



## Complaints handling: the designated person Frequently Asked Questions

From 1 April 2013, the Localism Act 2011 will put in place new arrangements for dealing with complaints by social tenants against their landlords. Councillors, tenant panels and MPs (“designated persons”) will have the opportunity to play a more active role in resolving complaints at the local level.

This document responds to questions posed by staff from Registered Provider landlords about the role, functions and operations of the “designated person”. Responses to the questions have been assembled by a stakeholder group consisting of representatives from the National Tenant Organisations<sup>1</sup>, 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.

The questions were asked by landlord staff (we have retained the original wording of the questions) and so this document is primarily aimed at them, although we also hope that it will be useful to tenants and others who wish to understand how the designated person system operates<sup>2</sup>. We intend this to be an organic document so please submit further questions about the designated person system to [Debbie.Larner@cih.org](mailto:Debbie.Larner@cih.org) so that the stakeholder group can continue to provide further clarification. These frequently asked questions should be read in conjunction with *Tenant Panels: Options for Accountability*<sup>3</sup> which gives further advice on how to set up effective Tenant Panels, and which is supported by all the landlord representative bodies. A forthcoming National Tenant Organisation document, due to be published in early 2013, will provide further support and information to designated persons. For further information on this project, please contact [nic@cch.coop](mailto:nic@cch.coop).

### “Designated person” questions

- 1 What is a designated person, a designated tenant panel and a recognised tenant panel? What is the 8 week rule?

<sup>1</sup> Confederation of Co-operative Housing (CCH), Tenant Participation Advisory Service (TPAS), Tenants & Residents Organisations of England (TAROE), National Federation of TMOs (NFTMO)

<sup>2</sup> The document refers to the term “tenant” to apply to all the service users of a landlord. Where we refer to “landlord”, we are referring to social landlords that are registered with the Homes & Communities Agency and members of the Housing Ombudsman scheme.

<sup>3</sup> available at [www.nationaltenants.org/tenantpanels](http://www.nationaltenants.org/tenantpanels)

- 2 What is the role/remit of the designated person? Is it to act as an advocate for complainants, to review and resolve individual complaints or to *rubber stamp* requests to go to the Ombudsman?
- 3 What are the actual powers that a designated person has?
- 4 If a designated person considers that a complaint is justified, does the provider have to complete the actions that they suggest? Can a designated person 'overrule' the organisation's policies and procedures?
- 5 What is the process for a designated person to escalate a complaint to the Ombudsman? How will the Ombudsman know whether they are OK to proceed?
- 6 Can complainants go to a designated person at any stage or do they have to exhaust the landlord's complaints procedure first?
- 7 Do providers need to write the designated person into their complaints procedure? Or does it sit outside of their existing processes?
- 8 Can customers take their complaint to different designated people one after the other? Is there anything landlords can do to control this? How can landlords ensure that different designated people operate consistently? And that the same designated person operates consistently when dealing with different cases?
- 9 Can county or parish councillors be designated persons?
- 10 What is the role of local councillors/MPs who may have a conflict of interest? Can they represent a constituent, or make judgements concerning a constituent's complaint? What about where designated people are part of a housing providers' governance structure (e.g. councillors where the local authority is the landlord, or tenant board members)?
- 11 What happens if a designated person stops being a designated person?
- 12 Is an MP's representative (e.g. their local office) eligible to act as a designated person?
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### Tenant panel questions

- 14 Is the onus on customers to decide they want a tenant panel set up? Or should providers look to set one up now? What happens if there is no appetite among tenants to form a tenant panel?

