

Social housing Complaints - Designated Person

Briefing note – Cllr Campbell

Introduction

From 1 April 2013 changes have been made to social housing complaints procedures following the implementation of legislation contained within the Localism Act 2011.

This briefing note outlines the changes and explains the options available to complainants once they have completed BCH's complaints procedure and they remain dissatisfied with the outcome of their complaint.

Background

Prior to 1 April 2013 should a complainant go through all 3 Stages of BCH's complaints process and still remain dissatisfied with the outcome they could if they wished, submit the complaint to the Housing Ombudsman Service who would then decide if they are able to investigate the complaint.

From 1 April 2013 the emphasis has very much been about trying to resolve complaints at a local level seeking to achieve consensus between complainants and BCH. This now means that a complainant is unable to submit their complaint directly to the Housing Ombudsman Service immediately following the landlord's final response.

From 1 April 2013 complainants who have completed or exhausted BCH's internal complaints process can only refer their complaint directly to the Housing Ombudsman Service 8 weeks after receiving the landlord's final response.

If the complainant does not wish to wait 8 weeks they can request to have their complaint reviewed by a "Designated person". The Designated person can be a tenant panel recognised by BCH, an MP (in England) or a local District councillor (not a County or Parish Councillor).

Discussions have taken place with the Cabinet Member for Housing, Public Protection and Street Scene and it is recommended that the only designated person role for the Council/BCH should be Councillors. As it stands this means that any Member may be called upon to review a complainant's case as a designated person. In order to manage the process efficiently it has been proposed that the Cabinet Member for Housing, Public Protection and Street Scene should undertake this role.

The role of the designated Person

The general role of the designated person is to assist in resolving tenant complaints and issues locally. Their role is to provide a fresh and independent insight on complaints from a tenant, councillor or MP perspective – acting as a critical friend suggesting views and approaches that may not have been considered by BCH's staff and others in handling the complaint. Where a designated person considers that they are unable to resolve a complaint

locally and if a complainant wishes and authorises them to do so, they have the option to refer a complaint to the Housing Ombudsman Service.

Designated Panel

The option of setting up a designated tenant's panel has been discussed and explored by BCH with the tenant scrutiny Group (TOWER). TOWER wish to continue their focus on scrutiny activity rather than take on a wider remit incorporating a Designated Panel. BCH also involve customers during the internal stages of the complaints process providing an independent view of individual complaints. TOWER therefore feel that their involvement would add little additional value.

Liaison with other housing organisations within the Fylde Coast area have highlighted that most other landlords have similar approaches to dealing with complaints and involving tenants within their internal processes and therefore there was little interest in setting up a separate designated tenants panel. The exception to this is New Fylde Housing. New Fylde's panel could be potentially used by the Housing Ombudsman if it thinks that the complaint would benefit from their review prior to the Ombudsman's decision. New Fylde are aware they may be requested to review other landlords complaints.

Conflict of interest

A designated person can not review a complaint case if:

- they have been involved in BCH's internal complaints procedure in relation to the complaint being reviewed
- they are connected to the complainant e.g. relative, close friend, business associate, direct neighbour
- they are connected closely to any member of BCH staff or Board that may have dealt with the complaint at any earlier stage of the complaints process
- they are involved formally in the governance of BCH

What are the actual powers that a designated person has?

Designated persons have the power of persuasion, negotiation and conciliation. They do not have "formal" powers other than the right to refer complaints to the Housing Ombudsman Service with the complainant's authorisation, once BCH's complaints procedure has been exhausted. Their role is to assist in resolving complaints locally and they will use appropriate diplomatic and conciliatory methods to do this, seeking to achieve consensus between tenants and BCH.

A designated person does not have power over BCH's policies and procedures although they may suggest ways they could be improved. A designated person would not be expected to make a formal judgement about the merits of a complaint, but if they do, their judgement will not be binding. They are not a tribunal. Their role is to facilitate resolution of tenant complaints which may involve them providing advice to tenants; advocating on their behalf; discussing matters with BCH or liaising with other BCH Panels or Groups.

