

A new regulatory framework for social housing in England

G15 response to the statutory consultation

G15 welcomes the opportunity to respond to the statutory consultation to the proposed new regulatory framework for social housing in England.

We made both a preliminary and then a full response to the discussion paper that the TSA consulted on in the summer and welcome the very significant changes that have been made since then.

We are particularly pleased with the focus on a co-regulatory approach with more emphasis on the Boards and the senior teams of housing associations taking responsibility for setting strategy and delivering services taking account of our residents concerns. We agree that this is consistent with the principles set out in the 2007 Cave Review and welcome the focus on de-regulation and the potential reduction in the regulatory burden.

Before responding to the detailed questions within the document we would make the following general points which we will elaborate on below.

Areas where we still have concerns include:

- *Local Standards* – we think that this approach warrants further thought. We would prefer to use the term ‘local priorities’, reflecting the way in which the national standards will be delivered locally. We see this approach as part of working with residents to tackle specific issues which are generally short term rather than to use it to create differential standards long term across our homes.
- *Inspection* - We are completely unclear about the brief for the new inspection regime, and the way in which the current arrangements will be used in the period until a new regime is formally introduced. It is also unclear how the TSA will make decisions about provider performance to prompt an inspection. There should be complete transparency about the basis upon which the TSA will take these decisions.
- We are also concerned that unless there is an extremely radical approach to the way that inspection is conducted, the KLOEs will effectively take the place of the various codes and good practice notes that were issued by the Housing Corporation and which the TSA is now proposing to scrap. A fundamentally different approach to inspection will be needed in order to deliver the co-regulatory principles of the new framework.
- *Value for Money* – We recognise the critical importance of this issue but we continue to think that it would be much more appropriate to have this as cross cutting theme than as a standard. A separate standard runs the risk of a focus on process rather than outcomes.

- We still have a concern that the TSA will use its regulatory framework to policy passport. The document contains one instance of this in paragraph 2.6 of the Home standard which implies that Registered Providers have a responsibility for Aids and Adaptations in their homes when this is a Local Authority statutory duty. However, the Minister has recently talked about imposing the 'Respect Standard' on social landlords. In this respect we think it is important that the framework is explicit around those areas where the TSA can require landlords to take action and where it is setting standards which are effectively advisory.
- *Complaints* - We are concerned by the proposed process for the TSA taking complaints from residents and the extent to which the TSA could inadvertently create an alternative means of redress that undermines the role of the relevant ombudsman. We suggest the TSA should adopt an approach which confines its role to complaints relating only to concerns about compliance with its standards
- We are also greatly concerned that there is no proper appeals or complaints process set out in the code for social landlords to raise formal concerns about any actions or decisions of the TSA. We have read the process for complaints on the TSA website and it seems to be about individuals complaining and precludes complaints about regulatory judgements. We think it is essential that the regulator provides a clear and transparent approach to permit challenge of its decisions.
- The *tenancy agreement*, the legal document which sets out the legal rights and responsibilities of landlord and tenant, is given no prominence in the standards at all. Providers can only meet the expectations of residents within the scope of the resources reasonably available and it is wrong to create the impression that tenants can expect their 'needs' to be met and that they should receive the services they 'deserve'. Such imprecise language has no place in the regulatory standards.

Our more detailed answers to the questions posed in the consultation document are set out on the following pages.

Detailed Responses to the Questions

1. Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?

We welcome and generally support the national standards being based on clear criteria and on the ten principles set out in the document. We also welcome the approach to focussing regulatory action in 2010-11 on poor performance which critically includes services to tenants underpinned by national standards. We would suggest that if the TSA is to be an effective, lean regulator that this approach should be adopted going forward. However, we are unclear about how such judgements are to be made and the absence of transparent criteria runs the risk of legal challenge.

We agree that Codes of Practice should be kept to a minimum thereby reinforcing that there is no opportunity for policy pass-porting outside the three areas where the government has the right to issue directions as set out in the 2008 Act.

We think there is an opportunity for providers to work with the trade and professional bodies around developing models of good practice while allowing housing associations the freedom to adopt different approaches where there is good reason. It is important to avoid any system that attempts to create a 'national housing service'.

2. Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?

We welcome the reduced number of proposed national standards although we still have concerns around the need for an explicit Value for Money standard. We think this would be much more appropriate as a cross cutting theme as it is for Audit Commission inspections. We think this would strengthen the position of the regulator in aligning issues of quality and cost and would mean that judgements on value for money were based on outcomes rather than process.

We have real concerns about the approach to Local Standards which we pick up later in this document under question 5A.

3. Does it seem reasonable to extend the same approach to those providers owning fewer than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?

