



**G15 response to the TSA Discussion paper
'Building a new regulatory framework'**

1.0 Summary

- 1.1 The G15 represents London's largest housing associations. We are thoroughly committed to working with the TSA to develop a new regulatory framework that enables it "*to regulate in a manner which minimises interference and is proportionate, consistent, transparent and accountable*". We are also strongly supportive of the proposition advanced by Professor Martin Cave that the new regulatory framework should be one in which "*the reliance should be on self-regulation but subject to a 'back-bone' of intervention by the regulator on a by-exception basis*".
- 1.2 A **co-regulatory approach is the only one that has any real prospect of success** in the longer run because a more intrusive regime would require staff in numbers and at a level of seniority that the TSA is unlikely to find affordable, especially in the current economic climate. Whilst we welcome the opportunity to comment on the discussion papers issued by the TSA in advance of formal consultation on the proposed framework, there is much work to do to develop proposals that are in line with the intention of the Housing and Regeneration Act and the Cave proposals that informed its provisions.
- 1.3 We think the **timescale for the introduction of a new domain wide regulatory framework is unrealistic**. We appreciate the political pressures the TSA is under to have a new system in place for 1 April 2010 but we suggest that those parts of the current framework which are working adequately – notably those dealing with governance and related matters - should be retained for up to a further year to allow more time to develop an updated framework in a way that wins the support of the whole domain. We are unconvinced that all of the ideas expressed in the discussion papers can achieve the support necessary to make the new system effective.
- 1.4 The G15 advocates that **the outline framework of standards should be simplified** and made to focus on those things that matter most – protecting tenants' interests, preserving the viability of the sector and protecting the investment of public funds. As far as possible, these standards should apply across the whole domain, including local authorities and ALMOs. **Effective governance and viability is at heart of this approach** and we do not accept the premise that only housing associations should be subject to standards covering these issues. If this is to be the case, the TSA must recognise that the current system has ensured our sector is viable and well led. Any changes to the existing arrangements must be contemplated very carefully. **We support the importance of putting boards firmly in control** of their organisation and it is therefore equally important that they should be engaged fully in developing any new standards by which their effectiveness will be measured. Insufficient time has been made available to do this justice.

The TSA should concentrate its relatively limited resources on:

- Ensuring it has **a framework for 1 April 2010 which will be robust enough to concentrate initially on working with poorly performing social landlords, to avoid failure and to improve standards for those residents receiving a poor service;**



- Developing the **national standards on the ‘service offer to tenants’ on a co-regulatory basis** ensuring that the standards are outcome focussed and proportionate i.e. sufficiently developed to identify possible failing social landlords but not concerned with process;
- **Requiring each provider to begin work with its tenants to agree the way that the national standards will be expressed and delivered locally** and to obtain verification that the agreed standards are being met. However, the **TSA should have no role to play in forging a direct relationship with our tenants**. It is legitimate for it to establish a limited number of key expected outcomes for tenants and to measure compliance with them but no more. **The TSA must also avoid becoming an alternative avenue for handling tenant’s complaints** – this is the role of the provider and the Ombudsman and not the regulator;
- Working with housing associations to **jointly develop an approach to assessing viability that captures the right information to reflect the risks** they face. In the longer run, this could **include the expectation that every association will be working to improve its viability with a programme of value for money** work upon which it would report regularly to its tenants, other stakeholders and the TSA.

1.5 **We are greatly concerned by the expectations the TSA has outlined for ‘tenant empowerment’**. It is our firm belief that residents should have every opportunity to become involved in decisions that affect the management of their homes and their neighbourhoods. Some residents may have the desire and the personal abilities needed to become members of the board of their landlord but there should be no presumption that involvement in governance is a given. **We advocate a more ‘consumerist approach’** in which residents are asked routinely about their experience of their home, our service and the neighbourhood and are able to influence reasonable improvements. The discussion paper fails to make clear what it means by the nebulous term ‘empowerment’.

1.6 **The TSA’s initial thoughts on ‘local area co-operation’ do not recognise the independence of housing associations** and the discretionary nature of much of the work we do in local neighbourhoods. Indeed, **the whole outline regulatory framework appears to place a greater burden on housing associations than local authorities**. There can be no expectation that we should fill the gaps in services left by local authorities or any presumption that we will commit resources that will benefit the wider neighbourhood unless there is tangible benefit for our residents and our business. This standard, above all others brings huge **risks of bringing us into public body status**. In its initial form, it is not an acceptable proposition. Local authorities are important stakeholders for housing associations but there must be no presumption that they can direct our activities.

1.7 Because the discussion papers concentrate almost entirely on what is to be regulated rather than how regulation is to be conducted, **we are left unclear about any distinction between those standards that will require performance to be measured and reported and those which social landlords will be required to self certificate**. This makes it hard to judge the extent of the regulatory burden. On the face of it, the outline proposals describe what could be an over complex, all embracing regime that will be difficult to deliver effectively and efficiently. We would like to believe that that this is not the TSA’s intention but references to the intention to issue **numerous Codes of Practice, which we oppose**, are worrying indications of an over keen interest in minute detail and process. **When**



developing the formal consultation document, the workings of the system should be explicit and the G15 will be looking closely to see the extent to which the formal proposals adhere to the Cave co-regulatory principles.

