

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	<b>Meeting:</b>	<b>Cabinet</b>
2.	<b>Date:</b>	<b>18 December 2013</b>
3.	<b>Title:</b>	<b>Housing Complaints - Designated Persons, Housing Ombudsman Service and Housing Complaint procedure</b>
4.	<b>Directorate:</b>	<b>Neighbourhoods and Adult Services</b>

### 5.0 Summary

This report proposes a change to RMBC's existing three stage housing complaints process in response to new statutory requirements (Localism Act 2011) which include a right to have complaints heard by either an independent person or an independent Tenant Complaint Panel.

In order to minimise any additional burden as a result of the new statutory requirements it is proposed to retain an internal two stage process, prior to the required independent stage. In reality this is expected to affect less than a handful of cases each year. (In 2012-13 only two housing "Stage III" complaints were received.)

A summary of the changes are:

- Complaints from tenants and leaseholders now fall under the jurisdiction of the Housing Ombudsman.
- Tenants and leaseholders can refer their complaint to a MP, Councillor or Tenant Complaint Panel following the final decision by the Council.
- A new two stage complaint procedure is created to respond to complaints from tenants and leaseholders on housing matters.

### 6.0 Recommendations

That Cabinet agree to:

**6.1 Adopt a new complaint procedure for Housing as indicated in section 7.3**

**6.2 Create a protocol or memorandum of understanding between the Council and a "designated person".**

**6.3 Acceptance criteria to recognise a Tenant Complaint Panel**

**6.4 Provide a briefing to Councillors and MPs to make sure that they are aware of their new responsibilities.**

## **7. Proposals and Details**

### **7.1 The Current Housing Complaint Procedure**

Currently Housing complaints follow an internal three stage process, as follows:

**Stage I:** Service response. A Manager or Senior Officer will complete the investigation and respond within 10 working days.

**Stage II:** Independent Officer response. An officer working outside the responsible service completes the investigation and responds within 25 working days. The Director responsible is made aware of and reviews the investigation and the decision of the Independent Officer.

**Stage III:** A Members' Complaint Panel provides adjudication and the final decision. The customer has the opportunity to present their complaint in person to a panel comprising of three Councillors who have had no prior involvement in the complaint

**Beyond Stage III**, under previous guidance, complainants could then choose to present matters to the Local Government Ombudsman.

### **7.2 Changes required by new legislation**

The Localism Act 2011, effective from April 2013, introduced changes to the way complaints from tenants and leaseholders should be dealt with by the Council. The two main changes are:

#### **1. Housing Ombudsman**

Under The Localism Act there will be a single mandatory Housing Ombudsman for landlord services. Local housing authorities will become 'registered providers', which is the legal status of housing associations and other bodies registered with the regulator of social housing.

As a result, complaints against local authorities in their role as social landlords (as well as in respect of their ownership and management of leasehold housing) have since 1 April 2013 been considered by the Housing Ombudsman. Previously complaints from tenants regarding local authority housing were dealt with by the Local Government Ombudsman.

In addition, there is now a legal power for the Housing Ombudsman to enforce decisions. The Secretary of State has the ability to enable the Housing Ombudsman to apply to a court to have his determinations enforced when necessary. Previously the Local Government Ombudsman had no legal powers to enforce a decision.

Only those complaints relating specifically to the Council's housing function will be considered by the Housing Ombudsman, this represents a very small number of cases (one or two a year on average, but no full investigations were received in 2012/13). The Local Government Ombudsman will continue to consider complaints regarding Housing Allocations, Homelessness, Disabled Facility Grant Adaptations and ASB that is not caused by Council tenants, and for these matters as there is no independent panel process, it is proposed to retain the councils internal stage three panel.

## **2. 'Designated Person'**

The Localism Act 2011 has also created the new role of 'designated person' for housing complaints. The main purpose of a 'designated person' is to encourage local dispute resolution and to reduce complaints made to the Housing Ombudsman Service.

The designated person can be an MP, a local Councillor, or a recognised Tenant Panel. Tenants will now be able to request that their complaints be considered by a 'designated person' once they complete the internal procedure of their landlord. The designated person may help resolve the complaint directly, may refer the complaint to the Housing Ombudsman or may decline doing either. If they decline doing either, the complainant may approach the Housing Ombudsman directly. The complainant may also approach the Housing Ombudsman directly if more than eight weeks have elapsed since the completion of the Council's internal complaint procedure, without the need to involve a designated person first.

It will be entirely a customer's decision to do this; they will be able to make the choice between going to any of the designated persons or waiting eight weeks and making their own referral to the Housing Ombudsman. They will not be supported by the Council to do this other than being provided with general information regarding the process.

### **MP or Councillor**

A review by an MP or Councillor acting as a designated person would be straightforward to operate. The Council would discuss the issues with them and they would liaise with the tenant and provide their view following consideration of both sides of the complaint. They would also suggest possible outcomes, liaising between the tenant and the Council.

The involvement of a designated person would be after the Council complaints procedure has ended. It would not replace any part of the existing procedure. They would have no powers to enforce a decision; they would simply provide their view and if applicable suggest a possible solution.

M.P.s and elected members have since the 1 April 2013 legally had the potential to be designated persons, but briefing and advice is required to make sure that members are aware of their new responsibilities and a consistency of response is provided.

The complainant has the choice to select any MP or Councillor in the Borough, but there would be a need to avoid potential conflicts of interests. We would expect Councillors and MPs to advise tenants of any conflicts and suggest an alternative. To assist this process it is proposed to create a protocol of understanding to define basic operating procedures for MPs and Councillors, helping to define the role of 'designated person' and how the Council will respond to enquiries.

