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Wednesday, 2 March 2011

## **Affordable Rent – Revisions to the Tenancy Standard: A Statutory Consultation**

Dear Amanda Newton

We welcome the opportunity to respond to this consultation. As an adviser of people in housing need and social tenants, we have a strong interest in the standards that apply to the provision of low-cost rented accommodation in England.

More than a million people a year come to us for advice and support via our website, helplines and national network of advice and support services. Our work gives us direct experience of the problems caused by the shortage of affordable housing across all tenures.

As such, we are disappointed that the only question asked of respondents relates to the flexibility for private registered providers of social housing, rather than the needs of tenants. We are therefore responding more generally to the TSA's proposals that, following the outcome of its consultation, it plans to reissue its standards to include the following guidance on Affordable Rent homes:

- rents in these homes shall be no more than 80% of the market rent for an equivalent property for that size and location
- providers must use a valuation of market rent in accordance with a RICS recognised method
- annual increases will be up to RPI + 0.5%
- providers will be required to rebase the rent on each occasion that a new Affordable Rent tenancy is issued for that property, to ensure that rent remains no more than 80% of market rent.

1. We are concerned that the TSA proposes to make changes to the rent and tenure components of the Tenancy Standard to give landlords greater operational freedom to benefit from the opportunities which Affordable Rent provides, as this may be at odds with needs of current or prospective tenants.
2. In our response to the Tenant Services Authority's 2009 discussion paper<sup>1</sup>:
  - We supported the proposed objectives for the rent standard on the basis that reasonable and affordable rents were identified as a top priority in the TSA's National Conversation. We stressed the importance of rents remaining affordable for social housing tenants and argued that future rent levels should be tightly controlled to provide certainty and protection for tenants and should continue to be set centrally.
  - We expressed concern that the proposed objective for the tenure standard was not clear. We argued that the full security of tenure that currently operates in the social rented sector is vital and must be maintained because people in housing need are in a better position to find and keep a job if they can first gain access to a affordable and secure home.
3. The TSA argues that 'when the policy environment changes, revisions to its standards may be needed to ensure they continue to support effective housing provision'. In December 2010<sup>2</sup>, the Minister for Housing and Local Government stated that Affordable Rent is designed to:
  - maximise the delivery of new social rented housing by making the best possible use of constrained public subsidy, and the existing social housing stock; and
  - provide an offer which is more diverse for the range of people accessing social housing, providing alternatives to traditional social renting.

The Minister stated that 'affordable rent will represent a significant first step towards giving social landlords much greater freedom to respond to local housing need.'

4. We acknowledge that Affordable Rent will give greater flexibility to social landlords in building and managing their housing stock. We do not object to the offer of Affordable Rent, for example as an alternative to private rented housing. As we acknowledged in

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<sup>1</sup> Shelter (September 2009) *Response to the TSA discussion paper – Building a new regulatory framework*

<sup>2</sup> Hansard (9 December 2010) Written Statement by the Minister for Housing and Local Government on Localism Bill and Social Housing: Affordable Rent

our response to the CLG consultation on the future of social housing<sup>3</sup>, housing associations can already let homes on fixed term tenancies at full market and 'intermediate rents'; 10,050 intermediate rent homes have been delivered between 2003/04 and 2009/10. These are usually marketed at households on modest incomes who are not in acute housing need, with the idea that intermediate renting enables the household to save for a mortgage deposit. They are often linked to 'key worker' options and shared ownership. We recognise that such tenancies can be an appropriate option for some households.

5. However, Affordable Rent homes do not represent an adequate and sustainable offer for people who have experienced homelessness and are in significant housing need. People find themselves in housing need because they are unable to obtain a secure and affordable home on the market. The regulated rents and security of tenure that social housing provides enable them to gain access to a secure and genuinely affordable home.

In our response to the TSA's 2009 consultation, we stated:

*The average income of social housing tenants is around £13,970 per annum<sup>4</sup>. 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.*

We cited research<sup>5</sup> showing 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 and 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. We oppose the removal of security of tenure in general needs social housing. People need homes and not simply housing and security of tenure is an essential feature of a settled home. The lack of security of tenure in the private rented sector is a major cause of homelessness. In 2009/10, the loss of an assured shorthold tenancy was the third biggest cause of statutory homelessness (11 per cent of cases accepted as being owed main homelessness duty), after family and friends no longer being able or willing to accommodate (34 per cent) and relationship breakdown (20 per cent).
7. Removing security of tenure would result in future tenants, and future generations, facing a lifetime of insecure housing with all the associated 'exported' costs to

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<sup>3</sup> Shelter (January 2011) Response to CLG consultation *Local Decisions: a fairer future for social housing*

<sup>4</sup> CLG (2009) *Survey of English Housing Provisional Results: 2007/08*

<sup>5</sup> Hills, J (2007) *Ends and Means: the future of social housing in England*, Centre for Analysis of Social Exclusion

education and health budgets. For example, a longitudinal survey of public housing tenants in Brisbane<sup>6</sup> provided evidence of the positive impacts on the educational outcomes for children resulting from greater stability and security of tenure for the family.

