

Consultation Response

Shelter's response to the
CLG consultation on
Delivering Housing and
Regeneration: Communities
England and the future of
social housing regulation

September 2007

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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 broadly welcomes and supports the proposals contained in this consultation paper. We believe that those on the formation of Communities England have the potential to enable the delivery of the significant increase in housing supply proposed in the recent Green Paper, and to secure improvements to the way in which regeneration is carried out. Similarly, we consider that the changes to regulation in social housing will improve the accountability of housing providers, both to tenants and to local authorities, and we welcome this.

Communities England

We largely agree with the proposed powers and functions of the new agency Communities England. We agree that it should be responsible for:

- Mixed communities
- Decent Homes
- Housing Market Renewal
- Growth Areas
- Capital investment under the homelessness strategy

- Maintaining the national database of previously-developed land.

We would like to see Communities England given powers as a regeneration agency, similar to those which English Partnerships enjoyed as the Urban Regeneration Agency. However we would like to see those powers extended to be applicable to all areas, whether urban in character or not. We believe there is scope for rationalisation and extension of existing institutional arrangements in this regard and would like to see this pursued. We would also like the Government to consider giving Communities England an oversight role over local authorities in the specific areas of its remit, along the lines of that which the social housing regulator will have over social housing providers.

As well as housing delivery, we suggest that this oversight role should include the way in which local authorities use the powers available to them to drive up standards in private sector housing in their districts, through

- Decent Homes improvements in the private sector (grants, loans etc)
- HMO licensing
- Empty Dwelling Management Orders.

These measures contribute towards the success of area renewal and it will be harder for Communities England to ensure best results for area renewal initiatives if they have no input into them.

In our view Communities England should also be required to work with, and ensure that other partners take on board the views of, local voluntary and statutory agencies. In this way it can genuinely ensure that the needs of vulnerable and excluded groups are met in housing and regeneration. We have highlighted the need to ensure that in Housing Market Renewal Pathfinders, the post-renewal communities should have an appropriate balance of housing of all tenures and types, including social rented and supported housing, and suggest that Communities England would be particularly well placed to ensure this happens.

We would like to see Communities England given Compulsory Purchase powers which extend to greenfield sites as well as brownfield.

Given the strategic importance of the Thames Gateway, we welcome the suggestion of a specific presence for Communities England in this area; however we stress the need for this part of the organisation to engage in close cooperation with the London and South-east regions of the agency.

There are many agencies involved in the process of delivering the required increase in housing supply – amongst them utility companies, the Highways Agency and the Environment Agency, as well as other Government departments responsible for education, healthcare and other facilities. We hope the Government will take this opportunity to consider what sort of leadership role Communities England can best play in bringing together all these diverse interests.

Social Housing Regulation

Shelter is concerned about the lack of clarity in the consultation document concerning how rents are to be set in social housing under the new regime. We consider subsidised/sub-market rents to be a crucial aspect of social rented housing and ask for urgent clarification of whether or not the current rent restructuring regime is to continue, and if not, what is going to replace it.

We believe that the new system of regulation should apply across the board to all social housing providers, whether local authority, arms-length management organisation (ALMO), registered social landlord (RSL), or for-profit company. We hope that this will be the eventual result of the Government's further deliberations. As far as possible we would like to see the regulator able to apply the same sanctions for poor performance to all providers regardless of type, and for the eventual suite of performance indicators, and detailed system of regulation, to be based on the best practice available from the different systems currently in use across the sector. We would also like to see a single housing ombudsman for all tenants in social housing.

Shelter is particularly pleased to see the proposals regarding the duties of social housing providers towards tenants and local authorities, and the new regulator's duty to take action when representations are made to it by local authorities or tenants' representative bodies. We hope that the duty to engage with the local authority's place shaping functions will have significant beneficial effects on the local authority's ability to secure better housing outcomes for homeless and vulnerable households.

We broadly support the wider range of intervention powers available to the new regulator. However we believe that forced change of management and rent restrictions are both sanctions which could have damaging effects on the service tenants receive, and should be approached with caution.

Shelter does not have any strong views on the location of the new regulator. We do, however, acknowledge the value of the expertise built up amongst staff in the Housing Corporation and the Audit Commission, and hope that this can be utilised in the new agency.

