

# **Consideration of Changes to the Ombudsman in Stage 3 of the Complaints Procedure used by Barbican Leaseholders**

## **Introduction**

At the 25 November 2024 meeting of the Residents Consultative Committee (RCC) a report was tabled by the Executive Director, Community and Children's Services (EDCCS). The report proposed that the third stage of the complaints procedure for leaseholders against the City of London Corporation (CoLC) should be changed. The report recommended that the Housing Ombudsman (HO) be replaced by The Property Ombudsman (TPO).

The RCC declined to agree the recommendation at that meeting and agreed that:

“that the proposal listed be considered further by the Service Level Agreement Working Party (SLAWP) and a further report submitted at the next meeting for consideration”.

At the RCC meeting on 3 February 2025 the SLAWP reported that it was still working on the issue and that it would bring its report to the RCC meeting scheduled for 28<sup>th</sup> April.

## **Action taken by the SLAWP**

The SLAWP considered the matter at its meeting on 3<sup>rd</sup> February. Concerns were raised about whether the BEO was eligible to join the TPO as it is not a Managing Agent. The Assistant Director Barbican Residential Estate (ADBRE) replied that the BEO was not a Managing Agent and did not plan to become a Managing Agent. There was a discussion of the criteria to be adopted in considering this issue. One member offered that the Housing Ombudsman was seen as more impartial, more public and better suited to the needs of Barbican residents. The ADBRE offered to arrange a further meeting in February which has not taken place.

By this stage it was apparent that there were two separate but linked questions:

- 1) is the City of London Corporation, as our landlord, eligible to join the TPO?
- 2) what are the pros and cons of having either the Housing Ombudsman or the TPO as the final stage of our complaints procedure.

If the answer the first question is that the CoLC is not eligible to join the TPO the second question becomes irrelevant.

## **Is the CoLC eligible to join the TPO?**

The RCC Chair had suggested, at the November 2024 meeting, that the SLAWP should seek advice from the Federation of Private Residents Association (FPRA) through the Barbican Association (BA). The BA is a member of the FPRA. The SLAWP drafted a set of questions(see Appendix 1) which were submitted to the FPRA. The FPRA relies on the services of what it regards as well informed volunteers. Two volunteers were asked to

respond to our questions. After repeated chasing by Adam Hogg, the FPRA offered the following

*“ I am sorry – I was meant to respond to say this wasn’t my speciality. I don’t deal with public sector/local authority landlords. I am almost certain that public sector landlords CANNOT be members of The Property Ombudsman (TPO) <https://www.tpos.co.uk/> - which is for private sector property agents only. I have no experience of dealing with The Housing Ombudsman. My suggestion is that the Barbican Residents' Association contacts The Housing Ombudsman to progress their complaint. Sorry I can’t help further.”*

This response, although interesting, did not respond to most of the questions the SLAWP had asked. No other response was received from the FPRA.

The SLAWP, aware that there are Barbican residents and leaseholders with considerable expertise, used the Barbican Bulletin to draw attention to the proposal and to invite comments and opinions. The comments and opinions received are shown in Appendix 2.

Given the uncertainty about the eligibility of the CoLC to join the TPO the Chair of the SLAWP contacted the TPO directly

The TPO responded saying

*“The Property Ombudsman Scheme is the final stage for unresolved complaints about estate, letting or managing agents. In this context, property management work does not include things done by, amongst others, registered providers of social housing. This is because housing associations and local authorities who are social landlords are already required to belong to the Housing Ombudsman Scheme. Consequently, a local authority landlord is not currently able to register with us for redress.”*

Given that the CoLC is a social landlord and already registered with the Housing Ombudsman this seemed definitive. The Chair of the SLAWP wrote to the Executive Director, C&CS, on March 28<sup>th</sup>, suggesting that the proposal to change the Ombudsman be withdrawn.

The ADBRE responded the same day saying

*“We had reached out to the TPO prior to our paper being written to provide our circumstances and ensure we were eligible to join (which they let us know we were) and this hinged on the fact the legal relationship is not one of a local authority Landlord but a Freeholder/Leaseholder relationship with the BEO performing the MA function.*

*I am going to speak to the original respondents of our inquiries to try and get a clearer understanding of why we now have conflicting advice”*

The BEO may perform some or all of the functions of a Managing Agent but that doesn't make it a Managing Agent. It is a department of the CoLC. The CoLC is not only the freeholder but also the landlord of the Barbican estate.

The Chair of the SLAWP contacted the TPO on March 31 setting out the position outlined by the ADBRE and seeking clarification. The email exchange is set out in full in Appendix 3.