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- 18 What is the role of existing groups of tenants that are already involved in the complaints processes (e.g. tenant board members)? Do they constitute a 'tenant panel', or does the landlord need to establish a separate panel? If it is a separate panel, could a tenant be part of both groups?
- 19 Will there be data protection issues? Do providers need to seek tenants' permission to share information about their complaint with the designated person? Do they need to ask members of tenant panels to sign confidentiality agreements?
- 20 Will there be indemnity issues in circumstances where complaints are subsequently considered to be potentially litigious?
- 21 How should providers support tenant panels? Should landlords provide training and administrative support? What is the right balance between providing assistance to tenant panels and ensuring they maintain their independence?
- 22 Is the formation of a tenant panel a regulatory issue? A number of organisations I have spoken to have said that they do not intend to assist the setting up of these panels as they have so few cases that go to the Ombudsman. Do you know if this is a stance that others are taking, and can they actually take this stance?
- 23 I believe the Ombudsman is going to hold a register of Designated Persons Tenant Panels. We are a national organisation and therefore we would need to establish regional panels which may get used infrequently – on the basis of our current referrals it may mean that they wouldn't even get used yearly. Is there an option to contact the ombudsman who could provide the details of a panel that is operating locally, that a tenant of ours might be able to use?
- 24 Do tenant panels need to be in place in time for 1 April?
- 25 The Frequently Asked Questions says that it is for tenants to decide what to do about designated tenant panels. Does this mean its OK for landlords to do nothing about designated tenant panels?

26 Could having a designated tenant panel mean that there could be fewer stages in the landlord complaints procedure?

## **1 What is a designated person, a designated tenant panel and a recognised tenant panel? What is the 8 week rule?**

“Designated persons” are defined in the Localism Act 2011 as an MP, a local councillor for the district in which a complainant’s home is located, or a designated tenant panel.

A “designated tenant panel” is defined in the Localism Act as a group of tenants who have been “recognised” by a social landlord for the purpose of referring complaints to the Housing Ombudsman Service.

The formal and only legally defined role of designated persons – as set out in the Localism Act – is to refer complaints from social housing tenants to the Ombudsman, but as this document sets out, the effectiveness of the role is likely to be dependent on how they use wider powers of persuasion to help landlords and tenants resolve complaints locally.

Designated persons may refer complaints to the Ombudsman at any time, although under the Ombudsman’s “scheme”, they will generally only consider complaints after the landlord’s complaints procedure has been exhausted. A social housing tenant may refer their complaint directly to the Ombudsman (ie. without a referral from a designated person) 8 weeks after the exhaustion of the landlord complaints procedure.

## **2 What is the role/remit of the designated person? Is it to act as an advocate for complainants, to review and resolve individual complaints or to *rubber stamp* requests to go to the Ombudsman?**

The general role of the designated person is to assist in resolving tenant complaints and issues locally. In doing so, they may also participate with the landlord in using the learning gathered from complaints to help improve services.

There could be a number of ways that they could carry out this role and it is probable that different approaches will suit different local circumstances. Their role is to provide fresh and independent insight on complaints, from a tenant, councillor or MP perspective – playing a critical friend role suggesting views and approaches that may not have been considered by landlord 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 Ombudsman once the landlord complaints process has been exhausted.

Ensuring that designated persons produce beneficial outcomes for tenants requires a culture where landlords, tenants, councillors and MPs encourage and nurture

independent views and constructive challenge and value these as an integral part of the landlord business.

### **3 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 Ombudsman once the landlord’s complaints procedure has been exhausted. Their role is to assist in resolving complaints locally, and they will need to use appropriate diplomatic and conciliatory methods to do this, seeking to achieve consensus between tenants and landlord.

### **4 If a designated person considers that a complaint is justified, does the provider have to complete the actions that they suggest? Can a designated person ‘override’ the organisation’s policies and procedures?**

A designated person does not have power over an organisation’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 would not be binding. They are not a tribunal, they don’t carry out the role of the Ombudsman and they are not an additional bureaucratic stage in a complaints procedure.

Their role is to facilitate resolution of tenant complaints, which may involve them providing advice to tenants; advocating on their behalf; discussing matters with the landlord; engaging with other designated persons; or carrying out other actions. It is envisaged that the role of the designated person will be bespoke and designed to achieve consensus between tenants and landlord.

### **5 What is the process for a designated person to escalate a complaint to the Ombudsman? How will the Ombudsman know whether they are OK to proceed?**

The complainant should always remain in control of their complaint, and a complaint can only be referred to the Ombudsman with the authorisation of the complainant. The Localism Act requires that the complaint is forwarded to the Ombudsman in writing, but the Ombudsman is anticipating that this could be done through their website.