Introduction

Shelter welcomes the proposals on the setting up of the new agency Communities England, and on the reform of the regulation of social housing.

We are very supportive of the main aims of merging the former Housing Corporation and English Partnerships into the new agency Communities England, and consider that this will have a beneficial effect on housing supply and regeneration. We do, however, have some concerns over the risk that social rented housing will be sidelined in some way in favour of other “affordable housing”, when it no longer has an advocate like the Housing Corporation whose primary reason for existence is the building and management of social rented housing. We believe that it is vital that the strategic priorities of the new agency specifically reflect the importance of new social housing provision. In particular, where public sector land is made available for development, or local authority owned land is developed through the “local housing companies” proposed in the Green Paper, Communities England must be committed to ensuring that a substantial proportion of the housing built on these sites is for social renting.

We also support Professor Martin Cave’s conclusions about the direction for reform of regulation in social housing, and very much value the fact that this review has taken place and that the Government is acting on many of its conclusions. We find some of the instances in which the consultation paper proposes not to follow the report’s conclusions hard to justify, and have indicated these below.

Responses to consultation questions - Communities England

1. Do you agree that the Mixed Communities and Decent Homes roles should be transferred to Communities England? If not, why not?

Yes, we agree. Transferring these roles to Communities England will allow the agency closest to the ground to oversee the implementation of the Government’s aims on mixed communities and decent homes.

2. Do you agree that the Housing Market Renewal roles should be transferred to Communities England? If not, why not?

Yes, we agree. Again, this should allow bureaucracy to be minimised and enable the implementation of policy to better reflect the realities on the ground.

We also consider that having the programme overseen by Communities England should provide a chance to iron out some of the concerns which Shelter has held over the implementation of housing market renewal so far, as regards the make-up of housing in the post-renewal communities. We believe that the Housing Market Renewal Pathfinders (HMRPs) must aim to create inclusive communities post-renewal by providing a range of housing tenures to meet a range of needs, including social rented housing and supported housing, integrated within stock of other tenures to reduce concentrations of poverty and social exclusion. There is a growing problem of affordability in some areas in or adjoining the HMRPs. Overall plans on supply and tenure mix need to be able to adapt to reflect these changes, particularly with regard to ensuring that enough social rented homes are built. Those on lower incomes or with support needs who rely on social rented or supported housing must not be displaced permanently by renewal activities. We also believe that HMRPs must address homelessness in their areas sufficiently, by including homeless and potentially homeless households in allocation policies for social rented housing in the pathfinders post-renewal.

We would like to see Communities England take a lead in ensuring that the approach outlined above is taken with future Housing Market Renewal activity. The Agency also needs to ensure that appropriate emphasis is placed on community empowerment and engagement in renewal areas. We are very pleased to see the emphasis on promoting sustainable and cohesive communities and meeting the needs of vulnerable groups contained within this consultation paper (section 4.5). We consider that with this remit, the agency should be well placed and motivated to bring about the improvements in strategy and delivery we have set out.

3. Do you agree that the Housing Growth roles should be transferred to Communities England? If not, why not?

Yes, we agree, for reasons similar to those stated under question 2 above.

4. Do you agree that the homelessness capital investment delivery role should be transferred to Communities England? If not, why not?

Yes, we agree. This transfer will allow the coordination of the provision of supported housing with that of general needs housing in the most efficient and well-informed way.

5. Do you agree that the National Land-Use Database of Previously Developed Land should be transferred to Communities England? If not, why not?

Yes, this seems a sensible rationalisation.

6. What are your views on Communities England taking on responsibility for the Academy of Sustainable Communities (ASC)? Do you see any difficulties in achieving this, and maintaining the identity of the ASC?

We have no strong views on this issue.

7. As an alternative approach, what are your views about establishing the ASC as a separate statutory body?

See 6 above.

