



Housing complaints – the role of designated persons

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The *Localism Act 2011* provided for a new approach to dealing with complaints by social tenants against their landlords. These provisions came into force on 1 April 2013. The aim is for councillors, tenant panels and MPs (“designated persons”) to play a more active role in resolving complaints at the local level. Referral of a complaint to a designated person will normally only take place once the landlord’s complaints procedure is exhausted.

The only legally defined powers of designated persons are to refer complaints from social housing tenants to the [Housing Ombudsman](#). The *Localism Act 2011* also provided for the creation of a single Ombudsman for complaints concerning the landlord function in social housing. On 1 April 2013 the Local Government Ombudsman’s (LGO) role in investigating complaints from local authority tenants and leaseholders about their landlords was taken over by the [Housing Ombudsman](#). The LGO has retained responsibility for complaints about authorities’ wider activities, such as discharging their duties towards homeless households, housing allocations and Housing Benefit. Complaints remaining within the jurisdiction of the LGO are not affected by the introduction of “designated persons”.

The “designated persons” role is new – the National Tenant Organisations suggest that “it will require the imagination of local people coming up with new ideas to make it effective.”

The Chartered Institute of Housing together with other housing organisations has developed a series of designated person [FAQs](#) which can be accessed online.

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Contents

1	Background	2
2	The <i>Localism Act 2011</i>	2
3	Tenant panels, MPs and councillors	4
4	Aims and role of designated persons	5
5	Dealing with formal complaints	6

1 Background

The Government's approach to tackling social tenants' complaints is linked to the issue of regulating the social housing sector. The October 2010 [Review of social housing regulation](#) proposed an "enhanced role for the ombudsmen" in the light of their "trusted role in dealing with individual service failings." The Review also considered whether there was scope for increased involvement by councillors and MPs in resolving complaints locally:

We concluded that there was scope to increase democratic involvement in complaints and that this would have a benefit, over time, of councillors and MPs becoming more expert at using their influence to stop complaints arising and resolve those that do at an earlier stage. Tenant panels could carry out a similar function. We therefore propose that **tenants should contact MPs, Councillors, or a tenant panel** once the landlord's complaint procedure has been exhausted, and that **MPs/Councillors/tenant panels should intervene in order to attempt to resolve the problem and only then refer the complaint on to the Ombudsmen if the matter cannot be resolved.**

We anticipate that the majority of tenant complaints will be resolved at the local level.¹

[Local decisions: a fairer future for social housing](#) confirmed the Government's intention to give MPs, elected councillors and tenant panels an enhanced role in the complaints process.²

2 The *Localism Act 2011*

The *Localism Act 2011* has amended Schedule 2 to the *1996 Housing Act* to provide that, with certain limited exceptions, only a "designated person" may refer a complaint concerning a social landlord to the Housing Ombudsman. A designated person is either an elected councillor, MP or designated tenant panel. A "designated tenant panel" is a group of tenants recognised by a social landlord "for the purpose of referring complaints against the social landlord." More than one tenant panel can be recognised by a landlord for complaints purposes. If no tenant panel is recognised by a particular landlord the only designated persons that the landlord's tenants can access will be councillors or MPs.

Thus the Act has created a "filter" process for complaints to the Housing Ombudsman service. Section 180 of the 2011 Act is reproduced below:

Complaints must be referred by designated person unless paragraph 7B applies

¹ CLG, [Review of social housing regulation](#), October 2010, para 4.5

² CLG, [Local decisions: a fairer future for social housing](#), November 2010, para 8.9

7A (1) A complaint against a social landlord is not “duly made” to a housing ombudsman under an approved scheme unless it is made in writing to the ombudsman by a designated person by way of referral of a complaint made to the designated person.

(2) Sub-paragraph (1) is subject to paragraph 7B (complaints that need not be made by way of referral).

