

Shelter's response to the TSA discussion paper – Building a new regulatory framework

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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. Many of our clients are tenants in the social rented sector experiencing problems with disrepair or seeking transfer to other properties. In addition, we deal with queries from prospective tenants who wish to access social housing and have problems understanding the criteria for accessing this including waiting lists and choice based letting schemes. Our services include:

- A national network of over 20 advice centres.
- Shelter's free advice helpline which runs from 8am-8pm.
- Shelter's website which provides 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 housing support services, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- A number of children's services aimed at preventing child and youth homelessness and mitigating the impacts on children and young people experiencing housing problems. These include pilot support projects, peer education services and specialist training and consultancy aimed at children's service practitioners.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

Summary

- Shelter strongly welcomes the approach of bringing together the standards for service delivery to local authority and housing association tenants into a single regulatory framework. We believe having one regulator will make life simpler for tenants and prospective tenants in identifying what they can expect from their landlord and will ensure greater consistency and transparency in the provision of services.

Scope of new framework

- Shelter recommends that temporary accommodation is included within the scope of the TSA's new regulatory framework.
- The Government has recently proposed stronger regulation of the private rented sector. Shelter proposes that in the future the TSA would be ideally placed to take on this regulatory function. This would ensure there was one cross-domain regulator for the entire rented sector, and allow the transfer of valuable learning from the regulation of the social housing sector.

Service offer to tenants

- We support the setting of a quality standard for accommodation.
- We agree there should be a national standard for repairs and maintenance.
- We emphasise the importance of ensuring that the national standard for antisocial behaviour is clear on how vulnerable tenants and potential tenants should be supported to enable them to sustain their tenancies.

Tenant empowerment and involvement

- A Code of Guidance on complaints detailing what is expected of landlords should be developed in partnership with the Ombudsmen services and with the involvement of representative tenant organisations.

The tenancy agreement

- Future rent levels should be tightly controlled to provide certainty and protection for tenants and should continue to be set centrally.
- The lifetime security of tenure which currently operates in the social rented sector is vital and must be maintained.
- The proposed objective for the tenure standard is not clear and should be amended to clarify that the intention is not to dilute security of tenure in areas of high housing need. The objective should also be broadened to reflect the aim of sustaining tenancies so that people are able to keep a home.
- A national Code of Practice on tenure should be developed which applies to both local authorities and housing associations. A national code would provide assurance to tenants that their landlord is operating to national standards.
- The pre-action protocol for possession claims based on rent arrears should be incorporated in the Code of Practice on the tenure standard.

- Direction on the use of Ground 8 by housing associations should be included in the Code of Practice on the tenure standard.
- Shelter supports the proposed objectives for the allocations standard. However, for this approach to be successful we believe that:
 - Detailed guidance on good practice in relation to exclusions should be included in the Code of Practice on Allocations.
 - There should also be strong guidance within the Code of Practice to eliminate the practice of requesting a number of nominations.
 - The Code of Practice should include reference to the need for local authorities and registered social landlords to publish their nomination agreements so they are widely accessible.

Introduction

Shelter welcomes the opportunity to respond to the Tenant Services Authority's (TSA) discussion paper *Building a new regulatory framework*. We are pleased that TSA will be responsible for regulating housing associations and the housing activities of local authorities who own their own stock, including those with arm's length management organisations (ALMOs). We believe that the approach set out in the discussion document has the potential to deliver considerable benefits for tenants, including greater simplicity and greater transparency and consistency in the provision of services.

This response is divided into two sections. The first looks at the scope of the new regulatory framework, focussing on the regulation of temporary accommodation and the potential role of the TSA in relation to the private rented sector. It then goes on to examine those of the proposed TSA standards that are of particular importance from Shelter's point of view.

Scope of the new standards framework

TSA and Temporary Accommodation

We note the discussion document is silent on the regulation of temporary accommodation. Shelter believes that as the new regulator for social housing in England, the TSA should include regulation of temporary accommodation within its remit. Many households remain in temporary accommodation for years, and during this time should benefit from the guiding principle set out in the discussion document *"that the tenants' experience should as far as possible be of the same high quality, irrespective of who their landlord is"*.

Many of the cases that Shelter's services deal with in relation to temporary accommodation concern the suitability of that accommodation. Although it is possible to challenge 'suitability' through the judicial system, it is our experience that the courts are not interested in dealing with challenges of this nature unless the case in question is particularly extreme.

We believe a number of the proposed standards could equally be applied to temporary accommodation. These would include, for example, the standard on maintenance and repair and the standard on antisocial behaviour.

TSA and the Private Rented Sector

In May, the Government published its response to the independent review of the private rented sector carried out at their request by Julie Rugg and David Rhodes. This included proposals to improve the regulation of the private rented sector, including through the introduction of a mandatory registration scheme for private landlords.

