



# Annual Report from the Independent Complaints Reviewer 2021-22

This is my third annual report as the Independent Complaints Reviewer for the Tenancy Deposit Scheme (TDS). It covers the period April 2021 – March 2022.

## Overview

During this period, I received and reviewed nine complaints. I did not uphold five of these complaints; I partially upheld three; and I fully upheld one. I explain the reasons for this below, where I provide a brief summary of each complaint.

Last year I also began regular ‘dip sampling’ of complaints received by the TDS. The aim is to identify if any issues arise in TDS’s internal handling of complaints or referral to me, 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 the cases myself, rather than having them selected by TDS. I look at both upheld and not upheld complaints and aim for a range of landlord, agent and tenant complaints. There are far fewer service complaints for me to sample, so the majority I sample are adjudication complaints, and these are mostly listed as level 4 (‘an error has or may have been made or the complaint warrants a full ADR response’).

In this report I share my findings from this sampling work and from the complaint reviews.

## 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 Independent Complaints Reviewer (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 final 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 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

## **Complaints reviewed**

The number of complaints referred to me is small relative to the total number of cases handled by TDS over the period, which was 12,473 (of which 2,195 were what are known as default awards). The number of complaints arising from these cases was 365 (of which 355 related to adjudication and 10 related to service), and only 10, or 2.7%, of these led to a request for me to review (one of these was referred in the current year and will be included in next year's annual report).

With a relatively small number of complaints, it can be 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 about an unpaid utility bill**

In this complaint, although I did not find any failure on the part of the adjudicator or TDS, I noted that TDS could have done more to identify the reasons for the complainant's frustration. The complainant, an agent, believed that the adjudicator had made an error relating to a tenant's unpaid utility bill, for which the landlord would be liable. There were implications for other properties managed by this agent, and she wanted to understand TDS's approach. When she stated in several emails that her questions were not being answered, TDS could have considered speaking with her, which might have prevented her having to escalate the complaint. I explained to both the complainant and TDS that I believe this would have been a more constructive approach in this case.

### **A complaint about damage to a basin**

The tenant objected to the award to the landlord of £60 for damage to the bathroom basin. The adjudicator who reviewed the complaint upheld the original decision. The complaint to me was fundamentally a disagreement with the judgements made by the adjudicator and reviewing adjudicator, which are matters that fall outside my remit. However, as the complaint alleged unfairness in the way the evidence was considered, I looked at this aspect. I concluded that there had been unfairness in the consideration of the evidence of damage. The adjudicator had acknowledged that the photos in the check-in and check-out reports did not provide a clear comparison but said the wording shows there was damage at the end of the tenancy. That wording was ambiguous, however, and accepting the landlord's interpretation meant the tenant bore the burden of proving that the damage was not new.

I asked TDS to write to the tenant with an apology for the failures identified and to pay him £60 to reflect the amount awarded to the landlord for the claim related to the bathroom washbasin. I also asked TDS to review this case with the adjudication team to consider any learning for future decision-making.



### **A complaint about cleaning award and complaint handling**

This complaint from tenants related to the adjudication decision and specifically the award made to the landlord for cleaning. The tenants also complained of failures in the review of their complaint. In its review, TDS identified an error made by the original adjudicator and agreed to pay the tenants £50 to rectify that error. Other errors alleged by the tenants were not upheld by TDS.

I partially upheld the complaint. The adjudication decision contained an error, one acknowledged by TDS. In my view the decision, and the reviews of the complaint, wrongly put the burden of proof onto the tenants rather than on the landlord in relation to spot marks on the landing carpet.

I noted that the response times from TDS were within the timescales it must adhere to. However, in phone conversations with TDS staff the tenants were led to expect, reasonably in my view, that

a manager would ring back to discuss the complaint. Instead, the tenants were asked to complete a review request form, which although it reflects the complaints process, adds to the time taken to review a complaint and requires the complainant to set out in writing what they had discussed already at length on the phone. This contributed to the complainants' frustration with the time taken to deal with the complaint, as did the fact that the error that TDS ultimately accepted was only acknowledged after several phone calls and escalation requests. TDS could have been more proactive; instead, the tenants were put through a protracted process that should not have been necessary.

