

TSA Consultation on Housing Regulation

Summary

1. This paper is intended to inform the Board's discussion of the LGA Group's response to the statutory consultation on the new regulatory framework for social housing in England, which was launched on November 12. The consultation closes on February 5.
2. This paper explains
 - the background to the creation of the new regulatory regime and the history of the relationship between the TSA and LGA;
 - the proposals in the consultation paper along with the main points of the proposed response; and
 - next steps.

Recommendations

Members are asked to endorse the main points for a response to the consultation on social housing regulation, as well as the proposed next steps.

Action

Subject to the above decision, Housing Portfolio Holders to agree the final LGA Group Response.

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Background

1. A new regulator for all social housing landlords was established by the Housing and Regeneration Act 2008. The Tenant Services Authority (TSA) formally came into being in December 2008. Prior to the TSA's establishment, housing associations and other registered social landlords (RSLs) were regulated by the Housing Corporation, while councils with retained stock were subject to the Audit Commission. The LGA, led by President Richard Best, led the campaign for cross domain regulation on the grounds that all tenants should experience excellence in the delivery of services and be supported to have a high quality of life, irrespective of their landlord.
2. While the TSA's relationship with the sector did not start on a strong note, relations have subsequently improved. Housing Portfolio holders established a good rapport with TSA Board members during three meetings in 2009, which has resulted in the TSA taking a regulatory approach much more in line with the LGA's vision than that which they initially proposed. However, challenges persist in getting TSA officers to follow through on the undertakings from Board- and officer-level meetings, e.g. actively promoting awareness of the new regulatory regime within the sector and clarifying the relationship between the TSA and the Audit Commission with respect to Comprehensive Area Agreements (CAA).

Summary of Proposed Regulatory Framework

3. The TSA propose to take a co-regulatory approach by encouraging landlords to report to tenants and acting as a backstop in cases of poor performance. Six standards are proposed: tenant involvement and empowerment; home; tenancy; neighbourhood and community; value for money; and governance and viability. It should be noted that the governance and viability standard will not apply to local authorities. Landlords will be required to report to tenants on their performance against these standards on an annual basis, generally using information that they already collect. The TSA will monitor landlord performance through these annual reports, as well as through direct feedback mechanisms. Where a landlord demonstrates poor performance, the TSA have undertaken to provide for self-improvement and peer support before intervening directly, other than in exceptional circumstances.

Key Issues

4. In some respects, the TSA's proposals demonstrate movement towards the LGA Group's position on regulation. Notably, the new regulatory framework tries to be outcome-focused, puts tenant scrutiny at the heart of the regime, and does not propose to set minimum thresholds for performance or issue Codes of Practice at the outset. However, a number of areas of concern remain and are set out below.

Standards

5. The proposed text of the six standards currently totals nine pages of A4 or 3,000 words, which casts doubt on whether they set out meaningful outcomes or would be comprehensible to tenants (**attached at Annex A**). The root of the problem lies with the design of the standards, which sets out "required outcomes" followed by a list of "specific requirements". The required outcomes are generally sensible, but the requirements tend to focus on the processes by which landlords should demonstrate they have met these standards. The specific requirements, by imposing new information burdens on landlords, may also not be compatible with the Local Performance Framework.
 - Do members agree that only required outcomes should be endorsed for the content of the standards?
 - Do members have views on how best to reconcile the avoidance of prescription and burdens on landlords with the benefits of comparative information being available between landlords?

Value for Money Standard

6. The TSA are proposing that a Value for Money (VfM) standard should apply to all landlords. The LGA line is that councils are already subject to an annual Use of Resources judgement by the Audit Commission and there is a great risk of overlap with this standard.
 - Do members agree that there should not be a VfM standard?

Smaller landlords

7. At present, providers with less than 1,000 properties will not be subject to this regulatory framework. About 65 authorities constitute small landlords, with 90% of them having less than 150 properties. While stock holdings of individual housing associations are not readily available, it could be assumed that many RSLs will have holdings in the 500-999 range, which could have a notable impact on a local area.
 - Do members feel that 1,000 properties is an appropriate threshold?