The relevant passage from the TPO on April 10<sup>th</sup> states that

*“We do not have any record of Barbican Estate Office trying to join TPO; and*

*in the circumstances where such a request was received, we would refer them to the Housing Ombudsman”*

## **The Pros and Cons of the alternative Ombudsman Schemes**

Comparing the HO and the TPO is difficult because of the major differences in material presented in the report. As one of the respondents to the Barbican Bulletin appeal eloquently put it

- the Housing Ombudsman is directly addressing the occupier and the service provider with fixed annual obligations on the service provider to demonstrate compliance irrespective of any complaints made (a proactive approach). It also highlights what is acceptable and what is excluded.
- the Property Ombudsman takes the approach of a structured and complex “agreement” requiring the service provider to respond to complaints from the Landlord, Leasehold, Sub-lease holder or tenant (reactive) and would probably require legal assistance by the complainant to reach the Ombudsman.

### Cost of the HO and the TPO

According to the EDCCS's report the HO charges £8.03 per unit. There are 2074 units (including tenants of the CoLC) resulting in a charge of £16,654.22 including VAT.

The Guidance provided by the UK Government in its **Regulator of Social Housing and Housing Ombudsman Service: factsheet** states

“Tenants, shared owners and leaseholders do not have to pay to use the Housing Ombudsman Service. The service is independent and impartial. The service is paid for by landlords, and all social landlords must be members.”

While switching to the TPO would save our landlord money it would make no difference to our service charge as leaseholders are not responsible for its payment.

The TPO charges according to category of membership. The EDCCS report stated that the CoLC would need to sign up as two branches (Guildhall (?) and BEO) at a cost of £849.60 (inc VAT) per branch making an annual charge of £1699.2 plus a joining fee of £84.

It is unclear whether Managing Agents are permitted to pass on the costs of the TPO under the service charge. If they are then it appears that, if a switch to the TPO were to occur, it would result in a higher service charge than previously (assuming that leaseholders are not currently paying for the HO).

### Scope of Coverage by the Ombudsmen

In the appendix attached to the November 24 report (p 124 in the RCC papers) the TPO states that

‘Investigating the fairness of service charges, and the quality of services or works for which they are collected, falls outside the jurisdiction of the TPO. Challenges must be referred to First Tier Tribunal.’

The report (p 122) also states that

“you should refer complaints concerning the actions you have taken under the instructions of the landlord, to the landlord. The landlord is the party who holds the ultimate responsibility to meet the provisions of the lease, and that only they have the authority to instruct you to manage the estate in a different way.”

Given these exclusions it is difficult to identify what matters, of real substance, Barbican leaseholders could refer to the TPO. The distinction between Managing Agent(MA) and Landlord makes sense if the MA is independent of the landlord but the BEO is not independent of the CoLC.

The Complaint Handling Code (Appendix 3 of the EDCCS report in November 2024) states that:

“A complaint must be defined as:

‘an expression of dissatisfaction, however made, about the standard of service, actions or lack of action by the landlord, its own staff, or those acting on its behalf, affecting a resident or group of residents’ “

There are some limited exclusions detailed in the Code (time since the issue occurred, other legal proceedings, matters previously considered under the complaints policy) but the overall tenor is that the Housing Ombudsman is inclusive rather than exclusive of complaints.

## **Prior Experience**

The Housing Ombudsman has provided the final stage of the Complaints procedure for Barbican leaseholders for several years. There is no evidence that leaseholders availing themselves of this service have been dissatisfied. There is a good level of transparency in relation to the Housing Ombudsman. One of the respondents to our appeal for comments stated:

“Housing Ombudsman’s decisions are recorded against local authorities and published. It is important that this does not change.”

The decisions of the Housing Ombudsman are recorded and published.

## **Conclusions**

Given all the evidence offered in this report in terms of the BEO’s lack of eligibility to join the TPO and the lack of any significant benefits to leaseholders from joining the TPO and the real risks in terms of costs, coverage and accessibility of doing so this Working Party advises the RCC not to endorse the recommendation in the EDCCs’s Report to the November 2024 meeting.

Given that the costs of using the Housing Ombudsman should be borne by the landlord the Service Charge Working Party might wish to enquire:

have Barbican leaseholders been charged for their access to the Housing Ombudsman through the service charge? On the basis of the Guidance quoted in report this charge should have been borne by the landlord and leaseholders are entitled to the return of their money.

