

Shelter's evidence to the Cave review of social housing regulation

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Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people every year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 50 housing aid centres
- Shelter's free housing advice helpline which runs from 8am-midnight
- Shelter's website which provides housing advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include 'Homeless to Home' schemes, which work with formerly homeless families, and Shelter's Inclusion Project, which works with families, couples and single people who have had difficulty complying with their tenancy agreements because of alleged anti-social behaviour. The aim of these particular projects is to sustain tenancies and ensure people live successfully in the community.

Executive Summary

Shelter welcomes this review into the regulation of social housing.

The two groups whose needs are prioritised in the terms of reference for the review are existing tenants of RSLs, and the taxpayer. In our view this misses out a crucial aspect of the role of RSLs as publicly-funded housing providers who have a duty to assist the local authority in addressing housing needs and homelessness in the local area. RSLs have duties to the communities in which they operate, and to the communities most in need of the housing and support which they are in a position to provide. This group of "customers" of RSLs should, in our view, be given equal prominence in the review's deliberations.

We would like to see this review look at inconsistencies in the way in which local authorities and RSLs are regulated; currently much of the debate is about the differences in regulation between RSLs and private developers.

We welcome this Review's desire to drive up the quality of housing services and agree that incentives for good performance are currently patchy. However, we do not think it is true that RSLs have no effective incentives to perform well simply because their

customers are unable to move on freely and they are categorised as non-profit-making; as organisations they work in a very competitive environment and there are consequences to poor governance or financial performance. We are concerned at some of the sanctions which are being suggested to introduce incentives for good performance, and believe that these could lead to unintended adverse consequences for tenants and wider communities.

We are concerned about the focus on a narrow definition of financial efficiency for the taxpayer. The sort of "housing-plus" services which need to be provided to tenants of social housing – support and community development - are expensive, when looked at in a narrow and short term context. However, they offer enormous benefits to society and to the exchequer in the long term. Any drive to achieve financial efficiency or value for money must be looked at in this wider context. If this is not done, the temptation will always be to exclude those in need of support because their needs are too expensive to meet.

There is also an inherent tension between the preferences of the majority of social housing tenants and meeting the needs of the most vulnerable potential tenants. This tension can be resolved through the provision of effective support, as has been shown through pilot projects run by Shelter and other organisations. However this tension needs to be acknowledged and considered in setting up any system of regulation.

We believe that any new system for regulation should ensure the following outcomes:

- Maintaining a distinctive registered social landlord status which distinguishes the sector from private developers or management companies in terms of their non-profit making status.
- Retention of rent regulation leading to affordable rent levels which provide the best route out of worklessness and poverty.
- Retention of security of tenure in social rented housing
- A percentage of RSL lettings going to statutorily homeless households which adequately meets RSLs' duty to address homelessness and housing need in the areas in which they operate.
- RSLs' new housing provision to reflect the full picture of housing need and demand in the areas in which they work. This should encompass the proportion of units provided for social renting as against low cost home ownership, as well as the types and sizes of housing needed across all sectors of the community including BME households, and households containing someone with a disability. RSLs should also be playing a role in the provision of sites for Gypsies and Travellers.

- Development of, and full participation by RSLs, in initiatives which maximise tenants' opportunities for mobility, both geographically and across tenures. These initiatives will, of course, have to operate in the context of extreme under-supply of social rented housing. Increasing supply will be the only long term answer to achieving mobility.
- More influence for tenants over the day-to-day management activities of RSLs so that tenants can shape the services they receive.
- RSLs should be incentivised through the regulation system to rationalise their stock by concentrating the properties they manage within only a few local authority areas. This will improve the extent to which they can work effectively with each local authority area.
- RSLs new building and work on existing housing stock should move towards principles of environmental sustainability, good customer-focused design, and high levels of local amenity and opportunity.
- Increasing opportunities should be available to social housing tenants for training, employment, and personal development, as well as support to develop more cohesive and inclusive communities.

We are in favour of the continuation of a system of external regulation for all housing providers, rather than pursuing the suggested alternatives of self-regulation, or contract-based regulation. We would, however, like to see the system of regulation reformed and simplified, with a stronger role given to oversight of all housing providers' activities by local authorities, regional housing boards, and tenants' representative bodies.

We recommend the setting up of tenant oversight bodies at local authority level to monitor and set priorities for landlords' day-to-day management and customer service standards. These bodies should be invested in and supported to ensure that they offer participation and inclusion for all groups in the community; training, support and development for members; and building up links with other relevant fora in the local area, such as the local homelessness forum.

Introduction

We welcome this review into the scope, aims and nature of the regulation of social housing. We would like to see the review look in depth at provision across the board, encompassing local authorities, RSLs, ALMOs, and other non-registered providers. Whilst in the terms of reference mention is made of the way in which local authorities are regulated, there is not much detail on the differences between the regulation and obligations of RSLs and local authorities. Given that local authorities and RSLs manage roughly half the social housing stock each¹, it seems sensible to try to achieve more consistency with the way in which the two halves of the social housing sector are regulated. ALMOs are also now an increasing feature in the social housing sector, and currently remain slightly separate in the way they are regulated from either local authorities or RSLs. We would like to see this review move towards a single system of consistent standards and priorities for all providers of social rented housing, whether private developers, RSLs (including stock transfer RSLs), ALMOs, or local authority housing departments. We would like these standards and priorities to be monitored and overseen in the same way, and by the same organisation(s).

We would also like to see the issue of tackling homelessness added to the list of priorities for this review. The current priorities are meeting the needs of existing tenants, and providing financial efficiency for the taxpayer. Whilst these are clearly objectives Shelter supports, we also believe that social housing providers have wider duties to the communities in which they work, to other agencies and stakeholders, and to those homeless or in housing need looking to these providers for accommodation and support. We strongly recommend that the focus of this review and the design of any new regulatory system reflects this aspect of the social housing system.