Inspections

8. The TSA and the Audit Commission will be developing a new inspection approach that aligns to the new standards. Until this is in place, the TSA will commission inspections using a slimmed down version of the current Key Lines of Enquiry (KLOE) framework.
 - Do members agree with the position that the KLOE framework should be used on an interim basis, provided that inspections are commissioned only when there is evidence that the well-being of tenants may be in jeopardy?
 - What are members' views on how inspections should be conducted in future?

Relationship with ALMOs

9. There is little detail in the consultation paper on how the TSA intend to work with ALMOs in practice, although they do propose to engage with ALMOs directly.
 - Do members feel that the TSA should have to agree with councils whose housing stock is managed by ALMOs how they will engage with the ALMO?

Strategic housing function

10. There is little discussion of local authorities' strategic housing role in the paper.
 - Do members agree that the TSA should seek feedback from local authorities on the performance of registered providers in their areas, particularly with regard to wider community well-being?

Proposed Next Steps

11. Dame Margaret Eaton, LGA Chairman, wrote to the Rt. Hon. John Healey M.P. in December 2009, setting out the LGA's concerns with the standards framework and suggesting that she and the Minister meet with Anthony Mayer, TSA Chair. While a response has not yet been received, a meeting is expected to take place in February.
12. Housing Portfolio Holders are scheduled to meet with TSA Board members on January 29 to discuss the LGA response and hear how the TSA will feed into the CAA. However, the meeting may have to be rescheduled until such as the TSA is able to provide a paper supporting the discussion on the CAA.
13. The LGA Group will be formulating an individual response, while coordinating with other landlord representative bodies to ensure coherent messaging wherever possible.

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14. The final response will be sent to Housing Portfolio Holders for clearance by January 22.

Financial Implications

15. There are no financial implications at this stage.

Implications for Wales

16. There are no direct implications for Wales.

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Annex A: Standards from the New Regulatory Framework for Social Housing

Tenant Involvement and Empowerment standard

The required outcomes

1 Customer service and choice

Registered providers must design and deliver housing services that tenants can access easily. Tenants must be offered choices over the services they receive, and be treated with fairness and respect. In relation to all the standards, registered providers must consider equality issues and the diversity of their tenants, including tenants with additional support needs.

Registered providers must understand their tenants' needs and use this information to:

- design and deliver housing services
- communicate with tenants

2 Involvement and empowerment

Registered providers will offer all tenants opportunities to be involved in the management of their housing. This must include opportunities to:

- influence housing related policies and how housing related services are delivered
- be involved in scrutinising performance in delivering housing-related services

Registered providers must offer tenants support so they are more able to be effectively engaged, involved and empowered.

3 Responding to complaints

Registered providers must have a clear and accessible policy. They must deal with tenants' complaints and any other feedback promptly, politely and fairly. The policy must include how they use complaints and other feedback to:

- change how they do things
- improve services

Specific requirements

1 Customer service and choice

1.1 Registered providers will be able to show they have arrangements for understanding their tenants, their views and needs so that in all the standards, they can use this information to:

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- improve services
- offer choices in the services provided

1.2 For all the standards, registered providers must consider equality issues and the diversity of their tenants, including tenants with additional support needs and incorporate choices that are designed to meet the diverse needs of their tenants.

1.3 Registered providers will provide tenants with accessible, comprehensive and timely information about:

- how tenants can access services
- the standards of housing services their tenants can expect
- how they are performing against those standards
- the service choices available to tenants
- any additional costs that are relevant to specific choices
- how tenants can communicate with them

2 Involvement and empowerment

2.1 Registered providers, having consulted their tenants, must have arrangements in place that support and enable tenants to be involved and empowered. Tenants must have the opportunity to:

- be involved in the management of their homes (including, for example, in relation to the repairs programme and choice of main contractors)
- influence their registered provider's strategic priorities
- measure and scrutinise how effective their registered provider's involvement and empowerment policy is

2.2 Registered providers must say how they will provide support to build tenants' capacity to be effectively engaged, involved and empowered.

2.3 Arrangements for involvement and empowerment must be clearly published and accessible for tenants.

2.4 Following consultation with their tenants, registered providers will establish by no later than 1 April 2011 local standards in those service areas where the TSA has indicated that its national standards should be tailored with local standards where tenants want them. Local standards should include commitments on:

- local standards for performance
- how performance will be monitored and reported to tenants
- how tenants can be involved in scrutinising performance
- what happens if local standards are not met
- arrangements for reviewing the local standards on an annual basis

2.5 Registered providers will offer tenants a range of opportunities to scrutinise their performance. This applies to all standards.

