

## Agenda Item 8

Housing Review Board

14 January 2010

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### A new regulatory framework for social housing in England

#### Summary

This report outlines the consultation being undertaken by the Tenant Services Authority on the future regulation of social housing. A detailed consultation paper was issued in November 2009 seeking responses to the consultation proposals by 5<sup>th</sup> February 2010.

The consultation paper sets out a series of principles and standards for the regulation of the sector leading to ten consultation questions. It is important that we feed any views we have into the process as the resulting standards will be a key regulatory tool in the future.

#### Recommendation

The Board are invited to assist in compiling a response to the Tenant Services Authority consultation paper titled **A new regulatory framework for social housing in England**.

#### a) Reasons for Recommendation

To give the Board an opportunity to comment upon this important consultation paper.

#### b) Alternative Options

Not to comment on the consultation or take an alternative stance to the one proposed in the report.

#### c) Risk Considerations

Not being fully aware of the new regulatory regime could result in poor assessments in the future.

#### d) Policy and Budgetary Considerations

The regulatory framework once finalised will determine and/or influence many of our policies that will be audited. I am unable to predict the budgetary implications at this stage.

#### e) Date for Review of Decision

Once the final version of the regulatory standards are published.

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## 1 Background

1.1 The Tenant Services Authority (TSA) was established in December 2008. I have reported previously on the role of the TSA (March 2009).

1.2 The TSA was set up as a result of the 2008 Housing and Regeneration Act. The Act increases the power over the regulation of social housing. The TSA has a goal of raising the standards of services for social housing tenants.

- 1.3 The TSA are currently working to develop a set of standards for the future regulation of the sector. In the meantime they are continuing to use the regulatory framework whose requirements are set out in the Regulatory Code and Guidance established by the Housing Corporation.
- 1.4 The TSA is an independent regulator, but one where the Secretary of State is able to direct the TSA in relation to certain standards affecting rents, the quality of accommodation and tenant engagement. The TSA are governed by a Board who are responsible for the strategic oversight of performance and governance. The TSA are subject to scrutiny by the National Audit Office.

## 2 Consultation paper proposals

2.1 The main thrust of the consultation proposals is the setting of clear requirements for service providers linked to what is important to tenants' lives, including repairs and maintenance; quality of accommodation; rents and allocations; anti-social behaviour; tenant empowerment; value for money; governance and viability. The proposals also seek to ensure that housing providers are open to scrutiny from their tenants.

2.2 The TSA have devised ten principles to shape future regulation which are:

- National standards will be established based on clear criteria;
- Our national standards will be clear, succinct, based on outcomes and avoid prescribing detailed processes;
- Our national standards framework will require providers to agree local standards with their tenants for the areas of service that are relevant to them locally;
- Every tenant matters. We expect providers to understand and respond to the particular needs of their tenants and to demonstrate how they have taken into account the needs of tenants across the six diversity groups;
- We will promote transparency in reporting of performance by providers for tenants and local authorities (in their strategic role) in the areas they operate;
- Good governance is a universal principle and is essential to the quality of service delivery, financial robustness and value for money;
- We want to promote effective forms of independent validation, audit and benchmarking of performance to encourage providers to continually improve and free the best from unnecessary red tape;
- For the national service delivery standards, we will focus our resources in 2010-11 on identifying and addressing the worst performing providers, where tenants are being let down by their provider's performance;
- The standards framework must support the principle of sector-led improvement. Where problems are identified the provider will usually be offered an opportunity for speedy self-improvement;
- Registration criteria should encourage new entry into the social housing sector, consistent with our objectives in the 2008 Act.

2.3 There is a specific section of the consultation report on the regulation of local authority providers. This has been reproduced in **annex 1**.

2.4 Part two of the consultation covers proposals for standards in relation to tenant involvement and empowerment; homes; tenancies; neighbourhood and community; value for money; governance and financial viability. This series of six standards are at the heart of the consultation and will provide the basis of future regulation. Each section is preceded with a section on the scope and rationale for the standard followed by the draft text for the standard and finally a series of consultation questions.

2.5 The summary document produced by the TSA and draft standards has been reproduced in **annex 2**. The full document is some 141 pages and can be accessed on the TSA website.