Our primary concern is to reduce homelessness and bad housing by ensuring that everybody has access to a decent home, and that the support needs of vulnerable and marginalised people are met. Shelter's research has shown the terrible effects which homelessness and bad housing has on people's lives, particularly the lives and life chances of children². We have also highlighted the extra costs to society and the exchequer of households remaining in temporary accommodation because they cannot obtain social rented housing³. In 1997, there were around 40,000 statutorily homeless households in temporary accommodation. Now there are over 90,000, although numbers

¹ In 2005 RSLs owned and managed around 44% of social housing stock in England. See Wilcox, S:UK Housing Review 2006/7, CIH/CML, 2006, table 17a.

² Against the Odds - An investigation comparing the lives of children on either side of Britain's housing divide, Shelter, 2006

³ Mitchell, F et al: Living in Limbo: survey of homeless households living in temporary accommodation, Shelter, 2004.

are moving downwards after a peak in 2005⁴. Average waiting times are going up, and, in some areas of the country, it is now not uncommon for households to wait for over a year in temporary accommodation. The unacceptability of this situation is what prompted the government to undertake to halve the numbers of households in temporary accommodation by 2010. Social housing providers (of all types) have a crucial role to play in achieving this target.

Shelter has expressed concern in the past that the regulatory system for RSLs does not incentivise them to play their full role in tackling homelessness. Local authorities have a full statutory obligation to house those homeless and in greatest housing need. RSLs have no statutory obligation to do this. They have a duty to assist the local authority laid down in the Regulatory Code⁵. However, we do not believe the code is strong enough to ensure that local lettings policies meet the needs of vulnerable households. When local authorities are using their nomination rights to RSLs' vacancies to try to obtain housing for statutorily homeless households, the loose regulation and data recording around nominations by local authorities to RSLs means that RSLs have little incentive to take on 'difficult' households that are likely to cause management difficulties. This leads to a situation where some local authorities are having difficulty in fulfilling their obligations, and this may create obstacles for the government in meeting their targets on reducing homelessness. This review offers a chance to create a regulatory framework that will allow this problem to be more effectively addressed. We believe new performance management and inspection tools need to be introduced to ensure that RSLs have a greater incentive to fulfil their regulatory duty to tackle homelessness⁶. We also believe that an obligation comparable to that under RSLs' regulatory code should be placed on any other non-registered organisation who wishes to receive public funding for managing social housing.

Specific responses to the consultation questions

How do we identify the option for defining a regulatory framework

which best meets the objectives we set out; and

How do we develop a detailed design for the implementation of that

⁴ P1E statistics

⁵ The regulatory code and guidance, Housing Corporation, 2005, item 3.6 states the following:
"3.6 Housing associations must work with local authorities to enable the latter to fulfil their duties:
3.6.1 to the homeless and people in priority housing need;
3.6.2 to the vulnerable and those covered by the Government's Supporting People policy."

⁶ In our response to the Housing Corporation's consultation on their Tackling Homelessness strategy in 2006 we recommended a new KLOE called "Addressing homelessness and housing need in the local area". We also recommended setting of regional targets for the percentage of lettings which RSLs should make to statutorily homeless households, and that the performance indicator framework for RSLs should include their performance in meeting this target. For full details see <http://england.shelter.org.uk/files/docs/22721/07-06%20Tackling%20Homelessness%20-%20Housing%20Corporation.pdf>

framework?

Shelter's evidence will centre around the wider obligations of RSLs in particular, and the shape which future regulation needs to take in order to meet the needs of all the various groups to whom RSLs have obligations.

The primary objectives of this review must include that of ensuring that the interests of vulnerable groups within society, who most need the services RSLs provide, will be met. In more than one third of local authority areas⁷, all of the available social housing for rent is owned or managed by RSLs; within the next few years, this figure is likely to rise to around half of all local authorities⁸. In many other areas, RSLs are major providers through partial stock transfer. Given this situation, it is vital that RSLs now take on the full level of duty to provide social housing to those in most need which was once mainly the responsibility of local authorities.

There are already significant questions and conflicts over the extent to which RSLs are fulfilling their duties to assist the local authority in discharging its statutory housing duties. There are frequently disputes between RSLs and local authorities over nominations of applicants for housing with significant support needs⁹, and statistics show that RSLs let fewer of their vacant properties to statutorily homeless households than do local authority housing departments¹⁰.

RSLs will often justify the low levels of their vacancies which are let to statutorily homeless households by saying that local authorities are not nominating homeless households to them, in spite of their right under most nomination agreements to 50 per cent of RSLs' vacancies. This argument is based on CORE letting statistics, which cover only the final successful letting. The statistics make no mention of the process which has gone on before a successful letting is made. This process will often have involved applicants with support needs, who are often statutorily homeless, being nominated by the local authority and being refused by the RSL. Shelter's housing advice services are aware of hardship caused to some homeless households who are repeatedly nominated by local authorities to local RSLs, and then refused by the RSL because they are seen as posing too many potential problems as tenants (see case study below). As we highlighted in our response

⁷ 136 out of a total of 360 LAs in England have transferred all their housing stock to RSLs – source Wilcox, S: UK Housing Review 2005/6, p14

⁸ Ibid

⁹ Effective cooperation in tackling homelessness: Nomination Agreements and Exclusions, ODPM/HC/NHF/LGA November 2004

¹⁰ In 2005/6, local authorities across England were letting 31% of their vacant properties to statutorily homeless households, whereas for RSLs the figure was 17%. In the worst performing regions, RSL lettings to statutorily homeless households were in single figures. See Annual digest of CORE data, Comparing LAs and HAs, 2005/6, and HSSA statistics.

to the Housing Corporation's Tackling Homelessness consultation¹¹, this problem remains hidden because of weaknesses in the methods of recording refusals of nominations by RSLs. It is common practice for RSLs to ask local authorities to nominate several applicants to them simultaneously for one vacancy. The RSL will then choose one applicant and return the others. None of these rejected applicants is counted as a refusal of a nomination under the current system for recording refusals. Similarly, if several applicants are nominated in succession, because the RSL refuses each one in turn, none of these refusals will be recorded as such, provided that eventually the local authority does manage to nominate an applicant which the RSL will accept.

