat**



in terms of an elastic band, which becomes stretched in particularly complex cases where the division of blame, responsibilities and perceptions of the terms of an agreement can be blurred. In such cases, the relative costs and benefits of a purely paper exercise compared to a clear oral hearing (affordability vs. certainty and complexity) become particularly stark. Social housing is itself a special case where the affordability and accessibility of redress is particularly important.

Mr Abrahams explained the view of CIArb that whilst it would be going too far to describe the current system as chaotic, it is certainly fragmented, and can be impenetrably confusing for consumers. However, a monolithic body covering all aspects of housing is perhaps not feasible given the need to guarantee specialist knowledge and the inherently varied nature of disputes across different areas of housing.

As a way of resolving this impasse, Mr Abrahams set out the value of a Kitemark system, under which all housing ombudsman bodies would be held to a set of agreed standards of service. This could be a realistic solution in that it would preserve specialisation whilst enforcing a form of quality control on the sector.

4. Royal Institution of Chartered Surveyors – Martin Burns

Martin Burns agreed that the current system is overly complex and confusing for consumers. He explained his view that the consumers are effectively the clients in the redress mechanism, and that they require a system that is clear, simple to understand and simple to use. He stated that he would agree with some form of standardization, whether in the form of a single 'housing ombudsman' – he doesn't believe such an ombudsman would inevitably become a 'monolith'.

5. John Howell (Chair, APPG for ADR)

How can we address suspicion of ombudsman providers as essentially industry bodies given you are funded by industry subscriptions?

6. The Property Ombudsman Service – Katrine Sporle

Firstly, what TPOS offer consumers is very wide-ranging. To accommodate the needs of consumers we operate a 24-hour helpline. Furthermore, our enquiry service is about consumer empowerment – we aim to ensure that when a consumer leaves us they have a better understanding of how to complain to the service provider. Simultaneously, we engage with industry to equip firms with the tools they need to resolve disputes early. Furthermore, 99.9% of the £1.3 million worth of awards we make are paid without further dispute, indicating our credibility with industry itself.

7. Chartered Institute of Arbitrators – Anthony Abrahams

Clearly a multi-layered approach here is the correct one. A monolith cannot work precisely because a multifaceted approach is needed. MHBC has fallen into the trap where it is perceived as being an industry body and that must be avoided.

8. Royal Institution of Chartered Surveyors – Martin Burns

RICS is an independent body mandated under the terms of our Royal Charter to act in the public interest. Standardisation does not mean a single body doing everything; other models are available.

9. Kevin Hollinrake (Chair, APPG for Fair Business Banking)

Given my background in estate agency I'm able to see the issue from both perspectives: business often perceives ombudsmen bodies as biased towards the consumer, whereas consumers believe they are biased towards business! There are a few issues on which I would benefit from some clarification:

- Is the process an open book in terms of evidence disclosure?
- Is there scope to appeal a decision?



- How do you ensure the competence of reviewers in a given case?
- What metrics do you use to measure satisfaction?

10. The Property Ombudsman Service – Katrine Sporle

Ours is an investigative process – not only can we make an award, we can also make a direction to the firm, threaten an audit or refer them to the regulator if we believe the situation merits it. In the case of Estate Agents this is National Trading Standards, to whom we can refer if we believe there is a 'flagrant breach' of the rules.

We never remove the rights of the consumer; it is their choice to come to us or not and they can still go to court if they so choose. Industry members of the scheme must abide by our rules.

On the appeals point, our scheme incorporates a 'representation process' which operates as a quasi-appeals period. During this time, our draft decision is sent to both parties who are then asked to provide comment or challenge any aspect which they believe hasn't taken account of the full facts of the case.

11. Yvonne Fovargue (Chair, APPG for Consumer Protection)

Our review found consumers find it very hard to navigate the current system of ombudsmen services across a range of sectors. Should all schemes have a statutory underpinning to make them mandatory?

12. The Property Ombudsman Service – Katrine Sporle

We believe in Parliamentary oversight for all appointments of ombudsmen. Whether this requires a statutory underpinning I don't know, but issues certainly arise in a situation where you have a mixture of mandatory and voluntary schemes.