8. What do you consider to be the pros and cons of each of the existing models; and is there scope to rationalise them?

Shelter would be keen to see Communities England have some sort of overarching role in working with local authorities to maximise the assets and funding available for housing delivery, and to facilitate the achievement of the housing supply targets proposed in the Green Paper¹. We would certainly expect Communities England as a minimum to retain English Partnerships' role as the Urban Regeneration Agency. However, because many of the difficulties with housing delivery are likely to be in areas which are not classified as urban, we believe the agency should also have similar powers across the board in all types of area, not just urban areas². We suggest that there may be scope to rationalise the existing institutional arrangements described in the consultation paper to create a single institution with a role that encompasses the most useful aspects of the remits and powers of all those institutions described.

¹ *Homes for the future: more affordable, more sustainable*, DCLG, 2007. This green paper sets out plans for the building of 3 million new homes by 2020.

² The legislation under which the Urban Regeneration Agency operates - the Leasehold Reform, Housing and Urban Development Act 1993, s159 (2) - states that the Agency's powers operate over any land which is vacant or unused, but for land which is merely under-used or ineffectively used, the land must be situated in an urban area. We envisage that much of the work of Communities England would involve land which is under-used or ineffectively used, hence the need to broaden the Urban Regeneration Agency's remit and powers.

9. How can we encourage joint working between local authorities and Communities England, including through institutional arrangements?

Please see our response to question 15 below for details of how we envisage Communities England working most effectively with local authorities.

We do wish to suggest that, as well as working with local authorities, Communities England could have a broader leadership role to play in bringing together all the various diverse agencies involved in the process of delivering the required increase in housing supply. These agencies include utility companies, the Highways Agency and the Environment Agency, as well as other Government departments responsible for education, healthcare and other facilities. There should be scope for Communities England to facilitate the sort of co-ordination that will best serve the delivery process.

10. Are there any problems with the existing powers, which should be changed?

We are not aware of any such problems, other than to say that we would be in favour of simplification and rationalisation of the powers and the institutions involved in planning and regional strategising wherever possible.

11. Do you think the existing compulsory purchase powers outlined above are sufficient for the range of challenges Communities England faces?

No, we would like to see Communities England have compulsory purchase powers over greenfield land as well as brownfield land. This will allow the agency to be more effective in assembling sites for development. This sort of comprehensive power and oversight is necessary if the scale of new housing supply set out in the Green Paper³ is to be delivered.

12. Do you agree that these roles should remain within the Department? We would welcome your views on whether it would be appropriate for these consents to sit with a regulator rather than ministers.

We agree, with the exception that we believe that Communities England should have some control over the implementation of the Decent Homes Standard across all tenures, including local authority stock and housing in the private sector. Since private sector

³ *Homes for the future: more affordable, more sustainable*, DCLG, 2007

housing comprises the majority of the housing stock in most areas, if Communities England is not to have any control over this aspect of the implementation of the Decent Homes Standard, it will be difficult to work in a community in a holistic way to ensure that all properties across all tenures meet the standard.

13. Are there any other Communities and Local Government roles that you think should transfer to Communities England?

We think there is a case for looking at placing responsibility for oversight of Empty Dwelling Management Orders and licensing of Houses in Multiple Occupation within the remit of Communities England. These things are crucial in the success of area renewal initiatives of various kinds. For example, in Housing Market Renewal areas, Shelter supports local authorities' adoption of additional or selective licensing of HMRP areas for the duration of the regeneration, to ensure that all landlords operate in a decent and professional manner. Furthermore we would urge local authorities to consider the use of Empty Dwelling Management Orders, to ensure that dwellings are used where possible and to reduce problems of area dilapidation, and to discourage speculative activity where landlords purchase properties and leave them empty or rent them out in a poor state of repair, to maximise profit on eventual sale. If Communities England is to take on the supervision of the HMRP programme and have a coordinating role in housing market renewal, then they need to have some overarching role in ensuring that these powers are used by the local authorities which make up the pathfinder areas.

We would also wish to raise the issue of the provision of sites for gypsies and travellers. Provision of suitable sites for gypsies and travellers should be part of all regional and local housing-related strategies, and must be a consideration in all local authorities' place-shaping functions. Whilst we are not calling for the role of ensuring that local authorities have sufficient sites for these groups to be wholly transferred to Communities England, we do consider that Communities England should have a role to play as part of its broader housing delivery remit. The agency is in a useful position to do this because it will be the primary agency funding the development activities of RSLs, and because it will be a key partner for local authorities in their place-shaping role.

