

CABINET

THURSDAY, 3 APRIL 2014

REPORT OF THE PORTFOLIO HOLDER FOR PUBLIC HOUSING AND VULNERABLE PEOPLE

TENANT DESIGNATED PANELS - LANDLORD SERVICES

EXEMPT INFORMATION

PURPOSE

To set out the powers within the Localism Act 2011 whereby Landlords have the option to establish a Designated Tenants Panel (DTP) under which to refer complaints about the Councils Landlord Service.

RECOMMENDATIONS

Cabinet are recommended to

1. Endorse the Tenant Consultative Groups recommendation to not establish a Designated Tenants Panel (DTP)
2. Delegate authority to the Director of Transformation & Corporate Performance to include tenants in the overall review of the Councils 'Tell us' Policy planned for 2014/15

EXECUTIVE SUMMARY

Intrinsic to effective service delivery is the organisational ability to respond effectively to complaints and customer feedback, ultimately ensuring a customer centric service and emphasis on continuous improvement. Tamworth's vision – "One Tamworth Perfectly Placed", harnesses people, place and effective resource management. Learning from complaints, compliments and comments is also a statutory requirement contained within the Landlord Co-regulatory framework.¹ The Councils 'Tell us' policy fulfils this requirement and is currently under review.

The new Housing Ombudsman have produced a fact sheet on the role of Designated Tenants Panels (DTP) and that can be viewed on-line here, <http://www.housing-ombudsman.org.uk/media/19535/tenant-panel.pdf>. Essentially the Localism Act 2011 provided for the formation of DTP's that tenants could access in order to have their complaint individually assessed. Officers have sought legal advice in relation to this, details of which are in the report, and there is no statutory requirement to have a

¹ (<http://www.homesandcommunities.co.uk/sites/default/files/our-work/regfwk-2012.pdf>)

DTP, save a requirement to show that tenants' have been instrumental in the decision making. The Council's Tenant Regulatory and Involvement Team have held several workshops to discuss this and members of the Tenant Consultant Group (TCG) are strongly opposed to their introduction. In summary this is because of the following reasons and observations:-

- Designated Persons are MPs, Councillors' and/or designated tenant panels – the TCG believe that the existing arrangements' with MPs and councillors are already sufficient and provide a relevant designated person.
- A DTP would be administratively onerous to resource and finance – disproportionate based on existing levels of complaints.
- Evidence shows that complaint monitoring for year ending 2012/13 confirms that there were only 5 complaints progressing to stage 3, c2% of overall complaints in any event. In addition there was only 1 case that progressed to the ombudsman. This information is also routinely reported in the annual tenants report (http://issuu.com/tamworth_borough_council/docs/tenant-annual-report-booklet/1?e=2662912/6114790)
- Confidentiality issues – members of the TCG were uncomfortable with the level of risk involved should they be required to address specific concerns with tenants directly.
- Data protection issues of handling personal data would require a detailed risk assessment and procedure to ensure this was not compromised
- They (TCG) would be accountable for landlord policy decisions when they are not part of the council's constitutional decision making structure, directly.
- An average case could take around 3-5 hours to investigate and given members of the Tenant panel are not remunerated this would raise questions around volunteering generally.
- Customers may feel uncomfortable approaching a tenant panel as there may be the need to share personal information with other local residents
- An unnecessary stage added to the complaints process and the complainant may still wish to pursue their complaint through the Ombudsman
- This could be considered an elongated process and cause even more dissatisfaction amongst the complainant
- If no local providers set up panels this could potentially lead to Tamworth Borough Council providing the resources and bearing the costs for others if a panel is formed
- It is considered that the current Complaints Review Panel, in conjunction with staff, works well to reduce complaints by learning from them

Given the corporate review around the 'Tell Us' Policy it is therefore recommended that a DTP is not established. Existing arrangements are compliant with the landlord national standards and the review will seek to enhance and strengthen this going forward and will consider DTPs as part of the annual review into whether this should change in the future. In addition the work done with tenants', and details of this report, will be evidence to either the housing ombudsman and/or Homes and Community Agency that the introduction of such panels was properly considered if subsequently scrutinised and the decision challenged.

