



Annual Report from the Independent Complaints Reviewer 2020-21

This is my second annual report as the Independent Complaints Reviewer for the Tenancy Deposit Scheme (TDS). It covers the period April 2020 – March 2021.

Overview

During this period, I received and reviewed four complaints. I did not uphold any of these complaints. I explain the reasons for this below, where I provide a brief summary of each complaint.

Last year, in my first year as Independent Complaints Reviewer (ICR), I reviewed 12 complaints. Because of the decrease in complaints I reviewed this year, I suggested that I should carry out regular ‘dip sampling’ of complaints received by TDS. TDS agreed to this, and so I have begun monthly reviewing of a random sample of complaints. In this report I share my findings from this sampling work.

About TDS

TDS protects tenancy deposits and adjudicates on disputes about protected deposits that arise in England and Wales. It is one of three independent dispute resolution schemes authorised by the Ministry of Housing, Communities and Local Government. The Housing Act 2004 requires landlords and letting agents to protect deposits on assured shorthold tenancies in an independent, authorised scheme. TDS offers insurance-backed and custodial tenancy deposit protection and provides free, impartial dispute resolution on deposits registered with it. TDS is operated by The Dispute Service.

Disputes that arise in Scotland are handled by SafeDeposits Scotland Ltd, which is a custodial tenancy deposit scheme. Disputes arising in Northern Ireland are handled by Tenancy Deposit Scheme Northern Ireland Ltd, which offers both custodial and insurance-based schemes. Both SafeDeposits Scotland and Tenancy Deposit Scheme Northern Ireland Ltd are operated by The Dispute Service.

Disputes can be raised by either party to the dispute, whether landlord, agent, or tenant.



About the ICR role

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 to a dispute.

I act completely independently of any influence from TDS. 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.

Matters of adjudicator judgement are outside the remit of the ICR, and I do not serve as an appeal to a decision or award with which someone disagrees. Primarily my role is to review how TDS investigates 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.

My investigations are primarily paper-based, although I do contact complainants and TDS staff to raise queries or discuss aspects of the complaint where I decide this is appropriate. In addition to writing to the complainant with my findings and decision, I report back to TDS on issues of concern and suggestions for improvements to procedures and policy.

About the ICR process

TDS has an internal process for considering complaints about its 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.

The published procedure explains how a TDS user can raise a complaint about either an adjudication decision or about TDS service. There is no appeal of adjudication decisions, but TDS states in its published procedure:

'... we would still like to hear from you if you have a complaint about the outcome reached in an adjudication, for example, only if you feel that the adjudicator:

- made an error in fact; or
- made an error in law; or
- did not arrive at a fair judgment properly based on the evidence available to TDS at the time.'

The ICR process is available to any user of the TDS, including but not limited to a party to an adjudicated dispute (for example, a complainant might object to service they received in raising a general query, or might complain about a tenancy deposit dispute not being accepted).

I expect complainants to explain to me what outstanding issues they would like me to review. If I do not have this information, I will contact the complainant and request clarification. If, on a review of the case file and the complaint responses, I consider that all issues have been appropriately addressed, I will decline to review the complaint further.



Complaints in this period

The number of complaints referred to me is small relative to the total number of cases handled by TDS over the period, which was 11,592 (of which 1,995 were what are known as default awards). The number of complaints arising from these cases was 171 (of which 169 related to adjudication and 2 related to service), and only 4, or 2.3%, of these led to a request for me to review. As noted above, this is a decrease on last year's number, making it difficult to identify patterns or trends. The introduction of my quarterly sampling of complaints investigated by TDS helps to provide further oversight of how complaints are handled internally and further reassurance.

Last year the complaints I received involved concerns about the TDS process (service complaints) and concerns about the adjudication decision. Most service complaints now appear to be resolved through the internal process; all the complaints I reviewed this year related to concerns about the adjudication decision. A summary of each complaint and outcome of my review is below:

A complaint from a landlord about errors in the adjudication decision. In its response to the complaint, TDS accepted that a factual error had been made in the adjudication report and that the landlord should have been awarded £200 towards the cost of a repair. TDS apologised and arranged for the payment. However, the landlord remained dissatisfied and believed that not all the concerns had been addressed by TDS, and requested a review by the ICR.

I considered the concerns the landlord believed had not been addressed, including concerns about lack of impartiality and about the TDS approach to evidence. I found no evidence of lack of impartiality by either the initial adjudicator or the reviewing adjudicator. I also confirmed that TDS makes it clear in its guidance and decisions that check-in and check-out reports are considered primary evidence, and the time to raise a concern about errors or omissions in these is at the time the report is issued, not at the point of adjudication. Furthermore, actual amounts awarded in a claim are matters of adjudicator judgement, and absent any evidence of error in reaching those judgements, it is not for me to second-guess or overturn them. I did not uphold the complaint, and I concluded that the issues raised reflect disagreement with the judgements made by the adjudicators, which is outside of my remit.

A complaint from tenants alleging that their evidence had not been considered by the adjudicator and that errors had been made. TDS requested a review by a second adjudicator, and following this review, in the response to the complainants, TDS explained that it found no errors in fact or law. The tenants remained dissatisfied and requested a review by the ICR.

Because one of the allegations related to missed evidence, I decided to review the evidence that was submitted to TDS. I noted that all the evidence submitted had



been taken into account by the adjudicator, and that the adjudicator had not failed to consider any evidence.

This complaint also raised a concern about the accuracy of the check-in report. The complainants had raised this with the landlord at the time, but had not received a response. I explained in my response that I understood their frustration with this, but that TDS adjudicators cannot become involved in determining the accuracy of check-in or check-out reports.

