

# Consultation Response

## The housing corporation: regulatory code guidance

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# Shelter

We welcome the Housing Corporation proposals for updating its regulatory approach. In 2000/1 Shelter helped over 5,000 housing association tenants who had a housing problem. On the basis of this experience there are three key areas of housing association's practice it is essential that the Corporation effectively regulates:

- Lettings policy, particularly in relation to applicants nominated by local authorities as being in priority housing need
- Management of tenancies and the need to pursue all other avenues before seeking possession
- Balancing business case decisions on management issues with the needs and circumstances of individual residents and potential residents.

We focused these issues in our response to the consultation on the Regulatory Code and our comments on the proposed Guidance also reflect these priorities.

There are a number of specific areas where the regulatory guidance does not strike the right balance and could undermine the Housing Corporation's regulatory role. Our key recommendations are that -

1. All lettings policies should have regard to the reasonable preference categories in the Homelessness Bill.
2. Housing associations should be required to record and report their possession activity
3. Housing associations should be required to consult their board before using mandatory grounds for possession or the assured shorthold ground.
4. The Guidance on co-operating with local authorities on homelessness should be amended to better reflect the provisions of the Homelessness Bill.
5. The Guidance on temporary accommodation should not focus on the use of permanent lettings as temporary accommodation.
6. The Guidance on setting criteria for accepting nominees should be strengthened to better reflect the allocations provisions of the Homelessness Bill.

### **Guidance under section 3.5 of the Code**

In our response to the Regulatory Code consultation we recommended an amendment to section 3.5.4 of the regulatory code to reflect the need to achieve the right balance between business decisions and the needs of individual residents and potential residents. In particular we emphasised the importance of achieving that balance on decisions relating to lettings, possession actions and transfers.

In the light of these concerns we welcome the paragraphs 2 and 4 of the Guidance relating to section 3.5 of the Regulatory Code.

## **Reasonable preference**

We welcome the requirement in the regulatory guidance that choice-based lettings schemes should be responsive to those in greatest housing need. In fact all lettings policies should have regard the reasonable preference categories.

We recommend that the guidance require all lettings policies to have regard to the reasonable preference categories as set out in the Homelessness Bill.

It is important to ensure that housing need remains a key determinant for access to housing association accommodation. While the movement to offering greater choice is welcome, this must not be used as an exercise to promote access to accommodation for other groups at the expense of those in greatest need, including homeless households. In increasing choice in the letting of housing homeless households must be given similar levels of choice as other households.

As choice based lettings schemes are developed it will be important to closely monitor CORE data on the proportion of lettings to homeless households. As part of inspection visits, associations' policies on choice should be assessed on the level of choice given to all households, including households owed a duty by local authorities under homelessness legislation.

## **Possession Actions**

Given that the primary of objective of social housing is to provide secure homes for people on low incomes and in receipt of welfare benefits it is essential that housing associations minimise the use of possession actions in their approach to management, particularly in cases of rent arrears arising from housing benefit problems. Paragraph 4 of the guidance in this section will rightly provide a replacement for existing section G1.3 of the current performance standards to ensure that associations avoid possession proceedings as far as possible. Our response to the Regulatory Code highlighted the fact that some housing associations are not complying with the current requirement with a number of case studies from Shelter's housing aid centres. Further case studies are below.

We recommend that housing associations should be required to report the number of possession actions entered, orders made, warrants executed and the grounds under which possession is sought. We also recommend that housing associations should be required to consult their board before pursuing possession action under mandatory grounds or the assured shorthold procedure.

Evidence from individual cases also shows that some housing associations appear to be seeking possession as a first, rather than a last, resort before alternative approaches have been tried. Also we have concerns about the disproportionate use of mandatory ground 8, and section 21 in the case of shorthold tenancies, to recover possession.

A couple with 3 children were assisted by Shelter through a court desk scheme. The mother had cerebral palsy and the father was recovering from a drink problem. Their third child was prematurely born a month before they came to Shelter for help. The family were in court for a hearing because their landlord was seeking to enforce a warrant for possession of their home as a result of rent arrears. The warrant had been suspended at three previous hearings on the grounds that they had welfare benefits issues to resolve. The Judge agreed to a further suspension of the warrant on the grounds that they had still not maximised their benefits income. Through advice from Shelter they increased their benefits income and before the hearing the father got a job and they were able to offer to pay off the arrears of £900 at £25 per week. The landlord rejected the offer and still sought to have the warrant enforced at the adjourned hearing. The housing association said that it was not in their interests to accept the offer on business grounds. They also claimed that it was not in the interests of the family to prolong the tenancy.

