

Guide to: Greenbelt Limited - Ombudsman scheme

(For resolution of disputes under the Greenbelt “Green Space” arrangement)

September 2014

Introduction

Greenbelt is a land management company that operates throughout the UK (including Northern Ireland). It has around 400 developments with over 40,000 customers, and has been described as one of the leading companies in this type of business in the UK.

Greenbelt is based in Glasgow, and also has offices in Leeds, employing C.50 people directly, and C.400 indirectly. Its core business is to take ownership from house builders/ developers, of public open space land on new housing developments. Once a development has been completed Greenbelt takes title to the land, and manages and maintains it in perpetuity on behalf of all residents. When an individual house purchaser concludes the purchase of a property from a developer, he or she is signed up to Greenbelt’s agreement for an annual management fee for the management and maintenance of the land. Greenbelt provides a customer care service and a complaints procedure.

Public open space land can comprise landscaped areas of grass, shrub beds, feature planting, young woodland, mature woodland, etc. The most common "features" are play areas and sustainable urban drainage systems (SUDS). Occasionally Greenbelt is asked to take on features such as walls, fences, and sculptures.

Greenbelt has worked with the Royal Institution of Chartered Surveyors to develop a facility for independent Ombudsman service to resolve individual and multiple customer disputes, including situations where Greenbelt has been managing and maintaining a development for some time.

Typical of the type of dispute which can be referred to the Ombudsman service is a case where a client refuses to pay Greenbelt's bill, because it is alleged there has been a lack of maintenance or that Greenbelt's charges are too high, and initial attempts by Greenbelt to resolve the matter through established internal procedures have been unsuccessful. The outcome of such procedures may include:

- Instructing a Greenbelt contractor to carry out remedial work;
- Face to face meeting with the customers and an apology
- An offer of a credit/ discount to their bill;
- A mixture of all of these,

The Ombudsman Service involves referring matters to an independent Ombudsman for an impartial assessment or decision, thus reducing any need for escalation of a dispute into political or formal legal arenas. The Ombudsman will be a person named in the appendix at the bottom of this document. S/he has been appointed by RICS for a fixed period of 12 months.

RICS has undertaken checks to ensure the Ombudsman is properly qualified, independent and prepared to make himself/herself available as far as possible. Issues can be referred to the Ombudsman as and when required by Greenbelt. The Ombudsman's appointment will be reviewed/refreshed annually on application by Greenbelt to RICS.

Summary

Greenbelt will refer disputes which cannot be resolved by internal procedures to an independent Ombudsman who will be appointed on an annual basis by the Royal Institution of Chartered Surveyors, Dispute Resolution Service.

The Ombudsman appointment covers disputes involving matters in England, Scotland, Wales and Northern Ireland.

In each case that is referred to the Ombudsman, s/he will be paid by Greenbelt at £75 per hour to a maximum of 10 hours.

The role of the Ombudsman is to resolve disputes in a fair, independent and informal way that aims to provide an outcome that is in full and final settlement of all disputes between complainants and Greenbelt. Whilst the Ombudsman takes into account legal principles, s/he does not take a legalistic approach. S/he is not bound by the same rules of evidence which apply in a Court. Neither can s/he take evidence under oath or cross examine people.

In most cases the Ombudsman will simply review relevant documents provided by the complainant and Greenbelt to arrive at a resolution. In some circumstance the Ombudsman may be proactive and meet with the complainant and Greenbelt and try to mediate a settlement.

Greenbelt will consider a case on its merits and, if appropriate, offer use of the Ombudsman scheme.

A complainant will be provided with an application form and supporting documentation which will advise him as to the process and what he can and cannot expect from the Ombudsman. The documentation will also advise that the scheme is an option which is open to him, though he is not bound to use it

Once an application is made to the Ombudsman s/he will determine if the case brought by the complainant is within the remit of the scheme. Should s/he decide that the case is not capable of being resolved by the scheme, the Ombudsman will assist the complainant in establishing what other options are open to progress the matter.

