

Briefing Paper

Social Housing Regulation and Inspection

May 2010

Introduction

Social Housing in England has always been regulated and inspected. There are three main reasons for this: Protection of the tenants' interests; Protection of the public / government interest in that housing benefit funds most of the rental income of housing associations and local authorities and government provides capital funding in the form of Social Housing Grant for housing associations and other funding for local authorities; and Protection for the financial institutions that provide loans for development by housing associations.

In 2008 the whole system was overhauled through the Housing & Regeneration Act and the Tenant Services Authority was created as the new regulator of both housing associations and local authorities with the audit commission acting as their agent with regard to inspection. A new approach to regulation and inspection has been developed based on targeting resources at areas of risk and focusing on the needs and priorities of tenants. National standards have been introduced and local offers are to be developed.

During the 2010 general election campaign the Conservative Party stated that they would abolish the Tenant Services Authority although they would obviously retain some form of regulation and inspection regime. Following the formation of the coalition government no announcement has been made about the future of the Tenant Services Authority or about regulation and inspection. It is considered likely that the Tenant Services Authority will be abolished but most of its initiatives will continue to be developed by its successor.

The Cave Review and the Tenant Services Authority

As a result of government concerns about protecting public money that is invested in social housing and ensuring that tenants are at the heart of regulation, Professor Martin Cave was commissioned to review the regulation of Housing Associations. In particular he was asked to:

- Establish a clear set of objectives for the regulation of social housing to underpin any new regulatory system
- Present a limited number of options for reform of the regulatory system with a full assessment of the pros and cons of each
- Make a clear recommendation for a preferred option for a reformed regulatory system and describe how that regulatory system would operate in practice, including its detailed legal and financial implications
- Allocate regulatory roles or make recommendations as to the institutional arrangements that would best support such a system

One of the key questions that the review addressed was the scope for increasing the resources available to Housing Associations and what changes to the regulatory framework would have a significant impact on the cost of capital or scale of debt funding.

Professor Cave published his report, 'Every Tenant Matters: A review of social housing regulation' that contains his recommendations to Ministers, on 19th June 2007. Professor Cave's recommendations were also included in chapter seven of the consultation, 'Delivering Housing and Regeneration: Communities England and the future of social housing regulation' that ran until 10th September 2007. These recommendations were taken forward in the Housing and Regeneration Act 2008.

The origins of the Tenant Services Authority are to be found in the Cave report (Every Tenant Matters) published in June 2007. Professor Martin Cave was asked by the Secretary of State to conduct a review a review of social housing regulation. His findings were that the system had many shortcomings:

- Inadequate concern for tenant interests
- Over-regulation of some providers and excessive administrative burdens
- Inadequate separation of policy and regulation (leading to the unacknowledged implementation of policy by regulation)
- Poor incentives for efficiency
- Failure fully to utilise available capacity to expand provision in the housing association and private sectors

Cave identified three principal objectives for the regulation of social housing as being to:

- Ensure continued provision of high quality social housing
- Empower and protect tenants
- Expand the availability of choice of provider at all levels in the provision of social housing

Two principles were adopted to underlie the design of the regulatory system:

- to achieve the above objectives with a minimum degree of intervention
- to apply the same approach, where possible, across all providers of social housing

The Cave Report's recommendations were on the whole incorporated into the Housing & Regeneration Act 2008 in that:

- The regulatory regime applies to a wider number of providers (including bodies controlled by local authorities through order of the Secretary of State)
- Although the regulator has strong powers, these are subject to controls and safeguards, that have the result of a hands-off approach, reducing the burden of regulation
- The regulator's statutory powers are more or less in line with what Cave recommended.

The government took the view that the Housing Corporation's emphasis on Investment had made it too 'soft' with regulation with the result that the Housing Corporation has failed to regulate effectively, most notably with Ujima Housing Association. However, there are other examples including Clay Lane Housing Association that was in supervision for 25 years. Board Members were appointed, Funding was stopped, Stock transfer was attempted but Clay Lane Housing Association stayed in operation and supervision. This situation was only resolved when the housing was cleared as part of Olympic development.

Housing & Regeneration Act 2008 and the Tenant Services Authority

The Housing & Regeneration Act 2008 defines 'social housing' as low cost rental accommodation and low cost homeownership accommodation. Accommodation is low cost rental accommodation if:

- It is made available for rent,
- The rent is below the market rate, and
- The accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

The Housing & Regeneration Act 2008 sets out how property within the meaning of Part 1 of the Housing Act 1996 is to be treated for the purposes of this Act. This clause ensures that properties owned by a Housing Association immediately before the coming into force of the Act are defined as social housing. There are some exceptions as long as the housing was not funded by Social housing grant:

- Market-let accommodation:
- Student accommodation:
- Care homes providing nursing care:
- Asylum seeker Home Office contracted accommodation: and
- Other property specified in regulations by the Secretary of State.