- 1.8 **The TSA should be strongly focussed on outcomes, risk, financial analysis and a proportionate response to problems.** Failure should be tackled robustly and forensically – this requires sufficient, highly skilled TSA staff that can analyse problems and broker solutions that protect the interests of residents, the tax payer and the sector’s reputation.
- 1.9 **Providers should continuously assess customer satisfaction** across the full range of their work and report the outcomes transparently. Context should be taken into account – this means understanding local factors and being concerned about the direction of travel of satisfaction and performance. **Performance data should be designed around what matters to residents.** The amount of **data collected should be kept to the minimum** but be sufficient to demonstrate comparable local performance to all stakeholders.
- 1.10 **The role of the Audit Commission must be explicitly about supporting the TSA** by inspecting in a manner consistent with the TSA’s statutory objectives. Any proposal to continue the parallel ‘KLOE’ regime would frustrate those objectives by reproducing an onerous, process-focussed and disproportionate burden. **The TSA must determine who and what gets inspected and approve the Commission’s methodology** for delivering this service.
- 1.11 It is also important that the **TSA consults with landlords about its own service standards** and the ‘independent’ complaints process it will put in place when providers have concerns around the validity of regulatory judgements.

2.0 Background

- 2.1 The G15 submitted an informal, interim response to ‘Building a regulatory framework’ in July 2009 and this paper expands on the key issues we raised at that time.
- 2.2 The G15 is committed to helping the TSA create an appropriate regulatory framework for social housing. We have not responded to the questions posed in the main and supplementary discussion papers but provide a strategic overview of the whole proposition. We append also at Appendix 3 a separate note on the ‘viability’ discussion paper since we believe this is so fundamental to the new framework.

3.0 Introduction

- 3.1 Our principal concern is that the TSA should move away from the compliance approach adopted by the Housing Corporation to develop a truly co-regulatory approach that will operate as far as possible across the whole domain. We believe that effective governance should be at the heart of this new framework. It follows that the majority of the TSA’s resources should be focussed on governance and viability. We are not sure that the proposed distribution of TSA staff resources supports this approach.
- 3.2 The TSA’s statutory objectives (amongst other duties) require it to *‘avoid the imposition of an unreasonable burden’* and *‘to regulate in a manner which minimises interference and is*



proportionate, consistent, transparent and accountable'.

- 3.3 We believe that in a number of respects, the proposals set out in the discussion paper fail these tests and those contemplated in the Cave Review, as well as the wider principles established for 'better regulation'. The new system should be explicitly outcome focussed and we favour an approach in which the standards to be met can be expressed concisely. However, many elements of the discussion paper describe a framework which merely extends the Housing Corporation regime that preceded it, reinforcing a compliance culture and an input driven approach. The many references to the proposals to issue 'Codes of Practice' and further guidance reinforce our concerns.
- 3.4 This creates a number of potential risks:
- It undermines the importance of good governance and the role of the board;
 - It interferes in the legal relationship between landlord and tenant;
 - As a result of its blanket application and intrusive nature, it increases the likelihood that independent providers will be classified as public bodies. This is a particular risk in relation to the expectations relating to 'local area co-operation';
 - Because it will require as much information from social landlords which perform satisfactorily as from poorer performing landlords, this could easily deflect attention and resources away from identifying and resolving issues of poor performance with the consequent financial risks and risks to tenant services;
 - It will be overly complex and expensive for government and provider alike;
 - It puts at risk the unique capacity of housing associations to respond to community priorities outside the regulatory framework which our Boards, existing and future tenants might see as being important.
- 3.5 G15 welcomes this 'pre-consultation' process since it gives the TSA the opportunity to review how its initial thinking could be revised to create a more proportionate co-regulatory approach which will reduce the burdens falling on the best providers, place a premium on effective governance and free up TSA resources to concentrate on avoiding and tackling failure.
- 3.6 To do this the TSA should be clearer about the essential purposes of regulation which we think are to ensure that:
- The interests of current and future tenants are protected in the absence of satisfactory market mechanisms;
 - Public money invested in social housing is used effectively and for its intended purpose;
 - The reputation of the sector for sound stewardship of public investment and private loans is maintained;
 - The viability of housing associations is maintained so as to make it possible to continue to develop new supply.
- 3.7 Context is also important. With nearly 80% of current residents satisfied with their homes and services and with most providers operating competently and viably, there is no case for



an over intrusive and complex, compliance based regulatory regime.

4.0 The new standards framework

4.1 *General points*

4.2 The new framework suggests six main themes under which fourteen standards will be developed. The G15 believes this is over complex. We suggest that the main standards should be:

- The service offer to tenants – based on the provisions of the tenancy agreement;
- Governance;
- Viability;
- Accountability – embracing tenant involvement, relationships with others.

4.3 Demonstrating 'value for money' is a key responsibility of the board and is an important component of maintaining viability. As such it should be a cross cutting theme that runs through everything a provider does. We are strongly opposed to the re-introduction of any methodology similar to the '*operating cost index*' because the range of activities undertaken by providers and the variety of structures under which we operate, make it impossible to capture comparative data in a reliable and meaningful way.

4.4 Since rents are subject to TSA control and the base service offer will be set in the new regulatory framework, there is no case for a regulator also to seek to control our costs. We accept it may wish to incentivise efficiency and we would welcome the opportunity to discuss what those incentives might look like. We believe therefore that the TSA can satisfy the value for money duty placed upon it by requiring boards to have an efficiency plan which it updates and monitors regularly, publishing progress annually to its tenants and other key stakeholders.

4.5 We have set out proposals for the revised themes in Appendix 1, comparing our approach to simplified framework for regulation with the one contained in the table in your discussion paper. While we have included all fourteen of the standards you have identified, this does not mean we subscribe to all of them.

4.6 *Standards – putting them into practice*

The G15 is very concerned by the number and potential codification of the standards. In itself, this brings the risk that the standards will become:

- Input rather than output focussed;
- Very process driven;
- The only way of undertaking certain activity;
- Unrealistic about what is possible – for instance not acknowledging the range of housing associations active in local authority areas and seeking levels of involvement and investment which local authorities cannot match;
- Dependent on existing external validation such as 'customer excellence' awards as a



proxy indicator of success rather than on the provider substantiating satisfactory performance and customer satisfaction.