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2.6 When registered providers are required by law to consult tenants about changes to their constitution (for example, where there will be a change of registered provider), they should clearly and objectively set out the options, and the costs and benefits of the options.

2.7 Where registered providers intend to make a significant change in the arrangements for the management of their stock, they must consult their tenants.

2.8 Where registered providers have consulted tenants about the standards, they should feed back to tenants about how they have taken their views into account.

3 Responding to complaints

3.1 Registered providers will have an approach to complaints that is clear, simple and accessible to tenants and potential tenants. The approach should include:

- a range of ways for tenants to express a complaint
- details of what to do if they are unhappy with the outcome of a complaint

3.2 Registered providers will develop, agree and monitor service standards for complaints with tenants. Registered providers will make sure that complaints and any other feedback are managed and resolved promptly, politely and fairly.

3.3 Each year registered providers will publish information about:

- the number of complaints received
- the nature of the complaints
- the business area the complaints relate to
- the outcome of the complaints
- how they have changed the way they do things to improve services as a result of feedback

The Home standard

The required outcomes

1 Quality of accommodation

Registered providers must ensure that all homes are warm, weatherproof and have modern facilities.

2 Repairs and maintenance

Registered providers must provide a cost-effective repairs and maintenance service that responds to the needs of, and offers choices to, tenants. They must meet all applicable statutory requirements that provide for the health and safety of tenants in their homes.

Specific requirements

1 Quality of accommodation

1.1 Registered providers must ensure tenants' homes either:

- meet the Decent Homes Standard set out in Section 5 of the Government's Decent Homes guidance*,
- or
- meet the standards of design and quality that applied when the home was first built, and were required as a condition of publicly funded financial assistance**, if these standards are higher than the Decent Homes Standard

1.2 Registered providers must meet the standard in 1.1 by 31 December 2010. They must continue to maintain their homes to this standard. The TSA may agree an extension to this date with the registered provider where it is reasonable.

1.3 Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard. The local standard should be higher than the standard set out in 1.1. In developing local standards, registered providers must:

- have regard to Section 6 of the Government's Decent Homes guidance
- demonstrate how they have ensured that tenants' views have been taken into account

* 'Decent Homes guidance' means A Decent Home: Definition and Guidance for Implementation, published by the Department for Communities and Local Government in June 2006, and any guidance issued by the Department or its successors, in relation to that document¹⁴.

** 'Financial assistance' is defined in Section 19 (3) of the Housing and Regeneration Act, 2008. For the purpose of this standard it includes financial assistance provided by the Homes and Communities Agency's predecessor bodies.

2 Repairs and maintenance

2.1 Registered providers must have a repairs and maintenance service that:

- is cost effective
- has the objective of completing repairs and improvements 'right first time'
- has published standards that have been agreed with tenants for completing repairs and improvements
- offers tenants choice (for example about appointment times for carrying out repairs)

2.2 Registered providers must ensure a prudent, planned approach to repairs and maintenance.

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It should demonstrate an appropriate balance of planned and responsive repairs, and value for money. The approach should include:

- responsive repairs
- planned and capital work
- work to empty properties
- adaptations
- cyclical works
- communal areas as well as individual homes

2.3 Registered providers must comply with all applicable legislation and regulation that provide for the health and safety of the occupants of their homes.

2.4 Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard.

2.5 Registered providers must provide tenants with clear information about:

- each other's responsibilities
- the progress of works

2.6 Registered providers must co-operate with relevant organisations to provide an adaptations service that meets tenants' needs.

The Tenancy standard

The required outcomes

1 Allocations

Registered providers must let their homes in a fair, transparent and efficient way. They must take into account the housing needs and aspirations of tenants and potential tenants. They should demonstrate how their allocations processes:

- make the best use of available housing
- contribute to local authorities' strategic housing function and sustainable communities

There should be clear decision making and appeals processes.

2 Rents

Registered providers will charge rents in accordance with the objectives and framework set out in the Government's direction to the TSA of November 2009.