Once a complaint has been referred to the Ombudsman by a designated person, they will handle it in the way they normally do – for example, they will check that it falls within their jurisdiction; that it has been authorised by the complainant and that the landlord’s complaints procedure has been exhausted.

### **6 Can complainants go to a designated person at any stage or do they have to exhaust the landlord’s complaints procedure first?**

As is the case now, complainants can approach MPs and councillors whenever they wish to, and tenants will be able to approach tenant panels in accordance with whatever arrangements tenants have agreed for their tenant panels. Tenant panels and councillors may already play a part in the landlord's complaints procedures. Ways that tenant panels could choose to assist complainants are set out in *Tenant Panels: Options for Accountability*.

Designated persons only take up their formal role once the landlord's complaints procedures have been exhausted although they may be the same people involved at an earlier stage.

**7 Do providers need to write the designated person into their complaints procedure? Or does it sit outside of their existing processes?**

Landlords should provide information to tenants on the role of the designated person and appropriate contact details should be provided. This information should also be included in complaints procedures. However, it is not anticipated that the designated person is an additional stage in a landlord complaints procedure as the role is intended to ensure that more complaints are resolved at the local level.

**8 Can customers take their complaint to different designated people one after the other? Is there anything landlords can do to control this? How can landlords ensure that different designated people operate consistently? And that the same designated person operates consistently when dealing with different cases?**

As is the case now, tenants may take complaints to councillors, MPs and tenant panels as they see fit, and the same applies in their role as designated persons. It would be inappropriate for landlords to "control" who a complainant should approach.

However, in order for landlords to best respond to the same complaint being raised by multiple designated persons, they need to achieve consensus, particularly with their tenants, about designated persons, tenant panels and complaints handling. Where consensus has been achieved, it should mean that landlords can respond with minimum additional work to complaints referred by multiple designated persons (i.e. by referring to responses already given to other designated persons).

It is the designated person's responsibility to ensure their effectiveness and consistency. The landlord can play a facilitatory role in helping tenant panels to achieve beneficial outcomes for tenants by ensuring they receive good quality training and support and through establishing a strong partnership relationship with them.

The establishment of designated persons is a new approach designed to help resolve problems locally. Developing successful and useful designated persons will require local imagination and vigour to come up with ways to make them effective. Advice is

being prepared by the National Tenant Organisations to help designated persons work together effectively.

## **9 Can county or parish councillors be designated persons?**

No. The Localism Act only permits councillors from the “local housing authority” in the district where the complainant lives to be a designated person. This definition does not include county or parish councillors, but tenants and landlords could choose to work with such people if that would help to resolve complaints locally.

## **10 What is the role of local councillors/MPs who may have a conflict of interest? Can they represent a constituent, or make judgements concerning a constituent’s complaint? What about where designated people are part of a housing providers’ governance structure (e.g. councillors where the local authority is the landlord, or tenant board members)?**

It would be inappropriate for councillors or MPs not to be in a position to represent their constituents. The designated person’s role is not to make judgements about the merits of complaints, and it would have little bearing on the progress of the complaint if they chose to do so. Local authority and Parliamentary Codes of Conduct govern how councillors and MPs should handle conflicts of interest.

Internal landlord rules should determine whether those involved in landlord governance can play a role as a designated person. It may be difficult for someone responsible for landlord governance to be able to provide sufficiently independent perspective to make the designated person role effective, but this is for the landlord and their tenants to agree.

In considering a complaint, the Ombudsman may criticise a landlord if they conclude that, by virtue of the designated person being involved in landlord governance, their perspective on a complaint simply reiterates the landlord’s opinion.

## **11 What happens if a designated person stops being a designated person?**

A tenant panel may choose that it no longer wishes to be a designated person, or a landlord may de-recognise a tenant panel (in accordance with a decision-making process agreed with its tenants). In these circumstances, the landlord has a responsibility to inform the Ombudsman that the tenant panel is no longer recognised and they will be removed from the register.