Data Protection

There are data protection issues involved in all complaints handling. Staff, tenants, designated persons and others involved in complaints handling are subjected to appropriate codes of confidentiality that ensure good data management and those involved may only use information gathered for the purposes of handling the complaint. In all cases the complainant needs to remain in control of their complaint and a designated person will only be able to act for the complainant once a written and signed agreement has been received.

What happens when a complainant contacts a designated person?

As a general rule applicable to whichever designated person is chosen by the complainant, the designated person should;

1. Confirm with the complainant that BCH's internal complaints procedure has been exhausted.
2. Ask the complainant for written authorisation stating that the chosen designated person may engage with BCH regarding their complaint and that information about the case can be released to the designated person.

The Designated Person (MPs or Cabinet Member for Housing, Public Protection and Street Scene) upon production of this written and signed authorisation may then ask BCH for copies of the complaint case paperwork.

Any submission put forward by the Designated Person (MP or Cabinet Member for Housing, Public Protection and Street Scene) on behalf of the complainant should be sent to the Chief Executive's Personal Assistant at BCH.

All administrative support required, relating to submissions made by the Cabinet Member for Housing, Public Protection and Street Scene upon request will be provided by BCH. No such support will be provided to submissions made by MPs, other than responding to request for copies of the complaint case paperwork.

Within two weeks a response to the submission will be sent to the complainant detailing that the Cabinet Member for Housing, Public Protection and Street Scene will review their complaint and will consider the following factors when reviewing the complaint:

1. Has BCH correctly followed their policies and procedures?
2. Has BCH acted in a "fair and reasonable" way?
3. Are BCH's proposed remedial measures or compensatory amounts "adequate and proportionate"?

BCH will forward copies of all case paperwork to the Designated Person (MP or Cabinet Member) within two weeks of receiving the submission. The Designated Person will aim to conclude the review and come to a decision within a period of two weeks.

What are the likely outcomes from the designated person?

Having been approached to act as a designated person and having reviewed the complaint it is likely that there will be one of two possible outcomes:

1. The Designated Person considers that BCH has handled the complaint correctly, there has been no unaddressed service failure issues, that the complainant has been treated in a fair a reasonable way and that the outcome proposed by the BCH is adequate and proportionate; complainant informed of this and that no further action will be taken – complainant can take their case to the Housing Ombudsman Service.
2. The Designated Person identifies that there has been some form of service failure not previously addressed or that BCH has not acted in line with its policies or procedures or acted in a fair and reasonable way; this is highlighted to BCH to re-consider its judgement; depending upon the outcome, Designated Person to consult with the complainant who will either accept any revised judgement or they will authorise the Designated Person to refer the complaint to the Housing Ombudsman Service.

The Designated Person considers that BCH's remedial measures or compensatory offers are not "adequate or proportionate" they consider and suggest alternative actions or amounts to BCH, this is highlighted to BCH to reconsider it's judgement; depending upon the outcome, Designated Person to consult with the complainant who will either accept any revised judgement or they will authorise the Designated Person to refer the complaint to the Housing Ombudsman Service.

Below is an example of the type of authorisation required;

Resident Name: _____

Resident Address: _____

Complaint reference Number: _____

I _____ confirm that my complaint has exhausted BCH's internal complaints procedure. I remain dissatisfied with the outcome of my complaint because of the reason(s) set out below.

(Attach separate sheet if required)

I would like you _____

as a cabinet member or MP, (delete as applicable) to act on my behalf, review my complaint case and consider if there is anything that can be done at a local level to resolve the outstanding issues that I have listed. If you feel appropriate, please forward my case to the Housing Ombudsman Service for their investigation and consideration in due course.

I authorise BCH to provide all relevant complaint case paperwork to you.

Signed: _____ Date: _____

Complaints process chart

This flowchart provides a brief overview of the complaints process.

Further Information

Please see attached FAQs document, which provides further detail about the role, functions and operations of the “designated person”, compiled by a stakeholder group consisting of representatives from the National Tenant Organisations, the Housing Ombudsman Service, the Department for Communities and Local Government, the Chartered Institute of Housing, the National Housing Federation, the Local Government Association, and the National Federation of ALMOs.