I asked TDS to send an apology for the failures identified and to pay the tenants £100 to reflect the amount awarded for the spots on the carpet landing, the slowness of the response to the original phone call, and the failure to acknowledge the error in the adjudication report until the complaint had been escalated. I also asked TDS to review this case with the adjudication and complaints teams to consider any learning.


### **A complaint about delays, lack of communication, and extensions**

The tenant raised a complaint about unreasonable delays caused by needless extensions provided by TDS to the landlord. She also complained of lack of communication from TDS, conflicting information and promises not kept. She described experiencing anxiety, ill health and homelessness as a result of the stress and the inability to take up offers on flats until the deposit dispute was concluded.

TDS acknowledged the failure to keep her updated and agreed that the number of extensions given to the landlord was excessive. TDS paid the complainant £50 in recognition of these failures. The complainant felt this was insufficient remedy.

I upheld the complaint, and I agreed that the payment made did not sufficiently recognise the number of service failures the complainant had experienced. The landlord had been given a number of extensions for submitting evidence, and even after these extensions, he did not submit evidence to support a claim on the deposit. It took nearly two months for the adjudication report to be issued, although it was a default award and did not involve assessing conflicting evidence. During this time, there were several occasions when the tenant was not informed of extensions or delays and not updated on progress.

I noted that it was important to remember that TDS was not responsible for the difficult circumstances in which her tenancy ended and the resulting anxiety. However, TDS was aware of these, and more should have been done to ensure she received her deposit as quickly as possible and was kept informed. That did not happen.



I asked TDS to pay the complainant a further £250 (making a total of £300), which I believe reflects the seriousness and number of failures in the handling of her deposit dispute. I suggested that TDS should ensure that all notes of phone calls are logged in the case files and are comprehensive. I also agreed to work with TDS to develop guidance for its complaints team on financial remedies.

#### **A complaint about evidence on cleaning and damage**

In this case, the landlord complained about the adjudication decision in relation to evidence on his claims for cleaning and damage. TDS did not identify any errors and therefore did not uphold the complaint. It advised the complainant on best practice in terms of check-in and check-out reports and referred him to the deductions template available on its website.

The complainant asked why previous claims had been handled differently. He felt TDS is biased against landlords. TDS explained that no two deposit disputes are the same and the decision complained about was based on the evidence submitted in that case.

I explained that I could not overturn the judgement of an adjudicator. I noted the guidance that is provided to landlords on the TDS website, and I reminded the complainant that adjudicators must uphold the principle that deposits belong to the tenant, and it is for the landlord to substantiate any claims against that deposit. I found no evidence of a process failure, nor any evidence of bias against landlords. I therefore did not uphold the complaint.


#### **A complaint about errors and inconsistencies in the adjudication decision and a lack of due diligence in the review of that decision**

In this complaint, TDS had accepted that an error had been made in the adjudication decision, whereby the adjudicator referred to the back door instead of the front door. However, TDS explained that the award was correct, as the landlord had incurred a charge for changing the lock to the front door. TDS acknowledged that the error caused confusion, and paid the complainant £50 in recognition of this.

The complainant raised further issues with me that had not been raised with TDS in the initial complaint. These included that the landlord had delayed in notifying him of the deductions to the deposit, contrary to a clause in his tenancy agreement stating that any deduction has to be made within 10 days of the end of the tenancy. I cannot consider issues that have not yet been considered by TDS in its internal complaints procedure. However, the complainant explained to me that he had not included this issue in the initial complaint because of the space restrictions on the request to review form that TDS asks complainants to complete.

The complainant was not informed of the landlord's proposed deductions until some months after the end of the tenancy. TDS explained to me that the clause in the tenancy agreement relates to the period during which the tenant and landlord (or agent) are expected to negotiate about any proposed deductions before a deposit dispute can be raised. Such clauses are often misinterpreted as setting a time limit for notification of proposed deductions. If no agreement is reached in that 10 days, it is open to the tenant to raise a dispute with TDS. The clause does not provide for forfeiture of the deposit, and TDS adjudicators do not automatically rule a landlord's claim invalid because of a delay in notifying a tenant of any proposed deductions.

I noted that this question about the applicability of the clause in the tenancy agreement had been raised in the original dispute submitted to TDS. However, it was not addressed by TDS, either in the adjudication decision nor in the responses to his complaint. That was a failure, and in my view it contributed to the complainant's view that due diligence was lacking. However, it would not have changed the outcome.