14. We would welcome suggestions and proposals for helping to take forward a successful investment finance model. Are there other approaches to the provision of support and investment that should be added to the proposed toolbox?

The toolbox as set out seems comprehensive.

15. We would welcome your views on how you feel Communities England could work most effectively with the different organisations and structures that support place-shaping.

The Sub-National review of economic development and regeneration, which has published its report in the time since this consultation paper was issued⁴, is set to alter the regional environment. It proposes that Regional Assemblies and their Housing Boards are abolished, and that new look Regional Development Agencies are charged with producing a Single Regional Strategy (SRS), which combines the spatial and economic strategy. We welcome the proposals in the Sub-National Review that Communities England should provide advisory input into the development of this SRS and play an important role in helping to deliver housing and housing-related interventions in the transformation of deprived local communities. We know that housing can transform how a place looks and feels and that local authorities, through their strategic housing role, are to place housing at the heart of their place-shaping role. Communities England can encourage local authorities to address the housing needs of all their residents through their full range of housing and land use planning powers. They can also support local housing strategies and provide a link between these and the SRS. These links between Communities England and local authorities could be useful institutional opportunities for joint working – and could bring benefits especially with local authorities where there is political opposition to housing development.

The way in which Communities England and local authorities work together and the balance of influence held by Communities England, will be crucial. We suggest that it might be appropriate to look at the sort of powers which this consultation paper proposes applying to the new social housing regulator, to see if it might be helpful for Communities England to have a similar role of oversight and investigation over local authorities in the areas which form the subject of its remit. The proposed regulator will have a duty to investigate and take action against housing providers if representations are made to it by local authorities (or tenant groups), to say that the provider is not fully engaging with the local authority in its place shaping function. It might be useful for Communities England to have a parallel duty to investigate and take action where representations are made to it that a local authority is not engaging fully in achieving the housing delivery targets in the Regional Spatial Strategy, or the housing and regeneration aims set out in the Green Paper. Such representations might be made by, for example, housing developers or the Regional Housing Boards (to be replaced by the role of the new Regional Development

⁴ *Review of Sub-National economic development and regeneration*, HM Treasury, 2007

Agencies). If, after investigation, this representation turned out to be well founded, it might be appropriate for Communities England to step in and exercise whatever planning and coordinating powers it is given as a regeneration agency (see question 8 above) to ensure that delivery targets are met.

If this system of oversight were to be implemented, it would be important to consider which sorts of organisations would be able to make representations which would trigger investigation and action. We would be keen for representations from voluntary or statutory agencies to have the same weight in prompting investigations as those from housing developers or the new Regional Development Agencies. These groups might have valid concerns with how the local authority was carrying out the functions of renewal and housing delivery which fall within the remit of Communities England. For example, voluntary organisations which represent the interests of particular excluded groups (such as gypsies and travellers, particular BME communities, formerly homeless households) might have concerns about what proportion of housing being given planning permission was meeting the needs of their client group.

We further recommend that Communities England takes part in local and regional forums which already exist, particularly those such as local or regional homelessness forums, which bring together statutory and voluntary agencies. Given that one of the stated aims of the agency is to meet the needs of vulnerable groups (section 4.5), it is vital to adopt an inclusive stance which makes best use of the expertise of voluntary and specialist agencies which work providing support, advocacy and advice to groups which are likely to face social exclusion. Place shaping, or any form of regeneration activity, must aim to foster an inclusive, diverse community and not seek a narrow definition of "sustainability" which relies on excluding households with support needs or low incomes.

Communities England can have an important role to play in acting as a conduit between agencies at regional and local levels of government. In the changing environment of sub-national development and regeneration, another issue likely to arise is that of cross-boundary working. This is likely to become an increasingly predominant way of working, with the introduction of Strategic Housing Market Areas and Multi-Area Agreements. We believe there is scope for Communities England to have a role in encouraging dialogue between regions, sub-regions, and the local level.

16. We are considering whether Communities England should have a specific presence in the Thames Gateway, in addition to the nine English regions. We would welcome your views on this.

We would welcome this, given the strategic importance of the Thames Gateway regeneration. However, there would need to be close links established between any Thames Gateway office and the London and South East regional offices of Communities England. Failure to liaise effectively might lead to incomplete integration of the new or enlarged Thames Gateway communities with existing communities and infrastructure.