## **Appendix 1**

### **Questions for Federation of Private Residents' Association**

- 1) We are private long leaseholders of a landlord who happens to be a local authority; a department of that local authority manages the estate. The local authority is a member of the Housing Ombudsman for both its social housing and its private leaseholders. The managing department has proposed changing to the Property Ombudsman, as a more appropriate ombudsman for our tenancies. We want to know what the advantages and disadvantages are to us, as long leaseholders, of this move? Can we expect the same sort of objective examination of any complaints as we would get with the Housing Ombudsman.
- 2) Is access to the Property Ombudsman restricted to cases involving managing agents?
- 3) Can landlords represent themselves at Property Ombudsman hearings?
- 4) What leasehold issues, if any, are excluded from consideration by the Property Ombudsman? What leasehold issues, if any, are accepted for consideration by the Property Ombudsman?
- 5) What are the statutory responsibilities of the Property Ombudsman?
- 6) What arbitration facilities are available to leaseholders in regard to lease matters that fall outside the scope of the Property Ombudsman?
- 7) What leasehold issues, if any, are excluded from consideration by the Housing Ombudsman? What leasehold issues, if any, are accepted for consideration by the Housing Ombudsman?
- 8) What are the statutory responsibilities of the Housing Ombudsman?
- 9) What arbitration facilities are available to leaseholders in regard to lease matters that fall outside the scope of the Housing Ombudsman?

## Appendix 2

### CHANGING OUR OMBUDSMAN

Comments received from Leaseholders and Residents

#### email from BS on 090325

Two points:

1.  
I believe that if the change of ombudsman means a less robust approach to the Housing Disrepair Protocol or the Housing Ombudsman's report on damp and mould being side-lined, then it would not be wise to make the change.  
The rights of individual leaseholders or block RTAs to use the protocol should be maintained.
2.  
Also, at the moment Housing Ombudsman's decisions are recorded against local authorities and published. It is important that this does not change.

#### email from SP 140325

1. Why do we need this 'service' at all?
2. What does it cost me now and what would it cost if changed?

#### email from SJ 140325

I shall pass you my views once I have the benefit of the objective pros and cons from the FPRA.

#### email from NG 150325

I'm responding to the note in this week's Barbican Estate Bulletin (14 March) about the Barbican Estate Office's proposal to Change from the Housing Ombudsman to the Property Ombudsman.

One thing to note about the proposal link in to the Barbican Information email is that the document is presented **without the Appendices** making an evaluation difficult.

Using the links in the document to access the Codes of Practice of the two services also presents a problem because the two services present their codes in an entirely different manner:

- the Housing Ombudsman is directly addressing the occupier and the service provider with fixed annual obligations on the service provider to demonstrate compliance irrespective of any complaints made (a proactive approach).

It also highlights what is acceptable and what is excluded.

- the Property Ombudsman takes the approach of a structured and complex "agreement" requiring the service provider to respond to complaints from the Landlord, Leasehold, Sub-lease holder or tenant (reactive) and would probably require legal assistance by the complainant to reach the Ombudsman.

Given the small number of complaints, I can see the reasoning why the BEO are reluctant to continue with the proactive approach to demonstrating each year that they are compliant when the small number indicates that in the vast majority of cases resorting to the Ombudsman hasn't been necessary.

On the other hand the statistic in the "year by year" table of complaints is troubling as last year is the first year that none of the complaints that reached level 2 were resolved at that level.

I don't agree with the argument that the Property Ombudsman is more orientated to disagreements between the service provider (and in this case Landlord) and leaseholders/tenants is "better"..

its cheaper for everyone as long as there are no complaints reaching the Ombudsman but the cost of actually accessing the Ombudsman would seem to be much higher for the complainant.

Unless you publish the Appendices (or links to the appendices) referenced and these appendices illustrate the differences and similarities of both schemes I can't evaluate the proposed change.

### **email from TB 150325**

am responding to the request in the barbican newsletter for thoughts about the housing ombudsman versus the property ombudsman.

I was slightly surprised about the low-level of referrals to the housing ombudsman as I've made one myself at the end of a complaint regarding the strategic management of an issue on the estate. This was a wider complaint than just about the BEO and also covered the city of London and their corporate handling of this issue.

My only comment about the housing ombudsman is that they have taken a long time to investigate this issue but have kept me updated.

While I am no housing expert I understand the property ombudsman deals more with complaints between tenants and agents (agents which are registered as such) while the housing ombudsman has a wider brief in relation to local authorities and housing providers.

I would be concerned if my ability to have external scrutiny of issues of concern is limited by moving to a different ombudsman process. I would need assurance that complains about the city of London's housing processes, contract management, governance would also be covered - not just the relationship between a tenant and an agency. My relationship



through my lease is with the landlord which is the city of London.

I hope these thoughts are helpful.