- 4.7 The level of detail contemplated for inclusion in each standard – especially if further supplemented by Codes of Practice and other guidance - will cut across the role of our boards in setting standards suitable for their business and is a long way from the proposals set out in the Cave review. We are finding it difficult at this stage is to understand how the TSA intends to make operable the wide range of ideas put forward in the discussion papers.

5.0 Timescale

- 5.1 We appreciate the political pressures the TSA is under to have a new system in place for 1 April 2010 but we do not believe it is realistic to try to put in place by this time the comprehensive and extensive new framework described in the various discussion papers. The only realistic approach will be to create an initial framework that recognises that most providers are performing satisfactorily. The highest priority is for the TSA to focus initially on those providing poor services or at risk of governance and viability failure.
- 5.2 We recognise the importance of following up promptly the pledges made to residents during the 'National Conversation' but the TSA must take great care to avoid raising unrealistic expectations. Services are already delivered to higher standards than those available to most private owners and tenants and the cost of further enhancements must be weighed against the loss of capacity to provide new homes. It would be sensible to make quick progress with the national standard for the service offer to tenants so that providers can open the dialogue with their residents about how these can be expressed locally.
- 5.3 We see no reason to put in place within this timescale any significant revision to the governance standard. Effective governance is arguably the most important factor in the success of any business. It is important therefore that board members should be engaged fully in developing any new standard by which their effectiveness will be measured. We believe the same is largely true of the viability standard although we accept that some interim amendments are desirable to ensure that the TSA is able to pick up any short term solvency issues more effectively.
- 5.4 By adopting a collaborative approach to the development of the new standards, the TSA will be able to build a more sustainable framework which is more likely to gain the support it needs from the regulated to make it succeed.

6.0 Incentivising improvement and dealing with poor performance

- 6.1 We have already expressed our contention that the TSA should concentrate initially on poor and potentially failing social landlords. We acknowledge that to do so, baseline standards are needed. The information currently provided by housing associations should be sufficient to identify poor service delivery but a closer dialogue is needed to identify any potential problems with solvency and viability. By combining the experience of the Housing Corporation when working on 'problem cases' with the extended intervention powers available to the new regulation teams, it should be possible to agree quickly an effective interim approach to tackling governance issues. Incentives that encourage and reward top performers should be developed at an early stage but we accept this will not be possible



until later in 2010. Excellence should be rewarded with such tangible benefits that all providers will strive to achieve it.

7.0 Governance

- 7.1 The G15's support for co-regulation is based upon our strong belief in the importance of maintaining our independence and placing responsibility for every aspect of our business with our boards. Effective governance is the most important factor in the success of the whole sector. We find it bizarre therefore that local authorities and ALMOs are to be excluded from the governance standard. This is wrong in principle and undermines fundamentally the intention to create a domain wide regulatory system.
- 7.2 For the majority of providers, co-regulation will work well but it will take time to become truly effective. It follows that the regulatory framework should be developed incrementally over time, starting with what matters most.
- 7.3 The way in which housing associations in England have mixed public and private investment since 1988 to provide the majority of new social housing and facilitate stock transfers has been Europe's greatest public-private partnership success story. Even despite the worst economic conditions for house building in living memory, housing associations have continued to meet the targets of the Homes and Communities Agency.
- 7.4 However, the Cave Report recognised this success has come at a price. The old regulatory regime performed well in encouraging organisations and in building confidence among those who lend to them. But in the scale and detail of its regulatory regime, the Housing Corporation contributed to a culture of over-dependency in which some associations came to rely too much on the regulator for direction, rather than their boards taking responsibility themselves.
- 7.5 The G15 therefore agrees with the Cave Report, and with the Government's subsequent consultation paper that 'the focus of regulation must shift, from provider to tenant', and that the regime should be 'co-regulatory, that is, the reliance should be on 'self-regulation but subject to a 'back-bone' of intervention by the regulator on a by exception basis'¹.
- 7.6 Whilst the approach taken by the TSA to date has properly taken full account of the need to shift the focus of regulation onto the priorities of tenants, in doing so it has taken insufficient account of the other key issues. We are particularly concerned that the TSA appears not to be taking the necessary steps to create a regulation system that puts effective governance – and the transfer of responsibility from regulator to the board room – as a top priority.
- 7.7 All housing associations must balance the needs of their existing tenants with other business needs. For instance, investment in keeping existing stock in good repair and meeting the decent homes standard has at times necessitated making choices about the best use of available funds.
- 7.8 Government and its agencies have in recent years looked to the sector to provide most of the new affordable homes, using their asset base developed as a result of previous public

¹ Every Tenant Matters, executive summary, page 12



investment. This creates the dynamic for boards to make choices between investment options and to balance improvements in existing service standards against the needs of those people who are currently unsatisfactorily housed. In addition the charitable status of many housing associations means that Boards have duties and responsibilities to respect and deliver against their charitable purposes.

- 7.9 In the current economic climate, with the acute and worsening housing shortage and the likely reduction in additional public funding, these tensions are likely to grow rather than diminish. In our view it is going to be at least as important to government and to our Boards to provide new homes as it will be to raise overall standards for those landlords already providing satisfactory services. A regulator that is determined to provide tenants with relentlessly increasing service standards, regardless of cost and wider consequence, will fail to meet its objective to ensure that providers have capacity to build new homes. The G15 sees this as a real danger with the TSA's approach.
- 7.10 The TSA therefore needs to be realistic about the balance between providing a service to tenants which goes beyond what is 'good', especially where this potentially requires investment which might be better spent on meeting other needs.

