

Select Committee	Housing Select Committee		
Report Title	The Localism Act 2011 – six month review of complaints about social housing		
Wards	All	Item No.	9
Contributors	Corporate Complaints Manager		
Class	Part 1	Date	4 December 2013

1. Summary and Purpose of this report

- 1.1 The Localism Act 2011 introduced changes to the way complaints against a social landlord are handled. The purpose of this report is to provide an overview of the changes to the way that social housing complaints has been dealt with, since 1 April 2013 whilst highlighting the impact the changes have had on the Council.
- 1.2 From 1 April 2013, the responsibility of dealing with complaints about social landlords, including Arm Length Management Organisations (ALMO's) fell under the jurisdiction of the Housing Ombudsman Service.
- 1.3 The Localism Act 2011 introduces changes to the way complaints against social landlords are handled prior to referral to the Housing Ombudsman Service. The referral to the Housing Ombudsman (HO) must now be through a 'designated person' (DP) in writing, once the landlords' existing complaints procedure have been exhausted. A designated person can be a Member of Parliament, a local councillor or a Tenant Panel.
- 1.4 In order to manage this process efficiently it was proposed at housing select committee on the 6 March 2013, that the Chair of Housing Select Committee would undertake the role of the statutory "designated person". In addition, two other members of the Housing Select Committee would need to be appointed to ensure that this role can continue in the Chairs absence, or if there is a conflict of interest regarding a particular complaint.
- 1.5 All other housing complaints, for example complaints about homelessness issues, allocation policy etc. would continue to be dealt with by the internal complaints process and if the complainant remains dissatisfied, they would be advised to approach the Local Government Ombudsman as is currently the case.

2. Recommendations

Members are recommended to:

- 2.1 note the contents of the report.

3. Housing Ombudsman Scheme

- 3.1 On 1 April 2013 the new process for complaints handling, as outlined in the Localism Act 2011, came into effect, in order to bring all social landlords under the jurisdiction of the Housing Ombudsman (HO). The intention is that it will provide a consistent approach in the handling of complaints for residents whether their landlord is a council or housing association. This will also include complaints from leaseholders of social landlords and the Council's managing agents; for example, Lewisham Homes and Regenter B3. However, complaints from leaseholders disputing their service charges will not be considered under this process but will instead be considered by a Leasehold Valuation Tribunal (LVT) as is currently the case.
- 3.2 The intent of the Housing Ombudsman Scheme is to add value to the complaints process with a focus on resolving complaints at a local level wherever possible. The HO's approach will be outcome focussed and may consider wider issues than those raised by the complainant. In order to ensure that localism is at the centre of the process, the HO may refer cases back to the 'designated person' for resolution.

4 Designated Person

- 4.1 The Localism Act 2011 states that tenants of housing associations, local authorities, and ALMO's will be able to ask for their complaints to be considered by a 'designated person' (DP) once the complainant has exhausted their landlord's internal complaints procedure. By introducing the role of the DP the intention is to involve local politicians and local people in resolving local housing issues.
- 4.2 A DP can be an MP, a local Councillor, or a Tenant Panel. Landlords do not have to set up tenant panels but they are expected to support their formation and activities if their tenants want them.
- 4.3.1 Prior to the 1 April 2013, both Lewisham Homes and Regenter consulted with their residents and/or Board members to ascertain whether they would be interested in their organisations having a Tenant Panel. Feedback from these discussions concluded that a Tenant Panel will not be set up in their organisations, at this time but would be reviewed following the changes being implemented on the 1 April 2013.
- 4.4 A report was taken to Housing Select Committee (HSC) on 6 March 2013. The report noted; the chair of the housing select committee to act as the main Designated Person and the remaining members of the HSC will act as designated people where there is a conflict of interest or the chair is unavailable.
- 4.5 The corporate complaints team has been offering administrative support to the DP. This includes monitoring the dedicated email account set up to receive DP referrals.

5. Progress so far

- 5.1 Since the implementation of the new changes, eight cases have been received via the dedicated email box for the DP. Of the 8 cases referred, 7 residents complained about their landlord and 1 resident made a compliment about the caretaking service at Sydenham Park hostel.
- 5.2 Four out the seven DP referrals related to Lewisham Homes, two for Pinnacle and one for London and Quadrant (L&Q).
- 5.3 The complaints received for Lewisham Homes varied from damp, leaking guttering, cutting back a tree in the back garden and internal repairs to the kitchen and bathroom.
- 5.4 The complaints received for Pinnacle were relating to damp and major works. Whilst the complaint received for L&Q related to anti social behaviour issues.
- 5.5 Although 8 cases were received in the dedicated designated email box, only two had exhausted the landlords internal complaints procedure. As such, each of the other cases were referred to the appropriate landlord for them to investigate via their internal complaints process.
- 5.6 It is felt that the arrangement that has been put in place appears to be working and no changes are recommended at this point. However, the process will be reviewed in March 2014 and the committee will be updated in April 2014.