2.6 The consultation paper sets out ten key consultation questions that I have reproduced below:

1. Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?
2. Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?
3. Does it seem reasonable to extend the same approach to those providers owning less than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?
4. Do our proposals on how we will approach the regulation of local authorities appear reasonable?
5. Does the proposed text for the following standards:
  - Address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?
  - Express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

5A Involvement and Empowerment  
5B Home  
5C Neighbourhood and Community  
5D Tenancy  
5E Value for Money

5F Does the proposed text for the Governance and Financial Viability standard:

  - Allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?
  - Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?
6. Does our approach to monitoring and compliance against the standards and regulatory requirements seem a reasonable basis for 'how' we regulate in 2010-11?
7. Does our approach to dealing with complaints seem reasonable?
8. Is our general approach to using our formal regulatory and enforcement powers reasonable?
9. Do our proposals for establishing registration and deregistration criteria seem reasonable?
10. Does our approach to issuing directions and the Disposal Proceeds Fund seem reasonable?

2.7 It is important that we take the opportunity of responding to the consultation paper.

### **3. Proposed response to the consultation**

3.1 Much of the consultation paper presents a reasonable approach to regulation in my opinion. I have participated in the TSA Single Conversation and many of the ideas put forward at that early stage have found their way into the consultation paper.

3.2 The TSA is committed to co-regulation, which it sees as self-regulation with a backbone of intervention on a 'by exception' basis. In the TSA's opinion the key ingredients are:



- Clear regulatory expectations; meaningful, non prescriptive national standards.
  - Locally agreed standards, developed with tenants.
  - Boards taking responsibility for meeting standards, engaging in honest and robust self-assessment. Tenant scrutiny of performance, external validation, independent audit and peer review is also encouraged.
  - Providers giving transparent performance information to tenants.
  - Where possible, allowing providers to correct problems, and take responsibility for self-improvement.
  - Ultimately, regulatory intervention (when self-correction fails).
- 3.3 The proposed standards are succinct. For instance the governance section of the proposed governance and financial viability standard contains just one paragraph on required outcomes and four specific requirements. It is not expanded upon by a code of practice. The TSA says that a reduction of the regulatory burden is a key part of its plans. As such, it proposes not to publish (at least in the first instance) any codes of practice to support any of the national standards.
- 3.4 The section on local authority regulation suggests to me that the TSA have thought mainly about the RSL sector in developing the framework.
- 3.5 The six standards proposed seem to cover the range of issues that are both relevant to tenants and likely to be a good test of how well a social housing provider performs. It would be helpful if the TSA incorporate a series of Systems Thinking measures such that we are not subject to arbitrary targets, or better still we have the freedom to establish locally relevant targets. This would enable us to devise our own suite of measures.
- 3.6 There does appear to be sufficient flexibility in the proposals to allow us to set local standards following consultation with our tenants, and agree a method for local performance management. This is something I argued for during the Single Conversation exercise.
- 3.7 The proposals for the Home standard for example recognise the need to provide warm, decent homes and an efficient, cost effective repairs service. I fully support this as a given, my slight concern is will we find 'the devil in the detail' once the standard is published.
- 3.8 The Tenancy standard is rather prescriptive in relation to rents. This might present more of a problem for RSL's as we have been used to rent determinations and control by government.
- 3.9 The Neighbourhood and Community standard is brief and states the obvious. Similarly I feel that the Value for Money standard is quite basic which leads me to suspect that they may be supplemented by Key Lines of Enquiry (KLOE) type detail that we are not seeing yet.
- 3.10 The Governance part of the standard seems to favour RSL arrangements and the Financial Viability element states the obvious.
- 3.11 More generally the new approach is less about specific requirements and more about broad expectations, for example 'to have effective governance arrangements'. It may therefore be harder for providers to predict the TSA's view on particular decisions and strategies and ultimately whether regulatory intervention is likely.
- 3.12 I find the majority of the proposals sensible, proportionate, and capable of local interpretation and covering the themes that are likely important and relevant to tenants.

- 3.13 I invite the Board to debate the contents of the consultation paper and I will devise a response taking into account the issues I refer to above and the matters the Board want fed into the consultation process. We also need to commence our preparations for the new regulatory regime and in particular start to establish our local service standards the new regulator will expect us to have in place during 2010. Our Housing Customer Charter can form the basis of this work as well as it being an opportunity to integrate these standards with Systems Thinking measures and 'what matters' to our customers.

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**Legal Implications**

This is a consultation report and there are no legal implications requiring comment at this time.

**Financial Implications**

No financial implications have been identified at this stage.

**Consultation on Reports to the Executive**

None.

**Background Papers**

- A new regulatory framework for social housing in England, TSA, November 2009.
- Report to the Board on the role of the TSA, March 2009.

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Housing Review Board  
14 January 2010