8.0 Viability

- 8.1 If governance is of paramount importance then maintaining viability must sit alongside it. Whilst the track record of the Housing Corporation in overseeing the viability of the sector was generally good, the recent rapid down-turn in the economy demonstrated that some elements of the methodology it relied upon were insufficiently sophisticated to identify quickly enough potential solvency problems including those brought by the use of certain types of derivatives. Just as important, it had not recognised the impact on some associations of the level of exposure to large scale development programmes, the low level of cash reserves, facilities and the limited capacity quickly to raise new loans.
- 8.2 The TSA must now accept that *'Unlocking the Door'* was based on a fundamental misunderstanding of associations' financial capacity and it is almost certainly the case that the Housing Corporation's capacity model paid insufficient attention to downside risk. As independent businesses, associations should demonstrate their use of capacity and their grasp of risk and its impact on their capacity through effective governance arrangements.
- 8.3 The TSA should now move away from the rigid and inflexible capacity model – which was designed to measure the capacity of developing associations rather than judge financial viability. It should now become engaged more closely with the models that associations are themselves using, if necessary, requiring these to be audited periodically. The complex question of financial viability demands a more sophisticated approach from both the regulator and the regulated. Essentially the TSA must place the onus on boards to take full responsibility for their own financial planning and to demonstrate the steps they are taking to manage risk and enhance financial capacity. In this context, we support more regular engagement with the TSA, including a regular return reporting on a range of ratios and forecasts as well as a questionnaire highlighting issues critical to a provider's viability. This would probably be prepared on a quarterly basis but less frequently for the most robust providers. This process can be further refined and work on this could start straight away.



- 8.4 We have advocated elsewhere that as part of maintaining and improving viability, every provider should develop and report on its plans for improving financial strength and operational efficiency. We do not believe that any further steps are needed in relation to the demonstration of 'value for money'. It is clear that there are variations in operating costs that should be capable of being reduced and the overall sector surplus is lower than is desirable. Improvements will not be secured overnight and the G15 favours a carrot rather than stick approach to incentivise improvement.
- 8.5 In its separate discussion paper, the TSA describes in outline how it intends to regulate viability. The G15 finds some elements of the proposals both naïve and unacceptable. We emphasise again that housing associations are independent private bodies operating within a competitive environment. We are not public authorities and we are not owned by our tenants. It follows that the suggestion that we might engage in peer review of our financial affairs or that our residents and stakeholders will be provided with the private information they would need to offer an opinion upon our financial viability is at odds with reality.
- 8.6 The G15's more detailed response to the TSA's proposals for the viability standard is attached as Appendix 2.

9.0 Co-regulation, not re-regulation

- 9.1 Our interpretation of the discussion paper is that there is an undercurrent of mistrust of housing providers. This mistrust is unfounded. To achieve co-regulation the TSA must be prepared to accept that the vast majority of providers do a good job – after all, the 'National Conversation' said as much. Therefore, the TSA must be more radical and be ready to apply more judgement rather than rely on copious performance information and over detailed standards. In this regard we are concerned by references in the governance discussion paper to the desire initially to rely more on formal regulation rather than self regulation. We think this is the wrong choice.
- 9.2 A list of standards, with further guidance and probably yet more requirements to be added is not an approach consistent with co-regulation. It will not move the sector from an over-reliance on the detailed requirements of a regulatory code and a culture of compliance to one where boards take proper responsibility for the performance of their organisations. It will further emasculate rather than liberate as Cave recommended.
- 9.3 The G15 quite accepts that our regulatory needs are not necessarily the same as those of other, smaller organisations. This points to the importance of the TSA adopting a more flexible, bespoke approach that recognises the variety and diversity of the sector. The TSA should prescribe less and rely more on a better, more consciously collaborative relationship between regulatory officials and boards. But critically, it requires TSA staff to have the right skills and good judgement.
- 9.4 For the majority of providers, co-regulation will work well but it will take time to become truly effective. It follows that the regulatory framework should be developed incrementally over time, starting with what matters most.

10.0 Resident involvement



- 10.1 We welcome the emphasis placed by government and the TSA on ensuring existing and future tenants are at the heart of the business of providers. However, we are concerned that there remains confusion within the TSA and government about the distinction between seeing our residents as consumers, how we demonstrate accountability – to tenants and others – and the proper role for tenant involvement in governance. For this reason, the G15 believes that a specific standard covering the accountability of providers would offer the opportunity to clarify what is expected of us in the wider sense as well as in resident involvement and local area co-operation.
- 10.2 Housing associations have over many years used a number of ways to ensure that we understand our tenants, listen to their concerns and develop services responsively. This makes good sense - having satisfied customers is at the heart of every successful business. The TSA's approach to regulating this activity should be sufficiently flexible to acknowledge the variety and diversity of the sector and the myriad ways in which it is possible to engage with our customers.
- 10.3 The discussion paper acknowledges much of this but worryingly the TSA has established an organisation structure which includes staff who it intends to work alongside providers and our residents to develop local standards. The G15 is absolutely clear that this is not an appropriate role for the regulator. The only relationship that counts is between landlord and tenant. The role of the regulator is to ensure that services to residents meet agreed standards and that they have proper opportunities to become involved in the management of their homes - but no more. We agree that residents should be actively engaged in developing how the standards will be delivered locally, in measuring performance against the local service offer to tenants and that providers should be held to account by residents and the TSA for the success in delivering it.
- 10.4 We are keen to work with the TSA to look at developing the way our proposed accountability standard would operate in practice. At its heart would be a more consumerist approach to delivering housing services, taking advantage of the many different ways in which we now interact with our tenants and moving beyond the traditional approach to resident involvement and empowerment. The reality is that most tenants are first and foremost customers of services. They should be under no pressure to take part in more formal resident involvement structures when these hold no interest to them.
- 10.5 Unsurprisingly, the TSA's recent 'National Conversation' showed that the main concern of tenants is to receive good services from their landlord, their top four concerns being:
- Repairs and maintenance;
 - Safety and security;
 - Reasonable/affordable rents;
 - Quality of accommodation.
- 10.6 None of these priorities are a surprise to G15. We have been adopting new ways to ensure our tenants can help us improve our services. This includes collecting data about our tenants to help us ensure we can shape delivery of day to day services, taking account of their personal preferences. We do so using a wide range of techniques – e.g., surveys by



phone and text; meetings; focus groups; mystery shopping; estate inspections; residents associations; customer panels and local committees. The key point is to offer a range of ways to get involved in terms that tenants want to.

