

CABINET

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IMPLICATIONS OF THE LOCALISM ACT 2011 FOR DEALING WITH LANDLORD SERVICES COMPLAINTS

Portfolio Holder: Councillor Howard Doe, Housing and Community Services

Report from: Stephen Gaimster, Assistant Director, Housing and Regeneration

Author: Katherine Bishop, Community Development Officer

Summary

This report sets out changes in the way complaints from our Housing Revenue Account (HRA) tenants are handled, as introduced by the Localism Act 2011.

From April 2013 the Housing Ombudsman rather than the Local Government Ombudsman will investigate complaints from HRA tenants, once they have exhausted the Council's internal complaints process. The Act also requires complaints to pass through a 'democratic filter'.

1. Budget and Policy Framework

1.1 The HRA Business Plan supports the Council's Housing Strategy, is consistent with the Council's Plan in understanding customers' needs, and is in-line with the Council's budgetary framework. Investigating housing complaints can help to identify areas in which the Council could improve the services it provides to its housing tenants. The information captured during the investigation of housing complaints also helps the Council to monitor the performance of its contractors, which provide a responsive repairs service to tenants.

2. Background

2.1 At present all housing complaints are investigated under the Council's Complaints procedure. The number of complaints received by Housing Services between April 2012 and 2013 is detailed in Appendix 2.

2.2 With effect from 1 April 2013, the Localism Act 2011 has put in place new arrangements for dealing with complaints from social tenants (tenants and leaseholders) against their landlords; including HRA tenants complaints about the Council's Landlord Service. Councillors, tenant panels and MPs ("designated persons") will have the opportunity to play a more active role in

resolving complaints at a local level. Appendix 1 shows how to refer complaints as from 1 April 2013, including referral to the Housing Ombudsman after exhausting stages 1 and 2 of the complaints process.

- 2.3 A tenant or leaseholder who has exhausted the Council's internal complaints procedure and remains unhappy with the response to their complaint can ask a 'designated person' to refer their complaint to the new Office of the Housing Ombudsman. This referral must be made in writing, either by letter, email or via the Housing Ombudsman's website.
- 2.4 A 'designated person' can be any Member of Parliament (MP) or Councillor from the local housing authority district or there can be a designated tenant panel, i.e. a group of tenants that is recognised by a social landlord for the purpose of referring complaints against the social landlord. The designated person or designated tenant panel will consider a complaint once the Council's complaints procedure has been exhausted and will be expected to decide whether or not to refer the complaint to the Housing Ombudsman.
- 2.5 If the tenant or leaseholder does not want to have their complaint considered by a 'designated person' they can refer their complaint directly to the Housing Ombudsman, if they are prepared to wait a period of eight weeks from the date on which they completed the Council's complaints procedure. In addition, if a 'designated person' refuses to refer the complaint to the Housing Ombudsman and puts their decision in writing, then the Housing Ombudsman will consider the complaint without requiring a referral from a 'designated person' or needing to wait for eight weeks.

The role of the Designated Person

- 2.6 An MP or Councillor, in areas that include Medway Council housing stock, would automatically become a designated person as soon as their term of office starts, and cease the role when it ends.
- 2.7 An MP or Councillor is unable to opt out of the role of designated person but may refuse to investigate individual complaints. The Localism Act states that the Landlord cannot restrict how MPs or Councillors carry out their role as designated persons.
- 2.8 One option locally to consider is for a defined group of members to be identified as the designated person(s) and a panel of these be set up. This would not exclude any other MPs or Councillors who may wish to also undertake the role of the designated person, should a case be referred to them in writing.
- 2.9 A designated person has no legal authority over Council housing policies or procedures and may only make recommendations to find a resolution locally, or refer directly to the Housing Ombudsman.
- 2.10 The designated person or panel would be provided with a complaints pack for review.
- 2.11 Once a complaint to a designated person is received in writing, a designated person can act in one of three ways;

