

**Decision Session: Cabinet Member for
Health, Housing and Adult Social
Services**

24th January 2012

Report of the Assistant Director of Housing and Public Protection

**A revised regulatory framework for social housing in England from
April 2012**

Summary

1. The Tenant Services Authority (TSA) have published a consultation document on a revised regulatory framework for social housing in England. The consultation period ends on the 10th February 2012. Major revisions include the current standards being reclassified into Economic and Consumer Standards (the Economic Standards do not apply to local authorities). Whilst the majority of the Consumer Standards have remained unchanged including the requirement to publish an Annual Report, there have been revisions to the Tenant Involvement and Empowerment standard and to the Tenancy Standard in relation to tenure.
2. Changes are also proposed with regards the regulators role concerning compliance to the Consumer Standards. The regulator will take a back seat approach to compliance expecting members, MP's and tenants to self regulate. The regulator may only intervene in cases of serious detriment. An area of concern of this approach shared by both the Chartered Institute of Housing and the Housing Quality Network is the whole approach of setting standards with no checking by the regulator and little likelihood of intervention unless the serious detriment test is applied to establish if a very serious harmful outcome has occurred. A summary of the key changes are:
 - Split of standards into economic standards and consumer standards
 - Economic standards only apply to 'private registered providers', i.e., housing associations and registered private companies. They do not apply to local authorities or ALMOs (unless an ALMO owns property and is separately registered)

- Consumer standards apply to all registered providers including housing associations, local authorities, ALMOs and registered private companies
 - The social housing regulator will only have a minimal backstop role in regulating consumer standards and will intervene only where there is serious detriment or harm to a number of tenants
 - Significant increased focus on value for money in private sector providers (not applicable to local authorities)
 - More focus on local mechanisms to resolve issues (i.e., not by the social housing regulator). There is an expectation that members, MP's and tenants self regulate.
 - New detailed requirements on tenant mobility and involvement in repairs and maintenance
3. The consultation questions in relation to the revisions are limited to
- Do the proposed changes reflect the direction outlined in the Localism Act and
 - Do the revisions express requirements of providers in a way that is clear, succinct and as outcome focussed as possible.
4. This report outlines the proposed changes to the framework and asks the Cabinet member to approve the response to the consultation document at Annex 1.

Background

5. The TSA published a consultation document in the later part of November 2011 highlighting the proposed changes to the regulatory framework and asking for responses to the consultation questions. The proposed new framework reflects both the recommendations made in the Government's review of social housing regulation and the requirements being introduced in the Localism Bill.
6. The Localism Bill gives local authorities more control over the funding of social housing, helping them to plan for the long term, introduces the opportunity for flexible tenancies and paves the way for a national home swap scheme. It reforms the way that social housing is regulated, providing social tenants with stronger tools to

hold their landlords to account by supporting tenant panels - or similar bodies - in order to give tenants the opportunity to carefully examine the services being offered. It also changes the way that complaints about social landlords are handled. Currently, there are two separate ombudsmen (the Local Government Ombudsman and the Independent Housing Ombudsman) handling social tenants' complaints about their landlord. In the future, a single watchdog (the Independent Housing Ombudsman) specialising in complaints about social housing will ensure greater consistency across the sector.

7. The Localism Act leaves some fundamental parts of the April 2010 regulatory framework unchanged. It reinforces the commitment to co-regulation – that is, that the regulator still expects robust self-regulation by the boards and councillors who govern the delivery of housing services, incorporating effective tenant involvement. There is still a requirement to produce annual reports and to monitor and revise local offers.

Economic Standards

8. Some TSA standards have been revised and in compliance with the Localism Act the standards have been reclassified into economic and consumer standards. Economic Standards are not applicable to local authorities and cover :

- Governance and Financial Viability
- Value for Money and
- Rent.

9. The regulator will continue to have a proactive role with those organisations where these standards apply on ensuring that the economic standards are met, and will engage with providers to obtain assurance that they are being met.