In our response to the Government's consultation, we put forward the view that the TSA is in an ideal position to take on the new regulatory functions set out in the Government's proposals. This would ensure there was one cross-domain regulator for the entire rented sector, and would allow the transfer of valuable learning from the regulation of the social housing sector. We believe the functions of the TSA in relation to the private rented sector should include:

- Creating, maintaining and publicising the register of landlords.
- Applying sanctions, such as points and fines based on information from other agencies.
- Producing and updating a landlords' Code of Practice.
- Seeking out those landlords that haven't registered.
- Sharing good practice/data on the sector.

We recognise that the TSA still needs time to establish itself and to undertake a large work programme on the new framework for regulation of social housing, but once this has been established we believe it could also take on regulation of the PRS.

The service offer to tenants (4A)

Quality of Accommodation

Shelter supports the setting of a quality standard for accommodation within the regulated housing sector and agrees that the Decent Homes Standard should be the basic expression of this. We also support the principle that homes that have been developed to a higher standard than decent homes should be maintained to the same standard.

Repairs and maintenance

Shelter welcomes the discussion document's recognition of the importance to tenants of good repair and maintenance services. We support the proposed objective for the repairs and maintenance standard, and agree there should be a national standard.

Many of the cases dealt with by Shelter's Advice Centres relate to disrepair and maintenance and poor quality of service to tenants. The problems they experience often centre around work not being completed properly on the first occasion necessitating further visits, failure of contractors to turn up to appointments and difficulty in contacting landlords to find out what is going on. In addition, the inflexibility of appointments during the week means they have to take time off work.

Case Study

A North West client, a single working parent with two children had three ongoing repair issues, one of which was as a result of work which had been previously carried out by the landlord. On reporting the problems, the local authority sent a surveyor out to assess the problems and he arranged for a joiner to carry out the repair. On arrival the joiner identified that more extensive repairs were needed and informed the client he would order the materials and return to complete the work. However, he did not return on the due day and repeated calls to the landlord were not returned. With regard to the other two problems, appointments were made for contractors to attend to complete the works but they did not attend on the due day and again the client could not get a response from the landlord on what was happening. Following Shelter's intervention, the client did have the repair work completed and obtained £100 compensation from her landlord. However, she would have preferred for the work to have been completed correctly at the outset, without the stress and strain that was involved in chasing up the landlord.

Antisocial behaviour and security

Shelter recognises that anti-social behaviour and security are key issues for tenants, and the importance of measures to both reduce antisocial behaviour and support its victims. We agree with the discussion document about the need for the national standard to be clear about how vulnerable tenants and potential tenants should be supported to enable them to sustain their tenancy. In Shelter's experience, measures put in place to support vulnerable tenants are successful in reducing anti-social behaviour and helping them to sustain a tenancy. It is important, therefore, that local authorities and RSLs are proactive in providing support for tenants at risk of eviction as a result of anti social behaviour. One example of this type of support work is Shelter's 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, enabling them to manage their tenancies, to change their behaviour and to live successfully as part of the community. It has shown remarkable success¹ and the Government and the Housing Corporation (as was) have both acknowledged the value of this type of intensive service.

Tenant empowerment and involvement (4B)

Complaints

A key aspect of tenant empowerment is the 'tenant trigger' which gives both individuals and groups of tenants the right to call upon the regulator where they have not been able to resolve their concerns with their landlord. We welcome the proposal that groups of tenants should be able to petition the TSA in this way.

We believe the complexity of the current complaint system (featuring, for example, internal landlord complaint procedures, Ombudsmen, the District Auditor, and County Court Action) can make it difficult for tenants to know how and when to pursue a complaint. It is therefore important that landlords provide clear information to their tenants on how and when to make a complaint. We would support the production of a Code of Guidance in this area, which should include details of how landlords should communicate with tenants to inform them about the complaints system. This Code could be developed in partnership with the Ombudsmen services and with the involvement of representative tenant organisations.

¹ 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.

The tenancy agreement (4C)

Rent

Shelter supports the proposed objectives for the rent standard. Reasonable and affordable rents were identified as a top priority in TSA's National Conversation and we would echo the importance of ensuring that rents remain affordable for tenants in social housing. We believe that future rent levels should be tightly controlled to provide certainty and protection for tenants and should continue to be set centrally.

The average income of social housing tenants is around £13,970 per annum². 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 - including those on low pay, and on fixed incomes such as pensioners - even small increases in rents or service charges can have a significant impact on budgets and also on work incentives.

The Joseph Rowntree Foundation³ has identified the steep tapers in means tested benefits, and in housing benefit in particular, as being the most significant disincentives to work amongst low income households. 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 rents⁴. Aside from the disincentive to work, rent rises also have considerable implications for public expenditure in terms of the housing benefit bill.

Tenure

Social housing provides a vital lifeline for one fifth of the population, providing a stable basis on which they can build their lives. A homeless or badly housed person is in a better position to find and keep a job if they can first gain access to a stable, affordable and secure home. Research has found that social tenants closer to the labour market reported that security of tenure, sub-market rents, and more supportive landlords all provided work-related benefits.⁵ It concluded that 'any moves to undermine security of tenure in the social rented sector are likely to have an adverse impact on levels of worklessness as well as undermining the well being of some of the most vulnerable tenants'⁶. The lifetime security of tenure which currently operates in the social rented sector is vital and must be maintained.