- Try to resolve the complaint themselves locally.
 - Refer the complaint straight to the Housing Ombudsman (within 8 weeks).
 - Refuse to do either of the above (in which case the tenant has the option of contacting the Housing Ombudsman directly).
- 2.12 They are there to provide a fresh and independent perspective on problems. They will play a critical friend role - suggesting views and approaches that may not have been considered by tenants, landlord staff and others in the handling of complaints.
- 2.13 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. Their role is to facilitate the local resolution of complaints.
- 2.14 Their role will be impartial - acting as honest broker and constructively challenging both “sides”. Their role may be to express an 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 is 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
- 2.15 If they consider that they cannot help to resolve a complaint locally, and if the complainant authorises them to do so, part of their role as a designated person is that they can refer the complaint to the Housing Ombudsman

The role of the Housing Ombudsman

2.16 Local Resolution

The Housing Ombudsman believes that complaints should be resolved as soon as possible and through the efforts of the landlord. The Ombudsman will therefore focus on helping parties to reach a resolution themselves through the available local procedures, namely the landlord’s internal complaints procedures and the designated person. Instead of focusing advice on how to complete the complaints process, the Ombudsman will advise parties on how to take steps to resolve a particular dispute.

The Ombudsman will encourage positive relationships between landlords, tenants, leaseholders and designated persons, and if necessary will refer cases to designated persons if it is considered that this will increase the chance of achieving local resolution.

2.17 Designated persons

The Ombudsman will not have any jurisdiction over designated persons, or their means of resolution, although he or she will feed back on referrals from designated persons to encourage good practice in complaints handling.

2.18 Service failure and maladministration

In addition to findings of maladministration and severe maladministration, the Ombudsman intends to introduce a finding of service failure to reflect the lower end of maladministration. The Ombudsman will take a problem-solving approach in his or her findings and will expect landlords to play an active role in resolving the disputes being investigated.

2.19 Focus on outcomes

The Ombudsman will only investigate complaints where he or she can add value that would not be achieved through local resolution, and will therefore consider the possible outcomes of investigation when deciding whether, or how, to consider a complaint. In particular he or she will investigate cases where there is some evidence that the complainant has experienced 'significant adverse affect'. At the end of the process the Ombudsman may make orders and recommendations with a view to putting things right for the individual complainant either through improved performance or compensation.

2.20 Time limits

The Ombudsman will not consider complaints that are brought to his or her attention more than six months after the complainant has exhausted their landlord's complaints procedure, since it is believed that reducing the length of the entire complaints process is beneficial to all those involved. The Ombudsman is keen to prevent excessive delay in dealing with complaints at any stage of the process.

3. **Options**

3.1 Whilst Section 180 of the Localism Act 2011 states that Landlords cannot restrict how MPs or Councillors carry out their role as designated person, a structure detailing the 'Designated Person' can be identified.

3.2 **Option 1 – A group of Councillors with a broad knowledge of housing issues are identified as being willing to act as designated persons. This could include an independent person. This group would comprise of Members selected to determine cross party membership.**

Advantages:

- Would provide a clear and transparent process and ensure complaints are dealt with in a fair, consistent, efficient, professional and confidential way.
- This would be easier to manage to ensure the Councillors have broad knowledge of housing issues, and could use and develop their skills in

relation to the handling of often sensitive and complex complaints to help seek local resolution to disputes.

- It is proposed that the make of the political Member group be representative across the political make up of the Council on a ratio basis. Nominations will be sought from political groups.

3.3 Option 2 - A 'Designated Person Panel' is identified. This group would comprise of Members selected to determine cross party membership, a Resident representative and an Independent person.

Advantages:

- The identification of specific Members to fulfil this role will ensure that Members can be fully trained and supported by the Housing team and fully understand the operations and obligations of the Housing service prior to dealing with any complaints. This will provide a single point of contact for consistency of approach, and will leave Tenant Groups, and the local MP and Members who are free to continue in their current roles without fear of conflict of interest issues arising.
- Customers would be assured that an impartial assessment of the complaint has taken place, by the presence of an independent person on the group.
- It is proposed that the panel be representative across the political make up of the Council on a ratio basis. A resident representative would be selected from the Tenant and Leaseholder Scrutiny Panel. The independent person would be from a neighbouring local authority as part of reciprocal partnership working arrangement in exchange for an Officer from Medway undertaking a similar role with them.

Disadvantage of Options 1 and 2:

- Tenants will still have the right to go to any other Councillor if they so wish at stages 1 or 2 of the complaints process, but Members may wish to be identified for the role.

3.4 Option 3- No formal 'Designated Person' structure is identified.

All elected Councillors and MPs for Medway become a 'Designated Person'.