**17. Do you agree with the accountability arrangement of Communities England?
Are any further safeguards required?**

The proposed arrangements seem satisfactory.

Responses to consultation questions - Regulation of Social Housing

18. Do you agree with the regulator's proposed status and functions as set out above (including independence, the scope of Government directions on rents and standards, and its objectives)?

We broadly agree with the regulator's proposed status and functions as proposed. However we would make the following comments:

We find the lack of detail given about how rent setting in social housing is to continue, to be unsatisfactory. The way in which the roles of the Secretary of State and the Regulator are to be split, is far from clear. We would like further clarification on the meaning of the phrase "an overall strategy for rent setting" which describes the Secretary of State's role. We also find the description on page 39 to describe the powers of the Regulator – "the detail of.....the maximum rent level to be charged would be for the Regulator to establish." – to be unsatisfactorily vague. The bullet points on this page then go on to say that the Secretary of State "would have the power to direct the Regulatorin regard to the setting of rent levels". These two statements appear to contradict each other. Shelter recognises the need for a robust legal mechanism to exist in order to underpin the setting of rent levels for social housing. However, under the current proposals it is not clear who would discharge this role; we believe that the responsibility for setting rent levels should rest unambiguously with the Secretary of State.

We also urge the Government to confirm that it is continuing with its existing policy for rent restructuring. Shelter remains strongly committed to the principle of rents in social rented housing remaining subsidised and controlled. We support the existing system of rent restructuring, because it ensures that rent increases are closely controlled so as to remain

affordable for social housing tenants. We also support it because it seeks to establish uniformity of rents across providers within each local authority area, which is clearly the fairest and most transparent position for tenants and prospective tenants. The average income of social housing tenants is around £12,185 per annum⁵. Of course, many social housing tenants have all of their rent paid by Housing Benefit. But for those whose incomes place them just above Housing Benefit thresholds, or who receive only partial Housing Benefit, even small increases in rents or service charges can have significant impacts.

A recent paper from the Joseph Rowntree Foundation⁶ identifies the steep tapers in means tested benefits, and in particular the Housing Benefit system, as being the most significant disincentives to work amongst low income households.⁷ The Hills Review also made a similar point⁸. Existing low rents in social housing mean that this tenure reduces 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 rent payable and Housing Benefit levels, as is often 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. We were concerned to read in the Cave Review report the suggestion that in areas where market rents were less than 10% above social housing rents, social housing rents should be de-regulated⁹. This consultation paper remains silent on that issue. We ask the Government to issue urgent clarification on exactly how the rent-setting regime will operate, and what aspects of the existing rent restructuring system are likely to be changed.

We believe that, as Professor Cave recommended in his report, the new system of regulation should apply across the board to all providers of social housing – local authorities, ALMOs, RSLs, and private or for-profit organisations. This would provide greater clarity of expectations for tenants and potential tenants of social housing, and reduce duplication and complexity. We are pleased to see that the Government is willing to give further consideration to this point, and we hope that the outcome will be that all social housing providers will fall under a unified system of regulation.

⁵ *Survey of English Housing Provisional Results: 2005/06, CLG, 2006.*

⁶ Adam, S, Brewer, M, and Shephard, A: *The poverty trade-off – work incentives and income redistribution in Britain*, the Policy Press, 2006.

⁷ 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.

⁸ Hills, J: *Ends and means: The future roles of social housing in England*, LSE, 2007.

⁹ Cave, M: *Every tenant matters – a review of social housing regulation*, CLG, 2007, p99 (Recommendation S15)

19. Do you agree that only core housing functions should be regulated?

We agree that the social housing regulator should only regulate core housing functions. However, where other activities are carried out (such as employment or training initiatives), it is important that these activities are overseen in some way so that the providers are accountable and vulnerable users are protected. This may be best carried out by other regulatory bodies in other sectors such as education, health, social services or employment.