- 10.7 Those tenants that want to become involved in more formal resident involvement systems should have every opportunity to do so. Equally, those able to demonstrate the necessary competencies to become non executive board members should be encouraged and supported. Some residents can be good board members but they must not be seen as delegates or representatives. Their first duty is to act always in the interest of the company of which they are a director. If a tenant fulfils the criteria and competes with other applicants then they should be appointed but the fact that they are a tenant should carry no additional weight.
- 10.8 Boards must be made up of the very best candidates available, whatever their background. As we have stressed throughout this submission, competent governance is paramount in the success of any organisation. The whole board should be customer focussed and the TSA will need to be in close contact with the board so as to judge whether the strategic direction is aligned with customers' needs. Where this is not the case, the TSA has the power to intervene.
- 10.9 It follows that the TSA's approach to resident involvement should be focussed on:
- Outcomes rather than inputs;
 - How providers continuously measure trends in tenant satisfaction, because tenant satisfaction is the most important measure of success;
 - High quality, clear, local performance information which is published so as to allow tenants to compare and contrast landlord performance;
 - Evidence that the Boards have established, monitor and act upon a framework for service improvement which is informed by a strong tenant perspective.
- 10.10 These could be the 'litmus' tests for how providers demonstrate how our customers shape our service. The way we engage with residents should not be prescribed. Many organisations will rely on traditional structures and methods to show that the views of all their customers are taken into account. If an organisation departs from traditional methods, adopting a more commercial, consumer based approach but can clearly show auditable links between customers' preferences and the service provided, then this too should be acceptable.
- 11.0 The service offer to tenants**
- 11.1 The G15 believes it is important to move away from a KLOE led inspection regime where process is perceived as more important than results. We are disappointed that the discussion paper is inherently concerned with how things are done rather than how well they are done.
- 11.2 The main measure of the effectiveness of a service should be tenant satisfaction. For example, this might look at whether:
- Tenants think we are effective at dealing with anti-social behaviour, rather than whether



we undertake the delivery of this service in a particular way;

- We provide a maintenance service which meets tenants preferences on access, arranging appointments and the quality of repair undertaken rather than whether we meet specific timescales for different sorts of repairs.

This approach better recognises tenants as consumers rather than beneficiaries of a national housing service, controlled by the state.

11.3 If tenant satisfaction is to be a key measure for assessing performance then we must:

- Move quickly to an approach which more regularly tracks satisfaction through post transaction and other routine surveys on main services;
- Recognise context, taking account of the demographics and satisfaction levels with other services in each local area - we know there is not always a causal link between landlord service standards and tenant satisfaction;
- Acknowledge that satisfaction is influenced by expectations and by the age and vulnerability of residents;
- Recognise the importance of the direction of travel. Is satisfaction within the organisation improving and if so is it improving quickly enough?

11.4 Any standard on tenant's choice must take account of the provider's financial resources and our opportunities to charge for extra services. There is a real danger that the TSA's attitude towards tenants and landlords will raise the expectations of current tenants. It is important to recognise that tenants have responsibilities as well as rights – a substantial proportion are in breach of their tenancy agreements a factor not recognised at all within the discussion paper. Indeed the proposed standard described as being concerned with the tenancy agreement makes little reference to the rights and responsibilities inherent in the contract.

11.5 We welcome the opportunity to agree with groups of tenants how the national standards can best be delivered locally but we do not support the proposition that there should be 'local standards' per se. Understandably, tenants would expect local standards to be regulated but the TSA would find it impossible to do so – there could be literally hundreds of variations taking into account spatial, tenure and many other potential definitions. It follows that it should regulate the national standards as they are expressed and agreed locally by landlords and their tenants. This is also a sensible way of promoting resident involvement in a meaningful way for a wide range of tenants.

The term 'local' should not necessarily be interpreted to mean local authority based – it could cover:

- Neighbourhoods that span local authority areas;
- One or more estates;
- Working with other landlords and with owner occupiers;
- Specialist housing schemes covering a wider geographical area

Above all, the definition of local must make sense to tenants and landlords rather than suit the administrative convenience of public authorities.



- 11.6 The G15 agrees that there is a role for providers with a large stockholding to work with local authorities as part of their place making responsibilities. But there must be no doubt that the prime responsibility for investing resources to make successful places remains with local government. Inevitably, the expectations for partnership working will grow the more significant an association's stock holding might be in a particular neighbourhood or area. Those with a significant stock – probably over 500 homes – are more likely to see the benefit of taking part in strategic area planning. However, those with smaller holdings are likely to serve their tenants better by advocating on their behalf rather than spending time in local partnership meetings.

12.0 Publishing performance

The G15 supports the importance of transparency about performance. Local 'league tables' might help to drive up service delivery and could act as a useful 'can opener' for the TSA – but data collection can be expensive to manage if it is expected to capture very small stock holdings. This is a particular concern with the cost of obtaining statistically valid results from satisfaction surveys. In most places, a provider with less than 500 homes is unlikely to be a significant local player and this might be an appropriate threshold for local data collection. Any data collected should be only that which is meaningful to tenants and landlords and should be kept to the minimum.