(3) For the purposes of this paragraph “designated person” means—

(a) a member of the House of Commons,

(b) a member of the local housing authority for the district in which the property concerned is located, or

(c) a designated tenant panel (see paragraph 7C(1)) for the social landlord.

(4) Before making a referral under sub-paragraph (1), a designated person must obtain written consent from the complainant or the complainant’s representative.

(5) Sub-paragraphs (6) and (7) apply if under sub-paragraph (1) a designated person refers a complaint to a housing ombudsman.

(6) If the ombudsman decides— (a) not to investigate the complaint, or

(b) to discontinue investigation of the complaint,

the ombudsman must prepare a statement of reasons for that decision and send a copy of the statement to the designated person.

(7) If the ombudsman completes investigation of the complaint, the ombudsman must inform the designated person of—

(a) the results of the investigation, and

(b) any determination made.

(8) In sub-paragraph (3)(b) “district” in relation to a local housing authority has the same meaning as in the Housing Act 1985.

The circumstances in which a referral to the Housing Ombudsman does **not** have to be made by a designated person are set out in paragraph 7B of section 180:

Complaints that need not be made by way of referral by designated person

7B (1) Paragraph 7A(1) does not apply in relation to a complaint against a social landlord made to a housing ombudsman under an approved scheme if the ombudsman is satisfied that—

(a) the social landlord has procedures for considering complaints against the social landlord,

(b) the matter that forms the subject of the complaint has been submitted to those procedures,

(c) those procedures have been exhausted, and

(d) the complaint has been made to the ombudsman after the end of the eight weeks beginning with the day on which those procedures were exhausted.

(2) Paragraph 7A(1) does not apply in relation to a complaint against a social landlord made to a housing ombudsman under an approved scheme if—

(a) the ombudsman is satisfied that a designated person—

(i) has refused to refer the complaint to a housing ombudsman under an approved scheme, or

(ii) has agreed to the complaint being made otherwise than by way of a referral by a designated person, and

(b) the refusal, or agreement, is in writing or the ombudsman is satisfied that it has been confirmed in writing.

(3) Paragraph 7A(3) (meaning of “designated person”) applies also for the purposes of sub-paragraph (2).

3 Tenant panels, MPs and councillors

MPs and councillors automatically become a designated person as soon as their term of office starts; they stop being a designated person when their term ends.

It is up to a local authority’s councillors (or a particular political party in the local authority) to decide whether tenants’ interests would be best served by identifying one or more specific councillors to act in the designated person role – where this approach is adopted other councillors will refer complainants to the identified councillor(s).

A tenant panel is “designated” when a landlord recognises it for purposes of referring complaints. The landlord should notify the Housing Ombudsman that it has recognised the panel(s). A tenant panel stops being “designated” if the landlord “de-recognises” it. Landlords are required through the [Tenant Involvement and Empowerment Standard](#)³ to support the formation and activities of tenant panels, including those set up for the purposes of dealing with complaints.

Options for tenant panel arrangements are set out in [Tenant Panels: Options for Accountability](#) published by National Tenant Organisations.⁴ Sample “terms of reference” for a designated tenant panel can be downloaded [here](#).

Social landlords are under a regulatory requirement to support the formation and ongoing activities of tenant panels. This support should be sufficient to enable tenants to consider complaints independently of the landlord, including:

- set up and recruitment support
- access to training
- secretarial and administrative support
- publicity to the tenant constituency of the existence and contact details for the panel

³ See page 17

⁴ Made up of the Confederation of Co-operative Housing (CCH), the National Federation of Tenant Management Organisations (NFTMO), Tenants & Residents Organisations of England (TAROE) and the Tenant Participation Advisory Service (TPAS).