A complaint from a landlord alleging the adjudicator failed to reach a fair judgement on claims for cleaning and damage. Because the complaint alleged failures in relation to how the evidence was considered, I reviewed the case file in order to determine if any evidence had been overlooked.

On each of the allegations, I confirmed that the adjudicator had considered the evidence submitted by the landlord. On one claim, the adjudicator determined that the amount claimed for repair of a wood floor, based on a quote supplied by the landlord, was not reasonable, and that the tenants' offer had been fair. The landlord suggested that TDS should have sought an alternative quote for the repair. I explained that it is not the role of TDS or its adjudicators to seek further or alternative evidence.

On another aspect of the complaint, the landlord believed evidence that was proof of the tenant's liability for damage to an item had been overlooked. I accepted that this evidence had not been mentioned in the adjudicator's decision, but that does not mean it was overlooked. On reviewing that evidence, it was not clear to me that it showed the tenant's liability. I noted that TDS had explained that it was not unreasonable for the adjudicator to consider the evidence as an attempt to resolve matters rather than an admission of liability.

I concluded that this complaint was a disagreement with the adjudicator's judgements rather than a failure to take evidence into account or to make a reasonable assessment. I did not uphold the complaint.

A complaint from a landlord alleging errors in the adjudication decision and a failure to intervene to remove a tenant's defamatory statements. The landlord was particularly upset about what he believed were defamatory remarks that were submitted to the TDS portal by the tenant, and he felt TDS should have acted to remove them. TDS requested a review by a second adjudicator, who concluded that there had been no errors in fact or law and that the tenant's submission did not amount to a civil or criminal offence.

I contacted the complainant for clarification on the key outstanding issues. These involved claims for damage and for laundry as well as the failure to act on the allegedly defamatory comments. In relation to the damage, I explained that the adjudicator was unable to make an award to the landlord without evidence of the condition of the items at the start and end of the tenancy, and specifically identification of this condition in check-in and check-out reports.



I noted in my response that TDS can only deal with disputes about the deposit itself and that issues outside the adjudicator's remit, such as tenant counterclaims, cannot be considered. Although I understood the complainant's frustration with the comments made by the tenant, they had not been considered to be defamatory or illegal. TDS had noted that it is not uncommon for comments to be made by one party that undermine the other party's evidence.

I found no evidence of errors or failure to act, and so I did not uphold the complaint.

There was follow-up correspondence from the complainant to TDS in this case, requesting clarification of when TDS acts on its power to remove defamatory comments from the portal. My view is that in the subsequent exchanges, TDS addressed the further questions and provided appropriate clarification. However, it was clear that the complainant remained dissatisfied. I drew a close to the correspondence when I identified that nothing further could be achieved.

Observations and recommendations

I have no concerns about the way TDS handled the complaints that I reviewed this year, and my view is that the reviews conducted by TDS have been thorough and the responses clear. These complaints reflect that some parties (whether landlord, tenant, or agent) disagree with the judgements made by adjudicators on aspects of the claim and amounts awarded. I understand the frustration this creates for parties who feel their claims were not upheld, but unless there is evidence that the adjudicator has made an error or been unreasonable in making an award, it is not for TDS or the ICR to overturn those judgements.

From February 2021, I began to carry out a random sampling of complaints (both service complaints and complaints about adjudication decisions) each month. The aim is to identify if any issues arise in TDS's internal handling of complaints or referral to the ICR, and if not, to provide reassurance to parties who use TDS and to TDS itself. I have access to the case databases so that I can select a number of cases myself, rather than having them selected by TDS.

I have been pleased to find that no major issues or concerns have been raised in my sampling. The complaint responses are comprehensive and sent within published timescales. Occasionally an error or failure is identified, and TDS acknowledges this and takes appropriate steps, including apologies, feedback to staff, and financial payment where necessary.

There were some minor issues identified in my sampling. I list these below, along with TDS's actions as a result:

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- A failure to provide an apology where an error was identified. My view is that this was an oversight in an otherwise comprehensive response acknowledging the error. This will be fed back to the adjudicator who carried out the review and responded to the complainant.
 - A concern that the limitation on the word count for submitting a request for an adjudication review might be too restrictive. Only one complaint so far has been raised on this issue, but TDS agrees to keep this under review by recording any concerns raised about the review process and analysing these monthly in order to identify any patterns.
 - A question about whether adequate signposting is provided with complaint responses. It would be unhelpful to complainants and to TDS to have every expression of dissatisfaction with a TDS response referred to me for review. However, good practice involves clear signposting to complainants about what they can do if they remain dissatisfied. Complainants should not be encouraged to exhaust the complaints process without justification, but nor should those with a valid complaint not pursue it because they are unaware of the procedure. There is a balance to be struck between managing expectations and achieving closure, on the one hand, and being open and transparent on the other. TDS has agreed to amend its complaint response letter to make it clear to recipients that the internal process has come to an end, rather than, as current wording suggests, it is ‘the end of the road’.

Conclusion

The issues I raised in last year’s report have been addressed by TDS. These include having a mechanism for alerting staff to the need to make reasonable adjustments for a party with a disability, through a pop-up notification on the file, and my need to access evidence in the case files. The first has been completed and has been the subject of staff training, and the second has been addressed by my now having direct access to the case databases, which contain evidence submitted with the dispute.

I noted last year that there was no evidence of delays in responding to complaints, and the same is true of this year. Where a delay has occurred, TDS acknowledges this and apologises. I also noted last year that the first-stage responses had improved. I am impressed that the complaint responses overall are thorough and comprehensive, and TDS does not hesitate to bring in a second adjudicator to review the decision to provide that additional oversight where necessary.

As with last year, 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 adjudicator’s judgement. I hope that this is a positive indication that complaints about procedural errors are being addressed at TDS’s 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
April 2021