13. Chartered Institute of Arbitrators – Anthony Abrahams

There is a potential problem in seeking to appoint 'a regulator to regulate the regulators'. The potential for appeals stretch the elastic band once again.

14. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

How do ombudsmen services relate to other aspects of ADR, and should some central hub direct consumers both to the relevant ombudsmen **and to the other forms of ADR that are available?**

15. Chartered Institute of Arbitrators – Anthony Abrahams

As we've heard today, ombudsmen services do to a certain extent already have mediation 'built-in' to their processes. On the portal point, we support the idea in principle but there are questions over how effective it could be in practice. Consumer needs differ, and in many cases, mediation would be the appropriate course of action. CI Arb make appointments through our Dispute Appointment Service and provide training – we have no axe to grind in this regard.

16. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

Then where does ADR feature in this conversation? Why does CI Arb have any position on this?

17. Chartered Institute of Arbitrators – Anthony Abrahams

We are a public interest body mandated under the terms of our Royal Charter to promote the use of ADR in the interest of the public. Expert determination, arbitration and mediation all fit within the role of ombudsmen and are certainly within our remit as a professional body. Our objective is to strengthen the profession and public trust in the profession by providing

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high-quality training to practitioners and promoting the highest standards of practice across the sector, including in consumer disputes.

18. Royal Institution of Chartered Surveyors – Martin Burns

In the context of consumer disputes and housing sector the focus must be on meeting the needs of consumers who probably have no knowledge of the ADR landscape.

19. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

If we're going to have legislation on housing redress what do RICS want to see happen?

20. Royal Institution of Chartered Surveyors – Martin Burns

We certainly think the landscape is fragmented, and some form of standardisation is needed – even at the risk of producing a 'monolith' in the form of an overarching Housing Ombudsman.

21. Lord Lytton (Member, APPG for Excellence in the Built Environment)

I am a member of both RICS and CI Arb. My wife is also a community mediator. Based on my experience, I've encountered the problem of getting parties to engage fully with the process, which can be abused. I would stress the importance of switching parties from a state of 'position taking' to one of 'interest taking' whereby the process is less adversarial and more constructive based on finding a way to satisfy both parties. The adversarial model certainly has a role to play but it is not good at fostering reconciliation.

How do you deal with complex cases where the complainant may have to reflect on their own role in causing a dispute to arise (for example, in the maintenance of older buildings)?

22. The Property Ombudsman Service – Katrine Sporle

There are different jurisdictions, and in any particular case the consumer may be landlord or tenant (who are client of an agent). We are looking at leasehold issues in more detail now that Ombudsman Services: Property have left the market. There are situations where unreasonable demands are made, or the complainant simply resents the manager of a block. However, as an impartial body we treat all complaints as valid and liaise with the parties on the facts of the matter at hand.

Where systemic issues are found we voice those, not because we have anything to gain but because flagging up systemic issues is in the public interest as a whole. We deal with cases up to £25,000 – beyond that cases should go to court or to another form of ADR. It should be pointed out that some consumers choose to go to the ombudsmen rather than the court because they are apprehensive about the court process or because they may be embarrassed about the situation and don't want the details aired in a court setting.

23. Chartered Institute of Arbitrators – Anthony Abrahams

Mediation is a misunderstood process and is often side-tracked by lawyers. The Woolf reforms have stalled to a certain extent, and it is appalling that mediation is sometimes referred to as 'another step in the litigation process', which is not its intention as all.

To take the example of social housing disputes, mediation may have a real role to play, given that both landlord and tenant need to find a constructive way to live together and continue interacting. 80% of mediations are successful so why don't we use the process more often?



AUDIENCE QUESTIONS

24. David Harper (Mediator)

You've said that only a certain percentage of agents are members of the Property Ombudsman Scheme, but also that membership is mandatory. Which is correct?

25. The Property Ombudsman Service – Katrine Sporle

Both are correct: it is mandatory for agents to belong to **an** ombudsman body but there are other alternatives available (Ombudsman Service: Property and The Property Redress Scheme).