RESOURCE IMPLICATIONS

As the recommendation is not to introduce a DTP then there are no direct financial implications as existing budgets already provide for the level of tenant engagement described.

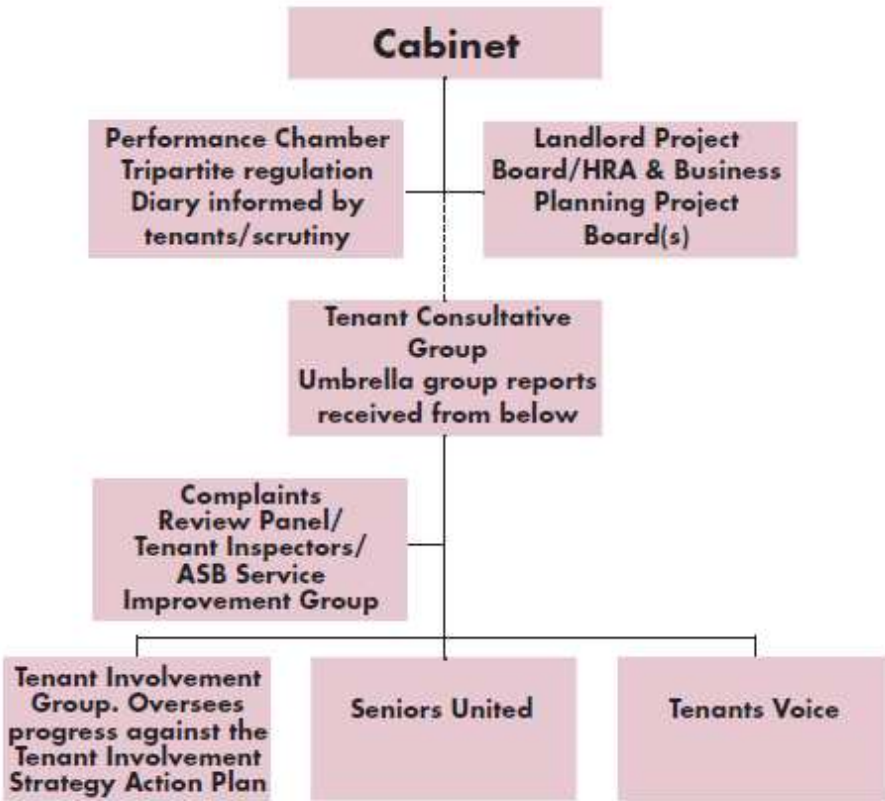
However there is a cost of Local Authorities joining the revised Housing Ombudsman service. From 2014/15 it is proposed that the cost of the service is shared equally across the sector by way of a per-unit subscription paid by all members of the scheme. For 2014/15 Tamworth Borough Council will have to pay c£1per unit subscription for membership per annum, approximately costing £4500. This can be met from existing budgets.

LEGAL/RISK IMPLICATIONS BACKGROUND

The establishment of a DTP is a power within the Localism Act 2011 and officers have sought legal advice in relation to this.

Since there are 3 different forms that a DTP may take (MP, Cllr, Designated Tenant Panel (DTP)), it follows that the existence of a DTP is NOT a legal requirement and Tamworth Borough Council is not obligated to set one up. The legal advice is that the requirement under the Tenant Involvement & Empowerment Standard sets out that Landlords must ‘support the formation and activities’ of tenant panels or equivalent groups and respond in a constructive and timely manner. The wording makes its clear that more than a passive involvement is expected.

The Council’s Landlord has a robust co-regulatory framework, illustrated below



This co-regulatory framework is explained in the Tenant Involvement & Consultation Strategy 2013-2016 and is available on the web. (<http://www.tamworth.gov.uk/tenant-involvement-0>) Part of this includes the existence of a Complaints review Panel, established in 2012. Its terms of reference include:-

- ✓ Assessing patterns and trends arising from complaints to inform continuous improvement
- ✓ Identifying best practice to minimise complaint escalation from stage 1 onwards
- ✓ Ensuring areas of the service are accountable to the wider Tenant Consultative Group in terms of performance and service delivery.