We are concerned that proposed objective for the tenure standard is not clear and could be taken to imply that security of tenure could be diluted in areas of high housing need. We understand that this is not the intention and believe the wording of the objective must be amended to clarify this. In addition, we would like to see the objective broadened to reflect the aim of sustaining tenancies so that people are able to keep a home.

² Survey of English Housing Provisional Results: 2007/08 CLG 2009

³ Adam, S, Brewer, M, and Shephard, A: The Poverty Trade-off – work incentives and income redistribution in Britain, the Policy Press 2006

⁴ Longitudinal research carried out by the Metropolitan University between 2003 and 2006 showed that young people leaving foyers have a much better chance of sustaining work/training if they moved into social housing, as compared to those moving into other tenures.

⁵ Hills J, Ends and means: the future of social housing in England, Centre for Analysis of Social Exclusion (CASE), 2007

⁶ The future of social housing op cit.

We believe tenure is an area in which the development of a Code of Practice is useful and important. However, for this Code of Practice to be truly effective we would suggest that it must be a national code applicable to both local authorities and housing associations. A national code would also provide assurance to tenants that their landlord is operating to national standards.

We believe that the pre-action protocol for possession claims based on rent arrears has been effective in preventing eviction and encouraging good practice in managing rent arrears, and we would like to see this protocol incorporated into the Code of Practice on the tenure standard. However, we still do have concerns regarding the continued use of Ground 8 by housing associations in obtaining eviction in relation to rent arrears, and believe that direction on the use of Ground 8 would be particularly helpful in the Code of Practice.

Allocations

Shelter supports the proposed objectives for the allocations standard. However, we have a number of comments on the detail of how the allocations and lettings process works, which we believe should be reflected in the way in which the standard is implemented by the TSA and in the Code of Practice. We recommend that detailed guidance on exclusions covering the good practice identified below is included in a TSA Code of Practice on Allocations. We would also like to see strong guidance in the Code of Practice to eliminate the practice of requesting a number of nominations, and to limit RSLs' ability to decline local authority nominations except in cases where the accommodation is clearly unsuitable for the household concerned.

One of the biggest problems with the allocations system remains unfair exclusion of applicants on grounds of their past behaviour, often because of small scale rent arrears. We have consistently called on Local Housing Authorities (LHAs) and housing associations to urgently review their practices and to stop excluding tenants from housing registers for minor past faults. Shelter's research on exclusions in the North East⁷ revealed widespread poor practice and showed that a significant number of vulnerable people were being unfairly excluded from social rented housing. We recommend housing providers should be required to write to such individuals, giving reasons for their exclusion and setting out the action that the applicant must take in order to have the exclusion lifted. We also suggest that housing providers should agree to allow anyone back onto their lists who is positively engaging with a recognised agency that provides support to deal with issues such as budgeting problems or anti social behaviour (and providing the agency agrees to continue to provide this support if and when the applicant is housed).

The quality of local authority nomination agreements and their level of enforceability need to be improved. Whilst the 2004 good practice guide⁸ contains good and comprehensive guidance on nomination agreements, there is no evidence that most nomination agreements are anywhere near approaching this standard. Such information that Shelter has available indicates that many nomination agreements are not even written down, or that the written agreement is so old it cannot be traced. We are also aware that local authorities often do not enforce or even clearly monitor the terms of these agreements. We would recommend that the TSA Code of Practice on Allocations includes reference to the need for Local Authorities and RSLs to publish their nominations agreements so they are widely accessible to those who may have an interest in them.

It is common practice for housing associations to ask for details of 3 or 4 applicants at once when they request a nomination. They then select one and return the others. We would make two points in relation to this practice:

⁷ Exclusions in Tyne & Wear: An investigation by Shelter's NWHAC into why applicants are excluded from social rented housing, Shelter, April 2006. The research revealed that minor rent arrears were often used as grounds for exclusion, with almost 40 per cent of households surveyed excluded for arrears of less than £500.

⁸ Effective cooperation in tackling homelessness: Nomination Agreements and Exclusions, ODPM/HC/NHF/LGA November 2004

1. In some local authority areas, each of the applicants whose details are sent is written to informing them that they have been nominated to a housing association. All but one are then disappointed when they hear that they are not, in fact going to be allocated the property. In some cases the same applicant (particularly if they are vulnerable with significant support needs) can receive many such letters, repeatedly raising their hopes and then letting them down. This has a damaging effect on an already vulnerable person.
2. We would like to move to a situation where RSLs are willing to house whichever applicant the local authority considers to be highest priority for the nomination and do not require several applicants to choose between. In particular, where an applicant has been assessed as statutorily homeless, there should be no room for an RSL to refuse the nomination on the ground that the applicant may have previous rent arrears or a history of tenancy problems.

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