13.0 Links with Audit Commission

- 13.1 The role of the Audit Commission must be explicitly about supporting the TSA by inspecting in a manner consistent with the TSA's statutory objectives. Any proposal to continue the parallel 'KLOE' regime would frustrate those objectives by reproducing an onerous, process-focussed and disproportionate burden. The TSA must determine who and what gets inspected and approve the Commission's methodology for delivering this service. This should prioritise supporting improvement rather than 'naming and shaming'.

14.0 Complaints

- 14.1 Inevitably, tenants view the effectiveness of a complaints procedure by the extent to which it delivers the result they want. The discussion papers do not recognise the impact of this on tenant satisfaction with this process. The G15 believes that an effective complaints procedure is an integral part of a proper approach to customer service and as such, we do not believe that complaints handling should be seen as a separate standard. We support the importance of promoting best practice, publishing performance data and involving tenants in designing and reviewing complaints procedures but not the development of a 'Code of Practice' which appears to us to be unnecessary.
- 14.2 We are clear that if nothing else, the TSA must not create a parallel complaints process that sits outside of a provider's own complaints procedure and that of the Independent Housing Ombudsman. The TSA should liaise with the Ombudsman to get information on the performance of individual landlords in relation to complaints that cannot be resolved through their own procedures.
- 14.3 We reject as disproportionate the suggestion that all complaints indicating a significant failure in respect of the TSA's standards framework should be reported to the TSA



immediately. If the TSA were to adopt this approach, it would have to set very clear parameters for the definition of 'significant'. Most complaints will link back in some way to the regulatory standards. Consequently the reporting obligations may be substantial. The TSA should focus on overall outcomes and not individual customer complaints. For the regulator, it is important to be certain that a provider has a robust complaints process and that when complaints are received they are dealt with promptly, professionally and in a way that improves services.

15.0 In conclusion

- 15.1 The G15 is keen to maintain a close working relationship with the TSA and wants to help shape a new regulatory system that will stand the test of time. We know that the financial pressures on public spending are likely to have a profound impact on the way social housing is developed and managed in the future and the new system must be adaptable enough to respond to such changes. We would welcome the opportunity to discuss this submission with the TSA prior to the commencement of the formal consultation process.

***Appendices: Appendix 1: Comparison of TSA and G15 proposals for the national standards
Appendix 2: G15 response to 'viability standard'***

***G15: representing London's largest housing associations
7 September 2009***

Appendix 1

Initial areas proposed to be included within TSA's national standards

THEME	National standards to apply	Relevant statutory objectives
A. The Service Offer to Tenants	Quality of accommodation (Decent Homes)	Quality supply (1)
	Tenant choice and customer service	Choice (2)
	Repairs and maintenance	Protection (2), quality supply (1), choice (2)
	Neighbourhood and estate management	Protection (2), quality supply (1), place (6)
	Anti-social behaviour and security	Protection (2), quality supply (1), place (6)
B. Tenant Empowerment and Involvement	Empowerment	Involvement (3), choice (2), protection (2)
	Complaints	Protection (2),
	Local area co-operation	Protection(2), quality supply (1), place (6)
C. The Tenancy Agreement	Rents	Protection (2)
	Tenure	Supply(1), protection (2), choice (2)

The G15 proposal

THEME	National standards to apply	Relevant statutory objectives
A The Service Offer to Tenants	Quality of accommodation (Decent Homes)	Quality supply (1)
	Tenant choice and customer service	Choice (2) involvement (3),
	Repairs and maintenance	Protection (2), quality supply (1), choice (2)
	Neighbourhood and estate management	Protection (2), quality supply (1), place (6)
	Anti-social behaviour and security	Protection (2), quality supply (1), place (6)
	Local area co-operation	Protection(2), quality supply (1), place (6), involvement (3),
	Complaints	Protection (2)
B. The Tenancy Agreement	Rents	Protection (2)
	Tenure	Supply(1), protection (2), choice (2)
	Allocations	Protection (2), quality supply (1)

Initial areas proposed to be included within TSA's national standards

THEME	National standards to apply	Relevant statutory objectives
	Allocations	Protection (2), quality supply (1)
D. Governance	Governance	Governance (5), investment (7), supply (1)
E. Viability	Viability	Viability (5), investment (7), value for money (8)
F Value for money	Efficiency and value for money	Efficiency (4), quality supply (1), choice (2), value for money (8), misuse of public funds(9)

The G15 proposal

THEME	National standards to apply	Relevant statutory objectives
C. Governance	Governance	Governance (5), investment (7), quality supply (1), misuse of public funds(9)
	Customer service	Involvement (3), choice (2)
D. Viability	Viability	Viability (5), investment (7)

TSA: 'VIABILITY: A DISCUSSION PAPER'**G15 RESPONSE****Introduction**

- 1 We believe that viability and governance should form the dual primary strands of regulation for the TSA. Good governance must put capacity for survival at its core, and we believe that the regulatory regime should reflect this.
- 2 In our view the Discussion Paper recognises some of the key shortcomings of the arrangements inherited from The Housing Corporation and we welcome it. This review of viability regulation provides an excellent opportunity to refocus the TSA's approach to regulating housing associations' viability, to make it more proportionate, flexible and successful at identifying failure and potential failure.
- 3 We would be happy to meet representatives of the TSA to discuss our thoughts in more detail if that would be helpful.

Summary

- 4 The last 18 months have shown clearly that associations must guard their financial capacity carefully so as to ensure that they remain viable in the long term in order to protect the interests of existing and future residents. This is a multifaceted issue that requires a more sophisticated approach by both the regulator and associations than either has adopted historically. We agree that a discrete national standard on viability is more appropriate than local standards.
- 5 In considering a new approach to regulation we believe that the TSA should seek to develop a framework which encourages associations to maintain robust financial positions. This could be targeted in part at increasing the sector's global surpluses, which at just 0.3% of turnover¹ do not seem to us to be sufficient to reflect the risks the sector has taken on over the last few years and which it is likely to continue to shoulder. It would also take account of a number of other key financial indicators.
- 6 One of the features of the last year has been much welcome support for those housing associations that ran into difficulties as a result of the recession. Longer term, whilst the implied government and regulatory support for the sector is critical to the continued confidence of the sector's lenders and investors, it is essential that the TSA moves to dispel any notion that UK government underwriting is available on demand. Consequently, we believe that the TSA has a critical role to play in generating a robust and self-sufficient sector able to weather bad times as well as good.
- 7 We do not believe that the TSA should engage directly on either the proper consideration by an association of its approach to investment, or in any detailed way on the question of efficiency or value for money (VfM).

