

## Appendix A

### Frequently Asked Questions

**Q. 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?**

A. 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.

**Q. What are the actual powers that a designated person has?**

A. 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.

**Q. 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 ‘over rule’ the organisation’s policies and procedures?**

A. 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.

**Q. 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?**

A. 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.

**Q. Can complainants go to a designated person at any stage or do they have to exhaust the landlord's complaints procedure first?**

A. 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.

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.

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

A. 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.

**Q. 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?**

A. 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 once the landlord’s internal complaints process has been exhausted.

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

**Q. 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 (eg: councillors where the local authority is the landlord, or tenant board members)?**

A. 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.

**Q. What happens if a designated person stops being a designated person?**

A. 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.

**Q. Is an MP's representative (eg: their local office) eligible to act as a designated person?**

A. 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

**Q. 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?**

A. 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).

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

A. 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.

**Q. Can landlords use customers who are already involved in other ways (eg: on area panels etc) for their tenant panel? Can tenant panels be made up of tenants from other landlords?**

A. 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.

**Q. What is the role of existing groups of tenants that are already involved in the complaints processes (eg: 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?**

A. 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.

**Q. 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?**

A. 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.

**Q. 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?**

A. 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.

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

A. 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?).