Similarly, an MP or councillor may resign or lose their seat, and thereby cease to be a designated person.

A designated person who no longer has that status would not be in a position to refer complaints to the Ombudsman. If a designated person had referred a complaint to the Ombudsman prior to them ceasing to be a designated person, and if the complaint complies with the Ombudsman’s other criteria for investigating a



complaint, the Ombudsman will continue to investigate the complaint as normal. It will be up to tenants and landlords to choose whether there should be any ongoing role for a de-recognised tenant panel.

**12 Is an MP's representative (e.g. their local office) eligible to act as a designated person?**

It is for each designated person to determine how best to carry out their role. An MP's local office representatives may be used if they consider that this would help them in their designated person role of helping to resolve complaints locally. Clearly the MP would be responsible for any actions carried out in their name by their local office.

**13 Will leaseholders, shared home owners and others be able to approach designated persons in the same way as tenants?**

The general policy intention is that the people who are able to make complaints to the Ombudsman should be in a position to approach designated persons. Under the 1996 Housing Act, all housing activities of Ombudsman member landlords are included in their jurisdiction; anybody who receives a housing service can complain to the Ombudsman against the provider. This means that all forms of tenure are within the Ombudsman's remit.

However, the Localism Act referred to designated persons only responding to tenants in social housing, which excludes leaseholders and market rented tenancies (but not shared home owners). This therefore means that leaseholders and market renting tenants are able to approach the Ombudsman directly regarding complaints when they have exhausted the landlord's complaints procedure.

Notwithstanding this, designated persons are likely to choose to receive complaints from people in all tenures and in practice, it is probable that all complaints will be treated in the same way.

## Tenant panel questions

### **14 Is the onus on customers to decide they want a tenant panel set up? Or should providers look to set one up now? What happens if there is no appetite among tenants to form a tenant panel?**

It is for tenants and the landlord to agree how tenant panels are set up for the purpose of being a designated person and for other purposes.

Information on setting up Tenant Panels is set out in *Tenant Panels: Options for Accountability*, which describes a range of potential options for tenant panels to get involved with decision-making in the landlord, to help to shape services, to be involved in monitoring and scrutinising landlord services and operations, and to be involved in complaints handling. It makes good business sense and is a regulatory requirement (within the Involvement & Empowerment Standard) that landlords support the formation and activities of tenant panels.

It is a choice for tenants whether and how they set up tenant panels (rather than an “onus”), and, whilst the landlord should provide support and assistance, it should not be the landlord setting up tenant panels either now or in the future.

If tenants do not wish to form a designated tenant panel, then tenants of their landlord or in their area would be able to access other designated persons (possibly including designated tenant panels set up in other landlords operating in the same area).

### **15 What is the process for recognising a tenant panel? Is it prescribed or is it up to individual landlords to decide? If a landlord decides not to recognise a tenant panel, how will they be expected to account for that decision? Should providers be preparing a framework for how they will recognise tenant panels now?**

It is for landlords to agree with their tenants the ways that tenant panels should be recognised (or de-recognised) for purposes of being a designated person.

It is expected that landlords will have a clear audit trail for how they agreed with their tenants the process for recognising designated tenant panels. 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.

Under the Act, landlords 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. It is expected that the Ombudsman will require landlords to provide a means of

contact with the tenant panel that is independent of the landlord (i.e. possibly an e-mail address that is only accessed by the designated tenant panel). In doing so, the Ombudsman will expect that reasonable steps have been taken to ensure that tenants see the contact point for a designated tenant panel as being independent of the landlord. If a personal contact point (i.e. of a tenant) is supplied, the Ombudsman will expect authorisation from the person concerned that their contact details can be used for this purpose.

The landlord will be accountable to their tenants for the tenant panels they do and do not recognise. In discussing the recognition of designated tenant panels with the landlord, tenants should consider what potential beneficial outcomes there could be from the recognition and support for a designated tenant panel (i.e. such as tenants will have been helped to resolve their complaints locally or there will be learning from the local handling of complaints), and over time, they will need to demonstrate that those outcomes have been delivered. In deciding not to recognise (or to de-recognise) a tenant panel, a landlord would need to agree with tenants that a particular tenant panel would be unlikely to deliver beneficial outcomes for tenants.