6. Case studies

- 6.1 To date, two legitimate cases have been received by the DP. One case falls under the remit of Lewisham Homes and the other case falls under the remit of Regenter. More detailed information on the cases can be found below.

Case study 1

- 6.2 Mr B is a leaseholder of a property at Mandarin Court, Deptford, SE8.
- 6.3 Since purchasing the lease, Mr B has raised several issues relating to the property, the block and the surrounding areas. His complaints included; leaking guttering, delay in repairing a faulty window latch and delay in replacing communal lighting.
- 6.4 The complainant made a stage 1 complaint on 16 April 2013 and escalated his complaint to stage 2 and 3 on the 10 May 2013 and 12 June 2013, respectively. The Independent Adjudicator (IA) concluded her investigations on 23 July 2013. On the issue of the leaking guttering, the IA concluded that she was satisfied that Lewisham Homes had carried out the necessary checks on the guttering and that no faults had been detected.

- 6.5 On 4 August 2013, Mr B made a referral to the DP but stated that he only wanted to escalate his complaint about the leaking guttering.
- 6.6 The DP carried out a joint site visit with representatives from the Council and Lewisham Homes to investigate the complaint further.
- 6.7 A Council Officer also attended Mandarin Court at a later date and established that the gutters were leaking from several places. These findings were given to Lewisham Homes who have accepted them.
- 6.8 The site visit also identified that the gullies on the walkway were blocked from debris and the DP asked Lewisham Homes to have the gullies jetted.
- 6.7 Based on these findings, the DP upheld the complaint and asked Lewisham Homes to write to the complainant within two weeks with an apology, as well as a timeframe when the remedial works will be carried out, to rectify this matter.

Case study 2

- 6.8 Mr P is a leaseholder of Elm Court, Brockley, SE4
- 6.9 Mr P has raised several issues relating to his property and his block, in general. Some of the issues Mr P complains about includes; substandard works, such as, poor electrical installation, poor signage, cracks to walls/ flooring due to the major works carried out and poorly repaired walls.
- 6.10 Mr P made a stage 1 complaint on 22 October 2010 and escalated his complaint to stage 2 and 3 on the 14 February 2011 and 1 July 2011, respectively. The Independent Adjudicator (IA) concluded her investigations on 11 August 2011. The IA concluded that the matters raised by Mr P were in fact resolved. The IA also advised Mr P that all leaseholders have the right to approach the Leasehold Valuation Tribunal (LVT), if they felt that their landlord is providing a poor service under the terms of their lease.
- 6.11 Mr P made a joint application to the LVT, along with other Brockley leaseholders, on 23 January 2013.
- 6.12 The case was heard by the LVT on 10 April 2013 and the LVT did not uphold any of Mr P's issues raised.
- 6.13 On 9 October 2013, Mr P made a referral to the DP regarding his outstanding issues.
- 6.14 The DP met with the Partnerships and Service Improvement Manager on 12 November 2013, to discuss the case and obtain an update of the current situation.
- 6.15 At that meeting it was concluded that a joint site visit would be carried out on 27 November 2013. Senior managers from Regenter, the DP and Mr P will be

in attendance to establish the outstanding issues and then propose a solution.

7. Comparisons between the Registered Social Landlords within Lewisham and other Local Authorities

7.1 As part of the review, the Council liaised with 15 local authorities and RSLs (detailed in Appendix 1) to find out what impact the implementation of the new changes had made.

7.2 Further details of the ten landlords that responded are listed in the table below.

Organisation	Volume of referrals	Internal complaints process exhausted	Decision reviewed by DP	DP referred to HO	Tenant Panel?
Bromley	Bromley do not own any housing stock.	n/a	n/a	n/a	n/a
Croydon	None	n/a	n/a	n/a	No
Family Mosaic	One	n/a	n/a	One	Yes
Hackney	Six	Yes	Three	One	No
Hexagon	None	n/a	n/a	n/a	No
Hyde Housing	None	n/a	n/a	n/a	No
Islington	One	Yes	n/a	One	No
L & Q	One	Yes	Still under investigation	No	No
Lewisham Homes	One	Yes	Yes	No	No
Phoenix	None	n/a	n/a	n/a	No
Regenter B3	None	n/a	n/a	n/a	No
Southwark	Two	Yes	No	No, but HO received and accepted 2 cases as were over 8 weeks.	No

7.2.1 The table illustrates that the volume of referrals made to the Designated Person, varied from zero to six.

7.2.2 Only one out of the ten landlords has set up a Tenant Panel.

7.2.3 Two cases have been referred to the Housing Ombudsman by the Designated

Person. Two cases were accepted by the Housing Ombudsman, without the intervention of the Designated Person, as 8 weeks had lapsed.