As a representative group of large housing associations, our comment is that the TSA has responsibility for upholding the reputation of the sector and that some of the most publicised failures in the sector have been in small housing associations. So, while we would support the reduction in regulation for small housing associations we think that the TSA need to think carefully about how it might spot potential regulatory failure in these organisations.

4. Do our proposals on how we will approach the regulation of local authorities appear reasonable?

While we understand the difference in organisational types, the exclusion of local authorities from any requirement to meet the Governance and Viability Standards, together with their exclusion from many of the penalties and enforcement measures means that the approach cannot represent truly domain-wide regulation. We think that this undermines the new regime and will create difficulties in our partnerships with local authorities. In this regard we would also point to the ambiguity and complication of the proposals relating to local standards. Many local authorities see local standards as a means through which they might regulate housing associations. This must be resisted explicitly and the failure of the TSA to create a common approach for all local providers reinforces this risk.

5A. Does the proposed text for the Tenant Involvement and Empowerment standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct, and as outcome focused as possible?**

Overall we are happy with the contents of this standard with the exception of two specific areas. These are:

Local standards

As already indicated we have significant concerns around local standards. While we are happy with the concept of local arrangements with tenants in a specific location or across a specific service type we are concerned about a number of aspects on our reading of how the TSA might want this to operate.

Operating local arrangements with our residents to reflect and tackle local concerns is not new to social landlords and we all have examples of working in this way. However, these are normally arrangements to tackle a specific problem or concern and are not necessarily about having higher standards but about either tackling a short term issue or about varying the way we deliver services particularly where this relates to housing where we also provide care and support. We will continue to operate in this way.

This consultation paper raises a number of issues of concern:

- The document suggests a timescale where all local standards must be in place by 1st April 2011. Many landlords expect local arrangements to be relatively short-term and

to respond to a specific issue, for instance to tackle anti-social behaviour in a particular area. We would favour a process that ensures that each landlord provides evidence that it has a framework in place which it has agreed with its residents to create local arrangements where required by the 1st April 2011

- We are concerned about what happens in a situation where agreement cannot be reached and a group of tenants were to complain about this to the TSA. It is essential to frame any requirements for local standards in the context of the overall priorities of the social landlord and the reasonable availability of financial and other resources. There will always be competing priorities and it is simply wrong to imply that every tenant can have everything they want.
- We are also keen to know the approach the TSA will take if a social landlord can demonstrate that their tenants organisations do not want to have different standards across their stock.
- We have real anxieties, which are already being played out, that local authorities will seize the opportunity to set standards for delivery of services in their area and will expect social landlords operating in that authority to adopt these as local standards. Local priorities should be agreed by Providers and their residents.

We think therefore that the notion of local standards needs considerably more work. We suggest that they might be renamed as 'local priorities' or 'local agreements' which we think better reflects what the TSA is trying to achieve. Where landlords can demonstrate that their residents don't want local arrangements we think that this should be acceptable although the TSA might want to set some system for tri-annual review.

Tenants on boards

We are concerned by the presumption about the role of tenants on Board. Many housing associations are now large and complex businesses. We recruit and appoint Board members to ensure that we have the range of knowledge, skills and experience to work with executives to run our businesses effectively and efficiently. Clearly this includes providing good quality homes and services to current and existing tenants and this requires the Board to have a good understanding of tenant's needs and aspirations. We are not opposed to tenants on boards provided they have the competences to discharge the full range of non executive responsibilities. It is wrong to imply that tenants should have a right to places on the Board. We think this is inferred by this requirement which asks for Registered Providers to consult their tenants about how many tenant members there should be on their governing bodies or service delivery committees at least once every three years.

We think it would be better to ask social landlords to demonstrate:

- That their Boards take account of the preferences of their tenants when developing and delivering key policies and strategies which impact on customer service
- That there are opportunities for tenants to be involved in the Board and committee structures where they demonstrably have the required skills and competencies

5B. Does the proposed text for the Home standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

We have already covered under question 5B the issues around local standards. The same applies to maintenance standards. It is very likely that a local agreement might relate to the improvement of an estate or a range of dwelling types such as sheltered housing. It is unlikely that these would be about higher standards but could relate to specific stock investment where involving tenants in the process of setting and delivering the stock improvements is critical.

We have more general concerns around stock maintenance in the context of rent control. Housing Associations have met the vast majority of the costs of delivering the current Decent Homes programme from our existing resources. This is not something we are likely to be able to deliver again in an environment where rent levels continue to be capped and cannot therefore reflect the added value to the tenant of stock investment even where this might result in lower running costs. In this context we would be concerned if this standard is used to ensure delivery of future government promoted improvement strategies unless the funding made available is adequate.