Consumer Standards

10. Consumer standards apply to all registered providers, including local authorities. The consumer standards support co-regulation. In future, the regulator's role is limited to setting these standards and not having a proactive role in monitoring compliance, intervening only where failure of the standard could lead to risk of serious harm to tenants (the 'serious detriment' test). Consumer standards are outlined in the table below.

| | |
|------------------------------------|--|
| Tenant involvement and empowerment | Customer service, choice and complaints Involvement and empowerment Understanding and responding to diverse needs of tenants |
| Home | Quality of accommodation Repairs and maintenance |
| Tenancy | Allocations & mutual exchange Tenure |
| Neighbourhood and community | Neighbourhood management Local area co-operation Anti-social behaviour |

Proposed Changes

Tenant and Empowerment Standard

11. This standard has been significantly revised due to government direction on local mechanisms to involve tenants, scrutinise performance and resolve problems. However, there has been no change to the standard in relation to sections on customer service, choice, complaints, and understanding diverse needs of tenants. The section on involvement and empowerment has been strengthened to include:

- Supporting the formation and ongoing activities of tenant scrutiny panels
- Provision of information to support effective scrutiny
- Support for tenants to build capacity.

The revised outcomes and specific expectations to the Tenant and Empowerment Standard are outlined in the table below.

| Outcome | Specific Expectations |
|---|--|
| <p>Registered providers shall ensure that tenants are given a wide range of opportunities to influence and be involved in:</p> <ul style="list-style-type: none"> • the formulation of their landlord's housing related policies and strategic priorities • the making of decisions about how housing related | <p>Additional Specific Expectations for Local Authorities:</p> <ul style="list-style-type: none"> • supporting their tenants to exercise their Right to Manage or otherwise exercise housing management functions, where appropriate supporting the formation and activities of tenant panels or equivalent |

| | |
|---|---|
| <p>services are delivered, including the setting of service standards</p> <ul style="list-style-type: none"> • the scrutiny of their landlord’s performance and the making of recommendations to their landlord about how performance might be improved • the management of their homes, where applicable • the management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made, • agreeing local offers for service delivery | <p>groups and responding in a constructive and timely manner to them</p> <ul style="list-style-type: none"> • the provision of timely and relevant performance information to support effective scrutiny by tenants of their landlord’s performance in a form which registered providers seek to agree with their tenants. Such provision must include the publication of an annual report which should include information on repair and maintenance budgets, and • providing support to tenants to build their capacity to be more effectively involved |
| <p>Consultation Question Does the revised Tenant Involvement and Empowerment standard:</p> <ul style="list-style-type: none"> • Effectively take into account the Government’s direction to the regulator and amendments required by the Localism Act? • Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible? | |
| <p>Proposed Response Yes- The Localism Bill clearly articulates the strengthened role expected for tenants. The revised standard reflects this and gives clarity in terms of what is expected</p> | |

Home Standard

12. The current 2010 Home standard has two elements: quality of accommodation and repairs and maintenance. There are no substantive changes proposed to the repairs and maintenance element of the home standard. Some minor change is proposed to the section on quality of housing to reflect government direction and the fact that compliance with the Decent Homes standard is an ongoing requirement now the original deadline has been passed.

Consultation Question

Does the revised Home standard:

- Effectively take into account the Government's direction to the regulator and amendments required by the Localism Act?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Proposed Response

Yes- The Localism Bill clearly requires that homes are of a decent standard and it is appropriate to remove the deadline date so that this process is continuous. The revised standard reflects this and gives clarity in terms of what is expected.

Tenancy Standard

13. The current 2010 Tenancy standard contains requirements in relation to rents, allocations and tenure. The rent element of the standard has been reclassified as an economic standard and has been moved from the Tenancy standard and is therefore not applicable to local authorities. The allocations element of the standard is retained without further change.
14. However it is proposed to make significant changes to the Tenure Element of the Tenancy Standard to reflect the Localism Act and include :
 - Introduction of flexible tenancies
 - Protection for existing tenants
 - Requirements for tenancy policies
 - Mutual exchanges.
15. The standard requires the use of internet-based mutual exchange systems. The standard does make it clear that where fixed-term tenancies are granted they should be for at least five years, apart from in exceptional cases when they can be as short as two years. The revised Tenure Standard is outlined below.