8. Financial Implications

8.1 There are no direct financial implications arising from this report.

9 Legal Implications

9.1 The Housing Ombudsman Scheme is an approved national scheme, pursuant to s.51 of and Schedule 2 to the Housing Act 1996, as amended by section 180 of Part 6 to the Localism Act 2011. The national Scheme came into effect on 1st April 2013.

9.2 The Council, as a Local Housing Authority in England (being a registered provider of social housing) is a “social landlord” (s. 51(2) of and Schedule 2 to the Housing Act 1996) and therefore must be a member of the Housing Ombudsman Scheme in connection with:

1. our housing activities, re: provision or management of social housing; and
2. the management of dwellings which the Council owns and lets on any long leases.

9.3 As a condition of membership of the Scheme, a member must:

- Agree to be bound by the Scheme
- Establish and maintain a complaints procedure
- As part of that complaints procedure, inform complainants of their right to bring complaints to the Housing Ombudsman under the Scheme and
- Publish its complaints procedure and its membership of the Scheme, and make information about them available to those entitled to complain to the Housing Ombudsman.

9.4 Under the Scheme, “a Complaint against a social landlord is not “duly made” to a housing ombudsman ... 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”. (para 7A(1)). Complaints must be referred by a designated person unless any of the specific exceptions set out within paragraph 7B applies. See numbered paragraph 11.7 below for the exceptions.

9.5 A designated person under the scheme means:

- 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 tenants panel for the social landlord.

9.6 The published draft Housing Ombudsman Scheme states that “A designated person will help resolve the complaint in one of two ways; they can try and

resolve the complaint themselves or they can refer the complaint straight to the Ombudsman.

9.7 Complaints that do not need to be made by way of referral by a designated person are those, which meet any of the exceptions specified within para. 7B(1) or 7B(2), as follows:-

- 7B(1) paragraph 7A(1) does not apply in relation to a complaint against a social landlord made to a housing association 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,
 - © 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.

- 7B(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.”

9.8. Decisions of the Ombudsman may become enforceable as if they were orders of the Court, pursuant to anticipated secondary legislation.

9.9 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.10 In summary, the Council must, in the exercise of its functions, and therefore when handling complaints under the Housing Ombudsman Scheme, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

9.11 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

9.12 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

9.13 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

9.14 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice.

Further information and resources are available at:
<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

10 Equalities Implications

10.1 The iCasework system enables the Council to collect equalities monitoring information which is used to ensure the complaints process remains accessible and that no particular parts of the community suffer injustice in service delivery. No specific issues have been identified.

11. Environmental Implications

11.1 There are no environmental implications to this report.

12. Conclusion

12.1 It is proposed that the contents of this report are noted.

13 Background documents and originator

13.1 There are no background documents to this report.

13.2 If you require more information on this report please contact Jennifer Greaux, Corporate Complaints Manager on 0208 314 6340.

Appendix 1 - Comparisons between the Registered Social Landlords within Lewisham and other Local Authorities

Housing Provider	How many referrals have you received via the designated person? Was any received via a tenants panel?	Was the decision changed as a result of the intervention of the DP?	How many cases were referred to the Housing Ombudsman? Was the case referred straight away or did the DP make a decision on the case first?	Did the Housing Ombudsman overturn the decision?
Bromley	Bromley doesn't have any housing stock – complaints are directed to the relevant housing association	n/a	n/a	n/a
Croydon	None and we do not have a tenants panel currently	n/a	n/a	n/a
Family Mosaic	We have had only one such request. We have our own designated panel (3 tenants).	n/a	We have had only one such request and this resulted in a referral by the DP to the Ombudsman (we don't know whether they have accepted this for review yet).	unknown
Hackney	<p>A total of 6 requests have been received:</p> <p>5 requests made to our designated person from complainants who have exhausted the Council's complaints procedure.</p> <p>1 request made to our designated person from another Registered Provider – DP decision: referred to HOS</p> <p>Hackney does not use a tenants' panel.</p>	<p>3 cases were reviewed by our DP and intervention taken – in each case a nominal increase in compensation was offered to the complainant together with action by the DP to raise and progress matters at the highest level of the organisation (Hackney Homes, our Arms Length Management Organisation).</p> <p>2 of the 3 complainants accepted the revised offer made by the DP</p> <p>1 complainant refused the revised offer and continued to pursue the matter with the Housing Ombudsman</p>	<p>3 of the total of 6 cases were referred to the Housing Ombudsman:</p> <p>2 cases received from Council tenants were referred direct to the Ombudsman following a review of the paperwork by the DP and his decision that his intervention could add nothing further to the Council's investigation and resolution of the matter.</p> <p>1 case was reviewed and intervention taken by the DP, however the new offer was not accepted by the tenant and he has subsequently approached the Housing Ombudsman direct.</p> <p>1 case received from the tenant of an external Registered Provider</p>	<p>1 of the cases we forwarded to the Housing Ombudsman was subsequently returned by both the HOS & the LGO as being outside both of their jurisdiction (it was from a private landlord who was not in tenant/landlord relationship with a member of the HOS scheme). It would be interesting to hear if anyone else has had experience of this as it appears that a private landlord or indeed a resident may not have an opportunity to pursue a complaint</p>