This, in conjunction with the existing role of members, already serves to fulfil the spirit of the legislation which is around attempting to resolve complaints at the earliest opportunity.

Ultimately, if Tamworth Borough Council is assessed as failing to comply with the regulation on DTPs, then this would see intervention from either the Housing Ombudsman and/or the Homes & Community Agency. Should tenants' make a complaint that is subsequently referred to the Ombudsman, this may prompt a review of the decision. However the requirement is that Landlords' evidence the decision making, and on the basis that the wider representative group of tenants are opposed to this level of involvement this should satisfy any wider scrutiny.

Risk	Mitigation
The legislation requires that the Landlord considers the formation of a DTP. Failure to evidence this robustly could result in the Housing Ombudsman / Homes and Community Agency (HCA) concluding that the decision to not adopt them is flawed resulting in intervention.	The tenants Consultative Group (TCG) is a formally constituted body recognised under the Council Landlord co-regulatory framework. They have voted against the formation of a DTP for the reasons set out in the report. The existing tenants' complaints review panel will review this annually to ensure the decision remains robust and representative of active tenant opinion.
Inequity between tenants and wider Tamworth residents. Currently the Councils 'Tell Us' Policy includes a 3-stage process, to set up a DTP would effectively create a stage 4 for tenants' and not residents.	The recommendation is not to introduce a DTP
The establishment of a DTP could detract from the Councils constitutional framework as MPs and local councillors are already recognised under this legislation.	The recommendation is not to introduce a DTP
A council owned constituted DTP could result in other housing providers accessing the service and the DTP considering complaints from the rest of the housing sector.	The recommendation is not to introduce a DTP
High levels of risk and potential dissatisfaction as complaints are no longer anonymised and potentially sensitive information is shared with members of the DTP.	The costs and processes involved to mitigate this are considered disproportionate when MPs & Cllrs already have this right.

SUSTAINABILITY IMPLICATIONS

Sustainable tenancies are the key to well balanced and cohesive communities. Overall satisfaction with the council's landlord is improving and linking complaint resolution to this is integral in terms of the national standard around customer involvement and empowerment.

MATTERS FOR CONSIDERATION

The Councils landlord is required under the national standard for Customer Involvement & Empowerment to have a framework for managing complaints and customer feedback aimed at driving service improvement. The Councils 'Tell Us' Policy fulfils this requirement with its 3-stage approach

1. Stage 1 – informal resolution
2. Stage 2 – Head of Service
3. Stage 3 – Head of Customer Service
4. Housing Ombudsman / Independent assessment

Historically, complaints about a local authority housing were made to the Local Government Ombudsman (**LGO**), while complaints about housing associations were made to the Housing Ombudsman Service. In order to streamline the system, from April 2013, the functions of the LGO transferred to the Housing Ombudsman for complaints about a local authority in its capacity as a provider of social housing (s.181 Localism Act 2011). Therefore, all complaints about social housing are now dealt with by a single body – the Housing Ombudsman. The future funding of the housing ombudsman was published by the DCLG in March 2014 and details are available at <https://www.gov.uk/government/consultations/future-funding-of-the-housing-ombudsman>.

The Government's aim is to increase the local resolution of complaints and in order to encourage this; a three step complaints process has been established. The first port of call for a dissatisfied tenant is his/her landlord. If the landlord is unable to assist, then a tenant should approach their Designated Person (**DP**). Finally, if the DP cannot help it can refer a complaint to the Ombudsman. Although complaints to the Ombudsman do not have to be referred by a DP, if they are not, at least eight weeks must have passed after the end of the landlord's complaint process before the Ombudsman can consider the case.

Designated Person

A DP is either an MP, a local councillor or a body known as a Designated Tenant Panel (**DTP**).