26. Mark Boyle (RICS)

Given the confusion around different providers, what are the positives associated with competition? Is there any need for variation in providers?

27. Chartered Institute of Arbitrators – Anthony Abrahams

A multifaceted approach is what is needed – not one size fits all. There should be some competition to accommodate this, but within a framework that guarantees standards. A kitemark system would allow both requirements to be met. Different means are also suitable for different situations (for example, 28-day adjudication was introduced to the construction sector). One final point – it should be noted that CI Arb appoint arbitrators, we don't administer arbitrations.

28. The Property Ombudsman Service – Katrine Sporle

There is the danger of 'scheme-hopping' whereby standards are driven down by providers seeking the most lenient regime. Competition must therefore be at the right level, not driving down standards in pursuit of commercial imperatives. There is no perfect solution. A good, clear and transparent benchmark is needed.

29. Chartered Institute of Arbitrators – Anthony Abrahams

Which would be achieved through good quality training, education, and a robust kitemark to guarantee standards.

30. David Richbell

As a free service, ombudsmen are a no-brainer for consumers. Ombudsmen schemes are prime candidates to include a mediation facility, extending the remit of the services to be much more party oriented.

31. The Property Ombudsman Service – Katrine Sporle

Only 3,500 of the 23,000 complaints we handle end as adjudicated disputes. By aiming for early resolution, we offer a form of mediation, but it is true that this is not formal mediation. We can and do advise complainants where there is no case to answer, but only 20-23% of disputes turn into adjudicated decisions.

32. Iain Christie (CMC)

To what extent are the parties involved in shaping outcomes? Are they able to make proposals?

33. The Property Ombudsman Service – Katrine Sporle



I have no precise figures for that, but consumers can come to us to say, “I’ve been offered £X – does that seem right?”. Generally, consumers come to us because they want a financial settlement. Sometimes they may be animated by wanting to stop offenders practicing – that is not our role. Where we believe there may be serious malpractice we can refer that elsewhere to the regulator, where the issue is really one of resourcing.

Sometimes we are the first to recognise systemic issues. For example, we were able to point out and stop the practice whereby homes sold under the Help-to-Buy scheme were falsely marketed as ‘discounted’.

Session 2: the future of housing redress

Witnesses: David Connolly (*The Housing Ombudsman*)
John Bryant (*The National Housing Federation*)
Poppy Terry (*Shelter*)

34. The Housing Ombudsman – David Connolly

The Housing Ombudsman covers residents in the social housing sector, both within Housing Associations and with Local Authorities. We have jurisdiction over almost 3 million housing association units and 1.8 million local authority units. Local Authorities came under our jurisdiction in 2013. In addition, we have 65 voluntary members who are landlords in the private rented sector (PRS). These cover 19,000 units (so less than 1% of our total units).

35. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

Do you see a single portal as the answer here?

36. The Housing Ombudsman – David Connolly

We concluded that this is a distinct possibility. Many private tenants have no access to an Ombudsman currently. We cover only a handful of PRS landlords. There is a serious question about how a single body would work, particularly in the areas of funding, making membership of an Ombudsman scheme mandatory and enforcement of Ombudsman decisions. We support a portal of some form, but there are questions over the detail. We would also support a way of bringing all landlords within the ambit of regulation. However, there are 2.1 million private landlords, and it is difficult to dragoon them into a redress scheme.

37. National Housing Federation – John Bryant

I would suggest that leaseholders should be covered – it seems absurd and illogical where leaseholders don’t have recourse to an ombudsman unless they bought from a Housing Association or Local Authority. We believe a single ombudsman body should be introduced also covering leaseholders. However, we have reservations about including new build homes. The relationship between buyers and developers is fundamentally different to the between a tenant and a landlord or agent.

38. Shelter – Poppy Terry

To be contrary, we don’t support a single monolithic ombudsman. The problem is one of complexity and a lack of consumer knowledge. We support the idea of a single portal in principle, but we believe there should be one service for each sector – we don’t see the benefit of several schemes competing for business within the same sector.

39. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

Does Shelter refer people to Ombudsmen services?



40. Shelter – Poppy Terry

We do, but generally we tend to speak to people after the fact. Again, we find the problem is the complexity of the system and the number of obstacles people face before being able to access any form of redress.

41. The Housing Ombudsman – David Connolly

We do have an improvement plan to reduce the lengths of investigations – this is part of our current business plan. In 2013 we saw the introduction of the ‘democratic filter’ whereby complainants would have to wait 8 weeks before they could bring their case to an Ombudsman unless they were directly referred by a ‘designated person’ (an MP, Councillor, or tenant panel). The evidence seems to be that this hasn’t worked, and we hope this can be changed in the Green Paper.

42. Shelter – Poppy Terry

Tenant panels are underused, which undermines general faith in the process.

43. The Housing Ombudsman – David Connolly

The ‘democratic filter’ certainly hasn’t worked as intended. There has been a lack of awareness raising of the system amongst the general public, and indeed with designated persons themselves, who are often unaware of the mechanism so don’t understand the urgency of acting.

44. John Howell (Chair, APPG for ADR)

I like to think I’m relatively well informed – why do I know nothing about any of these schemes?

45. The Housing Ombudsman – David Connolly

The aim of the democratic filter was laudable, but in reality, awareness is incredibly low.

On mediation, we don’t currently use mediators. We found that mediated disputes often ended up back at square one. However, 5-10% of our decisions are resolved by early resolution.

46. National Housing Federation – John Bryant

Certainly the ‘democratic filter’ has failed to achieve its aim. We shouldn’t lose sight of the fact that an enormous number of complaints are resolved by Housing Associations themselves. Provided the landlord has a fair procedure in place it is reasonable to require complainants to go to them first. May I just read 3 sentences from our submission to the Government consultation on housing redress?

We suggest, therefore, that the most effective enforcement mechanism will be to require landlords to give written details of their membership of the ombudsman scheme at the outset of a tenancy, preferably as part of the tenancy agreement. Legislation should provide that unless the landlord can show that this notification has been supplied, arrears of rent and service charges cannot be pursued through the courts. This is exactly the mechanism that has achieved virtually 100% success in enforcing the obligation on landlords to provide a UK address as required by section 48 of the Landlord and Tenant Act 1990.

47. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

Is it true that we could in theory force membership of a scheme, but that doesn’t necessarily mean difficult cases will be resolved?



48. National Housing Federation – John Bryant

Yes, but that could be said of any scheme or mechanism. We must judge each case on its merits.

49. Shelter – Poppy Terry

We fully support making redress schemes compulsory for all landlords.

50. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

Many landlords use no agents at all.

51. Shelter – Poppy Terry

There is a real problem with 'grey area' landlords – those who are somewhere between dangerous rogue landlords and professional operators. These providers (often called 'accidental landlords') are a serious problem precisely because they are off the radar.

52. John Howell (Chair, APPG for ADR)

How do you 'sell' [ombudsmen] schemes to tenants to ensure they can use the scheme properly?

53. Shelter – Poppy Terry

We must be very clear and up front about the risks of raising issues given the lack of security of tenure for tenants. Fixed-term tenancies may increase the risk to tenants of losing their home if they do complain – this is a real problem for tenants who fear the consequences of raising issues.

54. John Howell (Chair, APPG for ADR)

Does that come down to a question of trust between the tenant, scheme and landlord?

55. Shelter – Poppy Terry

I don't think the problem is a lack of trust in the process itself (for example, look at the success of the Tenancy Deposit Scheme). The issue is a step before that and is related to the inherent precarity of the PRS in the UK.

56. National Housing Federation – John Bryant

The NHF has no bias for or against the PRS. It seems there is a need to balance the rights of tenants and landlords given the risk of reducing supply of PRS properties.

57. The Housing Ombudsman – David Connolly

We require landlords to have published complaints procedures to become members of our scheme. John Bryant's suggestion for getting PRS landlords to join an Ombudsman scheme may be worth considering but we need other ideas too.

58. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

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Is it realistic for the Housing Ombudsman to be a single body for all tenants, including PRS tenants not currently covered?

59. The Housing Ombudsman – David Connolly

We believe in those circumstances, it would be better to have a single private sector ombudsman and our scheme dealing with social housing residents, working together under a shared portal.

60. National Housing Federation – John Bryant

Either way a scheme should be industry funded with no public subsidy.

AUDIENCE QUESTIONS

61. Karl Thompson (Civil and Commercial Mediator)

On the issue of the failure of mediation in ombudsmen processes, can we have further clarification? It sounds as though they've attempted to incorporate mediation into the process rather than using trained mediators?

62. The Housing Ombudsman – David Connolly

I don't have the evidence of this as the use of mediation was many years ago. However, if – as we heard earlier – 20% of mediations fail, then those cases would return to the Ombudsman for investigation.

63. Karl Thompson (Civil and Commercial Mediator)

I heard the reason they are no longer used is because the deal wasn't lasting (Mediation Settlement Agreement?). There are many mediators out there who could take on cases, but they tend to reach us through a range of inconsistent channels. A central referral system is needed.

64. Shelter – Poppy Terry

The problem is still the security of tenure issue and lack of effective communication.

65. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

But everyone agrees going to court is the worst outcome?

66. Shelter – Poppy Terry

On the question of the Housing Court, the principle is good, but it depends on how it is resourced. There is also a problem if it excludes those who need Legal Aid if referred to a tribunal.

67. Kevin Hollinrake (Chair, APPG for Fair Business Banking)

Is it not practicable for the tenant to take forward a case as a litigant in person?

68. Shelter – Poppy Terry



That depends – it required confidence. Again, security of tenure is vital as a prerequisite. We don't want to see wholesale shift towards a Housing Court. We would support it if Legal Aid were made available.

69. National Housing Federation – John Bryant

I endorse Poppy's comments, but the issue is also with availability across the country, especially in rural areas, where a court can exclude poor tenants or those for whom public transport is non-existent.

70. John Hamey (Barrister)

In 30 years of adversarial practice I've known of no instance where the judge has been accused of bias. How can this be avoided in an inquisitorial system?

71. Shelter – Poppy Terry

There is a wide variation in experience of housing cases, with results in the complaints system.

72. Chartered Institute of Arbitrators – Anthony Abrahams

Civil and Common Law systems are growing closer and that seems to work very well. The concept of 'good faith' is now recognised by the Court of Appeal. The last thing we should do is chuck people out of their homes.

73. Lord Best (Vice Chair, APPG for Excellence in the Built Environment)

Thank you everybody for the discussion today. To summarise the main points:

- There seems to be a consensus that a 'single source of redress' in some form – even if it is a portal hub – without 'race to the bottom' competition is a good thing
- Schemes need to be on a statutory basis
- Mediation doesn't feature in ombudsmen processes as much as it could. If it is to be expanded it needs to draw in properly qualified and trained mediators
- The 'democratic filter' should be abolished – it's had its day (indeed it looks like it may never of had a day at all!)
- A Housing Court is a good idea in principle but has its limitations and must be accessible and affordable to all tenants regardless of their circumstances.

Additional Note: information supplied by TPOS

- Validated by, and a full member of the Ombudsman Association
- Approved by MHCLG as a provider for letting and managing agent redress under the Enterprise and Regulatory Reform Act 2013
- Approved by the National Trading Standards Estate Agency Team (NTSEAT) under the Consumers, Estate Agents and Redress Act 2007
- Approved by NTSEAT and Chartered Institute of Trading Standard's (CTSI) as an ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015
- Codes of Practice approved by CTSI's Consumer Codes Approval Scheme (CCAS)

In each of the above approvals, TPO is required to demonstrate that the Ombudsman scheme (i.e. the way complaints are resolved) is independent from influence of scheme members who pay subscriptions.

Contact: Lewis Johnston (Head of Policy, Public Affairs and Research, Chartered Institute of Arbitrators)
ljohnston@ciarb.org