5C. Does the proposed text for the Tenancy standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

We would like to see this standard linked explicitly with our existing tenancy agreements which set out the rights and responsibilities of landlords and their tenants. We would make the following more detailed points.

Allocations

Most of the G15 are involved in choice based lettings schemes or have similar arrangements with local authorities. Most of our homes are allocated to nominations from the local authority and we have little or no say about who moves into our homes

and this often causes longer term problems about the sustainability of the communities we create. We are very keen to be able to develop a more mature relationship with our local authority partners which:

- Places expectations on local authorities to work with us on and then help us deliver local lettings plans so we can ensure a range of household types, ages and employment profiles in our homes
- Allows housing associations to use more of our new homes to meet overcrowding, under-occupation and other needs of our existing tenants. We don't keep waiting lists and therefore any vacancies arising from what might be a series of moves will then go to the local authority for nominations

An area of complaint for many current residents concerns our inability to meet their reasonable aspirations to meet their changing housing needs. In this context we think that the TSA, in concert with the CLG, could use its influence on strategic housing authorities to allocate homes on the basis of a more balanced view of housing needs, taking better account of the needs of our existing tenants and our requirements to create balanced communities. We therefore think that it would be helpful to redraft the standard to help to create a more balanced approach where we can perhaps exert more reasonable control over our homes while meeting the needs of the strategic local housing authority.

We would particularly ask you to change 1.2 under specific requirements so that the second sentence reads – ‘These services will respond to the reasonable needs of their tenants....’ We can't be required to meet our tenant's needs when in many cases we are demonstrably unable to do so due to lack of the right homes.

Rents

We acknowledge that this is largely out of the control of the TSA but we are very concerned that government will make directions on rent levels and increases without proper regard for the impact on services and viability. We are clear that a review of rent policy is overdue and should be seen by the TSA as a priority. We believe it will be critically important to create a new rent regime for the future which recognises:

- How rental income funds our businesses
- The need for more flexibility on rents on those dwellings with higher environmental standards and lower running costs so that landlords can share in their additional investment in achieving those standards
- The importance of securing a balance between value for money for the resident and the taxpayer, especially in terms of the costs in housing benefit and a fair and predictable income stream for providers.

5D. Does the proposed text for the Neighbourhood and Community standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

While we are happy with the sentiments expressed in this standard, we are very concerned about the reality of delivering against it. We think that:

- The level of stock a housing association might own in a local authority area will impact on the role they can reasonably play in that area. Where a housing association owns less than, say 500 homes, it is unreasonable to expect it to play a strategic role unless the housing is concentrated in a neighbourhood or has a more specific significance (such as housing for young people or for people with care and support needs).
- More generally, we think that the TSA must contextualise any concerns they may have about landlord collaboration with the willingness of local authorities and other statutory agencies to work with housing associations. We often experience difficulties of working with statutory agencies around issues such as tackling anti-social behaviour, rubbish collection or the maintenance of areas of land owned by local authorities. Also, the notion of local area co-operation requires a local authority partner who is interested in and willing to work with their social housing partners beyond the provision of new homes and nominations.

We know that this standard is designed to read across to the current CAA framework for local authorities and we are concerned therefore that there is an element of policy pass-
porting. We recognise the benefits to our residents in trying to create coherent, good quality service delivery in their local areas but this requires willing and constructive collaboration by local government.

This concern extends beyond the public sector. Many of G15 also experience real problems in achieving high standards of upkeep to communal areas on section 106 developments where managing agents are employed by the private freeholder to maintain common parts. The TSA will need to consider the circumstances and the powers of the landlord to deliver improvements in these circumstances.

5E. Does the proposed text for the Value for Money standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**

- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

Ensuring we get best value for money is of critical importance to the sector. We have made clear elsewhere our opposition to a stand-alone value for money standard and we remain convinced that the proposals runs the risk of creating an industry of analysis that will not achieve what the TSA intends. We are reminded of the failure of previous attempts like the Housing Corporation's Operating Costs Index and the imposition of complex methodologies attempting to capture cashable and non-cashable gains. We would urge the TSA to look for a simpler solution such as an annual requirement for each provider to publish progress against an updated efficiency plan.

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

- **allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

We are generally pleased with the TSA's approach to this standard although we believe it would be possible to place at least some obligations on local authorities to demonstrate compliance with good governance principles.

We would like to understand better how the assessment of financial viability will work in practice and the extent to which the TSA has discussed its proposed approach with lenders. Great care is needed to ensure that the regulatory framework does not inadvertently trigger default of lender covenants. G15 Finance Directors have already been involved in preliminary discussions which they report to be encouraging but we believe it is important for the TSA to provide detailed proposals upon which we can comment formally.

6. Does our approach to monitoring and compliance against the standards and regulatory requirements seem a reasonable basis for 'how' we regulate in 2010-11?