Housing Provider	How many referrals have you received via the designated person? Was any received via a tenants panel?	Was the decision changed as a result of the intervention of the DP?	How many cases were referred to the Housing Ombudsman? Was the case referred straight away or did the DP make a decision on the case first?	Did the Housing Ombudsman overturn the decision?
			was referred direct to the Ombudsman by the DP having reviewed the paperwork received from the tenant – which included his landlord's responses. We are not aware of the decision of this case.	made against the Council In the other case the HOS agreed with the Council's decision – no maladministration and case closed.
Hexagon	None	n/a	n/a	n/a
Hyde Housing	None	n/a	n/a	n/a
Islington	Only 1 so far. We don't have tenant panels	DP referred it on to HOS	only one so far.	No decision yet
L & Q	One resident has approached Designated person councillor with no feedback as yet. No tenant panel referrals	No decision has been notified as yet.	No cases referred to Housing Ombudsman since April 13	n/a
Lewisham Homes	1 referral. No Tenant Panel set up	Yes	No cases referred to Housing Ombudsman since April 13	n/a
Phoenix	We received no referrals via the designated person or a tenants panel	n/a	One case went to the Ombudsman but was not considered by them as the person had not completed our complaints policy or been to a tenants panel or designated person	n/a
Regenter B3	None	n/a	n/a	n/a
Southwark	So far two cases have been referred to us by designated persons but probably not in the way intended by the Localism Act. One Councillor contacted us as she was confused by her role as a DP and felt she didn't have enough complaints experience or knowledge to be	So far no, based on above, as no real intervention	We have two cases, both of which I think the HO took as over the 8 weeks. However they seem to be very ad-hoc in their dealings. We were led to believe that they were taking cases where the final response was sent after 01 April	We are still waiting for updates on all of these, so far have not had much in the way of outcomes from them. There was one case where we had declined

Housing Provider	How many referrals have you received via the designated person? Was any received via a tenants panel?	Was the decision changed as a result of the intervention of the DP?	How many cases were referred to the Housing Ombudsman? Was the case referred straight away or did the DP make a decision on the case first?	Did the Housing Ombudsman overturn the decision?
	<p>helpful. We explained the role of the DP to her and gave her some more info (we did of course do member briefings in March). We also clarified the current position with the complainant. It was a complex complaint involving major works and the home ownership team and was from a regular complainant. Some issues were resolved and others had gone to LVT so would have been out of jurisdiction. On another case, we got a letter from a local MP and again it appeared that he wasn't really clear what his duties were as just referred it over to us, didn't make any recommendations etc.</p> <p>We don't have a tenants panel, we are looking into using our arbitration panel in an amended format and colleagues have done some work on consultation with our Homeowners and Tenants Councils however there is little appetite from them for this and attendance at working parties has been very poor. I think this is likely not to progress in light of this.</p>		<p>however they have been taking cases which had final responses sent before that and when I asked them, they seemed to basically take whatever comes their way! One of the cases is a regular complainant where major works are taking place on his block and the works are significant, we also had a serious incident there and ended up sacking the contractor so lots of issues on that one. The other is a complainant who has a number of issues but basically boils down to compensation, she isn't happy with what we've offered. A couple of others they've asked for information such as tenancy agreement and copies of various policies along with complaint responses to determine if they are going to investigate.</p>	<p>as the complainant wanted compensation for personal items damaged in a leak. They've then gone to the HO who rang me and the complainant is now alleging that the ceiling is damaged as a result of this leak and so I agreed we would go and inspect and take it from there. Completely different to the actual complaint however</p>