At the hearing the judge found in favour of the family and suspended the warrant on terms that they paid £25 per week on top of their rent towards the arrears. However the costs of the hearing added a further £450 to the family's debts. In trying to enforce the warrant the association unnecessarily added to their debt burden.

A single parent with a two year old child got into rent arrears due to problems with the payment of housing benefit. The problems arose due to her working for two months. When she stopped work her new claim for housing benefit was delayed. The housing association issued a notice of seeking possession. When the delayed payment was made the arrears were reduced from £1,100 to £450. A one off payment of £200 reduced the arrears further and a repayment plan at £10 per week was put in place. However the landlord still sought a possession hearing. It was only through the intervention of Shelter that the housing association was persuaded that there was no need to seek a possession order.

A mother and her two adult sons were granted an assured shorthold tenancy by a housing association after they were accepted as being homeless by their local authority. The mother and one of the sons had an ongoing history

of mental health problems. Following allegations of nuisance by their neighbours the housing association initiated a possession proceeding under section 21. The association did not give the family the opportunity to appeal against the decision to initiate proceedings. The family feel that they have been discriminated against.

Shelter challenged the housing association's action and failure to give the tenants a chance to appeal against the allegations. The housing association refused to disclose the exact nature of the allegations that had been made. They admitted that they were using the section 21 procedure because they did not have adequate evidence of nuisance to apply for possession under ground 14. The day before the hearing they offered to give the tenants the opportunity to appeal after the order was granted. They made an undertaking to take into account the outcome of the appeal in any decision to execute the warrant and said that they would not be seeking costs for the action. Since the possession hearing Shelter has not been able to contact the family.

A woman with three children got into rent arrears because of delays in housing benefit. For the first six months of the tenancy no housing benefit was paid although they were in receipt of income support. When her husband, who was in receipt of JSA, moved back to the family following a period of separation the housing benefit was eventually sorted out. Although approximately £800 of arrears remained on the rent account from the initial delay. Their landlord had sought possession and a suspended order on terms of payment of £10 per week towards the arrears was agreed. The terms were unaffordable from the family's benefit payments. The housing association refused to consider applying for a variation in the terms of the order on business grounds. According to the association the arrears would have taken too long to pay off. Ultimately the family were evicted, had to apply to the local authority as homeless and were rehoused.

The failure of these housing associations to take appropriate steps prior to issuing proceedings has had serious consequences, increased indebtedness and homelessness, for these households. Interventions such as welfare benefits and debt advice would be more appropriate in many of the arrears cases and mediation may have been more appropriate in the nuisance case. Pursuing court actions against households that have offered or entered into repayment plans is indefensible and a waste of public money.

Shelter is very concerned at some housing associations' failure to have regard to the requirements of the existing performance standards and statutory housing management guidance and at the lack of balance between business interests and the needs of

individual residents in housing management decisions. In order to ensure that housing associations are complying with the guidance on possession actions and the spirit of the obligations in sections 3.5.3 and 3.5.4 of the regulatory code Shelter would recommend a specific requirement for associations to report the number of possession actions they pursue.

Housing associations should be required to report the number of possession actions entered, orders made, warrants executed and the grounds under which possession is sought. A recent survey by ROOF magazine (Nov/Dec 2001) showed that this information is readily available. This data would provide an important source of information for the current policy debate about the increasing numbers of households being evicted from social housing. A key barrier to understanding the rises in possession actions is the paucity of information about this area of landlords' activities. It would also provide valuable information for lead regulators about an association's compliance with the relevant part of the regulatory guidance. Also a proportionately high numbers of possession actions for arrears might indicate a need for inspectors to look particularly closely at an association's management practice on arrears and whether they are following best practice on ensuring that residents have access to welfare benefits and debt advice.

It is important that the good practice supporting this part of the regulatory guidance provides examples of the kinds of steps housing associations should be taking prior to issuing a notice of seeking of possession.