The purpose of this is to protect the interests of Housing Associations that have developed without grant for particular needs groups.

The Tenant Services Authority performs its functions with a view to achieving the following objectives so far as possible:

- Objective 1 is to encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands.
- Objective 2 is to ensure that actual or potential tenants of social housing have an appropriate degree of choice, and protection.
- Objective 3 is to ensure that tenants of social housing have the opportunity to be involved in its management.
- Objective 4 is to ensure that registered providers of social housing perform their functions efficiently, effectively and economically.
- Objective 5 is to ensure that registered providers of social housing are financially viable and properly managed.
- Objective 6 is to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated. This raises the question of the proper extent of the functions of a Housing Association. Housing Associations were not organisations with a duty to co-operate with Local Area Agreements until now.

- Objective 7 is to encourage investment in social housing (including by promoting the availability of financial services to registered providers of social housing).
- Objective 8 is to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds.
- Objective 9 is to guard against the misuse of public funds
- Objective 10 is to regulate in a manner that minimises interference, and is proportionate, consistent, transparent and accountable.

The regulator may do anything it thinks necessary or expedient for the purpose of or in connection with the performance of a function conferred on it. In particular, the regulator may do anything it thinks appropriate for advancing its fundamental objectives. The Act also sets out how and to whom financial assistance can be given by the regulator.

The Act places a specific duty on the Tenant Services Authority to involve tenants in its activities. In particular, the regulator is required to promote awareness of the regulator's functions among tenants of social housing, where the regulator thinks it appropriate, consult them about the exercise of its functions (for example, by holding meetings) and where the regulator thinks it appropriate, involve them in the exercise of its functions (for example, by appointing them to committees or subcommittees).

The Tenant Services Authority may direct the Homes and Communities Agency not to give financial assistance to a specified registered provider. This would happen if the Tenant Services Authority was not satisfied with the financial administration of that Association.

The Tenant Services Authority may give directions to registered providers about the preparation of their accounts. Registered Providers are required to send their accounts to the regulator in accordance with a timetable, expected to be within six months of the year end. Auditors and accountants are obliged to make disclosures to the Tenant Services Authority regardless of any duty of confidentiality. This applies to Internal and External Auditors.

The Tenant Services Authority has set six standards for Registered Providers to comply with. They are aspirational standards rather than minimum standards. The standards build on:

- The Housing Corporation Regulatory Code: Governance, Viability and Management
- National Housing Federation's new draft Code of Service Standards and Accountability

These national standards will be complimented by local offers that will constitute the promises that each housing association will make to its tenants.

There will be an overlap with the Homes and Communities Agency's requirements for Development and the Audit Commission Key Lines of Enquiry will be retained for the time being.

Standards may, in particular, require registered providers to comply with specified rules about:

- Criteria for allocating accommodation
- Terms of tenancies,

- Levels of rent (and the rules may, in particular, include provision for minimum or maximum levels of rent or levels of increase or decrease of rent),
- Maintenance,
- Procedures for addressing complaints by tenants against landlords,
- Methods for consulting and informing tenants,
- Methods of enabling tenants to influence or control the management of their accommodation and environment,
- Policies and procedures in connection with anti-social behaviour,
- Landlords' contribution to the environmental, social and economic well-being of the areas in which their property is situated
- Estate management.

The Tenant Services Authority may set standards for registered providers in matters relating to the management of their financial and other affairs. In respect of profit-making registered providers, standards may be made in relation to the management of their affairs only so far as relating to the provision of social housing. In setting standards the Tenant Services Authority will have regard to the desirability of registered providers being free to choose how to provide services and conduct.

The Tenant Services Authority has a new set of enforcement powers to replace the previous supervision framework including:

- Enforcement Notices
- Fines and penalties
- Management tenders
- Management transfers
- Manager appointments
- Transfer of land
- Amalgamations
- Suspension and removal of officers, employees and agents
- Officer appointments

These are broader powers than were possessed by the Housing Corporation. Housing Associations placed in supervision by the Housing Corporation could have had Board members appointed and development funding stopped. The powers of the Tenant Services Authority go further.

The Tenant Services Authority is independent of the Funder and has greater powers than its predecessor to intervene in Registered Providers that fail to meet their standards.