Designated Tenant Panel

A Designated Tenant Panel ("DTP") is defined in the Localism Act 2011 as a group of tenants who have been recognised by a social landlord for the purpose of referring complaints to the Housing Ombudsman Service. A landlord's role in establishing and working with a DTP is twofold: firstly, it is *to support*; and secondly, it is *to recognise* and these tasks are discussed in more detail below.

Recognising a Designated Tenant Panel

There is no guidance available as to how landlords should decide whether to recognise a tenant panel or not. The Council can use its discretion as to whether or not to recognise a DTP as there will be instances where it might not be appropriate to recognise one. In this instance it is simply because the representative body for tenants' does not support the formation and therefore it would be pointless in recognising such a body.

What is a Designated Tenants Panel (DTP)?

From 1 April 2013, the Localism Act put in place new arrangements for dealing with complaints by social tenants against their landlords. Tenants of Tamworth Borough Council would be able to ask for their complaints to be considered by a 'designated person' when their landlord's internal complaints procedure has been exhausted.

Why have designated persons?

The purpose of the 'designated tenant panel' would be to enable the Panel to play a role in helping to resolve complaints received from tenants locally, potentially using powers to refer complaints to the Housing Ombudsman Service where local resolution is not possible.

The Housing Ombudsman is not a regulator and cannot define the expected role or processes for designated persons. This would be contrary to the purpose of localism

Who can be a designated person?

A 'designated person' can be an MP, a local Councillor, or a Tenant Panel. Landlords do not have to set up tenant panels but they are expected to support their formation and activities if their tenants want them. To be effective the tenant panel must be 'recognised' by the landlord.

What is the impact of designated persons on complaints procedures?

Designated persons have no direct impact on a landlord's internal complaints procedure. MPs and local councillors have always been involved in complaints procedures as advocates for tenants and will continue to do so. Specific obligations are set out in the guidance attached at annex one – "*Tenant Panels; Options for Accountability*" (2012/13)

In practice this means that if complaints are not resolved at the end of the landlord's complaints procedure, the tenant can:

- refer the matter to a designated person (MP, Councillor) or
- Wait 8 weeks and refer the matter directly to the Ombudsman.

A designated person has no legal authority over a landlord's policy or procedure in relation to complaints resolution. Notwithstanding and recognising the wider executive and cabinet role in policy making in any event.

Tenant Consultation and Impact on customers?

Consideration was given by the Tenant Consultative Group determine whether the introduction of a “designated tenants panel” would enhance the existing arrangements for tenants to seek resolution to their complaints. Namely that

- ✓ adding an additional stage to the existing Tell Us Policy would lead to resolution
- ✓ minimise complaints and escalation to the housing ombudsman
- ✓ improve customer satisfaction

The Tenants Consultative group considered this at a series of meetings and workshops and unanimously rejected the formation of a DTP on the basis that

- It would be administratively onerous to resource and finance – disproportionate based on existing levels of complaints.
- Annex two shows the complaint satisfaction monitoring for year ending 2012/13 showing that there were only 5 complaints, c2% of overall complaints that escalate to stage 3 in any event. In addition there was only 1 case that progressed to the ombudsman. This is also routinely reported in the annual tenants report (http://issuu.com/tamworth_borough_council/docs/tenant-annual-report-booklet/1?e=2662912/6114790)
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The Tenant Consultative Group were unanimous and vociferous in their comments about introducing tenants panels and have asked officers to strongly recommend that these are not established under the new powers. Given that any subsequent DTP would have to be recruited, trained and resourced it is highly unlikely given the current opinion that the Council would be successful in establishing this in any event.

Cabinet are reassured that the existing complaint handling process is robust and that the planned corporate review will only seek to strengthen this going forward. Tenants still have the right to proceed to the Housing Ombudsman the only difference is that the establishment of a DTP is considered formally and is recommended for rejection.

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LIST OF BACKGROUND PAPERS

APPENDICES

Annex One - "*Tenant Panels; Options for Accountability*" (2012/13)

Annex two – Tamworth Landlord Services Complaint Summary 2012/13