Some issues arise over what is to be defined as a core housing service. In the case of services such as rent collection or repairs, the definition is unlikely to cause a problem. However there are other areas where it is not clear whether they should be defined as core housing functions or not. This is particularly the case when considering items such as estate management, which the consultation paper says may be included (page 38). Shelter is keen to see housing providers regard meeting the support and housing needs of vulnerable households as a core part of their work. We also want to see providers viewing it as an essential part of their work to assist the local authority in fulfilling their obligations to homeless and vulnerable households¹⁰. The new system of regulation may well address this obligation through other channels. However we would like further consideration and clarification as to which of the “community-forming” functions of housing providers should be regarded as core housing functions and therefore come under the domain of the Regulator.

In particular, we are concerned that tackling anti-social behaviour may come within the definition of a core housing function, but assisting the local authority with discharging their duty to homeless and vulnerable households may not. If this is the case, the differential regulation between the two areas could lead to pressure on housing providers to simply avoid housing formerly homeless applicants, or applicants with support needs, for fear that this may lead to complaints of anti-social behaviour. This would make it very difficult for local authorities to meet their statutory obligations to house homeless households, and for the Government to meet their policy aims on reducing homelessness.

20. Do you agree that all providers should have a duty to engage constructively with local authorities in their place-shaping function?

¹⁰ *The Regulatory Code and Guidance*, Housing Corporation, August 2005, section 3.6. This existing regulatory code for RSLs puts RSLs under an obligation to assist the local authority in this way.

Yes. Shelter is particularly pleased to see this reform being proposed. For some time now we have been concerned at the plight of local authorities in districts where a substantial amount of the available social rented housing is managed by RSLs, which can sometimes be unwilling to house applicants with support needs, or statutorily homeless applicants. Figures from CORE indicate that in 2005/6, local authorities across England were letting 31%¹¹ of their vacant properties to statutorily homeless households, whereas for RSLs the figure was 17%.

In nearly 40 per cent of local authority areas¹², 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 authorities¹³. In many other areas, RSLs are major providers through partial stock transfer.

The joint ODPM/Housing Corporation/LGA/NHF good practice guide published in 2004 recognised that there is some way to go before RSLs are fully and effectively contributing to tackling homelessness and participating in local authorities' homelessness strategies¹⁴. Shelter willingly acknowledges that there is some very encouraging good practice in existence which shows that it is possible for RSLs to work well with local authorities and to make a major contribution to tackling homelessness. Our joint conference with the National Housing Federation in 2005¹⁵ highlighted a number of examples. We were also pleased to see the publication of the joint Housing Corporation/Chartered Institute of Housing guide¹⁶ which details further examples of the good work taking place. In our view, a major shift needs to take place in the priorities and outlook of the RSL sector so that these examples of good practice become universal, and are built on. We would hope that this can be achieved to some extent through goodwill and the spreading of good practice, and strongly welcomed the introduction last year of the Housing Corporation's Tackling Homelessness strategy¹⁷. However, we consider that this will not be enough on its own to ensure the level of partnership working and the adoption of shared priorities which are needed. We believe that this will only come about with some level of specific duty or regulation imposed on all housing providers, and we are very pleased to see this new proposal that it should be enforced with a statutory duty. The guidance on the

¹¹ CORE Annual Digest 2005/06 and HSSA 2006

¹² 140 out of a total of 360 LAs in England have transferred all their housing stock to RSLs – source Wilcox, S: *UK Housing Review 2006/07*, Table 68a.

¹³ Wilcox, S: *UK Housing Review 2005/6*

¹⁴ *Effective cooperation in tackling homelessness: Nomination Agreements and Exclusions*, ODPM/HC/NHF/LGA November 2004

¹⁵ see *Housing Associations and Homelessness: The challenge ahead*. Conference report, Shelter, 2006

¹⁶ *Homelessness prevention and housing associations*, CIH/HC, 2006

¹⁷ *Tackling Homelessness: the Housing Corporation strategy*, Housing Corporation 2006

statutory duty should include specific reference to the requirement for RSLs to house homeless households (both statutorily homeless and other homeless households), and to meet the housing needs of vulnerable applicants¹⁸.