Case Study

Single male client of Shelter's housing advice services was made homeless from a private rented tenancy in 2000. He has significant levels of vulnerability and support needs. Local authority accepted full statutory homelessness duty and placed client in a B&B as temporary accommodation. However they have no housing of their own due to stock transfer. The RSLs in the area consider the client's support needs to be too great, and have refused to house him. He remained in the B&B for over 5 years, before eventually finding his own accommodation in the private rented sector. This new accommodation is unlikely to be an end to his housing problems due to his need for support and the insecure nature of a tenancy in the private sector.

Shelter would like to see tighter regulations governing the nomination of households by local authorities to RSLs to address the problem of vulnerable households being unable to get their housing needs met. Regulation in this area should include:

- Tightening up of nomination agreements to ensure that they are in writing, they include protocols for the exchange of information around support needs and local lettings policies, and they include methods for resolving disputes which arise.
- There must be a protocol for agreeing the support needs, and putting together a support plan for all applicants, in a way which is carried out through cooperation and joint working between the local authority, the RSL, and local voluntary and statutory agencies.
- Coupled with the above, a presumption that RSLs must accept the first applicant nominated to them by the local authority. This should mean an end to the practice of local authorities being asked to nominate several applicants at once so that the RSL can choose out of the list and return the others.
- Refusals of nominations to be accurately and comprehensively recorded, and performance in this area to be monitored by the regulatory authority.

¹¹ For full details see <http://england.shelter.org.uk/files/docs/22721/07-06%20Tackling%20Homelessness%20-%20Housing%20Corporation.pdf>

- Effective sanctions to be put in place where refusal of nominations by an RSL is excessive.
- The ability of the regulatory authority to compel an RSL to accept an individual nomination provided that the information disclosed by the local authority and the support package put in place, are in keeping with the terms of the protocols in force.

If the focus of the regulatory system under which RSLs operate is to ensure that they provide low cost services, and services which are more closely tailored to the priorities of their current tenants, both these things will place further at risk RSLs' incentives to house homeless, or vulnerable applicants. Because of the system of priority need classification in homelessness law, many statutorily homeless households, particularly single adults, have significant support needs or are vulnerable in some way. For this reason, when RSLs are discouraged from accepting applicants with support needs or vulnerability, this indirectly means they accept less homeless applicants. This will make it harder for the government to reach their targets on reducing homelessness. A narrow efficiency agenda also makes RSLs more likely to take a fast track approach to evicting existing tenants who may need support in order to maintain their tenancies – thus creating homelessness rather than tackling it.

It is also worth pointing out that a tension exists between the preferences of the majority of social housing tenants, and the need for landlords to provide housing for those households who have significant support needs. Shelter fully supports the rights of tenants in social housing to have a say over the services which are provided to them, and to be the recipients of a high standard of service which meets their needs. We would like to see the new regulatory system give prominence to tenants' ability to influence the services their landlord provides. We go on later in this response to suggest ways in which tenants should have more influence over the day-to-day management standards of their landlord. But we feel it is important to raise here the potential issues which go with tenant-led prioritisation of landlords' strategic aims, in terms of disadvantaging the most vulnerable and difficult applicants and tenants.

Applicants (or tenants) with support needs are often unpopular or unwelcome amongst the majority of tenants. The reservations of this majority are perfectly understandable – there is a history of inadequate support provision in social housing, and an inability of social landlords to address the antisocial behaviour which can sometimes result. It is very easy to see tenants or applicants with support needs as being a problem which “good” tenants don't want in their neighbourhood. But there are other approaches, which Shelter has demonstrated through a range of support projects such as our Inclusion Project in Rochdale. This provides intensive support to those tenants who need it, whether families

with children, or single people and couples without children. This support enables them to manage their tenancies, to change their behaviour, and to live successfully as part of the community. It has shown remarkable success¹² and the Government and the Housing Corporation have both acknowledged the value of this type of intensive support and have committed funding to further pilot projects of this nature¹³. The new system of regulation should not deter RSLs from engaging in this sort of work.

Provision of intensive support works, and it is the way forward for finding a long-term solution to the problems of antisocial behaviour and repeat homelessness. Leaving aside the individual needs of vulnerable households, it is vital for the health of society and wider communities that social housing providers are deterred from going down the route of excluding those applicants who have high support needs. We commend the recent publication by Homeless Link setting out some case studies that show the startling economic good sense of providing housing with appropriate support to vulnerable applicants¹⁴. These applicants can cause massive costs to the criminal justice system, social services, education and health services; the Homeless Link report shows how these costs can be greatly reduced by providing good housing with support in the social housing sector. Notwithstanding all of the above, it must be acknowledged that provision of support can be difficult and expensive in the short term. The long term costs and benefits to society and the exchequer of providing support need to be taken into account in any analysis of costs and benefits of social housing management. The new system of regulation must not stress cost reduction or "efficiency" in any narrow context that discourages taking this wider view. We fear that an efficiency and cost reduction drive makes the alternative option - of simply excluding any applicant who will need support to enable them to sustain their tenancy – look more attractive. We are already aware of a problem of RSLs choosing to exclude applicants with a history of tenancy problems or support needs, rather than accepting them for housing and providing the support they need¹⁵. The recent Housing Corporation strategy for tackling homelessness acknowledges the undesirability of this situation and warns against future practice of unfair exclusions¹⁶. The Corporation's Regulatory and Good Practice Circular on evictions and exclusions also warns against using eviction as anything other than a last resort¹⁷.