I partially upheld the complaint. I asked TDS to send an apology and to pay a further £75 in recognition of the confusion, concern and inconvenience. I also asked TDS to remind the adjudicators of the importance of referring to evidence in decisions and addressing key points made in a submission. I have also asked TDS to monitor any concerns raised about the review request web form and its limitations on text.

**A complaint about a libellous insinuation by an adjudicator**

The complainant was unhappy about a statement made in the adjudication decision that he felt was libellous. The decision referred to the landlord's delay in notifying the tenant of any proposed deductions as 'not wholly unreasonable' and that such timeframe clauses were intended to facilitate the deposit return process and not to act as a mechanism for tenants to evade liability. The complainant believed this reference to evading liability reflected bias on the part of the adjudicator. TDS explained that the statement was a reference to tenants as a group and not to him personally. TDS acknowledged that the statement could have made the complainant feel the adjudicator was suggesting he was evading his obligations, and in recognition of this TDS paid the complainant £50.

I did not uphold the complaint. I saw no evidence of bias or any error of fact or law in the adjudicator's decision, nor did I see any evidence of bias or impartiality as a result of the wording used by the adjudicator. It did not affect the outcome or the decision, nor was it unprofessional or targeted at the complainant personally. However, I agreed that the wording had an impact on the complainant, and this impact could have been foreseen and avoided. In my view, TDS provided an appropriate remedy; it acknowledged the poor wording, apologised, and has paid £50 in recognition of the impact.

**A complaint about an award made without evidence of loss**

The tenant complained about the adjudicator's award of £40 to the landlord in relation to a claim for a stain on a carpet. The complainant said there was no evidence the landlord had incurred a loss because the property was sold after the tenancy ended and it was unlikely the carpet had been professionally cleaned.

TDS explained that landlords are not required to submit evidence they have actually carried out remedial work. The adjudicator determined there had been a deterioration in the condition of the carpet beyond the scope of fair wear and tear, and this justified the award made. The complainant was not satisfied with the response and queried why the compensatory principle was not applied in the adjudication decision.

I considered that TDS had provided a full explanation in its responses to the complaint. TDS had explained that a landlord is not required to submit evidence of carrying out remedial work. If a breach of contract has been identified, the aim of a financial award is to return the person affected to the position they would have been in had the breach not occurred. TDS has explained that the assessment of what is required to achieve that can be based on quotes, actual receipts, and/or an adjudicator's professional judgment; it is not necessary to demonstrate that the loss suffered has been remedied.

I did not uphold the complaint. I saw no evidence of a process failure, and I concluded that TDS had fully addressed the issues raised.



### **A complaint about a cleaning award and delays in complaint handling**

This complaint was raised by the tenants and was about the adjudication decision made in relation to a cleaning award. The complainants believed that the adjudicator misinterpreted evidence regarding the landlord's claim. They also experienced delays in the handling of their complaint, and they told me that the complaints procedure they experienced was not the same as outlined on the TDS website. TDS responded to the complaint in detail and did not uphold it as it did not identify any errors in the adjudication. It acknowledged the delays and apologised for these.

The issue about the cleaning award was a disagreement with the judgement made by the adjudicator in relation to the evidence and the amount awarded. These are not within my remit to review, as I cannot overturn an adjudicator's judgement. There was no indication that evidence had been overlooked, which is something I can review.


I noted that although the delays were unfortunate and caused frustration, they were acknowledged by TDS and apologies were given. I explained that although I expect delays to be avoided, it is not always possible to avoid them. If there are delays, I expect TDS to acknowledge those and apologise. They did so in this case, and I concluded there was no further action to take. Regarding the complaints procedure as outlined on the website, this was followed, although I noted that it might not be clear to all complainants that complaints about adjudication decisions go through a two-stage internal process before they can be referred to me. I asked TDS to consider making this more clear on the website.

### **Complaint sampling**

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. In my sampling I have seen that where an error or failure is identified, TDS acknowledges this and takes appropriate steps, including apologies, feedback to staff, and financial payment where appropriate.