Advantage:

- Tenants have the right to go to any Councillor if they so wish to, even if the council decides to go for named persons. Provides a fresh and independent insight on complaints, playing a critical friend role suggesting views and approaches.

Disadvantage:

- Provides no clear and transparent structure for the complaints process and therefore a risk that complaints are not dealt with in a fair, consistent, efficient, professional and confidential way. Ensuring all these Councillors have the appropriate understanding of housing issues would be complicated and difficult to manage.

3.5 **Option 4: A sole person is identified for the role of Designated Person.**

Advantage:

- A single contact is specifically trained to deal with all complaints.

Disadvantage:

- Potential for a lack of independence or fresh insight into each complaint.
- The availability of the Designated Person to review complaints.

4. **Advice and analysis**

- 4.1 Under the Act, the Council must give the Ombudsman the contact details for every designated tenant panel they have recognised. The Ombudsman will keep a national register and will provide publicly available information on designated tenant panels.
- 4.2 The Ombudsman will require the Council to provide a means of contact with the tenant panel that is independent of the landlord (possibly an e-mail address that is only accessed by the designated tenant panel).
- 4.3 The Council will need to consider what training it should offer the tenants or Councillors who become members of this panel. In particular, it is suggested that the panel will require training on the need to maintain confidentiality of personal information at all times, how to deal with any conflicts of interest, and on best practice in complaints handling and investigation. However, the extent to which the panel will become involved in tenants' complaints is difficult to predict. It is possible that some complainants may be deterred from approaching tenant complaints panels due to concerns about sharing confidential information with other residents and possibly neighbours.

5. **Risk management**

- 5.1 The primary risk and influencing factors are issues of confidentiality and the handling of personal information. There is also the potential for lack of independence if a Councillor has previously assisted a tenant with a number of complaints.

Risk	Description	Action to avoid or mitigate risk
Lack of Consultation	<p>It is expected that the Council will have a clear audit trail for how they agreed with their tenants the process for recognising designated tenant panels.</p> <p>It makes good business sense for the Council to support tenant panels, recognising that the Council can deliver more efficient and effective services that meet tenants' needs by providing opportunities for panels to scrutinise performance, shape services, take decisions and resolve complaints.</p>	In dealing with particular complaints, the Ombudsman may criticise landlords if there is not a clear audit trail for the involvement of tenants in decision-making about designated persons or if a designated tenant panel is not sufficiently enabled to contribute independent views to the local resolution of complaints.
Lack of training for Designated Person (or Tenant Panels).	The Council should play a facilitatory role in helping designated persons to achieve beneficial outcomes for tenants by ensuring they receive good quality training and support through establishing a strong partnership with the designated person.	Designated Persons are provided with adequate training regarding the Housing Complaints process and local resolution of complaints.

6. Consultation

- 6.1 Consultation is currently underway with Focus Groups to ascertain if tenants wish a Tenant Panel to be established.
- 6.2 An article has been placed in the Tenant and Leaseholder magazine, Housing Matters.
- 6.3 Tenants and Leaseholders have received training regarding the role of the designated person and the remit of Tenant Panels.

7 Regeneration, Community and Culture Overview and Scrutiny Committee

- 7.1 The Regeneration, Community and Culture Overview and Scrutiny Committee considered this report on 27 June 2013. The Committee asked how the new system would work if option 2 were to be adopted. Officers advised that once a complaint about housing landlord services has been through stages 1 and 2 of the Council's Corporate Complaints Procedure the Localism Act stipulates that complaints may only then be referred to the housing ombudsman if a "designated person" agrees to make the referral. The definition of a "designated person" is an MP, a member of Medway Council or a Designated Tenant Panel. The Committee was advised that there were limited circumstances under the Act where the housing ombudsman would accept referrals directly from complainants; where eight weeks has elapsed from the day on which stage 2 of the complaints procedure has been exhausted or

where a designated person has refused to make a referral or has agreed to a direct approach to the Ombudsman.