Revised Tenure Standard

16. Outcome - Registered providers shall enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services

Specific Expectations

17. Registered providers shall subscribe to an internet based mutual exchange service which allows:
 - a tenant to register an interest in arranging a mutual exchange through the mutual exchange service without payment of a fee
 - the tenant to enter their current property details and the tenant's requirements for the mutual exchange property they hope to obtain
 - the tenant to be provided with the property details of those properties where a match occurs
18. Registered providers shall ensure the provider of the internet based mutual exchange service to which they subscribe is a signatory to an agreement, such as Home Swap Direct, under which tenants can access matches across all (or the greatest practicable number of) internet based mutual exchange services.
19. Registered providers shall take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to its tenants. Registered providers shall provide reasonable support in using the service to tenants who do not have access to the internet.

Outcome

20. Registered providers shall grant tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock. They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements.

Specific Requirements

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

22. Registered providers should set out:

- The type of tenancies they will grant.
- Where they grant tenancies for a fixed term, the length of those terms.
- The circumstances in which they will grant tenancies of a particular type.
- Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
- The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
- The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
- Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
- The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
- Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- Registered providers must grant general needs tenants a periodic secure or assured (excluding assured short hold) tenancy, or a tenancy for a minimum fixed term of five years, or exceptionally a tenancy for a minimum term of no less than two years, in addition to any probationary tenancy period.
- Before a fixed term tenancy ends, registered providers provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the fixed term or do not propose to do so.
- Where registered providers use probationary tenancies, these shall be for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review.
- Where registered providers choose to let homes on fixed term tenancies (including under Affordable Rent terms), they shall

offer reasonable advice and assistance to those tenants where that tenancy ends.

- Registered providers shall make sure that the home continues to be occupied by the tenant they let the home to for the duration of the tenancy period allowing for regulatory requirements about participation in mobility schemes.
- Registered providers shall develop and provide services that will support tenants to maintain their tenancy and prevent unnecessary evictions.
- Registered providers shall grant those who were social housing tenants on the day on which section 150 of the Localism Act 2011 comes into force, a tenancy with no less security where they choose to move to another social rented home. (This requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms).
- Registered providers shall grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.

Consultation Question

Does the revised Tenancy standard:

- Effectively take into account the Government's intended direction to the regulator and amendments required by the Localism Act?
- Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?

Proposed Response

The proposed standard does reflect the Governments direction required by the Localism Act and the requirements of the standard are clear and succinct,

Neighbourhood and Community Standard

23. The proposed Neighbourhood and Community Standard remains largely unchanged from the current standard. One minor terminology change is proposed. The current 2010 standard includes a specific expectation under 'local area cooperation' that registered providers should 'co-operate with Local Strategic Partnerships and strategic housing functions of local authorities where they are able to assist them in achieving their objectives.' More general wording is now

proposed, to reflect cooperation with local partnerships rather than with Local Strategic Partnerships specifically.

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| <p>Consultation Question Does the revised Neighbourhood and Community standard: Express requirements of providers in a way that is clear, succinct and as outcome focussed as possible?</p> |
| <p>Proposed Response Yes</p> |

Regulating the standards

24. The consultation reinforces the principles of co-regulation and makes it clear that regulation of consumer standards will depend on tenant panels and third party regulation such as the Ombudsman or elected officials. There is no change in the regulation of economic standards, and indeed there's an increased focus on value for money.
25. In relation to regulation on the consumer standards the consultation paper identifies that the social housing regulator may intervene in consumer standards if there is evidence of serious detriment and there is evidence of harm to a number of tenants in areas such as:
- Loss of home
 - Unlawful discrimination
 - Loss of legal rights
 - Financial loss.
26. Examples given which illustrate that only the most serious issues will be investigated

| Standard | Example |
|--|--|
| <p><i>Tenant involvement and empowerment standard</i></p> | <p>Failure to consult tenants on a substantial variation to how services are provided, which has a material detrimental impact on, for example, the condition of their homes, or the terms and the security of their tenancies</p> <p>Failure to operate an effective complaints or scrutiny system, which results in the risks of</p> |