3 Tenure

Registered providers must offer and issue the most secure form of tenure compatible with:

- the purpose of the housing
- the sustainability of the community

They must meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements.

Specific requirements

1 Allocations

1.1 Registered providers will co-operate with local authorities' strategic housing function, and their duties to meet identified local housing needs. This includes assistance with local authorities' homelessness duties, and through meeting obligations in nominations agreements. Where in exceptional circumstances registered providers choose not to participate in choice-based lettings schemes in areas where they own homes, they justify their reasons for doing so publicly.

1.2 Registered providers will develop and deliver services to address under occupation and overcrowding in their homes, within the resources available to them. These services will meet the needs of their tenants, and will offer choices to them.

1.3 Registered providers will provide tenants wishing to move with access to clear and relevant advice about their housing options. They will participate in mobility schemes and mutual exchange schemes where these are available.

1.4 Registered providers will publish their allocations policies and outcomes, how this has made best use of available housing and contributed to sustainable communities. The published policies should include (where it applies) their participation in:

- common housing registers
- common allocations policies
- local lettings policies

Registered providers will clearly set out, and be able to give reasons for, the criteria they use for excluding actual and potential tenants from consideration for allocations, mobility or mutual exchange schemes.

1.5 Registered providers will develop and deliver allocations processes in a way which supports their effective use by the full range of actual and potential tenants, including those with support needs, those who do not speak English as a first language and others who have difficulties with written English.

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1.6 Registered providers will work to make sure that the specific needs and aspirations of tenants and potential tenants with diverse needs are reflected in the choices available to them. This applies particularly to the development of local lettings policies.

1.7 Registered providers must minimise the time that properties are empty between each letting. When doing this, they must take into account the circumstances of the tenants who have been offered the properties.

1.8 Registered providers must record all lettings and sales in the Continuous Recording of Lettings system.

2 Rents

2.1 Registered providers will ensure they meet the following requirements which derive from the Government's direction to the TSA of November 2009 and published within Directions to the Tenant Services Authority – summary of responses and Government response, November 2009, CLG.

2.2 Subject to paragraph 2.3, registered providers will set rents with a view to achieving the following as far as possible:

2.2.1 Rents conform with the pattern produced by the rent formula set out in Rent Influencing Regime guidance* ('target rents') with a five per cent tolerance in individual rents (ten per cent for supported and sheltered housing) ('rent flexibility level') but subject to the maximum rent levels specified in that guidance ('rent caps').

2.2.2 Weekly rent for accommodation increases each year by an amount which is no more than RPI** + 0.5% + £2 until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower.

2.2.3 Weekly rent for accommodation which has reached or is above the upper limit of the rent flexibility increases each year by an amount which is no more than the increase to the target rents.

2.2.4 Rent caps increase annually by RPI + one per cent.

2.2.5 Target rents increase annually by RPI + 0.5%.

2.3 Where the application of the rents standard would cause registered providers to be unable to meet other standards, particularly in respect of financial viability including the risk that a reduction in overall rental income causes them to risk failing to meet existing commitments such as banking or other lending covenants, then the TSA may allow extensions to the period over which the requirements of the rent standard are met.

2.4 Registered providers must provide clear information to tenants that explains how their rent and any service charge is set, and how it is changed, including reference to

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the RPI benchmark to which annual changes to rents should be linked (except where rents are controlled under different legislation).

* 'Rent Influencing Regime guidance' means the Rent Influencing Regime Guidance published by the Housing Corporation¹⁵ in October 2001, and any guidance issued by the Housing Corporation or TSA, or its successors, in relation to that document.

** 'RPI' means the general index of retail prices (for all items) published by the Office of National Statistics or, if that index is not published for any month, any substituted index or index figures published by that Office.

3 Tenure

3.1 Registered providers must publish clear and accessible policies which outline their approach to tenancy management. They must develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions. The approach must set out how registered providers will make sure that the home continues to be occupied by the tenant they let the home to.

3.2 Registered providers must provide tenants with accessible, comprehensive and timely information about their responsibilities and tenants' responsibilities.

Neighbourhood and Community standard

The required outcomes

1 Neighbourhood management

Registered providers will keep the common areas associated with the homes that they own clean and safe. To achieve this, they will work in partnership with:

- their tenants
- other providers and public bodies, where this is the most effective way of achieving this standard

2 Local area co-operation

Registered providers will co-operate with relevant partners to help promote social, environmental and economic well being in the areas where their properties are.