- 7.2 The Committee was advised that whilst complainants will be notified they are able to approach any of the “designated persons” it was being recommended that in addition they be offered the alternative of discussing their complaint and the option of referral to the Ombudsman with a Panel of Members who will be supported (in an advisory capacity) by an Independent Person and a tenant representative.
- 7.3 The Committee discussed whether the establishment of a Designated Person Panel as recommended in paragraph 3.3 of the report (option 2) would add an additional and unnecessary layer of bureaucracy to the complaints procedures. Reference was made to the small number of housing landlord complaints typically reaching stage 2 of the complaints procedure, the work that will continue at ward level by Councillors to resolve complaints and the possible difficulty in convening a meeting of the Designated Person Panel before the expiry of eight weeks.
- 7.4 The view was expressed there may be some merit in offering the option of a Designated Person Panel particularly for complainants who feel their ward member has been unable to resolve their concerns.
- 7.5 The Committee agreed to recommend the Cabinet to adopt option 2 set out in paragraph 3.3 of the report. It was recommended that the Designated Person Panel should comprise 5 Councillors (3 Conservative members, 1 Labour member and 1 Liberal Democrat member nominated by Group Whips); that the advisory independent person should be from Gravesham Council (or another neighbouring Council) on the basis of a reciprocal arrangement with Medway and the advisory tenant representative should be nominated by the Tenant and Leaseholder Scrutiny Panel.

8 Financial and legal implications

- 8.1 It would be a breach of the regulatory standard if the Council refused to assist tenants to set up tenant panels if their proposals to set them up in a particular way were sensible and broadly supported by other tenants.
- 8.2 In order to avoid data protection breaches, the written consent of complainants for the designated person to engage with the Council regarding their complaint should be obtained in all cases. The Council should not engage with the designated person until it has been provided with a signed written agreement from the complainant authorising disclosure to the Council of all data relating to the complaint.
- 8.3 Whilst the Localism Act does not exclude any ability to create a Designated Person Panel selected from designated persons within the meaning of section 180, it must be recognised that all Designated Persons, serving Members of Parliament and Councillors are empowered to undertake this role. Every tenant or leaseholder still retains the right to refer their complaint to any designated person if they so wish.
- 8.4 Designated persons do not have any formal powers. Therefore they are unable to make decisions other than a decision to refer a complaint to the

housing ombudsman, not refer the complaint or to agree to the complaint being made otherwise than by way of a referral by a designated person. Their role has been created to facilitate resolution of tenant's complaints which may involve them in providing advice to tenants, advocacy on their behalf, discussions with the landlord or engaging with other designated persons. Their role is designed to achieve consensus between tenants and landlords.

8.5 It should also be noted that a Designated Tenant Panel referred to in Section 180 7A (3) (c) of the Localism Act is a separate entity to the proposed Designated Person Panel referred to as option 2 of this report. The Council has not yet received any request to approve a Designated Tenant Panel. The proposed Designated Person Panel is a local arrangement over and above the statutory provisions relating to complaints to the housing ombudsman.

8.6 There are no budget implications arising from this report

9. Recommendation

9.1 The Cabinet is recommended to adopt option 2 as set out in paragraphs 3.3 and 7.5 of the report and that the Designated Person Panel should comprise 5 Councillors (3 Conservative members, 1 Labour member and 1 Liberal Democrat member nominated by Group Whips) with an advisory independent person from a neighbouring Council on the basis of a reciprocal arrangement with Medway and an advisory tenant representative to be nominated by the Tenant and Leaseholder Scrutiny Panel.

9. Suggested Reasons for Decisions

9.1 This provides complainants with the option of discussing their complaint and possible referral to the housing ombudsman with a small panel of Councillors, working in their capacity as designated persons, who will build up a level of experience and knowledge of housing operations and obligations.

Lead officer contact

Katherine Bishop, Community Development Officer, Regeneration, Community and Culture

Katherine.Bishop@medway.gov.uk

01634 333201

Background papers

Chartered Institute of Housing, Frequently Asked Questions, 2013

<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Designated%20person%20FAQs.pdf>

The Regulatory Framework for Social Housing in England from April 2012

<http://www.homesandcommunities.co.uk/sites/default/files/our-work/regfwk-2012.pdf>