¹ Housing Corporation Global Accounts 2008

Developing a Framework

- 8 The TSA should reasonably expect associations to develop a simple, high level framework of parameters for financial improvement over time aimed at helping boards focus on financial strength, value for money and prudence. This could be based on a set of self-determined rules or targets, with efficiency at their centre, which target minimum performance and financial improvement levels across a range of financial indicators. It should also include an assessment of the “value at risk” from their development activities, alongside a clear view of how a worsening position might affect its financial performance, including compliance with funders’ covenants and liquidity.
- 9 The aims of the new framework would be for associations to be able to demonstrate in a transparent way to the TSA and other stakeholders:
 - a. A profitable, cash generating business;
 - b. A solid liquidity position;
 - c. Ample headroom to deal with the value at risk on development activity;
 - d. Effective balancing of social objectives with financial strength;
 - e. A focus on improving efficiency;
 - f. Measured and proportionate utilisation of financial capacity.
- 10 The TSA should seek to avoid any inclination to over regulate here, or to be prescriptive on the framework that associations might follow. It should however, set out the broad expectation that associations will develop, maintain and routinely monitor a framework that has these principles at its core. This could then form the basis for any regulatory code which the TSA seeks to develop.
- 11 Housing associations are independent organisations. We strongly believe that they should determine for themselves how they use their capacity. The framework described above would incorporate a balanced approach to the development of new homes, investment in existing homes and communities, and improvements to services. “Unlocking the Door”² was based on a misunderstanding of associations’ capacity and failed to take sufficient account of the risky nature of their activities. The TSA must avoid any repetition of an approach which seeks to interfere in the legitimate role of a board in determining investment strategy.

Regulatory Methodology

- 12 The framework above would recognise that financial viability is about more than a prudent 30 year financial model. In conjunction with this framework therefore, we would support a shift away from rigid formulaic analysis towards more regular and fluid engagement between the regulator and associations. In particular, the TSA should consider introducing a high level quarterly return to the TSA with self-declaration on a very limited number, say eight to 10, key indicators, with the proviso that it was designed to minimise the impact on associations’ resources. Appendix 1 sets out some possible indicators; it would be critical to limit this to a handful of well considered indicators that should be supplemented by disclosures against a limited number of standard questions. Possible questions (which might be more appropriately dealt with through discussion than via written responses), are set out in Appendix 2. Getting the indicators and questions right would be

² Housing Corporation – February 2007

critical to the success of viability regulation and we would be happy to be consulted in more detail by the TSA on what those indicators and questions should be.

- 13 The Housing Corporation placed too much emphasis on *“financial planning based on a robust business plans that demonstrates current and future financial obligations can be met”*³ and the TSA should avoid this pitfall. This is of course, a vital element of any viability regulation, but it should only be one dimension in the assessment of viability and cannot stand alone. It is, for example, possible to demonstrate robustness in a business plan whilst ignoring serious risks or making cash losses on an ongoing basis. It is as important to look at risks associated with binary decisions or outcomes. For example, the purchase of a piece of land pre-planning on the grounds that planning will probably be achieved could have a major impact if the value drops significantly if planning is not obtained. Similarly, a plan might look viable if it is based on an assumption that additional or future funding is available, but unviable if that funding is not available. A more nuanced approach to regulation needs to be developed using financial modelling in parallel with other tools. In particular, it needs to reflect the emerging shift in funding availability away from long-term (30 year) to much shorter term (5 to 10 year).
- 14 We do not support the retention of the Housing Corporation’s capacity model. Whilst modelling must remain a core element of viability regulation we believe that the TSA should consider departing from a rigid and inflexible standard model, and that it should look to associations’ own models which are best placed to reflect the activities and complexities of their business. Essentially the TSA must trust associations to do their own financial planning based on solid governance arrangements and to this end it should restrict itself to getting comfortable with the models that associations are themselves using, if necessary, looking for them to be audited periodically.
- 15 In addition, it seems to us that there is very little value in assessing 30 year based models. The landscape for developing associations, the riskiest group, is constantly changing and looking much beyond the medium term is inevitably going to be of limited value. Over the long term it will be relatively straightforward for most associations to recover viability through the sale of stock or the cessation of development activity. The focus for longer term modelling should therefore be shifted to no more than 10 years.
- 16 We would support the development of a suite of financial health indicators reported regularly, say quarterly. The Discussion Paper helpfully acknowledges the importance of short term solvency, liquidity and covenant compliance. Associations can demonstrate viability over the medium and long term, but can find themselves in serious difficulties as a result of short-term liquidity issues. Short term liquidity problems or problems resulting from short-term technical breaches of covenants might indeed be even more serious than long term problems since they are likely to be harder to rectify. Regular reporting would allow the TSA to refocus on a limited number of key indicators covering these and other things which should be readily available at short notice. We would stress that any such returns to the TSA would need to be proportionate and should be designed to draw out information that many associations will be monitoring as a matter of course.