| | |
|---|---|
| | harm noted above not being addressed. |
| Home standard | <p>Provision and maintenance of accommodation, or failure to meet statutory requirements, that endangers the health and safety of tenants. This would include such issues as fire safety, asbestos, gas servicing, electrical testing and legionella</p> <p>Failure to provide an effective emergency repairs service which places the health and safety of tenants at risk.</p> |
| Tenancy Standard | <p>Discrimination in the allocation of tenancies resulting in the unlawful denial of the rights of groups of tenants or potential tenants</p> <p>Breach of tenancy terms resulting in actual or potential loss of home or an unlawful denial of rights.</p> |
| Neighbourhood and community standard | <p>Failure to deal effectively with anti-social behaviour affecting a large proportion of tenants in a locality, or which could lead to the death of, or serious harm to the physical or mental health of, an individual tenant</p> <p>Failure to manage the clearance and regeneration of an estate to the extent that the security of remaining tenants is at risk, or the condition of their housing places their health and safety at risk.</p> |

27. The main sources of intelligence about potential cases of serious detriment will be information provided by third parties. These include the housing ombudsman, recognised tenant panels, MPs, local authority councillors, the Health and Safety Executive or a fire and rescue authority. Additionally, the regulator may also consider relevant information it receives directly, for example through whistle blowing.
28. Where the regulator believes the serious detriment threshold has been crossed in relation to consumer standards it will then seek to determine whether this is the case through examining the evidence and the nature and extent of the impact or potential impact on tenants.

29. The regulator retains the right to conduct, or agree that the provider commissions, appropriate investigations in order to determine whether there is evidence of a breach of standard and serious detriment. The regulator may need to consider the use of its regulatory, enforcement and general powers in some cases, and may need to intervene directly to address the problem(s) identified.
30. In order to bring about improvements, the regulator may propose an action plan setting out the key corrective actions it requires and will work with the provider to agree how best to implement the plan. When the regulator is satisfied that the key corrective actions have been completed it will notify the provider. Given the high threshold for intervention in relation to the consumer standards, the materiality of the problem is likely to provide grounds for the regulator not to follow a self-improvement approach.

Consultation Questions

Does the proposed approach to regulating the consumer standards seem reasonable, taking into account the regulator's future statutory duty to minimise interference and the serious detriment test introduced in the Localism Act?

Do the proposed principles underpinning the use of the regulator's intervention and enforcement powers, and the associated guidance notes for each power seem reasonable

Proposed Response:

Whilst the approach proposed is in line with the change in approach for the regulator to take more of a back seat approach to regulation and complies with the duty to minimise interference except in the case of the application of the serious detriment test. The application threshold of this test is high and the application of this approach could allow poor performing landlords to exploit the situation leading to a 'regulatory gap' where failures to meet the standards will in effect, be tolerated if they do not pose a risk of serious detriment

Consultation

31. Consultation on the proposed revision to the regulator framework has been undertaken with senior housing managers.

Options

32. The following options are put forward for consideration:

- a. **Option 1:** To approve the consultation response attached at Annex 1 in order that CYC's response can be considered prior to the regulatory framework being finalised.
- b. **Option 2:** Not to approve the consultation response. However this would exclude feedback from CYC prior to the regulatory framework being finalised.

Council Plan

33. In responding to the consultation this supports the Council's priority area of 'Our core capabilities – a relentless focus on our priorities and completely in touch with our communities.'

Implications

34. There are no implications arising from this report.

Risk Management

35. There are no risks associated with responding to the statutory consultation document 'A revised regulatory framework for social housing in England from April 2012'.

Recommendations

36. The Cabinet Member is asked to:

Agree option 1 – to submit the letter at Annex 1, to ensure CYC's consultation response is considered prior to the new social housing regulator's approach being finalised

Reason: to ensure CYC's consultation response is considered prior to the new social housing regulator's approach being finalised

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Report Approved



Date 12th Jan 12

For further information please contact the author of the report

Background Papers:

A statutory consultation The revised regulatory framework for social housing in England from April 2012 – Social Housing Regulator November 2011

A new approach to regulation; The social housing regulator's proposals for revised regulatory standards – Housing Quality Network Summary December 2011

Annexes

Annex 1 – Consultation response letter