Last year I identified issues that arose in my sampling. They have now been actioned:

- A failure to provide an apology where an error was identified. This was an oversight in an otherwise comprehensive response acknowledging the error. This has been 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. Last year this issue was raised in one complaint I sampled. As noted above, this issue was raised also in one of the complaints I reviewed this year, suggesting it requires monitoring. TDS has agreed 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. Last year I noted that the wording at the end of complaint response letters stated that the complaints process has been brought to an end. I explained to TDS that I found the wording to be leaning too far towards shutting down any further escalation from a dissatisfied complainant. TDS 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 wording suggested, it is 'the end of the road'. TDS has changed its final wording on the letters to state: 'Kindly note you have now exhausted the TDS complaints procedure and this letter brings our in-house complaints process to a close.'



Another issue arose in my sampling this year:

- Making reasonable adjustments. One complaint I reviewed in my sampling identified a training need in relation to the TDS policy on making reasonable adjustments. Not only was there a failure to make the reasonable adjustment, but the initial response to the complaint failed to mention reasonable adjustments or disabilities. TDS acknowledged the failure to make reasonable adjustments and paid financial compensation in recognition of this. The policy was recirculated internally with a reminder. This showed the importance of maintaining awareness of the responsibilities staff have to address the need for reasonable adjustments and to refresh training where necessary.

Overall, I have been able to provide reassurance on TDS's internal handling of complaints and feedback on points identified in my sampling. The responses are timely and clear, and reviews by a second adjudicator are carried out when appropriate. From what I see in the sampling, TDS is acknowledging when errors occur and providing appropriate remedies. TDS has facilitated my access to the case database and has responded to my feedback fully.

## Observations and recommendations

### Observations

#### Fairness

Some complaints involve relatively low levels of awards to landlords, but they nevertheless set off a keen sense of unfairness in complainants, both landlords and tenants. Often, they involve finely balanced judgements by the adjudicator on ambiguous evidence. Those judgements are not within my remit to review, making these challenging complaints to review.

However, if the approach to ambiguous evidence (especially in relation to check-in and check-out photos and wording) leads to conclusions that tilt the burden of proof onto tenants rather than landlord (for example, by requiring tenants to prove damage existed at check-in, rather than requiring landlords to prove that it did not exist at check-in), this results in a sense of unfairness.

#### Review request form

There has been some concern expressed in complaints about the requirement to complete a review request form before a complaint will be considered by TDS. The form has a text limit of 400 words, which has been considered to be too restrictive for some complainants. I have asked TDS to monitor complaints made about the review request form to ensure that it is not perceived as unduly restrictive.

#### Delay in referral to ICR

In some cases, I have noticed a significant delay in a complaint being escalated to me.

#### Tenancy agreement clause

An issue that arose in two complaints I reviewed involved a clause in tenancy agreement that has been interpreted by some tenants as setting a time limit for a landlord to inform a tenant about proposed deductions from the deposit. TDS has explained that this has been widely misinterpreted, and TDS would continue to raise awareness of this misunderstanding about the time limit clause in tenancy agreements.





### **Financial remedies guidance**

One complaint I reviewed raised questions about transparency in financial remedies for TDS errors and how they were calculated. I worked with TDS on guidance for staff that sets out a scale that identifies an appropriate level of financial redress according to the type, severity and number of errors that occurred. This should provide consistency and clarity about how such remedies are calculated.

### **Recommendations**

In addition to the recommendation to use the learning from my complaint reviews (for example, in feedback and training to adjudicators and casework staff), I made the following recommendations in my complaints reviews:

- Where protracted correspondence is continuing, consider contacting the complainant for a discussion in order to ensure the complaint is well understood.
- Ensure that all notes of phone calls are logged in the case files and are comprehensive.
- Develop and publish guidance for its complaints team on financial remedies [in progress].
- Monitor any concerns raised about the review request web form and its limitations on text.
- Consider making the stages of the internal complaints process more clear on the TDS website.

I will follow up on my recommendations and report on progress in my annual report next year.

## **Conclusion**

I am confident that the internal complaints and review processes are thorough and the response are clear and comprehensive. The one complaint that I upheld fully is, in my view, a one-off occurrence of a number of service failures, and I do not believe it reflects general practice in the way TDS handles deposit disputes or complaints. I partially upheld a further three complaints because there were instances of process failures that had not been identified by TDS in its reviews of those complaints.

As with last year, it is notable that many of the complaints referred to me 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 2022**