- support regarding indemnity and insurance issues

4 Aims and role of designated persons

The National Tenant Organisations, supported by funding from CLG, published a guide entitled *Resolving Complaints Locally: your role as a designated person*. The guide describes the aim of designated persons:

... to contribute to getting housing problems sorted out locally. It is about you:

- using your local knowledge, contacts and relationships to work with tenants and landlords to find local solutions at the earliest possible occasion
- being able to constructively challenge landlords and tenants so that they can sort things out for themselves wherever possible
- being part of a local democratic framework providing support to tenants and being relevant to ordinary people and communities
- building up local knowledge to give feedback to help landlords improve their complaints handling

The designated person's role is described as:

... assisting in resolving tenant complaints. You are there to provide a fresh and independent perspective on problems. You will play a critical friend role - suggesting views and approaches that may not have been considered by tenants or landlord staff and others in the handling of complaints.

Designated persons are not intended to be a tribunal, to carry out the role of the Ombudsman or to be an additional stage in a landlord complaints procedure. Your role is to facilitate the local resolution of complaints.

Your role will be impartial - acting as honest broker and constructively challenging both "sides". Your role may be to express your opinion:

- to a tenant that they have been through all stages of a complaint - it has been properly handled and the nature of the complaint suggests that there's little to be gained by them pursuing it further
- to a landlord that it has not followed procedures correctly or the procedures are inappropriate, and it should acknowledge and do something about the mistake as soon as possible
- to either party that, even if the tenant or landlord is right or wrong about the facts of a complaint, they could have handled it better

If you consider that you cannot help to resolve a complaint locally, and if the complainant authorises you to do so, part of your role as a designated person is that you can refer the complaint to the Housing Ombudsman.

In *Resolving Complaints Locally: your role as a designated person* the National Tenant Organisations suggest that designated persons may participate in using the learning gathered from complaints to help improve services:

You could let the landlord know your views about how policies and procedures could be changed to prevent complaints arising again. Making helpful suggestions may be a particularly important part of the designated person role.

5 Dealing with formal complaints

Resolving Complaints Locally: your role as a designated person provides advice for designated persons in dealing with formal complaints:

A complainant makes contact

If not...

Is the complainant a constituent of yours? If you are a tenant panel, has the complainant's landlord recognised you as a designated tenant panel?

You may wish to offer the complainant advice about how they can progress their complaint, but you will be unable to contact the landlord

Is the complainant able to progress their complaint themselves?

If the complainant is particularly vulnerable, then you will need to make a sensible judgement about ensuring they get the support they need.

Has the complainant raised the matter with the landlord?

You may wish to offer advice, but you should suggest that the matter needs to be raised with the landlord.

Has the landlord informed the complainant that their internal procedure has been concluded? Is it more than six months since the issue complained about took place? Is it more than six months since the landlord's complaints procedure has been exhausted?

You may wish to offer advice, and with the complainant's agreement, you may wish to contact the landlord. You may refer the matter to the Ombudsman, but under his "scheme" (see note 14), he will not normally consider it until the landlord's procedure has been exhausted. His scheme also sets out a number of other circumstances where he will not normally consider a complaint.

Has the complainant told you about other designated persons they have approached?

You may tell the complainant that knowing about other steps they have taken will help you consider how you can help.

Does the complainant authorise you to approach other designated persons about their complaint?

You may tell the complainant that not being able to discuss the complaint with other designated persons may make it harder for you to resolve.

If appropriate contact other designated persons to discuss the complaint and any previous action taken.

Does the complainant authorise you to act on their behalf with regards the complaint?

You may still give them advice but you will have to tell them that you are unlikely to be able to discuss the complaint with anyone else.

The landlord will not discuss the complaint

Does the complainant authorise their landlord to release personal information about the complaint to you?

The landlord will not be able to discuss the complaint with you.

Make sure you agree with the complainant what action you are going to take. Make contact with the landlord about the complaint. Maintain dialogue with the complainant and agree any ongoing action.

Has it been possible to resolve the complaint locally?

Exercise judgment about referring the complaint to the Ombudsman

The [FAQs](#) published by the Chartered Institute of Housing in association with several other housing bodies also provide helpful advice for designated persons.