Tenant Services Authority Standards

The Tenant Services Authority has published six national standards that apply from Spring 2010 as follows:

- Tenant Involvement and Empowerment Standard
 - Customer Service and Choice
 - Involvement and Empowerment
 - Responding to Complaints
- Home Standard
 - Quality of Accommodation
 - Repairs & Maintenance

- Tenancy Standard
 - Allocations
 - Rents
 - Tenure
- Neighbourhood and Community Standard
 - Neighbourhood Management
 - Local area co-operation
 - Anti-Social Behaviour
- Value for Money Standard
 - Value for Money
- Governance and Financial Viability Standard
 - Governance
 - Financial Viability

The Tenant Services Authority considers that, in future, tenants can expect:

- A greater focus on the issues that matter most to them, such as repairs, affordable rents and tackling anti-social behaviour
- More opportunities to have their say, to get involved and to hold their landlord to account.
- A greater emphasis on their own priorities through new local offers agreed by tenants and landlords.
- More feedback from their landlord including an annual report setting out just how well they are doing against local offers and the Tenant Services Authority's national standards

The Tenant Services Authority considers that, in future, landlords can expect:

- More responsibility to work closely with their tenants to drive improvements.
- More flexibility about how they deliver their housing services in return for more accountability to their tenants and partners.
- A modern co-regulatory relationship with their tenants and the regulator where many of the activities necessary to regulate outcomes are undertaken by landlords with their tenants
- A fair and proportionate approach if their performance needs to improve.

Joint Statement by the Tenant Services Authority and Audit Commission

In March 2010 the Tenant Services Authority and Audit Commission issued a joint statement on the arrangements for inspection of registered providers for the period April to October 2010. It set out how the Tenant Services Authority intends to commission inspections of registered providers' housing services from the audit commission. During this period the two organisations will review the inspection methodology jointly.

The Tenant Services Authority will commission inspections from the Audit Commission where it believes a provider may be failing to meet one or more of the standards. The Audit Commission will establish whether this is the case so the Tenant Services Authority can decide whether regulatory action is needed.

The Tenant Services Authority will identify which registered providers to inspect, why the inspection should happen and which standards will be looked at. A short notice methodology is usually used to commission inspections. However, the Tenant Services Authority can commission a more widely scoped inspection in which case more notice is given to the registered provider.

Inspections will be carried out through aligning the existing Key Lines of Enquiry (KLOE) with the requirements of the Tenant Services Authority's standards. Inspections will focus on the specific standard areas where cause for concern has been identified.

Once it has assessed providers through the risk based regulatory engagement that will allow it to understand the provider's context and relevant improvement plans, the Tenant Services Authority will commission inspections. For local authorities this would take into account relevant work done by the Commission in 2010 and earlier that would include Comprehensive Area Assessments where this evidence causes concern.

Providers will be notified when the Tenant Services Authority commissions an inspection and in particular will notify the provider of:

- The reason why it has commissioned an inspection
- The Tenant Services Authority standards to which the inspection relates
- Those parts of the Commission's existing Key lines of Enquiry that are relevant to the Tenant Services Authority's standards that are being inspected as agreed with the commission.

The objective of an inspection will focus on the provider giving assurance and evidence as to how they are meeting the standards and delivering required outcomes to tenants. The commission will consider all relevant evidence regarding the delivery of the standard and outcomes to tenants.

Inspections will continue to produce an assessment of service quality against each standard area inspected (judgment one) and on the provider's prospects for improvement (judgment two). Both the Tenant Services Authority and the Audit Commission will publish the inspection report.

The tenant Involvement and Empowerment standard defines the way in which providers are expected to deliver services across all the standards in respect of customer service, choice, complaints, involvement and understanding and responding to the diverse needs of tenants. Where the Tenant Services Authority considers that their concerns about a standard extend to the way tenant involvement and empowerment is being delivered the cross-cutting Key Line of Enquiry relating to access, customer care and diversity may form part of the scope of the inspection.

The Tenant Services Authority will use the results from inspection to inform its judgment on whether a provider has breached the delivery of the standards or is at risk of non compliance.

The inspection report will make recommendations where failings or deficiencies against the standard have been identified. Where this occurs, providers will be expected to respond with an improvement plan. Providers should engage their tenants in this process.

The Tenant Services Authority would oversee the delivery of the post-inspection action plan and would approve it as complete once satisfactory assurance has been demonstrated that the provider has established compliance with the standards. Where the inspection reveals significant or extreme failings the Tenant Services Authority would consider whether to exercise any of its more significant regulatory powers.

The Implications for Landlords and Tenants

The Tenant Services Authority can be considered to have three legal roles: Registration, Control and Standards. It can register and deregister providers and approve mergers; it can control providers and board members through powers including taking over, fining and removal of board members or officers; and it can enforce its national standards and some simplified public standards.

Inspection is to be based on co-regulation with more being done by providers and less centrally. Audit commission inspections will focus on those of the national standards where there are considered to be problems. In future the Tenant Services Authority may not use the Audit Commission at all.