¹² Jones, A et al: Addressing antisocial behaviour – an independent evaluation of the Shelter Inclusion Project, University of York/Shelter, 2006. This research found that 60% of tenants who had been supported through the project were no longer exhibiting any antisocial behaviour, while a further 11% had shown improvements in behaviour. 84% were no longer subject to any possession action putting them at risk of homelessness. The service was considered to be cost effective in light of the high costs of pursuing punitive action against perpetrators of ASB, and of eviction and repeat homelessness.

¹³ Corporation cash boost for family support projects: Housing Corporation news release December 2006

¹⁴ Supporting People – a story of success. See <http://www.homeless.org.uk/policyandinfo/issues/support/success.pdf>

¹⁵ Finch, R: Exclusions in Tyne and Wear, Shelter, 2006.

¹⁶ Tackling Homelessness: the Housing Corporation strategy, Housing Corporation 2006, p6

¹⁷ Housing Corporation Regulatory Circular 07/04: Tenancy Management – eligibility and evictions, Housing Corporation, 2004

These are valuable developments in the Corporation's ongoing approach to the issue, and the new system of regulation must not act as a pull in the opposite direction.

We are aware that there are difficulties inherent in the current system of funding and providing housing-related support which put the taking of a wider view at risk. It would be useful if this review could contribute towards resolving them. We are aware that RSLs find it difficult to guarantee support provision for their tenants. This is because of the unreliability of Supporting People funding in the long term. Because local authorities make funding decisions about housing support projects on an annual, or perhaps 2- or 3-year basis, funding streams for support provision are constantly insecure, and long term planning and familiarisation (which itself has the potential to lead to efficiency gains) is difficult. Shelter has pointed out in the past that the support services provided to some difficult or unpopular groups are particularly vulnerable to funding cuts when overall budgets are reduced or competing demands arise elsewhere¹⁸. We would like to see the Supporting People budget continuing as a ring-fenced budget, and substantially increased. We would like to see the funding stream for providing the support which tenants of that housing will need guaranteed for a period of years, rather than left vulnerable to separate review and negotiation. The fact that support funding cannot be guaranteed in the long term places developer RSLs in a very difficult situation, having to commit funding to building the bricks and mortar when there is no certainty that funding for the support provision will be available in the long term.

It is also the case that not all of the costs associated with providing housing to tenants with support needs will fall under the Supporting People funding regime, and that even where Supporting People funding can be secured, RSLs are likely to face costs themselves which will need to be met out of their overall management and maintenance budgets. For example, a tenant's mental health, or drug dependency issues may lead to higher management costs because a housing officer's time could be taken up by visiting neighbours who have complained about the tenants behaviour, and trying to mediate and reach agreement. Similarly, these issues may lead to increased maintenance costs as damage to the inside or outside of the property may be more likely. Such damage can come about as a result of the tenant's own actions, or the actions of other residents expressing their opposition to the person's presence in their neighbourhood through vandalism or other attacks. The fact that such costs may push up an RSL's management and maintenance spending is a problem, if RSLs are to be judged too narrowly on their efficiency and cost savings. This approach reduces their incentive to take on tenants with support needs.

¹⁸ See Shelter's response to the to the ODPM consultation on Supporting Independence: a strategy for the Supporting People Programme, available on our website.

What regulatory (or, compared with the current position) deregulatory approach(es) should be applied to achieve the primary objectives we have set out?

RSLs are not-for-profit organisations. They are set up for benevolent or charitable purposes, with aims of meeting the housing and support needs of various groups of households. They receive around £2 billion per year of public funding in order to pursue these objectives¹⁹ and no system of regulation should allow these bodies to move away from their central function of meeting housing needs. We believe that it is important to maintain the distinctive public-service ethos of RSLs. Shelter has been opposed to the practice of allocating Social Housing Grant to private developers, and of allowing private developers or other private companies to go on to manage social rented housing²⁰. Our opposition has been based on the concern that the disparity between RSLs and private developers in ethos and regulation would eventually lead to pressure for RSLs to have regulation removed, rather than for private developers to raise their practices and public service commitment to the level historically shown by RSLs. We believe a strong regulation system is needed across the housing sector to ensure that the most vulnerable people in society have their housing and support needs met. We believe it is too soon to consider changes based on the experience of private developers delivering social housing grant funded schemes, or working as accredited managers of social rented housing. Both initiatives are in their infancy and more time is needed to evaluate what effects they are having.

The new system of regulation of RSLs needs to ensure the following outcomes:

Rent regulation

Rents in social rented housing must continue to be controlled. The average income of social housing tenants is around £8,000 per annum²¹. Of course, many social housing tenants have most or all of their rent paid by Housing Benefit. But for those whose incomes place them just above housing benefit thresholds, even small increases in rents or service charges can have significant impacts.

A recent paper from the Joseph Rowntree Foundation²² identifies the steep tapers in means tested benefits, and in particular the Housing Benefit system, as being the most

¹⁹ Wilcox, S: UK Housing Review 2006/7, CIH/CML, 2006, table 59. Total gross investment expenditure from HC and LAs in Britain was £2,062,000,000.