Of course we recognise that tackling homelessness is not the only way in which housing providers need to work together with the local authority. Amongst other important areas are the provision and coordination of support to tenants who need it, the management of antisocial behaviour, and the provision of the sort of non-core activities which this paper proposes should not come under the remit of the new Regulator. In addition, the choices made by housing providers in building new housing, refurbishing existing stock, and in acquisition and disposal of stock are relevant to local authorities' place shaping role. However we are aware from the experiences of our clients that the area of homelessness and provision of support to vulnerable individuals is one where much stronger powers for local authorities are needed and we hope that local authorities will prioritise this area under the new regulatory system.

21. Do you agree with our proposals for the regulator's intervention and enforcement powers, including the level of information provision, the role of tenants, local authorities and others in triggering action, and the increased range of intermediate intervention powers?

As indicated above, we are strongly in favour of local authorities being able to influence how RSLs and other housing providers provide their services. For this reason, we value the proposal that representations from local authorities to the Regulator will trigger intervention. We also strongly support the proposal that complaints from tenants' representative bodies will trigger intervention by the Regulator. This means of empowering tenants is greatly to be welcomed.

Similarly, we welcome the proposal that providers should be required to provide performance information at a local authority level, to both the authority and to tenants. This will allow easy comparison between different local providers and will be a useful tool for tenants, and the local authority, as well as for the various housing providers themselves. However, we would suggest that the information be made publicly available, rather than just released to tenants and the local authority. Information of this sort will be

¹⁸ The existing Regulatory Code for RSLs includes the following obligations: "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. This existing obligation should be reflected in the wording of any new statutory duty applied to RSLs. See *The Regulatory Code and Guidance*, Housing Corporation, 2005

useful to prospective tenants and local voluntary and statutory agencies, as well as to residents, businesses etc, in the local area, and we see no reason for confidentiality. Accordingly, we recommend that all the information is published and made available to any interested parties, rather than just separate high-level data as proposed in the consultation paper.

Regarding the Regulator's intervention and enforcement powers, we broadly support these, but would wish to make the following points:

Two of the enforcement powers suggested are firstly, a reduction in rents chargeable, and secondly, a forced change of management, handing over to another organisation. Both of these sanctions could, in our view, cause more problems than they solve 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 National Housing Federation's Tenant Involvement Commission also rejected the idea of rent withholding as a performance incentive, recognising that it is likely to lead to poorer services¹⁹.

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 we accept that 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. We are pleased to see the proposals in the consultation paper that this sort of sanction, if introduced, would be done in a way which ensured competition, value for money, and input from the tenants affected. However, even with these provisions, we suggest that the sanction should be tightly controlled and limited as to when and how it can be used.

We would like to question why it is not considered appropriate for the placing of new board members to take place in a for-profit organisation. To exempt a for-profit provider from this type of intervention implies that they are not, after all, to be regarded as on a level playing field with not-for-profit providers. We suggest that any for-profit organisation

¹⁹ *What Tenants Want- Report of the Tenant Involvement Commission*, National Housing Federation, 2006, p27

that wishes to enter into the management of social housing should do so in the knowledge that they are to be subject to the oversight of the social housing regulator in exactly the same way as a housing association, and that this may include a range of sanctions including the appointment of board members and removal of the housing stock from that organisation's management.

22. Do you agree that the regulator's consent to disposals of RSL stock should continue to be required?

Yes, we strongly agree that this consent should still be required. Whilst we can see the benefits of the role which stock disposal can have in furthering mixed communities, we are concerned at the prospect of units of social housing being sold off at a time when there is a huge under-supply in the sector. We are particularly concerned that RSLs may choose to dispose of street properties which have a high market value, particularly in London, in order to raise funds for improvements to other stock under the Decent Homes Standard, or for some other purpose. Sales of street properties are counter to the drive to further mixed communities; RSL ownership of street properties in desirable areas is a very fine example of housing in a single area being occupied by different income groups and in different tenures. For these reasons we consider that, whilst it is right that strategic disposals should be one of the tools which RSLs have to work with in creating mixed communities, these disposals should continue to come under the regulatory system, and consent needs to be obtained.