If the Ombudsman decides s/he cannot deal with a dispute, s/he will tell the complainant in writing with his/her reasons. However, a complainant may question the decision and provide further valid information in order to persuade the Ombudsman to accept a complaint into the scheme.

In dealing with a dispute, The Ombudsman will keep the complainant and Greenbelt informed of progress. S/he may make further enquiries of the complainant and others to help reach a decision.

The Ombudsman will provide the complainant and Greenbelt with a written decision and will explain what either or both of them need to do.

Types of issues which cannot be determined by the Ombudsman

The Ombudsman can only consider disputes against Greenbelt which are made by clients who live on sites managed under its Green Space arrangement and in respect of which Greenbelt is charging residents for its services in terms of the title deeds to their property.

A complaint must be about:

- Maintenance issues, whether lack of maintenance or standards of maintenance
- Charges made for services – excessive/value for money

A complaint must be referred to the Ombudsman scheme within 2 months from the date Greenbelt's internal procedures have been exhausted.

The Ombudsman cannot consider a complaint if the complainant has accepted an offer of settlement from Greenbelt. If an offer has been made and is not yet accepted it lapses on referral of the complaint by the complainant to the Ombudsman.

Summary of procedure

1. A complainant should complete a complaints application form as fully as possible and provide all the documents that he relies upon to support his/her case. Guidance will be given on the form to assist the complainant with its completion. It is important that the complainant makes a clear statement of the issue or issues at dispute. It is not sufficient for him/her to make unsupported allegations against Greenbelt. The Ombudsman will need some corroboration to enable him/her to consider allegations.

2. The complainant should send the application form and other papers to Greenbelt who will take copies and forward the originals to the Ombudsman's office, together with their file and a statement describing their version of events. All documents may be submitted electronically but the Ombudsman may need to see any original documents where s/he believes it is necessary, for example, signatures.

The complainant should send payment of a fee of £75 to Greenbelt, which sum would be returned to the complainant if the Ombudsman upholds the complainant's complaint.

3. When the complaints form and payment is received by the Ombudsman, s/he will consider the dispute by formally reviewing the documents presented. The Ombudsman may make further enquiries of the complainant and/or Greenbelt or third parties. Further documents or information may be

requested from the complainant and/or Greenbelt to assist his investigation. The Ombudsman will draw his/her own conclusions if such information or documents are not provided. (Neither the complainant or Greenbelt will be required to disclose documents which the Ombudsman is satisfied are protected by legal or professional privilege).

4. The Ombudsman will compile a written statement of his/her findings and make a recommendation as to how the matter should be resolved. If a complaint is supported, the Ombudsman will also assess the remedy which should be awarded to the complainant. This would normally include a level of compensation which is appropriate bearing in mind any aggravation, distress and/or inconvenience suffered by the complainant. Also, the Ombudsman can assess quantifiable losses that have occurred as a result of Greenbelt's actions, or inaction. The final decision should always be made by the Ombudsman and confirmed to the complainant and Greenbelt in writing (via email if appropriate).

5. If a complaint is supported, either wholly or in part, the proposed decision will be sent first to Greenbelt, who will then have 14 days in which to accept or to make a representation. Any representation made will be considered and incorporated as necessary into the proposed decision. The proposed decision is then sent to the complainant together with a copy of Greenbelt's submission and those documents relevant to the Ombudsman's proposed decision, not previously seen by the complainant.

The complainant will have 14 days in which to accept the proposed decision or make a representation. If a complainant makes a representation which persuades the Ombudsman to change his proposed decision, Greenbelt will be given a further opportunity to comment.

6. If a complaint is not upheld either in whole or in part, the complainant will be sent the proposed decision, together with a copy of Greenbelt's submission and copies of those documents relevant to the Ombudsman's proposed decision, if not previously seen by the complainant.

The complainant will have 28 days in which to accept the proposed decision or make a representation. If s/he makes a representation which persuades the Ombudsman to change his proposed decision, Greenbelt will be given an opportunity to comment.