²⁰ See Shelter's response to the Housing Corporation's consultation on the housing management accreditation scheme, 2005. <http://england.shelter.org.uk/policy/policy-825.cfm/ct/1/sb/39/pg/3/plitem/178>

²¹ Survey of English Housing

²² Adam, S, Brewer, M, and Shephard, A: The poverty trade-off – work incentives and income redistribution in Britain, the Policy Press, 2006.

significant disincentives to work amongst low income households.²³ Existing low rents in social housing mean that this tenure offers the best chance of escaping from these sorts of disincentives; this must not be put at risk by increasing rents. It would also be unacceptable to move towards a position in which shortfalls exist between rental and Housing Benefit levels, as is the case in the private rented sector. Tenants in the private rented sector suffer hardship and poverty due to the uncontrolled rents in this sector, having to make up shortfalls in Housing Benefit from their other limited income.

Aside from the disincentive to work, the wisdom of having public funding (Housing Benefit) paying out higher sums to cover increased rents paid to RSLs needs to be questioned. We recognise the pressure coming from the RSL lobby for the sector to be treated more like private companies, and to have their private status emphasised via this review of regulation. As stated above, we believe this is not a sustainable position while RSLs rely so heavily on the public purse both for their development funding, and their rental income.

Security of tenure

The lifetime security of tenure which currently operates in the social rented sector is vital and must be maintained. The ideas which have been discussed as part of the profession's input into the Hills Review of social housing have included the suggestion that allowing households to stay in social housing for life when their circumstances have improved is inefficient, and should be revised on this basis. We strongly disagree with this view²⁴ and believe that the regulation of RSLs or any other organisations providing publicly-funded housing should continue to ensure security of tenure for life. The rented sector as a whole needs more security of tenure, not less.

Allocations and lettings

As discussed above, we are extremely concerned at the possible effects of changing the focus of regulation, on the ability and willingness of RSLs to house homeless, or vulnerable applicants, and to offer support to meet the needs of their tenants. Shelter has called for RSLs to be more closely regulated in terms of how they help local authorities in discharging their statutory duty to house homeless households, and to improve practice around nominations and liaison with local authorities²⁵. In particular, we maintain that RSLs need to have performance indicators and targets set for the percentage of their lettings which go to statutorily homeless households. We would not like to see any new system of regulation do away with the possibility of setting such targets and performance

²³ For further development of Shelter's views on the housing benefit system, see our Policy Briefing on Housing Benefit, published 2005, and available on our website.

²⁴ For a development of the arguments as to why the value of security of tenure outweighs narrow considerations of efficiency, see Shelter's submission to the Hills Review of social housing, available on request.

²⁵ See response to the Housing Corporation's consultation on the performance indicator framework for RSLs, Shelter, 2006. <http://england.shelter.org.uk/files/docs/16262/Shelter's%20response%20to%20the%20Housing%20Corporation%20consultation.pdf>

indicators. The Regional Housing Boards are well placed to develop their role of monitoring RSLs' performance in this area, and this is something we would like to see explored.

Development funding

We agree with the arguments put forward from the sector about the need for RSLs to maintain a regulated status²⁶. We agree that this is essential in order to attract private sector funding for development; it gives confidence to potential investors that the RSL will have a certain level of good governance and financial strength.

We would also like to see a system which incentivises the delivery of social rented housing through development funding, rather than low cost home ownership housing. We have been extremely concerned in recent years to observe the drift in RSL development away from rented housing and towards units for low cost home ownership²⁷. Social rented housing is in desperately short supply, and Shelter continues to campaign for an extra 20,000 units of social rented housing to be funded from the Social Housing Grant each year, to address the backlog of unmet needs, plus newly-arising need²⁸. Given the limited availability of land and money for building affordable housing, we believe that new social rented units are needed much more than new Low Cost Home Ownership units, and should be prioritised much more strongly than is currently the case. We would like to see all Regional Housing Boards determine targets for the percentage of new publicly-funded development which must be for social rented housing. The ODPM select committee on affordability and the supply of housing recommended recently that a limit should be set on the proportion of Housing Corporation funding that is allocated for LCHO schemes²⁹, and we are fully supportive of this proposal.

Mobility

We recognise this review's concerns about the inability of tenants in social housing to "vote with their feet" by changing landlords when they receive bad service. Sadly, given the massive under-supply of social rented housing, it is hard to imagine a situation where genuine choice or mobility could exist for tenants in this sector. Nonetheless, there is potential for some limited opportunities for social housing tenants to move from one area, or one landlord, to another. We have supported, and continue to support, initiatives like

²⁶ Tickell, J: Letting Go – redesigning regulation for housing associations, Campbell Tickell for the National Housing Federation, 2006

²⁷ In 2003 and 2004 more than 40 per cent of publicly-funded homes built were LCHO, compared with 26 per cent in 2002. About 35,000 homes (42% of the total output) in the 2006–08 programme will be for LCHO, compared with 49,000 social rented homes. For a development of these arguments, see Shelter's submission to HM Treasury on the priorities for the Comprehensive Spending Review of 2007, available on request.

²⁸ See Shelter's submission to HM Treasury on the priorities for the Comprehensive Spending Review of 2007, as above.

²⁹ House of Commons, ODPM: Housing, Planning, Local Government and the Regions Committee, *Affordability and the supply of housing*, Third Report of Session 2005–06, Volume 1, May 2006

LAWN, Seaside and Countryside Homes, and the former HOMES scheme. It is sad to see the proposed MoveUK agency in such disarray, and we hope that work in this area continues to be developed. We would also like to see incentives exist for RSLs to participate more fully in regional and local choice based lettings schemes. The future system of regulation has a role to play in this.