Landlords should be engaging with their tenants now to discuss how tenant panels could be set up. This should include tenants and landlords agreeing how designated tenant panels will be recognised.

## **16 How many designated tenant panels can operate in the same area? Can they be made up of tenants from other landlords?**

Tenants and landlords can agree to have as many designated tenant panels operating in the same area as makes sense to them. The Localism Act says that there can be more than one in each landlord.

Any group of tenants can request that the landlord recognise a tenant panel for the purposes of being a designated person. Tenants can ask for recognition of panels for tenants across a whole landlord, in a particular area for tenants of one particular landlord, and in a particular area for tenants of more than one landlord.

*Tenant Panels: Options for Accountability* sets out examples of “Collaborative Tenant Panels” where tenants from different landlords are setting up area based panels. If such panels applied for recognition from a landlord in the area, such an application should only be rejected if it was considered that this would not produce beneficial outcomes for the landlord’s tenants (even if there was also a landlord based designated tenant panel).

It is expected that the Ombudsman will provide publicly available information and contact details for designated tenant panels (subject to ensuring that Data Protection requirements are met). This means that tenants from any landlord could approach any designated tenant panel operating in their area. Designated tenant panels will need to choose how to respond to complaints from tenants of other landlords. They may choose that they do not have the resources to provide any

assistance or they may engage with the complainant, possibly providing them with useful information about regulatory standards and how they might go about progressing their complaint (although it may well be the case that they would not be able to engage with the complainant's landlord). Designated tenant panels could not refer complaints to the Ombudsman relating to other landlords.

**17 Can landlords use customers who are already involved in other ways (e.g. on area panels etc) for their tenant panel?**

Tenants and the landlord may consider that designated tenant panels would benefit from the involvement of tenants involved in other ways, or they may consider other involvement to be a conflict of interest. The audit trail for how decisions were taken about designated tenant panels should show consideration of potential conflicts of interest and how tenants and the landlord made the decision.

We have retained the original phrasing of this question - "can landlords use" and the ambiguity about ownership of the tenant panel - to illustrate that some cultural shift may be required. It is not expected that tenant panels will be solely "owned" by the landlord or that how they will be set up will only be decided by the landlord. The whole purpose of tenant panels is that they are tenant-led.

**18 What is the role of existing groups of tenants that are already involved in the complaints processes? Do they constitute a 'tenant panel', or does the landlord need to establish a separate panel? If it is a separate panel, could a tenant be part of both groups?**

Tenants and the landlord may consider that it would be beneficial to involve tenants involved in the complaints process in other ways, or they may consider such involvement to be a conflict of interest. In some cases, earlier involvement in the complaints procedure (e.g. on a stage 3 review panel) may make it difficult for a designated tenant panel to provide fresh perspective that could help to resolve the problem.

The audit trail for how decisions were taken about designated tenant panels should show consideration of conflicts of interest and how tenants and the landlord made the decision.

**19 Will there be data protection issues? Do providers need to seek tenants' permission to share information about their complaint with the designated person? Do they need to ask members of tenant panels to sign confidentiality agreements?**

There are data protection issues involved in complaints handling. Staff, tenants, designated persons and others involved in complaints handling need to be subject to appropriate codes of confidentiality that ensure good data management, and that 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. The complainant should be asked by the designated person to authorise (through a written and signed agreement) that the designated person may engage with the landlord regarding their complaint and that information about the case can be released to the designated person. The landlord should be expected to ask the designated person for that written and signed agreement and should not engage with the designated person on the case without it.

## **20 Will there be indemnity issues in circumstances where complaints are subsequently considered to be potentially litigious?**

It is possible that there may be indemnity issues, but these may be limited if tenant panels restrict themselves to providing advice and support (and only provide accurate advice) rather than making formal judgements about the merits of complaints.