³ Viability Discussion Paper Highlight – Page 7

- 17 The approach here might be to capture a small number of key indicators which focus on liabilities (committed and expected) and cash (drawn and available) over the short to medium term.
- 18 In addition, as part of this the TSA might look to develop a more discursive relationship with associations. This would have the added advantage of providing the TSA with a “heads up” before problems emerge (or at least as they emerge) and move the focus away from a narrow analysis of the business plan. It would also provide informal market intelligence and enable the TSA to form an overall view on credibility and risk.
- 19 In order to develop this more targeted and flexible approach the TSA would need to undertake a reassessment of the people resources required to develop a deeper understanding of an individual association’s pressure points and key risks. It must ensure that its regulators are sufficiently qualified and experienced to adopt a flexible approach to regulation and not to assume “one size fits all”.

Treasury

- 20 It is a role of the boards of housing associations to ensure that their treasury arrangements meet best practice, are proportionate to the scale of the business, and deal effectively with risk.
- 21 If landlords do not have “*skills, knowledge and experience necessary at board and officer level to properly manage treasury management risk*”⁴, then this is a clear failure of governance. Consequently, we do not believe that the regulation system needs to single out treasury for special attention, since good governance must include appropriate treasury arrangements.
- 22 The restrictions on foreign exchange transactions and the requirement that derivatives may only be used for the purpose of managing risk should be retained. However, they would seem to fit better within associations’ governing instruments (ie – Rules) than as part of the regulatory system. The TSA should look for these to be reflected in the NHF Model Rules and for associations to plan to adopt any necessary changes.
- 23 We do not see a need for blanket collection of associations’ covenant arrangements. Instead, associations should be encouraged to build significant headroom to weather negative movements in financial performance.

Cost Benchmarking and VfM

- 24 Although one of the TSA’s objectives is to ensure that providers demonstrate value for money, we do not believe that the TSA should introduce a standard on VfM. Instead it should use the framework we have suggested above to ensure that associations focus on VfM as a key strand of governance and financial management.
- 25 Whilst the OCI was a complex and sophisticated approach to cost benchmarking, it failed the important test of credibility, and we believe that it would be difficult to replicate it in any meaningful way. The difficulty here is obtaining simple and comparable information from a large cohort of organisations with quite different historic and current profiles and operating activities. We believe that VfM should

⁴ Housing Corporation Circular 01/07

be a core responsibility of the board of every provider and should be demonstrated to the TSA at a high level and not by cumbersome and formulaic modelling with limited practical use or strategic value.

- 26 We believe that operating costs extracted from annual statutory accounts provide as meaningful an indicator as it is possible to get without engaging in a lot of work in an attempt to obtain spurious accuracy. Associations should be able to demonstrate to the TSA that they keep efficiency under regular review and have plans in place to reduce per unit operating costs over time. Operating cost reductions year on year should be monitored by associations (both including and excluding major works, perhaps).
- 27 Beyond that, the TSA should essentially rely on (a) the existing rent regime (b) viability regulation and the generation of surpluses, and (c) resident satisfaction results, to ensure that a focus on cost control and VfM are important strands in an association's governance toolkit.
- 28 In addition, it should expect associations to be able to demonstrate that they have due regard to the role of benchmarking.

Other Matters

- 29 Resident feedback: We do not understand the role that residents might play in helping the TSA to understand the question of viability. (Page 9, second bullet). However, as indicated in paragraph 27 above, there is a link between satisfaction and VfM, but in this context associations must be free to make a judgement about when it ceases to be good value to invest more in service delivery in order to derive only marginal improvements in satisfaction.
- 30 Peer Review: Since housing associations' business plans are commercially confidential we do not understand how peer review can work in the context of viability. (Page 9, third bullet).
- 31 Grading: We think that this is a very difficult area. In principle, we would support option "(c) Pass, Pass with closer regulator monitoring, Fail". However, it is important to acknowledge that the post-credit crunch funding landscape in which the sector operates is very much less benign than the old world. There is a real danger that the middle rating might be interpreted by lenders as tantamount to a "red light" and that could prompt lender action. This could have very serious consequences for individual associations and for the sector as a whole. If the TSA does adopt three grades it must be made absolutely clear that a middle rating does not imply that an association is not viable. As well as the response of the banks, we would urge the TSA to confirm that the middle rating would not lead to disproportionate regulatory action.

***G15: representing London's largest housing associations
7 September 2009***

Appendix 1 – Possible quarterly indicators

The following indicators could be provided for either the year to date or the forecast for the full year, or both, depending on what is appropriate. Detailed calculations would need to be thought through and where suggested here they are only designed to indicate the thrust of the health indicators.

- **Adjusted cash generation.** This would be designed to ascertain the extent to which existing stock is managed within ordinary operating surpluses and calculated as: Operating surplus, plus depreciation and impairment, less net interest payable, less capitalised major works.;
- **Interest Cover;**
- **Interest Cover stressed to take account of significant property falls;**
- **Debt : turnover**
- **Debt per unit;**
- **Operating cost per unit;**
- **Cash and Undrawn facilities cf committed expenditure;**
- **Value of development programme, WIP, sales, land bank etc at risk;**
- **Forecast annual surplus against Turnover %;**
- **Forecast annual surplus.**

Appendix 2 - Possible quarterly questions (or probably better, questions for regular informal engagement)

The following questions are suggestions for high level soundings which could be taken at intervals. These are intentionally not as detailed or prescriptive as the questions asked over the last year by the TSA/Housing Corporation.

- Are you at risk of breaching any funders' covenants in any group member in the next 12 months?
- Do you have funding available and in place sufficient to meet all contractual commitments? If not what is the size of any shortfall?
- Have any discussion on concerns about material financial loss or viability taken place at executive or non executive director level within the last quarter? If so, please provide details.
- Are there any events, decisions or triggers that are due to occur in the next [3/6/12] months which have the potential to affect the association's financial viability?
- Do you have any concerns over the level of your activity which is exposed to adverse movements in the property market, such as stock for sale, land bank? If so, please provide details.