Even if tenants cannot actually leave a particular landlord, due to scarcity of supply, we believe there may be ways for their level of satisfaction with that landlord to be registered, and to form part of how that landlord's performance is rated. Indeed, it must surely be preferable for tenants to have the power to secure improvement in poor services where they are, rather than having to move to another landlord? With all the stress and expense that moving house entails, this cannot be seen as the most desirable way of tenants having an influence over their landlords' performance. We go on later in this submission to talk about the possibility of a tenant-led oversight body at local authority level. Such a body could be part of developing a tenant-led model that would hold landlords to account.

Stock rationalisation

The issue of stock rationalisation is an important one for social housing, and one which this review should address. Some RSLs own or manage stock across dozens, or even hundreds of local authority areas. This is an obvious obstacle to RSLs being able to participate fully in local housing and homelessness strategies and work effectively with local authorities as partners. It can also put obstacles in the way of strengthening the influence of tenants over the service they receive. It is hard for tenants to take part in management and governance when their landlord may be based a long distance away. The Housing Corporation and the Chartered Institute of Housing have recently been investigating what can be done to address this problem, and published a review paper last year³⁰. The most often-quoted barrier to rationalisation stated in the CIH's review paper from their interviews with RSLs is "There is no 'pressure in the system' to influence, persuade or compel housing associations to undertake stock rationalisation activity."³¹ This being the case, this review of regulation is a valuable opportunity to introduce such an incentive, and we strongly recommend that this issue is given more prominence in the aims of any new regulatory system. We would suggest that the direction in which we are suggesting that regulation should move – ie that there should be a stronger oversight role for local authorities, the regional housing boards, and local social housing tenants – would create strong incentives for RSLs to reduce the number of local authorities where they were managing only a small number of properties.

³⁰ Rationalisation of housing association stock – stock rationalisation review paper, CIH/HC, 2006

³¹ Ibid, page 5

Design and quality of housing

Shelter supports recent initiatives by the Housing Corporation and the DCLG to require high environmental standards in new-build housing³², as well as the requirement for all social rented housing to meet the Decent Homes Standard, and would like to see the future system of regulation continue this approach. We would also like a new regulatory system to encourage

- Housing incorporating flexible design to accommodate changes in the life cycle, and in the way people live now.³³
- All new social rented homes built to the Lifetime Homes standard and at least 10 per cent of these being wheelchair accessible³⁴.
- Emphasis on the quality of the local environment and provision of amenities and infrastructure when building or refurbishing.
- Good design and best practice in the housebuilding industry as highlighted by the Commission for Architecture and the Built Environment initiative *Building for Life*.

Sustainable communities

We believe it is essential that social rented housing develops in the future to encompass a wider view of the localities and communities in which it is set. We support the National Housing Federation's "in business for neighbourhoods" drive, and believe that more emphasis needs to be given to services and amenities outside of the four walls of a person's home. We have discussed the need to provide appropriate support elsewhere in this paper. Allied to this is the need for opportunities in work, training, and personal development to be available to residents. Strong communities are vital to addressing social ills such as crime, antisocial behaviour, isolation and poor mental health. Whilst there is no reason why RSLs should themselves be the sole or main providers of this sort of community and personal development, any system of regulation should require that they have an obligation to promote and support this kind of facility.

What specific mechanisms should be employed within these approaches?

The call for evidence for this review suggests 3 alternatives for the regulation of RSLs:

- Retaining and reforming the current Housing Corporation framework

³² In December 2006 it was announced that all new social rented homes would have to comply with level 3 of the new Code for Sustainable Homes. See Housing Corporation press release dated 13.12.06

³³ For example where the design of a larger home enables it to be split into two units, or two units combined into a larger home. This sort of design innovation could also make it easier to allow tenants to work from home, or to accommodate extended or "blended" family arrangements that change across the life cycle

³⁴ We support the call of the John Grooms Housing Association for 10% of all housing built through Social Housing Grant to be required to be built to a wheelchair-accessible standard

- Licensing or contract-based regulation
- Self Regulation

Shelter favours the retaining of the current system of regulation, with reform and simplification.

We do not consider that self-regulation will provide the right outcomes, for society as a whole, and for the households most in need of support. We believe that the current framework of regulation will be better placed to compel social housing providers to fulfil the more challenging aspects of their obligations as a receiver of public funding. If work in the area of providing housing and support for vulnerable or formerly homeless households is not imposed externally by a regulator, there are a number of perverse incentives in operation which will deter RSLs from carrying out their full duty to assist the local authority in meeting homelessness and housing needs in the local area. A good example is the current drive to address antisocial behaviour, and for RSLs to play a part in the government's Respect Agenda³⁵. Performing well on tackling antisocial behaviour is shortly to be included as one of the Key Lines of Enquiry (KLOE) on which the Audit Commission inspects and rates RSLs. There is no similar KLOE on how well RSLs are performing in addressing local housing needs and homelessness. This imbalance in performance monitoring, together with the local pressure from tenants and other neighbours, and the financial costs associated with tenant management problems resulting from unmet support needs, all act as a disincentive for RSLs to house those households who have support needs and are at risk of antisocial behaviour and tenancy problems. We have already talked about the overall efficiency agenda and the perverse incentives which that provides not to engage in providing housing support where needed.

We do not doubt RSLs willingness to carry out the full public duty stated in their regulatory code, or to house vulnerable applicants. They are, after all, not-for-profit bodies, and many of them are registered charities which were originally set up specifically to meet the needs of vulnerable and excluded groups. We are simply acknowledging the many competing demands of the external environment in which they operate, and saying that as in many areas of life, it is the most difficult and challenging tasks which tend to be sidelined unless there is an external driver requiring them to take place.

We also believe that the existence of a strong independent external regulator is something which helps RSLs to attract funding from the private sector, as it offers potential investors the assurance of high standards of probity and quality.

