

# TONBRIDGE & MALLING BOROUGH COUNCIL

## STRATEGIC HOUSING ADVISORY BOARD

20 May 2013

### Report of the Director of Planning, Housing and Environmental Health

#### Part 1- Public

#### Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

### 1 HOUSING OMBUDSMAN SERVICE

#### Summary

From 1 April 2013 the Housing Ombudsman will deal with all complaints by social housing tenants about their landlords. As part of this process, councillors, tenant panels and MPs will have the opportunity to play a more active role in resolving complaints at a local level in their capacity as *designated persons*. This paper explores the role of the designated person and the implications this has for local members.

#### 1.1 Introduction

1.1.1 Prior to April 2013, the Housing Ombudsman dealt with complaints against housing associations; and the Local Government Ombudsman dealt with complaints against local housing authorities and Arms Length Management Organisations (ALMOs).

1.1.2 The Localism Act 2011 provides that from April 2013, the Housing Ombudsman will investigate all complaints about social landlords. The Local Government Ombudsman will continue to consider complaints about local authorities' non-landlord activities, for example in discharging their statutory duties in respect of homelessness.

1.1.3 However, the Housing Ombudsman can only consider complaints that have been referred by a *designated person*, or by the tenant themselves if eight weeks have passed from the completion of the landlord's internal complaint process. Designated persons may refer complaints to the Ombudsman at any time, although there is an expectation that they will generally only do so after the landlords' own complaints procedure has been exhausted.

1.1.4 This provision does not apply to complaints made to the Local Government Ombudsman, which can still be referred directly. Where appropriate, the Ombudsmen will conduct joint investigations in cases which engage both jurisdictions.

## 1.2 The role of the Designated Person

- 1.2.1 Designated persons are defined in the Localism Act 2011 as an MP, a local councillor for the district/borough in which a complainant's home is located, or a designated tenant panel. The Act defines a designated tenant panel as a group of tenants who have been "recognised" by a social landlord for the purpose of referring complaints to the Housing Ombudsman Service.
- 1.2.2 The legally defined role of designated persons, as set out in the Localism Act, is to refer complaints from social housing tenants to the Ombudsman. Practically however, designated persons have been introduced in order to improve the chances of complaints about social landlords being resolved locally, on the basis that local people know best how to resolve local issues. Consequently, the expected role and processes for designated persons are not defined by the Housing Ombudsman.
- 1.2.3 Once a landlord's internal complaints procedure has been exhausted, tenants can ask for their complaints to be considered by a designated person. Guidance on the Housing Ombudsman's web site ( [www.housing-ombudsman.org.uk](http://www.housing-ombudsman.org.uk) ) is non-prescriptive about exactly *how* the designated person will assist, stating that "*the designated person can try to put things right in whichever way they think may work best. If the problem is still not resolved following the intervention of the designated person either they or the tenant can refer the complaint to the Ombudsman*". The guidance continues, "*Designated persons have no direct impact on a landlord's internal complaints procedure. MPs and local councillors have always been involved in complaints procedures as advocates for tenants. They will continue to have that role. Their specific role as designated persons is different as they play a more specific part in the procedure. The detail of that role is not spelt out in the Localism Act, but a part of it is to refer complaints to the Ombudsman*".
- 1.2.4 Although the Ombudsman has committed to providing information and advice to designated persons on good practice in complaints handling; and also to provide feedback on referrals from designated persons, it has no jurisdiction over the designated person nor authority to regulate or produce guidance for their selection, activity or conduct.
- 1.2.5 The designated person has no specific powers other than the right to refer a complaint to the Ombudsman once the landlord's complaints procedure has been exhausted. They have no power over an organisation's policies and procedures, their role is to facilitate resolution of tenant complaints which may involve providing advice, discussing matters with the landlord, and engaging with other designated persons. It is recognised that there could be numerous ways to undertake this role and that in practice different approaches will suit different local circumstances.

## 1.3 What does this mean for local members?

- 1.3.1 Although the principle of enabling the opportunity for more local complaint resolution is understood, there are some practical implications that Members may wish to be aware of. First and foremost there must be a very real risk that this process will become extremely time-consuming for local members who may feel obliged to follow up and seek to assist in an unresolved complaint by a social housing tenant. Naturally, local Members might be minded to seek assistance and advice from officers and that would could also generate a capacity issue and divert resources away from our main stream work.

In order to minimise these factors, it is proposed that the following actions be implemented. These steps should assist Members to review the extent to which it is appropriate to intervene and ensure that any engagement as a designated person is as effective and efficient as possible:

- the role of the designated person be integrated into the complaints procedures of partner housing associations. This will enable complainants to understand the role (including limitations) of the Designated Persons procedure. This has already been raised with Russet Homes who are happy to work with the Council in updating their own procedure. The matter will also be raised with other housing association who hold stock in the borough;
- the Council's own complaints procedure will be reviewed to reflect these provisions in order to clarify the process that is to be followed on complaints of this nature;
- a series of training workshops for local members will be convened with input from officers from the housing, legal and customer services teams, as well as Russet Homes. It is hoped that this will assist Members in being clear about the Designated Person role, what the general options for Members in this situation are and an opportunity to be clear about practical capacity issues;
- a briefing document will be made available to members on how to deal with requests to act as designated persons; and
- information for prospective complainants will be provided on the Council's and partner housing association web sites.

## **1.4 Legal Implications**

- 1.4.1 The Localism Act 2012 provides that tenants of housing associations, local authorities and ALMOs will be able to ask for their complaint to be considered by a designated person once their landlord's internal complaints procedure has been exhausted.

## **1.5 Financial and Value for Money Considerations**

1.5.1 None associated with this report.

## 1.6 Risk Assessment

1.6.1 Without some further structure around this process there is a risk that it will become time-consuming for local members with very little return.

## 1.7 Equality Impact Assessment

1.7.1 See 'Screening for equality impacts' table at end of report

## 1.8 Recommendations

1.8.1 **CABINET** is **RECOMMENDED** to **APPROVE** the proposals at section 1.3 for ensuring that local members can effectively engage as designated persons.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Janet Walton

Nil

Steve Humphrey

Director of Planning, Housing and Environmental Health

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	If approved, the potential equality impacts of members engaging as designated persons will be more fully explored as part of the training process proposed at section 1.3.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	See above.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*