In making decisions about how tenant panels are set up, tenants and landlords should consider legal issues. This should include activities covered by the landlord's public liability insurance (e.g. does it cover a tenant panel meeting with a complainant in a landlord premises?) and professional indemnity insurance (e.g. does it cover a tenant panel giving advice to a complainant?).

## **21 How should providers support tenant panels? Should landlords provide training and administrative support? What is the right balance between providing assistance to tenant panels and ensuring they maintain their independence?**

Regulatory standards make it clear that landlords must support the setting up and ongoing activities of tenant panels. It is for landlords to agree with their tenants the ways that tenant panels are set up. The balance between providing support to tenant panels and enabling them to consider matters independently is discussed in *Tenant Panels: Options for Accountability*, but there can be no one formula that determines the right balance. A tenant panel that is not facilitated and encouraged to think independently is unlikely to be able to make a useful contribution. This means that support to tenant panels needs to be provided in such a way that enables them to come to and state independent views.

The Ombudsman may criticise the landlord if it is felt that landlord support for the designated tenant panel is subject to them simply reiterating landlord views of complaints.

Landlords and tenants should discuss how support needs for tenant panels will be met in the process of agreeing how they will be set up. It makes good business sense for landlords to support tenant panels, recognising that landlords 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.

Suggestions for the support tenant panels need are set out in *Tenant Panels: Options for Accountability*. They will need training – which should be provided by the landlord, but some of which could come from other sources to ensure access to independent support and a breadth of information. DCLG already funds residential training at Trafford Hall and will shortly initiate a national tenant support programme for tenant panels.

**22 Is the formation of a tenant panel a regulatory issue? A number of organisations I have spoken to have said that they do not intend to assist the setting up of these panels as they have so few cases that go to the Ombudsman. Do you know if this is a stance that others are taking, and can they actually take this stance?**

It is a regulatory requirement that landlords “support the formation and activities of tenant panels or equivalent groups and respond in a constructive and timely manner to them”. This is a broad regulatory requirement that applies to all forms of tenant panel (ie. as set out in the NTO guide *Tenant Panels: Options for Accountability* – including for example, designated tenant panels and tenant scrutiny panels). It is for tenants and landlords to work together to decide how they should be implemented in each landlord.

It would be a breach of the regulatory standard if a landlord 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. Tenants should be primary drivers in deciding how tenant panels are set up. Landlords are expected to provide facilitatory support to help tenants decide the best approaches for them and then to help them to set them up.

It is intended that tenants and landlords should try to achieve consensus with each other about what it makes sense to set up. Tenants and landlords should have regard to what structures and arrangements are most likely to achieve beneficial outcomes for tenants with the resources available. They should also have regard to ensuring that tenants involved in tenant panels are encouraged and in a position to constructively challenge landlord decision-making and thinking where it is right to do so in order to lead to service improvement.

Landlords should develop a clear audit trail that shows how they have achieved consensus with the widest possible body of tenants in decisions about setting up tenant panels (particularly designated tenant panels).

It is definitely not expected that tenants or landlords would wish to set up designated tenant panels that are unlikely to be used by tenants. Certainly current levels of complaints may be an indicator to where it would be helpful (or not) to set up designated tenant panels. However, tenants and landlords may also wish to

discuss whether setting up tenant panels that are perceived by tenants as independent of the landlord could result in more tenants feeling comfortable to raise complaints. Good landlords will use complaints to improve their services.

**23 I believe the Ombudsman is going to hold a register of designated persons tenant panels. We are a national organisation and therefore we would need to establish regional panels which may get used infrequently – on the basis of our current referrals it may mean that they wouldn't even get used yearly. Is there an option to contact the ombudsman who could provide the details of a panel that is operating locally, that a tenant of ours might be able to use?**

Tenants from any landlord could approach any designated tenant panel operating in their area (although it will be up to those tenant panels to decide how they respond to tenants from other landlords, and designated tenant panels may only refer complaints to the Ombudsman from tenants of landlords who have recognised that tenant panel). See also the answer to question 15 of the previous FAQ document.