The fundamental differences between the new regulatory and inspection framework and that which preceded it are:

- Less bureaucracy and more freedom on how to provide services and conduct business.
- A shift in accountability from the regulator towards the tenants
- An expectation of joint working, for example on anti-social behaviour.
- Standard one on Tenant Involvement and Empowerment makes more explicit requirements.

The Tenant Involvement and Empowerment Standard requires that registered providers must ensure that tenants can influence service delivery and hold providers to account (empowerment) through building capacity, consultation, provision of information and development of a scrutiny role. It also requires that registered providers must ensure that tenants have an equal chance to be heard and an equal opportunity to contribute (involvement). This requires taking account of needs across all six diversity groups and knowledge of the client base.

Tenants are to be given real choices between costed options and a formalised scrutiny role.

In addition to observing the national standards, registered providers are expected to agree local offers. These local offers represent the 'offer' that a registered provider makes to its tenants and to other users of its services. The local offers will allow for differences in standards where relevant either due to geographical location or the needs of a particular community. There is a wish to avoid a 'one size fits all' approach. Local standards have been piloted in 37 areas. One of these was in Workington, Cumbria, where Impact Housing Association and three other registered providers developed a local offer. Adrian Waite is a member of the Board of Impact Housing Association and is the board champion for tenant involvement and empowerment.

Registered providers already have the guidance of the Tenant Services Authority on the local offers as well as details of the national standards. Registered providers have until October 2010 to publish a report on which standards they meet and how they plan to meet the others. Registered providers have until April 2011 to establish their local offers. The first annual reports showing performance against standards will be published by July 2011. Consultation will be required with tenants throughout.

Specific governance issues are raised as follows:

- Councils and Housing Association Boards have responsibility for meeting the obligations placed on registered providers by the Tenant Services Authority
- Registered providers are expected to carry out honest and robust self-assessments based on evidence and tenant scrutiny of performance
- Consultation includes, in the case of Housing Associations, asking tenants how many tenant members should be on the Board at least once every three years.

The Tenant Services Authority states on its website that:

“The proposed new standards for social housing providers are the centrepiece of our new regulatory framework. They describe the outcomes we want to see delivered and the specific requirements we expect all providers to comply with in meeting these outcomes. We believe the best place for the quality of services to be discussed, agreed and scrutinised is locally between providers and their tenants. So our standards require providers to set out what they offer to tenants and set local offers that reflect the priorities of local communities.”

“These proposals balance new demands on providers to be transparent and report on performance to their tenants and hold themselves to account – with a significant reduction in red tape, with no Tenant Services Authority codes of practice, the removal of thousands of individual regulatory consents, and the demise of over fifty detailed Housing Corporation circulars and guidance notes.”

The new arrangements give registered providers and their tenants the freedom to be different. Landlords will be able to be creative with tenants, residents and customers. There is an opportunity to achieve more consistency and clarity in dealings between registered providers and residents.

There is certainly a significant difference in approach between that of the Tenant Services Authority and that which has traditionally been followed by the Audit Commission. It will be interesting to observe how the relationship between the regulator and the commission develops.

Statement by Grant Shapps MP, Minister for Housing

In May 2010, Grant Shapps MP, Minister for Housing, was asked in an interview by 24dash.com whether he was still committed to abolishing the Tenant Services Authority. His response was as follows:

"It's certainly something I'm keen to progress now that I'm here. In my view the TSA was always a quango too far but we are absolutely committed to putting tenant protection and satisfaction at the heart of everything we do. I feel there are better, more cost effective ways to regulate the social housing sector and I do think the money invested in the TSA could be better spent elsewhere. As part of the Coalition Deal there is a commitment to reducing the number of government quangos and I think it's fair to say the TSA will probably be one of those that we have to look at very closely."

Conclusions

Social Housing in England has always been regulated and inspected. The most recent overhaul of the system was made by the Housing & Regeneration Act 2008 that established the Tenant Services Authority. The coalition government, elected in May 2010 is expected to abolish the Tenant Services Authority but to transfer its responsibilities to another body.

In 2007 the Cave review reported on social housing regulation and recommended that an independent regulator be established with greater powers than the previous Housing Corporation and a brief across the whole social housing sector. These recommendations were accepted and incorporated in the 2008 Act. The act gives the Tenant Services Authority ten objectives that it is to pursue through setting standards and enhanced enforcement powers where standards are not met.

The Tenant Services Authority has established six standards as follows:

- Tenant Involvement and Empowerment Standard
- Home Standard
- Tenancy Standard
- Neighbourhood and Community Standard
- Value for Money Standard
- Governance and Financial Viability Standard

In March 2010 a joint statement was made by the Tenant Services Authority and the Audit Commission. The Audit Commission is to continue to inspect housing organisations but as an agent of the Tenant Services Authority.

The fundamental differences between the new regulatory and inspection framework and that which preceded it are:

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9