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**Response by the Public Services Ombudsman for Wales
to the Safer Buildings in Wales: A Building Safety White Paper**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Safer Buildings in Wales White Paper.

Our role

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

The 'own initiative' powers I have been granted under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019) allow me to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also establishes the Complaints Standards Authority (CSA) to drive improvement in public services by supporting effective complaint handling through model procedures, training and collecting and publishing complaints data.

General Comments

The tragedy at Grenfell Tower is not an event that anyone would want to see repeated. As such, I broadly welcome these proposals for a building safety regime that promotes higher compliance standards, improved competency and greater accountability, alongside better communication and engagement with residents. I

also agree that the definition of building safety should go beyond immediate fire risk and structural safety and I am pleased to see that the Welsh Government is working with the UK Government on the role that the Housing Health and Safety Rating System will have in the new regime.

There are clear matters that cross-reference to issues within the jurisdiction of my Office, so it is regrettable that there is no reference to either the PSOW or the CSA in the White Paper. In proposing new complaints duties on dutyholders and the new building safety regulator, the white paper does not appear to have taken account of the current complaints system for public and social housing that exists in Wales. If implemented as proposed, there is a risk that the complaints process will become more convoluted, and as a result stands to confuse and complicate the system for tenants and freeholders alike.

As set out at the start of my response, Wales has an established public service complaints system which includes public sector and social housing within its jurisdiction which has a critical role in upholding justice for tenants and residents. Both local authorities and housing associations are subject to duties that require them to have complaints handling arrangements in place. These processes must comply with complaints handling standards and guidance published by my Office under powers contained within Section 36 of the PSOW Act 2019 which created the CSA for Wales. As well as the redress for tenants that the current process can afford if complaints are upheld, complaints can be an important indicator of systemic problems and provide opportunities for learning that can help improve support services across the wider public service.

As proposed in the white paper, where the freehold of a Category 1 building is owned by a local housing authority (LHA) or a housing association (HA), the Accountable Person responsible for managing complaints regarding a specific building, will in effect be working on behalf of the LHA or the HA. I would expect that they should therefore be subject to the provisions set out in the PSOW Act 2019 and subject to the CSA standards. On this basis, whilst the Accountable Person for Category 2 buildings will not be duty bound to manage a complaints system, residents living in social housing owned by LHAs or HAs should also be able to access existing complaints services. These residents will retain their right to escalate the complaint to us if they are unhappy with the outcome of complaint made to the Accountable Person.

There is the potential that a private developer could own the freehold of a building with mixed use, where social housing might make up one element of the building's tenure. Under the current proposals, the Accountable Person will be appointed by the private developer as the freeholder, and so technically would not be subject to the PSOW Act 2019 or the relevant CSA standards. As such, tenants may be unable to raise complaints directly to my office about failures in building safety that are the responsibility of the freeholder to manage. This situation could result in a disparity between tenants' rights to complain, even if they have a social landlord.

Whilst residents will have the right to raise complaints with the new regulator under

these new arrangements, the white paper does not set out the standards by which these complaints would be handled or what redress would be afforded to the complainant should a complaint be upheld. As I have jurisdiction for complaints handling for the bodies proposed for the new regulatory role and many of the complaints that may be raised with this new body currently fall within the remit of my office, I would consider that any new regulator should also come under the jurisdiction of the PSOW Act 2019. This would ensure a clear, consistent and comprehensive complaints system for the public in Wales.

I would welcome further exploration of these matters with Welsh Government officials and my officers to ensure that social housing tenants across Wales have fair and equitable access to rigorous and high-quality complaints handling procedures which are clear and accessible to all.

Closing remarks

I trust that you will find my comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Tanya Nash, my acting Head of Policy (tanya.nash@ombudsman.wales).



Nick Bennett

Public Services Ombudsman for Wales

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