It is expected that the Ombudsman will provide publicly available information and contact details for designated tenant panels (subject to ensuring that data protection requirements are met). However, the details for how this will operate are not yet available. The Ombudsman will be able to signpost in the same way as it signposts to Citizens Advice Bureaus and Law Centres, but it will not be able to endorse any particular panel or to record what support each tenant panel can offer. It is likely that different tenant panels will offer different levels of support and this may change and evolve as the system develops. tenant panels, landlords and local authorities may also be able to develop local means to publicise designated tenant panels and what support they can offer.

Tenants of national landlords need to work with their landlords to develop a sensible system of designated tenant panels. National landlords need to develop an audit trail that shows how they achieved consensus with a wide cross section of their tenants (ie. taking into account all the areas where they own homes) about how tenant panels should be set up and when they should be recognised.

There is definitely not an expectation that a national landlord (or any other landlord) should set up regional designated tenant panels if tenants are unlikely to use them. Tenants of a national landlord could agree to set up one national designated tenant panel if they felt that this would work for tenants. For a national landlord, tenants and landlords may wish to consider one or more of the following options:

- setting up one (or more) national designated tenant panel for all the landlord's tenants to use
- setting up regional designated tenant panels where it is anticipated that tenants would use them
- recognising other tenant panels in particular areas where this is what tenants want (which would involve dialogue with those panels and their landlords)

## **24 Do tenant panels need to be in place in time for 1 April?**

Developing new systems and ensuring their effectiveness will take time. No one expects that tenants and landlords should rush through recognition of designated tenant panels just because the Localism Act changes come into force on 1<sup>st</sup> April 2013.

However, landlords should at least aim to have in place a process for how they will discuss with their tenants how designated tenant panels will be set up and recognised. Ideally these discussions should have already started.

If tenants do not have access to a designated tenant panel on 1<sup>st</sup> April 2013, then this will mean that the only designated persons available to them will be councillors and MPs (or possibly tenant panels set up in other local landlords).

If the Ombudsman receives a complaint from a tenant, they may enquire as to how tenants and/or councillors have been involved in resolving the complaint and whether they have tried to discuss it with a designated tenant panel. If there hasn't been a tenant panel available for them to discuss the complaint with, the Ombudsman may ask to see the landlord's audit trail of how the landlord has discussed setting up designated tenant panels with their tenants. If the Ombudsman considers that the landlord does not have a reasonable audit trail for discussing and supporting the development of tenant panels, they may refer to this in their judgment on the complaint.

## **25 The Frequently Asked Questions says that it is for tenants to decide what to do about designated tenant panels. Does this mean its OK for landlords to do nothing about designated tenant panels?**

The regulatory requirement is that landlords "support the formation and activities of tenant panels or equivalent groups and respond in a constructive and timely manner to them". This requirement refers to the wide range of potential panels referred to in Tenant Panels: Options for Accountability, including panels that are designated for complaints purposes.

Supporting the formation of tenant panels includes landlords having dialogue and debate with their tenants about how panels should be set up. To not facilitate a debate with tenants about tenant panels (including designated tenant panels) therefore potentially could mean that a landlord may not be complying with regulatory requirements.

If a landlord does nothing to recognise a designated tenant panel, this would mean that their tenants would not have access to a designated tenant panel. If tenants of that landlord make a complaint that is referred to the Housing Ombudsman, the Ombudsman may wish to explore the designated persons available to the tenant,



and the audit trail by which the landlord agreed with its tenants how tenant panels would be recognised for complaints purposes. This may result in the Ombudsman referring to lack of action on the landlord's part to facilitate development of a designated tenant panel in their determination of the complaint.

**26 Could having a designated tenant panel mean that there could be fewer stages in the landlord complaints procedure?**

It has been suggested to us that a possible result of having a designated tenant panel could be that landlords could reconsider whether there is a need for a multi-stage complaints procedure. If designated persons review complaints, then perhaps there may not be a need for the landlord to hold an internal review of complaints as part of the landlord procedure prior to the complaint reaching the designated person. Such an approach may be worth considering.