

THE SOCIAL TENANTS PERSPECTIVE

- 1.1 This document does not represent the Law Commission’s official view of the matters discussed, nor is it an authoritative statement of the law.
- 1.2 This note arose initially from a workshop at the TPAS Annual Conference on 5 August, 2005, and some subsequent discussion with some of those who attended. The landlords of the tenants at the workshop were a mixture of local authorities and housing associations – we refer to them as “social landlords” and “social tenants”.
- 1.3 At that earlier point in the team’s thinking, we were concerned to isolate “models” of dispute resolution, so the aim was to produce a “tenants’ model”. The “model” concentrated strongly on how relations between tenants and social landlords should be managed and negotiated. However, our thinking has continued to develop. At the point we have reached with publication of the issues paper, the approach described here can be viewed as an extension to (or use of) the techniques we describe under the heading of “managerialism”. However, we recognise that to describe it in that way misses some of the point – tenant participation is not *for* social landlords, and should not be seen as merely a management tool.
- 1.4 It is important to emphasise that we do not claim that our discussions with tenants gives these thoughts any special status. The tenants we talked to were not representative, or scientifically selected; it is not something that we can say that all or most social tenants or Rent Act tenants would necessarily agree with. Our purpose is to stimulate thought and discussion.

Relationships and communication

- 1.5 For social tenants, the key feature of a system is its impact on the relationship between landlord and tenant. The relationship between social landlords and tenants has both individual and collective dimensions. As well as their individual legal relationship with their landlord, tenants have a collective relationship through representative tenants associations and federations.¹ Our approach here seeks to recognise both dimensions.
- 1.6 In a good relationship, both sides communicate well, and are responsive to each other. The first objective of the system should be to enforce good communication and responsiveness between tenants and landlords, from the earliest stage of the crystallisation of a dispute.
- 1.7 Communication is good if it
 - (1) is in plain language;
 - (2) has the right tone;
 - (3) is made at the right time;

¹ For the importance of maintaining good collective relationships, and how to deal with it when they break down, see the TPAS Landlord-Tenant Dispute Toolkit, available at <http://www.tpas.org.uk/>.

- (4) is not used to (or has the effect of) intimidating the tenant; and
 - (5) is structured so that there is a single named contact at the landlord's end.
- 1.8 In a good relationship, a party is responsive to communication. Being responsive starts with *really listening*. The responsive party does not have to agree with what is said, but it has to listen, and respond by explaining why it disagrees, why it thinks something else is more important, or whatever. A good response is one that is thought about and tailored to the real facts of the complaint or dispute, not a standard, off-the-peg one.

Enforcing communication and responsiveness: a procedure

- 1.9 There should be a simple, step-by-step procedure for dealing with disagreements between landlords and tenants. Unlike current complaints procedures, it should apply equally where the landlord is initiating a dispute with the tenant. Housing association tenants thought that their landlords often seemed to have better complaints procedures than councils, and suggested that these might provide a model.
- 1.10 The disputes procedure should be *agreed* between tenants' groups, landlords, and the regulators (Audit Commission and Housing Corporation). The regulators' role would be two-fold. First, they would set down minimum standards for the procedure, so that, for instance, a weak Tenants' Association could not be manoeuvred into agreeing a procedure which provided tenants with insufficient protection. Secondly, the regulator would oversee the process of agreement, laying down procedures and time limits for the necessary stages. It would also be able to ensure that a Tenants Association was, for instance, truly representative of tenants. If, at the end of the process, agreement between landlord and tenants was impossible, the regulator would be able to impose a procedure.
- 1.11 The Agreed Procedure would include three broad phases (the details of which would be the subject matter of the local agreement):
- (1) Internal consideration and re-consideration: complaints by the tenant should first be properly considered by the landlord; complaints by the landlord should be properly explained to the tenant. A tenant might complain about disrepair (where he or she might have a formal legal right to the repairs); or about the way in which a neighbourhood office dealt with some contact. The landlord might complain about rent arrears, the tenant's failure to keep the garden in a reasonable condition, or more serious anti-social behaviour.

The highest stage of internal re-consideration could be formal statutory internal review mechanisms, such as those for homelessness determinations and introductory tenancies. But with the other protections envisaged in the Agreed Procedure, would these sorts of procedure be necessary or desirable?

- (2) Independent help in reaching agreement: external mediation, which could be compulsory or voluntary (or the tenant could require the landlord to come to mediation, but not the other way round). Alternatively, or in addition, the complaint could go to the ombudsman. There would need to be a change in the law so that the Local Government Ombudsman could consider complaints which might also go to court, the way that the Independent Housing Ombudsman can for complaints against housing associations.
 - (3) Final determination: if all else fails, then the dispute must be authoritatively determined. Determination could be either by the court; or by independent binding arbitration. In deciding the case, the court or the arbitrator could take into account how the parties have behaved during the process, and particularly whether they properly abided by the Agreed Procedure. This could include making a judgment as to whether one or other of the parties was taking the procedure seriously (really listening), or just going through the motions.
- 1.12 The landlord would be required to maintain and hold an open file containing all the papers sent by both sides in the case, to which the tenant and others involved (tenants' representatives or other advisors, mediators, ombudsmen, the court or arbitrator) could have access.

Advice

- 1.13 Throughout the process, tenants needed good quality advice, both about the procedure itself, and the underlying realities (that is, both their formal legal rights, and what the likely outcomes would be "in practice"). Advice, and informal assistance, were more important than advocacy and representation. It could make more sense for such an advice and assistance role to be delivered via the local tenants' representative body, or in partnership with it, rather than by a purely external agency.

The nature of the parties

- 1.14 But how would it work when the separateness of landlords and tenants has broken down? Many housing associations have tenants on their boards, particularly where they have taken over council stock as part of a large scale voluntary transfer. Can a tenants association really play the role of negotiating an Agreed Procedure with a landlord, where, say, a third of the board is composed of tenants' representatives? At an extreme level, could the procedure apply to a fully mutual co-operative housing association? Probably not – while individual complaints systems are possible, the idea of a collective tenants' dimension distinct from the association itself is difficult to see working. In a "three thirds" large scale voluntary transfer housing association, on the other hand, it seems likely that a reasonably workable system could be constructed. But to ensure that the different roles of individuals and associations were clearly delineated would take careful planning and thought. And there would have to be careful oversight of systems, to ensure that at an "in practice" level, roles and responsibilities did not become blurred.