



Annual Report from the Independent Complaints Reviewer

In the financial year 2019/2020 Tenancy Deposit Scheme (TDS) dealt with 140,051 calls, 98,630 emails and fully adjudicated 14,089 disputes. TDS strives to provide an excellent level of Customer Service and we are always pleased to receive feedback as it gives us an opportunity to learn from mistakes and do better in the future. We have independent accreditation of the quality of service we offer, and this includes how we deal with concerns or complaints about the quality of our dispute resolution service. Things can go wrong sometimes and we may receive a complaint. TDS is on hand to listen, to understand the problem and offer solutions. In a small number of cases complainants who exhaust our internal complaints process take their complaint to our appointed Independent Complaints Reviewer [Margaret Doyle], whose role is to review whether TDS has handled the complaint in accordance with our procedures. Here is her Annual Report and Recommendations.

About the ICR role and ICR process

This is a summary of my first annual report as the Independent Complaints Reviewer for the Tenancy Deposit Scheme (TDS). It covers the period January 2019 – April 2020. During this period, I received and reviewed 12 complaints. I upheld or partially upheld 5 complaints. A number of recommendations have been made to TDS to improve its service and procedures, and these arise from both upheld and not upheld complaints.

The ICR was introduced in January 2019 as a measure of reassurance that concerns about TDS's handling of disputes and complaints would be independently reviewed upon request of either party in a dispute. I act completely independently; I am not a member of TDS staff and I do not work within TDS offices. I am appointed by and report to the TDS Board. I produce regular updates on my work and publish an annual report within the TDS Annual Report.

TDS has a two-stage internal process for considering complaints regarding their service, and it is expected that complaints will first be considered through this internal procedure before they can be escalated to me for review. If a complainant remains dissatisfied with the TDS response, they can request that the complaint be referred to me. A document published on the TDS website explains the stages and timescales of the process.

Matters of adjudicator judgement are outside my remit, and I do not serve as an appeal to a decision or award with which someone disagrees. I review the handling of investigated complaints to ensure that the process has been fair and transparent, and that the issues raised in the complaints process have been properly considered. Where I consider that a mistake has been made in the handling of a complaint, I can recommend corrective action or the payment of compensation by TDS.



Complaints in this period

The number of complaints referred to me is a small number relative to the total number of cases handled by TDS over the period; out of 14,089 awards made by TDS, the number of complaints arising was 228 (the vast majority of which, 208, related to adjudication decisions), and only 12, or just over 5%, of these led to a request for me to review. With this small number, it is difficult to identify patterns or trends, but several of the complaints have raised important learning points for TDS.

Examples of complaints reviewed during this period include:

- A complaint via an MP from a landlord about TDS having paid the deposit to the agent after the agent had been removed from TDS membership. I upheld the complaint, and TDS agreed to pay the £2,146 deposit to the landlord and to try to recover this from the agent's administrators.
- A complaint from a landlord that TDS had erred in allowing the tenant to object to adjudication after the deadline for responding had passed, disadvantaging the landlord. I partly upheld the complaint. I did not uphold the aspect of the complaint related to the use of TDS discretion in applying the deadline. I did uphold other aspects relating to administrative failures, and I noted that TDS had acknowledged these failures and apologised for the failure to keep the complainant updated.
- A complaint from a landlord about procedural errors, including a breach of personal data, and a flawed decision. I partly upheld the complaint. I did not uphold the aspects of the complaint related to a data breach or the adjudicator's decision. I did identify a number of service failures. I also noted that TDS staff had not noted the access requirements of the complainant and did not offer to make reasonable adjustments to its process. I recommended that TDS pay the complainant £300 in recognition of the service failures and the failure to make reasonable adjustments to meet access needs.
- A complaint from a landlord about misleading information given in a phone call about the date when a deposit would be registered. I did not uphold the complaint. I noted that TDS had accepted and apologised for the initial inaccurate information and I stated that I did not agree that they should provide financial compensation for the failure.
- A complaint from a tenant about the TDS adjudicator awarding legal costs to the landlord contrary to the tenancy agreement. I upheld the complaint and recommended that TDS pay the complainant the amount of legal costs that had been deducted from the deposit, £625 and a payment of £100.

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- A complaint from a tenant alleging that the adjudicator had awarded unreasonable amounts to the landlord with claims for cleaning, damage and removal of items, and that the tenant's alternative quotes were disregarded. I did not uphold the complaint. I noted, however, that the decision left the complainant not knowing why their alternative quotes appeared not to have influenced the adjudicators decision. I asked TDS to provide the tenant with an explanation of the adjudicators reasoning for the award and confirmation that the tenants evidence had been considered but not found credible.
 - A complaint from a landlord about the amount awarded for damaged flooring, soffited and fireplace tiles, which the complainant alleged reflected bias in dealing with the complaint. I did not uphold the complaint. I explained that I had found no evidence of bias in the adjudicators decision or the TDS response to the complaint.
 - A complaint from a tenant about the adjudication decision and specifically the award made to the landlord for gardening following the end of tenancy. I did not uphold the complaint. I noted, however, that the complaint raised issues for TDS to consider in relation to their approach to evidence.

Observations and recommendations

Several complaints raised by tenants and landlords, have related to TDS's approach to claims for cleaning and damage, and in particular to the issue of how evidence is considered by TDS adjudicators. They include complaints that the adjudicator disregarded evidence or awarded unreasonable amounts to the other side for cleaning and damaged items.

Sometimes the issue is that evidence is not explicitly referred to in the adjudication decision, leading complainants to consider that their evidence was overlooked. In other cases, the complaint focuses on alleged bias by the adjudicator. TDS's procedures do not require adjudicators to describe in adjudication decisions that all the evidence was considered. The preamble to decisions states that 'All evidence submitted by the parties has been considered by the adjudicator, even if it is not referred to specifically in the report.' I have not found evidence of bias in any of the complaints I have reviewed, although I have noted where the lack of explanation in an adjudication decision has led to a perception of bias. In one such case, I concluded that the complainant should have had a fuller explanation of the adjudicators' assessment of the evidence submitted and particularly whether the adjudicator considered the alternative quotes provided and how these were dealt with.

Often these complaints reflect disagreement with the judgement made by the adjudicator. Adjudicators are very experienced in estimating costs, and they use their own skill and knowledge



to assess what is reasonable if a claim appears excessive. It is not within my remit to second-guess or overturn such judgements, nor would I have the experience and knowledge to do so fairly. If the adjudicators reasoning is explained, I do not uphold a complaint that is essentially a matter of disagreement with this reasoning.

In one case, I identified that TDS had failed to adjust their process for a complainant who was visually impaired. There was clear evidence that she had informed TDS of her impairment, and that this was not flagged up in the system as it should have been. This meant that in effect, she did not have the same access to the service as someone without her sight difficulties. TDS has taken this issue seriously and aims to incorporate a pop-up notification to remind all staff handling a case where there is a need for reasonable adjustments, and has made it a focus of staff training following this complaint.

Issues with the complaints process have come to light during this period, including delays in referring complaints to me, initial complaint responses that made too much use of standard and 'boilerplate' text and difficulties in facilitating my access to case files. I am pleased to say that these have been addressed.

Conclusion

It is notable that many of the complaints reviewed in this period were essentially ones outside of my remit because they were almost solely about the adjudicators' judgement. I hope that this is a positive indication that complaints about service failures and procedural errors are being addressed at TDS' internal complaints stages.

I appreciate the opportunity given to review complaints about TDS and I thank the complainants and the TDS staff for their assistance to me in my role as ICR.

Margaret Doyle
Independent Complaints Reviewer
July 2020