23. How should local authority owned social housing be regulated?

Shelter believes that local authority owned social housing should be regulated in the same way as RSLs and ALMOs to provide consistency and transparency of standards expected. We consider that some of the ways in which performance of local authority housing is measured under the current system are preferable to the way in which RSLs' performance is measured. A good example is the way in which local authorities, and RSLs, have their performance measured in the area of rent arrears management. RSLs have a single performance indicator of the percentage of total rent debit owed in arrears. Local authorities' performance is measured in 4 separate Best Value Performance Indicators²⁰, including those which encourage them not to take court action in arrears

²⁰ The indicators in use by local authorities are: BV66a: Rent collected by the local authority as a proportion of rents owed on Housing Revenue Account dwellings (high numbers=better performance) ; BV66b: The number of local authority tenants with more than seven weeks of (gross) rent arrears as a percentage of the total number of council tenants (low numbers=better performance); BV66c: Percentage of local authority tenants in arrears who have had Notices of

cases and not to evict tenants for rent arrears, as well as measuring the total amount of arrears as for RSLs. This latter type of performance monitoring encourages local authorities to adopt a preventative and supportive approach to rent arrears management in order to keep totals down whilst not pursuing legal action and eviction, which only contributes to homelessness in the local area. RSLs are only measured on how high their total arrears are, which gives them a perverse incentive to evict tenants who are in arrears, in order to appear to be performing well. This contributes to homelessness. Shelter has recommended in the past that the way RSLs' performance on rent arrears is measured should be switched to be the same as local authorities²¹. We hope that the Regulator will consider examples such as this where the details of the new system can be informed by best practice from either sector.

24. What are your views about combining the Ombudsman services for tenants of RSLs and local authorities under a single ombudsman?

As mentioned above, we would like to see the "level playing field", which Professor Cave recommended in his review, implemented. This would mean that all providers of social housing are regulated in the same way, by the same regulator, and to the same standards. The aim of this would be, as Professor Cave set out, and indeed has been acknowledged in this consultation paper, to provide tenants and prospective tenants across social housing with a consistent service. Part of providing tenants with a consistent service is ensuring that the same methods of redress are available to them when things go wrong. We see no benefit in maintaining two separate ombudsman services, one for local authority tenants and one for RSL tenants; this will simply duplicate processes and staffing, and be a waste of resources at a time when housing providers themselves are being pressed to achieve efficiency savings. We are pleased to see that the Government is willing to continue looking at this issue; Shelter's view would be that the two existing organisations should be merged into a single social housing ombudsman which would investigate complaints from tenants across the sector.

25. What are your views about the location of the regulator of social housing?

Shelter does not view the location of the regulator as being the most significant issue in terms of achieving the regulatory outcomes which we think are necessary. However we would lean towards the idea of the regulator being a completely new organisation which is

Seeking Possession served (low numbers=better performance); BV66d: Percentage of local authority tenants evicted as a result of rent arrears (low numbers=better performance).

²¹ See Shelter's response to the Housing Corporation Consultation on Tackling Homelessness, July 2006. Available on www.shelter.org.uk

set up specifically for this purpose, rather than including regulation amongst the functions of the Audit Commission, or part of the former Housing Corporation. Having said this, we recognise the efficiencies to be gained by making use of the highly trained staff with experience in regulation and performance monitoring, who are currently employed by both the Housing Corporation and the Audit Commission.

We agree with the statement in the consultation paper, that a key issue is to ensure that during the transition process, tenants are protected and risk is minimised.

26. Do you have any other comments about the proposals, including any practical implications you think it might have? For example, how can we best ensure we minimise bureaucracy?

We have incorporated all our comments into our responses to the consultation questions above.

27. Views are also invited on the Partial Regulatory Impact Assessment provided at Annex B on Communities England.

We do not propose to comment on the Regulatory Impact Assessments.

28. Views are also invited on the Partial Regulatory Impact Assessment provided at Annex C on the future regulation of social housing.

We do not propose to comment on the Regulatory Impact Assessments.

Conclusion

Shelter supports these proposals. We believe that those in respect of the formation of Communities England have the potential to enable the significant increase in housing supply proposed in the recent Green Paper to be delivered, and to secure improvements to the way in which regeneration is carried out. Similarly, we consider that the changes to regulation in social housing will improve the accountability of housing providers, both to tenants and to local authorities, and we welcome this. We have set out above some suggestions for amendments, or where we believe additional items should be considered.

We will be glad to discuss any of the contents of this response further, if that would be helpful.

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