7. Representations will normally only affect the Ombudsman's substantive decision on the complaint, if it can be shown that there has been a significant error in fact that would have had a material effect on the outcome; or if significant new evidence is presented which will have a material effect on the decision.

8. If the Ombudsman rejects the representation made by either party, s/he will advise that party in writing.

9. Any request for an oral hearing will be considered by the Ombudsman by reference to the nature of the issues to be determined and in particular the extent to which the complaint raises issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions. The Ombudsman will give reasons in writing, if he declines to grant a hearing.

10. When both sides have had the opportunity to consider a settlement, to make further representations and, where appropriate, any oral hearing has taken place, the Ombudsman will issue his/her final decision in writing. The complainant is not obliged to accept the proposed settlement or the final decision and if s/he does not do so, s/he is free to pursue the complaint through the Courts. However, Greenbelt's complaints procedures will be exhausted. There will be no further internal avenue of appeal or further internal review of a complaint for either party once the Ombudsman has issued his final decision.

11. If a complainant accepts the final decision (whether after representation or not), Greenbelt will be advised and will be required to pay any award that the Ombudsman has determined within 28 days of being notified of the complainant's acceptance.

12. If the complainant does not accept the final decision within 28 days, that decision will lapse and his case will be closed (unless there are exceptional circumstances). In such circumstances the fee paid by the complainant will not be returned.

13. The Ombudsman can direct that Greenbelt takes a certain course of action to rectify the matter. This might include offering an apology or encouraging Greenbelt to revise its procedures such that future complaints of a similar nature are eliminated.

14. By accepting the Ombudsman's award the complainant accepts that it is a full and final settlement of the dispute with Greenbelt and s/he will be asked to sign an agreement to that effect. Therefore if the complainant wishes to pursue the matter through the Courts s/he must reject the Ombudsman's findings in their entirety.

15. Subject to the provisions of his Terms of Reference, the Ombudsman shall, at his/her own discretion, decide the procedure to be adopted in considering complaints. S/he may therefore vary the procedure set out above, but s/he cannot exercise discretion to remove any rights given to complainants by law.

FAQs

What is the Ombudsman Scheme?

The Ombudsman provides a free, fair and independent service for dealing with unresolved disputes between Greenbelt and its homeowner customers.

Who is the Ombudsman?

The Ombudsman is a chartered surveyor. S/he is independent of Greenbelt and is appointed to the position by The Royal Institution of Chartered Surveyors (RICS) annually or sooner if a replacement is needed (e.g. if the Ombudsman resigns, dies or is otherwise incapable of acting).

The appointment of any Ombudsman is reviewed by RICS annually.

Additional Ombudsman may be appointed to cover regional areas if required by Greenbelt

What if a complainant has a complaint about the Ombudsman?

Complaints about chartered surveyors can be referred to the RICS Regulation Department, which will provide information and guidance on procedures

How much does it cost to use the Ombudsman Scheme?

The scheme is offered to clients of Greenbelt at a nominal sum of £75, which will be reimbursed if the complaint is upheld by the Ombudsman. Normally the only additional costs a complainant should pay are photocopying or postage costs associated with filling in a Complaints Form and providing documents as evidence. S/he will not be responsible for any of Greenbelt's costs.

The substantive costs of the Scheme are borne by Greenbelt. These costs will include:

- Appointment/review fee to RICS for appointing an Ombudsman.
- A case by case fee to be paid Ombudsman

A client has a complaint against Greenbelt – what should he do?

Tell Greenbelt that s/he has a complaint and wants Greenbelt to look at it under internal complaints procedure. The Ombudsman will not consider a complaint unless this is done first.

If a complainant is not a client of Greenbelt, can s/he refer a complaint to the Ombudsman?

No, the scheme is only available for redress by clients of Greenbelt.

What happens when Greenbelt receives a complaints form?