Against the background of increasing possession activity by housing associations Shelter is very concerned about the use of mandatory grounds for possession. If some housing associations are failing to balance the needs of individual households against business considerations, it is important that Judges should have the opportunity to consider whether granting possession is reasonable and whether it will cause hardship. Housing associations should be required to consult their board before using mandatory possession grounds or the assured shorthold possession procedure.

### **Guidance under section 3.6 of the Regulatory Code**

Over all we welcome the proposed Guidance relating to section 3.6 of the Code and also the proposals for assessing compliance. The proposal to require associations to report the number of homeless nominees they accept and refuse to house fills a gap in the current mechanisms available to monitor compliance with the Corporation's regulatory requirements. However there are a number of areas where we have specific concerns about the proposed Guidance.

### **Homelessness reviews and strategies**

We recommend minor amendments to paragraph 2 of the Guidance so that it reads as -

*Associations are able to demonstrate their co-operation with local authorities in the development and delivery of homelessness reviews and strategies and in the delivery of the authorities homelessness functions.*

The Homelessness Bill will provide a number of specific provisions relating to the role of housing associations in both homelessness reviews and strategies

- Homelessness reviews will need to take into account the resources available to housing associations
- Local authorities will have the power to include within the homelessness strategy specific action, that will contribute to the objectives of the homelessness strategy, it expects to be taken by housing associations with their consent
- A requirement on local authorities to consult housing associations on the homelessness strategy.

The suggested wording above would better reflect these statutory provisions.

Housing associations will also have a role in assisting local authorities in the discharge of their homelessness powers as well as duties. For example clause 5 of the Bill provides for a new power to accommodate applicants who are homeless but not in priority need. In many cases this accommodation could be a housing association letting. Therefore the guidance should refer to authorities' homelessness functions.

## **Temporary accommodation**

Housing associations play a very significant role in the provision of temporary accommodation for homeless households. However the guidance only promotes the use of permanent lettings as temporary housing. While there may be certain circumstances where this is appropriate, on the whole such practice will only reduce the availability of long-term lettings and therefore exacerbate the need to rely on temporary accommodation. Housing associations can make a significant contribution to the Government's commitment to reducing the use of bed and breakfast accommodation for homeless households, but this should primarily be through the provision of leased temporary accommodation.

We would therefore recommend replacing paragraph 3 with the following

*Associations have assisted the local authority in the discharge of its homelessness functions by the provision of temporary accommodation.*

This should be monitored through the level of satisfaction expressed by the local authority with the association's co-operation on this issue.

## Nominations and lettings policies

Shelter welcomes the requirement that associations should consult with local authorities on the adoption of criteria for refusing to offer accommodation. However we are concerned that the guidance fails to specify the grounds on which housing associations can base those criteria. The proposed guidance refers to 'behaviour that makes a person unsuitable to be a tenant', reflecting the wording of the allocations provisions in the Homelessness Bill.

It is right that the Regulatory Guidance should be consistent with the new legislative provisions for allocations schemes. However the provisions under clause 13 of the Bill very clearly define the test which should be applied in considering eligibility for allocation of housing accommodation. The Bill states that an applicant is ineligible if they, or a member of their household, have been guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant. Unacceptable behaviour is defined only as behaviour which would (if they were a secure tenant of the local authority) entitle the authority to possession.

The Guidance for housing associations currently leaves it at their discretion to determine what is behaviour that makes a person unsuitable to be a tenant. Shelter is concerned that as currently drafted the Guidance gives housing associations far too much discretion and 'behaviour that makes a person unsuitable to be a tenant' must be defined in the Guidance to reflect the test set out in the Homelessness Bill.

Paragraphs 9.15 and 9.16 of the Housing Green Paper clearly set out the Government's policy intentions in the allocation of social housing:

*"Any decisions to suspend applications would need to take account of the circumstances of the household in order to safeguard vulnerable groups such as those with mental or behavioural problems, or the children of the families concerned. We would expect suspensions to be exceptional and that other ways of managing problems or risk may be more appropriate in many cases."*

*"Meeting housing need remains the priority for lettings and transfer policies"*

We feel that the Guidance does not reflect these policy intentions.

## Assessing compliance

Shelter is concerned that any move towards replacing the Regulatory and Statistical Return (RSR) with an annual compliance statement would result in inconsistency in the way in which associations demonstrated their compliance. We would recommend retaining the RSR.