We are completely unclear about how the TSA intends to make judgements about how providers are complying with the standards. We are equally unclear about the criteria for regulatory action. Although the document refers to a risk based approach, we have not seen any explanation of how that model will work. More detail is needed as a matter of urgency because as currently drafted, the potential breadth of discretion around TSA interventions could be wide open to legal challenge.

We are unclear also about how performance is to be 'graded', both in terms of regulatory compliance and inspection. Will this be 'pass/ fail' or some other more graded assessment and what will be the criteria?

We need clarity around the brief for the new inspection regime, and the way in which the current arrangements will be used in the interim period before a new regime is formally introduced. It is also unclear how the TSA will make decisions about provider performance to prompt an inspection. We have serious concerns around the currently process driven and bureaucratic inspection methodology which does not reflect the TSA's intention to move to a co-regulatory approach. In particular, we are concerned that unless there is a radical approach to replacing the KLOEs with a new outcome based inspection process, the KLOEs will become a replacement for the Housing Corporation codes and good practice notes that you are intending to remove. We see this as one of the most fundamental and urgent issues to be tackled and we would welcome the opportunity to influence the shape of the new inspection regime.

Since there will not be a new inspection regime before Autumn 2010, we anticipate that there will be problems with the interpretation of the Audit Commission's judgements during this transition period. We would like to discuss with you in more detail.

Whilst we understand the importance of continuous improvement derived from good practice, there is a fundamental misunderstanding about the powers of the TSA to enforce the sharing of good practice. While we accept that as public bodies, local authorities and ALMOs can reasonably be expected to share best practice and take part in 'peer review', no such requirement can be placed on independent housing associations. Many associations compete with each other and with commercial entities for contracts, especially for housing management and support services and it must clearly be for them and not the TSA to decide with whom they will share their best practice.

We are also confused about the distinction in the roles of the TSA Tenants Standards Advisors and Risk and Assurance Teams. We remain particularly unclear about the role of the former and believe there is a risk that the effectiveness of regulatory engagement will be diluted without greater clarity of roles, responsibilities and boundaries. The document implies that Tenant Standards Advisors will have a direct relationship with tenants. We do not believe this is in any way appropriate for a regulator.

7. Does our approach to dealing with complaints seem reasonable?

We have serious concerns over the proposed process for the TSA taking *complaints* from residents. The TSA should confine itself to complaints that relate to overall performance, not individual grievances: it would be damaging if there were any overlap between the TSA and Independent Housing Ombudsman (IHO), and no opportunity should be allowed for complainants to go 'shopping' between the two bodies, turning to one if not satisfied with the response of the other. It will be essential to ensure clarity of

process and to ensure that the TSA does not make judgements about social landlords based on allegations rather than facts.

We would therefore be very supportive of an approach which:

- Strengthens and reinforces the responsibility of social landlords as the first point for all complaints relating to tenant concerns. This which would include a complaint from a group of tenants;
- Maintains the Housing Ombudsman Service as the next point of referral for all complaints for tenants who have been through their Provider's complaints process and were dissatisfied with the outcome. The ombudsman could then refer any issues relating to non compliance with the relevant standards on to the TSA.

On a more general point we are unclear how the TSA will use the level of complaints as an indicator of concern about a landlord. Many social landlords have been encouraging their tenants to log their complaints as part of their continuous improvement processes. We would advise the TSA to focus on those complaints which escalate through the complaints process where the landlord either accepts the complaint is justified or has a finding made against them by the ombudsman.

8. Is our general approach to using our formal regulatory and enforcement powers reasonable?

We welcome the intention that the TSA should decide which providers should be inspected through an agreed methodology. We do not understand at this stage the criteria, evidence or data the TSA will use to identify when a Provider is failing to meet a standard.

We support the use of the TSA's powers on a graduated basis and we are pleased that there is recognition of the use of voluntary undertakings to make improvements to meet the standards. However, we do not understand the rationale for or support the intention to exercise a wider range of sanctions against housing associations than local authorities and ALMOs. For example, we do not see why local authorities should not be subject to fines or compensation awards or the removal of an officer.

It is absolutely vital that there is a transparent means by which providers can challenge regulatory judgements and we are disappointed that no proposals have yet been offered for consultation. It would be a significant mistake if challenge of TSA decisions became a matter for the courts.

9. Do our proposals for establishing registration and deregistration criteria seem reasonable?

We are generally content with the TSA's proposals although we are unclear about how and over what period it intends to resolve the issue of Group structures which are headed by a non asset holding parent.

10. Does our approach to issuing directions on Accounts and the Disposal Proceeds Fund seem reasonable?

We look forward to commenting on the separate consultations when they are issued in due course.