### **Designated Tenant Panel**

Under the guidance a designated Tenant Panel is one recognised by a registered provider landlord to play a formal role in resolving complaints once the landlord procedure has been exhausted.

A designated Tenant Panel can be established to assist one or more landlords. Equally a landlord can designate more than one Tenant Panel for this purpose. The Council will

determine criteria which they will require panels to meet and will provide the panel with a list of expected operating standards, as part of the designation process.

Through the recognition criteria the Council will ensure that the designated Tenant Panel is properly trained, has the ability to properly conduct meetings in a professional manner and is able to carry out the role with appropriate integrity, confidentiality, and in accordance with legal requirements. Designated Tenant Panels will also be required to have suitable professional indemnity insurance.

In terms of deliberating an individual complaint, the Tenants Panel's involvement would be after the Council complaints procedure has ended. It would not replace any part of the existing procedure. Designated Tenant Panels would have no powers to enforce a decision; they would simply provide their view and if applicable suggest a possible solution.

However, the Council can recognise and register multiple Tenant Panels; it does not have to recognise one group locally. Going forward, it could recognise multiple groups using those available in the wider region. Benchmarking has indicated that other South Yorkshire Local Authorities (Sheffield and Barnsley) have established designated Tenant Panel groups from their existing volunteer framework and are working with them in preparation for the required changes.

An agreed standards protocol between a Tenant Panel and the Council will agree in advance how the Council will respond to a designated Tenant Panel decision. For example, the Council could ask the panel to always present a range of options for resolution and the Council could make it clear that it is under no obligation to accept any decision.

The decision to accept and designate a Tenant Panel will be made on behalf of the Council by the Director of Housing and Neighbourhoods.

### **7.3 The Proposed Housing Complaint Procedure.**

In light of the new guidance it is proposed to create a three stage complaint's process with the existing first two internal stages being retained, but the existing stage three panel being replaced by the 'designated person' process, for the handful of cases which now fall under the jurisdiction of the Housing Ombudsman Service. This change will avoid what would in effect otherwise be a four stage process. It will also ensure our processes comply with government guidance and bring us in line with neighbouring Local Authority Landlords.

Consequently the proposed new complaints process will be as follows:

**Stage I:** review by the responsible service. A Manager or Senior Officer will complete investigation and respond within 10 working days.

**Stage II:** response by independent officer and Director review. An officer outside of the responsible Service will complete the investigation and respond within 25 working days. The Director responsible for the Authority housing function will review the investigation and the decision of the Independent Officer, which will be indicated in the response.

**Stage III:** The customer has the option of contacting a Designated Person/Tenant Panel or self-referring to the Housing Ombudsman Service after eight weeks.

## Required Actions

Subject to the agreement of cabinet to this report, the following actions will now take place:

- Agree the protocol of understanding between the Council and a “designated person”.
- Designate a Tenant Panel and register it with the Housing Ombudsman.

We will also agree the panel operating criteria, we will set out standards for the panel, including training requirements for panel members and how complaints should be best considered to ensure fairness and transparency.

- Brief Councillors and MP's to make sure that they are aware of their new responsibilities.
- Agree the amendment to existing complaint literature to provide information to tenants about the new process, to allow them to make informed choices about the options available to them following completion of the Council's complaint procedure.

## 8. Finance

The Housing Ombudsman requires an annual subscription payment by the Council. This is expected to start from April 2014 but a decision regarding the payment has not yet been finally agreed by the Secretary of State and the Housing Ombudsman.

The annual subscription payment is proposed to be £1.47 per housing unit, this means the cost to the Council would be approximately **£30,874.41** (the current housing unit total is 21,003).

Regarding the operation of a designated Tenant Panel, guidance suggests that the panel needs to be resourced primarily by the landlord. These costs will include the training of panel members and the operation of panel meetings. As yet these costs are not determined but are expected to be met from the Housing Revenue Account and to be negligible.

## 9. Risks and Uncertainties

This is a new way of working with new legislation; the full implications of the changes are unknown.

Although a new internal two stage complaint procedure could mean a potential loss of a third opportunity to resolve a complaint prior to a complainant escalating their concerns to the Housing Ombudsman, it should be considered that the new Designated Person's process will provide some opportunities for further resolution, if the complainant chooses to take this route. Therefore it is not expected that there will be a significant increase in complaints being referred to the Housing Ombudsman.

The new stage two complaint process must have robust mechanisms and safeguards in place to guarantee the quality of the response and to make sure that decisions fully consider all options and outcomes, as this will represent the last chance within the Council's control of resolving disputes.

The Council should be wary of potential implications of not being able to accept a decision requested by the designated person. It is now no longer a matter of not being able to agree an outcome with a customer, the Housing Ombudsman will want to know why we have not been able to reach an agreement with both the customer and designated person.

The Housing Ombudsman will have the power to go to court to enforce a decision, the implication of this new power would be that if the Council was not able to reach a settlement it could potentially have to face additional legal costs as well as damage to its reputation.

## **10. Policy and Performance Agenda Implications**

In line with the NAS Service Plan and the Corporate Plan the changes will allow us to work with tenants in a new and better way to improve services. It will improve perceptions around fairness and transparency and help maintain more accessible and efficient services.

For the first time how we would deal with complaints about housing is mentioned in legislation; Localism Act 2011, 180 (1) – Amend Schedule Two; Housing Act 1996 Designated Tenant Panels.

## **11. Background Papers and Consultation**

- Localism Act 2011 - Chapter 6, Other Housing Matters

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