³⁵ See Promoting Respect – tackling nuisance behaviour, Housing Corporation, 2007

As regards contracts-based regulation, the contracting out of services in the housing sector to date has been far from trouble-free. We recognise that contracts would provide an element of certainty for providers, and freedom from “regulation creep” as more and more duties are brought in to reflect changing external priorities. However, the reality is that the external environment and government priorities do change with time. Under these circumstances, a contracts based system could lead to difficulties and a lack of flexibility to meet changing needs. A further issue is that of comprehensiveness. It is difficult to ensure that you have exhaustively specified every aspect of a service in a contract. This is particularly likely to be the case in the early stages of any new system. If some aspects of service provision were overlooked in the contract, then delivery of these items would be at severe risk. We would also have some concerns around potential inconsistency in service provision if contracts which set obligations on social housing providers were negotiated individually.

For these reasons we believe that regulation based on the present framework for the social housing sector must continue to exist. Within this, there is room for reform and simplification to address some of the worst problems of complexity and the time-consuming nature of regulation and information-gathering which the sector currently grapples with. The formation of the new Communities England organisation provides an opportunity for greater coherence in regulation and oversight from the earliest stage of planning and land acquisition, through to delivery of housing management and community development services. This regulation and oversight should be effective across the full spectrum of social housing provision, regardless of the nature of the organisation who is providing it – RSL, local authority, ALMO, non-registered private developer or manager, or PFI provider.

We would like to see representative tenants’ organisations take on oversight of day to day management and customer service standards in housing providers, based more on outcomes such as tenant satisfaction than on inputs.

We would like to see local authorities take on oversight of how well RSLs are meeting their obligations to address the housing and support needs of homeless and badly housed households in the local area, through tighter regulations for making and accepting nominations, liaison over the provision of support, and exchange of information.

We would like to see Regional Housing Boards set and monitor overall targets for all housing providers in the region as to the percentage of their lettings which were made to statutorily homeless households, and the number of evictions which they carried out. Regional Housing Boards should also be involved in ensuring that targets are set for housing providers in the region to address matters such as the proportion of affordable

housing which is for social renting rather than low cost home ownership³⁶; the provision of sites for Gypsy and Traveller communities, and the type and mix of housing required to meet local need.

What sanctions are necessary to ensure that there are effective levers within the regulatory framework to protect tenants and the interest of lenders and Government in social housing assets?

We would like to challenge one of the premises behind this review - that RSLs do not at present have any effective incentives to deliver high quality services as compared to other sectors, partly due to the absence of a profit making incentive (para 14 of the call for evidence). RSLs do make what is in many ways analogous to a profit. However, their "not-for-profit" status means that this profit is called a surplus, and instead of being distributed to shareholders, it is kept in reserves for future use, or used to cross-subsidise other forms of development or activity. RSLs' reserves are substantial and are a vital component to their financial stability, and attractiveness to potential investors. Their incentive to build up these reserves is strong. Similarly, RSLs do operate in a competitive environment, where poor performance, or financial difficulties mean that they may be sidelined in terms of investment funding from the Housing Corporation, as well as becoming less attractive to private lenders and investors. Struggling RSLs risk becoming targets for takeover and merger bids from more successful and larger RSLs, particularly those with growing group structures.

The call for evidence for this review puts forward two alternatives to increasing incentives for RSLs to improve. We would like to make the following comments on these two suggestions:

Greater competitiveness in the sector, in order to incentivise landlords to provide improved services, might be introduced by opening the market to a wider range of organisations (for example by allowing a wider range of organisations, including profit-making bodies, to register with the regulator as providers of social housing) or allowing a restructuring of existing providers;

We strongly disagree with any further attempt to place RSLs on an equal footing with private developers. Their status and ethos are different and should remain so. There must be no movement away from RSLs' public service ethos. We would have no objection to profit-making bodies setting up a not-for-profit arm and pursuing registered status, in fact we consider this to be the best way of ensuring a "level playing field". All

³⁶For a discussion on the reasons why building social rented housing should be prioritised over building units for low cost home ownership, see Shelter's submission to HM Treasury on the priorities for the Comprehensive Spending Review of 2007, available on request.

organisations involved in the management of social rented housing must be regulated to the same level, and this should be the level appropriate to a publicly-funded housing provider with responsibilities to the wider community and to meeting government objectives.

Another approach could be to establish a framework which compares and publishes information about the comparative costs and quality of service provision, and links such performance with a balanced distribution of gains from operating more efficiently among landlords, tenants and government

As discussed in earlier sections of this evidence, we have grave concerns about placing disproportionate emphasis on reducing costs and ensuring “efficiency savings”. This could place the quality of services at risk and could lead to unjust comparisons between organisations. It would be very difficult to find two organisations who were providing exactly the same service in exactly similar circumstances and contexts, to enable a like-for-like cost comparison. Because we are so concerned about the unintended outcomes for vulnerable households if the cost reduction strategy were pursued to the degree suggested, we would be strongly opposed to the idea of creating incentives by distribution of efficiency savings.

In addition to the options outlined in the call for evidence, we have noted some suggestions made in media discussion around this review. These imply that sanctions for poor performance might include

- Reduction in rents chargeable. This would be coupled with the provision for an increase in rents for tenants of those RSLs who are providing the best service.
- Handing over units to another landlord to manage

Both of these sanctions, could, in our view, cause more problems than they solved in terms of disruption to the services provided to tenants. Rental income pays for services; it could be difficult for a landlord to achieve an improvement in services out of less rental income. It is notable that the tenants interviewed as part of the NHF's Tenant Involvement Commission also rejected the idea of rent withholding as a performance incentive, recognising that it is likely to lead to poorer services³⁷. But of course we recognise that reduction in income will tend to provide a strong incentive for a landlord to ensure good performance. Our understanding is that the proposed sanction of a reduction in rent would be coupled with a right for the best-performing RSLs to increase their rents above the current limits of the rent restructuring regime. We would like to reiterate the point made on page 12 of this response around the limited income of tenants in social housing.