3 Anti-social behaviour

Registered providers must work in partnership with other public agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

Specific requirements

1 Neighbourhood management

1.1 Registered providers will consult with tenants in developing their policy for maintaining and improving the neighbourhoods associated with their homes. This applies where the registered provider has a responsibility for the condition of that neighbourhood. The policy must include any communal areas associated with the registered provider's homes. The registered provider must publish this policy.

1.2 Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard.

2 Local area co-operation

2.1 Registered providers, having taken account of their presence and impact within the areas where they have properties, will:

- identify and publish the roles they are able to play within the areas where they have properties
- co-operate with local strategic partnerships and local strategic housing authorities where they are able to assist them in achieving their objectives

3 Anti-social behaviour

3.1 Registered providers will develop and deliver services which are effective in achieving the core commitments of the Respect Standard for Housing Management¹⁷.

3.2 Registered providers will publish a policy on how they work with relevant partners to tackle anti-social behaviour in areas where they own properties.

3.3 Registered providers must ensure their tenants have the opportunity to agree a local standard, as set out in 2.4 of the Tenant Involvement and Empowerment standard.

Value for Money standard

The required outcomes

1 Value for money

In meeting all national standards and their local standards, registered providers have a comprehensive approach to managing their resources to provide cost-effective, efficient, quality services and homes to meet tenants' and potential tenants' needs.

Specific requirements

1 Value for money

1.1 Registered providers, publish as part of their communications with their tenants, information on at least an annual basis that demonstrates:

- how they have allocated and prioritised expenditure on different areas of housing services covered by the national standards and their local standards and other priorities such as investment in the supply of new social housing
- how they have ensured that it has secured value for money in that expenditure, how they have tested this, and the benefits that tenants can expect
- their expectations for future value for money improvements and how they have taken into account in these expectations improvements arising from asset management, income management, and procurement policies

1.2 Registered providers have arrangements for tenants to influence the services delivered and the cost of those services that result in service charges to tenants. Registered providers must ensure their tenants have the opportunity to agree a local standard (in line with the requirements of 2.4 of the Tenant Involvement and Empowerment standard).

1.3 Registered providers' governing bodies scrutinise the performance of the registered provider at least annually against this standard.

Governance and Financial Viability standard

The required outcomes

1 Governance

Registered providers have effective governance arrangements that ensure that they have structures, systems and processes to deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. Governance arrangements ensure they:

- adhere to all relevant legislation
- comply with their governing documents and all regulatory requirements
- are accountable to tenants, the TSA and relevant stakeholders
- safeguard tax payers' interests and the reputation of the sector

2 Financial viability

Registered providers must manage their resources effectively to ensure their viability is maintained.

Specific requirements

1 Governance

1.1 Registered providers adopt and comply with an appropriate code of governance. They will give the reasons for their choice and explain areas of non-compliance with their chosen code.

1.2 Registered providers must establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive. At least once a year, they must assess how effective these arrangements are in meeting the required outcomes above.

1.3 Registered providers submit an annual return, on an accurate and timely basis in a form determined by the TSA. This is currently the Regulatory and Statistical Return (and its successor the National Register of Social Housing).

1.4 Where a registered provider is within a wider group structure that is not regulated by the TSA, it will ensure with its parent that nothing in their relationship shall hinder the subsidiary's ability to meet all the national standards, and the TSA's effective regulation of performance against these standards.

2 Financial viability

2.1 Registered providers ensure that:

- effective controls and procedures are in place to ensure security of assets and the proper use of public funds
- effective systems are in place to monitor and accurately report delivery of their plans
- the risks to delivery of financial plans are identified and effectively managed

2.2 Registered providers will ensure that they have a robust and prudent business planning and control framework. Through this framework they will ensure:

- there is access to sufficient liquidity at all times
- financial forecasts are based on appropriate and reasonable assumptions
- planning sufficiently considers the financial implications of risks to the delivery of plans
- they monitor, report on and comply with their funders' financial covenants

2.3 Registered providers will provide to the TSA:

- accurate and timely statutory and regulatory financial returns
- an annual report on any losses from fraudulent activity