It will send a copy (and any attachments) to the Ombudsman together with its file and version of events. The Ombudsman will then undertake a formal review of the complaint, largely based on the documents from both sides, but s/he may also make other enquiries. The Ombudsman will then present his/her recommendation for his/her proposed decision. That proposed decision may be: to support a complaint; not to support a complaint; or to propose a settlement.

What level of proof is required by a complainant?

It will not be sufficient for a complainant to merely make an unsupported allegation against Greenbelt. The Ombudsman will need to be convinced that there is some reasonable substance behind any allegation.

If the evidence provided by Greenbelt disproves an allegation, the Ombudsman will not support a complainant's version of events. However, if Greenbelt is unable to provide documentary evidence and the Ombudsman believes that s/he should be able to, s/he may support the complainant's version of events.

How will the Ombudsman judge a complaint?

In carrying out his review of a complaint against Greenbelt, the Ombudsman will be guided specifically by his/her terms of reference. At the same time, the Ombudsman will be influenced by any evidence that s/he sees. S/he will adopt a common sense approach and arrive at a decision on what seems to be fair and reasonable in all the circumstances.

What happens if the Ombudsman supports a complaint?

If the proposed decision supports all or part of a complaint and an award of compensation is made in the complainant's favour, the case review with that decision is first sent to Greenbelt, who will then have 14 days to accept the decision or make a representation. If Greenbelt submits a representation, this is considered and the case review may be amended as necessary.

The case review is then sent to the complainant with the Ombudsman's proposed decision, together with a copy of Greenbelt's submission and any relevant documents which the complainant has not previously seen. The complainant will have 14 days in which to accept the decision, or make his/her own representation.

What if the Ombudsman does NOT support a complaint?

The Ombudsman's case review containing his/her proposed decision together with a copy of Greenbelt's submission and any relevant documents, which the complainant may not have previously seen, will be sent to the complainant first. S/he will have 14 days in which to accept the decision, or make his/her own representation.

What if the complainant does NOT agree with the Ombudsman's decision?

S/he can submit a representation within 14 days. However, the Ombudsman will only re-consider his/her proposed decision if:

- The complainant can show that there was a significant error in fact that would have had a material effect on the decision, or
- The complainant can produce significant new evidence that will have a material effect on the decision

If the complainant is unable to produce either of these, the complaints procedure is ended. There is no avenue for appeal or further review of a complaint for either party within the Ombudsman Scheme.

Can a complainant ask for a hearing in front of the Ombudsman?

Any request for an oral hearing will be considered by the Ombudsman by reference to:

- The nature of the issues to be determined and in particular to the extent to which the complaint raises
- Issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions
- The balance of time and costs in holding a hearing against the extent to which the Ombudsman believes it will assist him/her and inform the outcome

The Ombudsman will give reasons in writing, if S/he declines to grant a hearing.

If the Ombudsman supports the complaint, what can s/he do?

The Ombudsman can criticise Greenbelt for any failings or breaches of internal codes of practice. This is normally confined to ensuring that the Ombudsman examines procedures and supervision, so that such failings are reduced or eliminated. Such criticism can also result in the Ombudsman reporting a serious breach of the Code of Practice to relevant compliance/regulatory authorities for consideration of further action.

Alternatively, the Ombudsman may direct that Greenbelt apologises to the complainant.

What happens if the complainant accepts the Ombudsman's award?

If s/he accepts the award, s/he does so in full and final settlement of all the complaints against Greenbelt upon which the Ombudsman has made a formal judgment.

Can the complainant accept the award and still go to court?

By acceptance of the award, s/he agrees to the full and final settlement of his dispute with Greenbelt and s/he will be asked to sign an agreement to that effect. (This Ombudsman Scheme is designed to be recognised by the courts as an Alternative Dispute Resolution mechanism for settling disputes). If a complainant wishes to pursue a case through the courts, s/he must reject the Ombudsman's findings in their entirety.

For further information contact:

RICS Dispute Resolution Services

T +44 (0) 20 7334 3806

F +44 (0) 20 7334 3802

E drs@rics.org