### **further email from TB 170325**

Further to my previous email - you probably know this already so apologies:

The Housing Ombudsman states membership is compulsory if the landlord is registered with the Regulator for Social Housing (RSH).

It may be possible if the Barbican is under the General Fund and therefore not part of the social housing stock in the Housing Revenue Account (or part of a registered provider) that it's not covered by this registration.

If the Barbican is outside of the Housing Revenue Account then it might be a choice they can make.

If we don't know it might be worth an enquiry of CoL to see how they have classified the Barbican estate stock?

But as I say you may already know this.

### **email from HB on 240325**

I have just read the proposal regarding the change from the Housing Ombudsman to the Property Ombudsman. Based on the information provided I would support the proposed change.

I did, some years ago, consider filing a complaint as regards the conduct of an estate agent selling a property I owned (interestingly in a development for which the managing agent was Rendall and Rittner). Although I did not ultimately proceed with the complaint, I did select the Property Ombudsman as the appropriate regulator and found them helpful when we spoke.

Does the Property Ombudsman have the power to require that specific actions occur and apply penalties?

## Appendix 3

email to and from The Property Ombudsman concluding on 10 April 2025

Dear James

Further to my email of last week, I am writing to update you on our enquiries, in relation to the potential eligibility of Barbican Estate Office to register with TPO for redress. As you may be aware, private landlords are not currently required to register with a redress scheme. However, we do have the facility for private landlords to register with us, on a voluntary basis.

During the past week, I have been reaching out to colleagues who process membership applications, to establish whether we have any records of Barbican Estate Office trying to join TPO. Having looked into this matter on my behalf, they have confirmed the following: -

- We do not have any record of Barbican Estate Office trying to join TPO; and
- In the circumstances where such a request was received, we would refer them to the Housing Ombudsman.

I trust that this information will be of use to you and genuinely appreciate your patience, while we sought answers to these questions.

Yours sincerely

**Benjamin Neesham** (He/Him)

**Initial Enquiries Advisor**

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The Property  
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**Working Hours: Monday - Friday, 9:00 - 17:00**

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**From:** Benjamin Neesham <benjamin.neesham@tpos.co.uk>

**Sent:** 03 April 2025 12:37

**To:** James Durcan <jwdurcan@hotmail.com>

**Subject:** RE: Eligibility of local authorities to join the TPO

Dear James

Thank you for your email and the additional information provided.

In order to ensure that you receive a thorough and accurate response to your enquiry, we have referred your email to our Membership Team, to seek clarity regarding the points you raised. I am hopeful that we will be in a position to provide a definitive answer within the next five working days. However, in circumstances where it takes longer than this to fully respond to your query, I will email you with an update by this time next week, to make sure that you are kept informed.

We are committed to continually improving the service that we provide and would be grateful if you would take the time to follow the link below to tell us what you think about the service provided to you to date by this office. The survey will take less than 5 minutes to complete but will provide us with a wealth of useful information to help improve our service. Please [click here](#) to participate.

Yours sincerely

**Benjamin Neesham** (He/Him)

**Initial Enquiries Advisor**


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**From:** James Durcan  
**Sent:** 31 March 2025 15:08  
**To:** Benjamin Neesham  
**Subject:** Re: Eligibility of local authorities to join the TPO

Dear Benjamin,

Many thanks for your clear and informative response to my query. I shared your response with my landlord, the City of London Corporation, expecting that their proposal to switch to The Property Ombudsman, in respect of complaints from the Barbican Estate would be withdrawn.

I was very surprised to discover that my landlord is persisting with their proposal. In the response to me they stated

"We had reached out to the TPO prior to our paper being written to provide our circumstances and ensure we were eligible to join (which they let us know we were) and this hinged on the fact the legal relationship is not one of a local authority Landlord but a Freeholder/Leaseholder relationship with the BEO performing the MA function."

My understanding is that, although the Barbican Estate Office (BEO) performs some (all?) of the functions of a managing agent the BEO is not legally constituted as a managing agent. Consequently leaseholders' relationship with the BEO is not the same as a relationship with a Managing Agent acting for a landlord. In the case of the Barbican the BEO is a department of the local authority not an independent legal entity. The City of London Corporation is not only the freeholder but also remains my landlord according to the lease.

I'd appreciate any comments you might make on this situation. In particular whether you will confirm your initial advice that the local authority is not eligible to join The Property Ombudsman or whether your view has changed.

In addition I'd be interested to know whether any other local authorities have joined the TPO? My understanding previously was that landlords were not eligible to join the TPO, that membership was restricted to Managing Agents but I understand that I may have been mistaken.

Looking forward to a prompt response

Best wishes

James Durcan