National Tenants Organisation, Options for Accountability, 2012

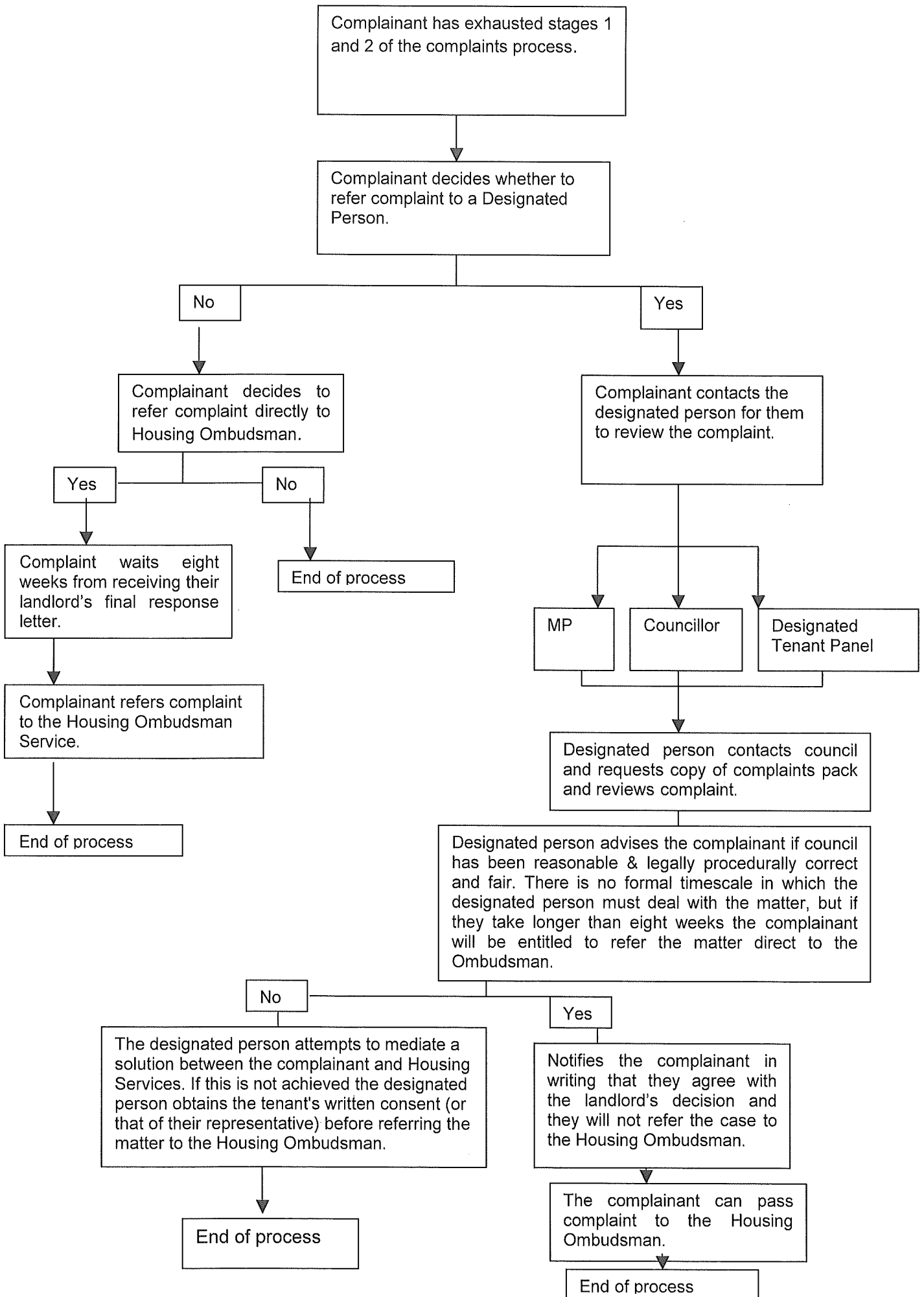
<http://nationaltenants.org/tenantpanels/>

Localism Act 2011

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

Resolving your complaints locally: Your role as a designated person, 2013
<http://nationaltenants.files.wordpress.com/2012/07/resolving-complaints-locally.pdf>

Appendix One: Complaints Process with Designated Person



Appendix Two:

Complaints received by service area – Year To Date (April 2012 – 2013).

Service Area	Stage One: Year To Date	Stage Two: Year To Date	Local Government Ombudsman: Year To Date
Tenancy Management	37.5	4	0.5
Sheltered Housing	6	1	0
Estate Services	0	0	0
Repairs	34	4	0

** NB: 0.5 of a complaint is shown where a complaint was received by more than one housing category.*