³⁷ What Tenants Want- Report of the Tenant Involvement Commission, National Housing Federation, 2006, p27

Even small increases in rent would be damaging for tenants whose income is just above the threshold for housing benefit.

Changing managing landlords is extremely disruptive and expensive, entailing costs of new stationery and administrative processes; training and familiarisation of new staff; disruption to repairs and maintenance caused by using different contractors; errors and lost records caused by swapping over computer or paper databases. Whilst in severe cases of under-performance it is a necessary last resort (and, as a last resort, removal of stock from a badly performing landlord is available now to the Housing Corporation), it is difficult to see that it would be suitable for any more widespread or frequent use. The costs involved could make it counter to the overall aim of increasing efficiency and value for money.

Which approaches best lend themselves to a more tenant-focused/driven approach to delivery of social housing services?

Strategic issues such as value for money and the balance between provision of support and punitive measures for antisocial behaviour would need to be decided in accordance with central government priorities; we do not recommend that these sorts of decisions can be devolved to tenant-led groups. However we believe that general housing management – such as repairs service or rent collection– is an area where there is scope for greater tenant empowerment and for monitoring to shift away from a central regulatory body, and towards local accountability. Customer service could also fall into this category. The Tenant Involvement Commission has set out a list of aspects of a good basic service which tenants rate most highly³⁸, and these are quoted in the call for evidence of this review. Two of them – security and affordable rents - are, in fact, more to do with the legislative context in which RSLs operate than with the quality and service provided by an individual landlord. The remaining aspects of management which tenants value are:

- Commitment to delivering a quality service
- Competent and polite service from frontline delivery staff
- Speedy repairs conducted to a high standard
- Listening to tenants

We suggest that a tenant oversight body should be set up in each local authority area, drawn from tenants of all the social housing landlords, and have responsibility for setting targets and monitoring housing management and customer service performance across all the landlords providing social rented housing in that area. We would prefer the setting

³⁸ What tenants want - report of the Tenant Involvement Commission, National Housing Federation, 2006

up of tenants' oversight function at a local authority level, rather than national or regional. The fact that all the landlords were operating in the same local geographical area would ensure some level of comparability with each other, and local residents would be able to quickly become familiar with the locations and stock managed by all the landlords in the district. Such a body would enable tenants of different landlords to exchange information and ideas, and gain a broader perspective through finding out how other landlords are approaching common problems. The development of this tenant oversight body would fit well with the new direction in which local government is moving, with the sense of place and local accountability becoming increasingly important³⁹. We believe that genuine accountability to tenants through giving a representative group such oversight powers would result in improving service standards across the board. In order for this to take place, tenant oversight bodies would need to have an effective range of sanctions at their disposal. This needs further development, but initial thoughts are that they could give each provider a rating similar to the "traffic light" system which the Housing Corporation have been using over the last few years. Any deviation from the "green" rating could then trigger an inspection from the Audit Commission, or the new regulatory body.

It might be worth looking at the possibility of switching the sorts of things which this body was monitoring away from performance indicators like those measured under the best value regime for local authorities, and towards an outcome-based set of indicators which would more accurately reflect tenants' priorities. The areas monitored could include

- Number of complaints received
- Number of ombudsman complaints upheld
- Tenants' satisfaction ratings with their home and their neighbourhood based on an annual survey

We discussed above (page 9) some of the difficulties which may arise if tenants' preferences have too much influence over strategic service provision, and over decisions such as allocations or evictions. This is because the immediate interests of the majority of tenants may often be best served by excluding or evicting households who have support needs. The consequences to the individuals and families concerned, and to society as a whole, if this happens, are too severe for this to be an acceptable solution. For this reason, decisions of a strategic nature should, in the short term, continue to be made by housing professionals, and influenced strongly by the duty of the landlord to meet housing needs in the local area. However, the existence of a tenant oversight body would provide a good opportunity for training and personal development of community representatives, and for breaking down cultural barriers arising through separation, or misinformation. For

³⁹ Strong and prosperous communities – the Local Government White Paper, DCLG, 2006

example, liaison between the tenant oversight body and the local homelessness forum would go some way towards improving understanding. Intensive recruitment from across all sectors of the community, and the provision of support and training to enable members of excluded groups to participate would need to be a key priority. As the development of these tenant bodies continued, they could become a valuable tool in bigger social objectives such as community cohesion and tackling exclusion, as well as playing a vital role in regulation. A long term aim would be for these bodies to acquire a level of expertise, experience and knowledge which would allow them to develop their role further. Part of this future development could be a move into greater involvement in strategic decisions and prioritisation of funding.

Which organisation or organisations are necessary to deliver the regulatory approaches proposed in respondents' evidence?

Given the merger of the Housing Corporation and English Partnerships, it seems that some degree of change is inevitable. We do not wish to be prescriptive as to the organisation(s) who should be responsible for monitoring and carrying out regulatory functions. However, in general terms, we believe while there should continue to be a national agency with responsibility for registration and regulation of social housing providers. Whether or not inspection is a role which should continue to fall to the Audit Commission is something on which we have no firm views. We believe that there is scope for a greater role in monitoring RSLs to be played by

- Local authorities
- Social housing tenants
- Regional Housing Boards.

Conclusion

We believe it is vital that this review focuses on the way in which regulation can incentivise RSLs to help local authorities meet their housing duties to the most vulnerable members of society. We have set out in the body of this response a number of detailed areas for consideration, and we have warned about the risks associated with some of the ideas for regulatory change currently being proposed. We will be glad to discuss any of the content of this response in more detail as and when required.

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