8. We particularly oppose the proposals that councils could be able to discharge their homeless duty through the new tenancy, and that existing and future vacant social rented homes could be re-let on Affordable Rents. These measures would reduce the number of homes available at social rents and push homeless households into higher rent homes.
9. These proposals are also likely to force an increasing number of social tenants into dependency on benefits to pay their rents, as the higher rents would require a much higher employment income for people to cease claiming housing benefit. One of the main advantages of social rents is that they allow people to enter low paid employment without the need to claim housing benefit, or to seek to increase their income without facing benefit withdrawal. Because Affordable Rents will be based on local market rents, this will particularly disadvantage households living in areas where market rents are high, which tend to be areas where housing need is greatest.
10. We are concerned that the proposed changes to standards will permit the conversion of vacant social rented homes to Affordable Rent on condition that providers have signed a new supply delivery agreement with the Homes and Communities Agency for Affordable Rent homes. We note that the consultation (paragraph 22) states that 'there may be occasions outside of Affordable Rent delivery agreements when we may discuss with providers conversion of social rented homes to Affordable Rent. This will be on a case by case basis and in context of our guidance on use of powers'. We believe that the decision to allow conversion of existing social relets should be based on a local assessment of the need for social rent homes.
11. The consultation proposes (paragraph 17) that 'in order to support good housing management practice, we also intend to require that where tenancies of fixed length are used in Affordable Rent and landlords decide not to renew the tenancy at the end of the fixed term, they should offer reasonable advice and assistance to those tenants'.
12. We strongly welcome the proposal that social landlords should be required to provide advice and assistance to tenants prior to the expiry of the fixed term. However, this duty should apply in relation to tenancy reviews and not at the point where the landlord is minded not to reissue a tenancy. More vulnerable tenants, for example those with learning difficulties, will require a great deal of advice and assistance to deal with tenancy reviews. We believe this duty should also be required by primary legislation. We strongly oppose the suggestion that a tenant may be refused a reissue of the tenancy even where they are 'unable to obtain alternative accommodation and becomes homeless'<sup>7</sup>. We strongly urge the TSA to consider and confirm in what

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<sup>6</sup> Khan, A. and Phibbs, P. (2005) Education and Public House Building for Diversity  
(<http://www.nhc.edu.au/downloads/2005/Refereed/4Khan.pdf>)

<sup>7</sup> CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.54)

circumstances it would be appropriate for a social landlord to refuse to reissue a tenancy where this would result in homelessness.

13. If reissue of tenancy is to be based on an assessment of need, to create a vacancy for a needier household, there must be a suitable alternative available for the current tenant's occupation. If the intended outcome is to create vacancies where the tenant has an alternative available, we favour continuing security of tenure and the use of Possession Ground 9. This would necessarily require landlords to advise and assist with a suitable alternative home in order to obtain vacant possession. Where a landlord decides not to renew a fixed term tenancy, and as a result brings possession proceedings against the tenant to evict him/her, the tenant may well have a 'public law' defence to the possession claim, either on conventional judicial review grounds, or on grounds of proportionality and Article 8 of the European Convention on Human Rights (right to respect for the home, and for private and family life), following the recent decision of the Supreme Court in the case of *Manchester City Council v Pinnock*. In that case, the Supreme Court endorsed the remarks of the European Court of Human Rights in the earlier case of *McCann v UK*:

*'The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end.'*

14. In the case of housing associations and other registered providers, there may additionally be a defence, or challenge by way of judicial review, on the basis of Article 6 of the European Convention on Human Rights (right to a fair and public hearing... by an independent and impartial tribunal established by law), in view of the absence of a statutory review process in respect of a decision not to renew a tenancy. The amended Tenancy Standard should address this.
15. We have a number of concerns relating to the practical delivery of the proposed system of Affordable Rents. The government has set out<sup>8</sup> that 'the association's calculation of the market rent would need to be based on a residential lettings estimate for a property of the appropriate size, condition and area. Valuations should be in accordance with a RICS recognised method.' This suggests that the responsibility for determining 80 per cent rents falls with housing associations. However no guidance is provided on how 'the appropriate size, condition, and area' should be defined.
16. Furthermore, the CLG 2010 consultation also sets out that 'where a tenant cannot afford to pay, the new Affordable Rents will be eligible for housing benefit'<sup>9</sup>. We believe that safeguards should be put in place to ensure that in future the Affordable Rent level cannot exceed the maximum permissible housing benefit for the area should the rules governing the levels of social rented housing benefit change. This would ensure that households in more acute need can always access Affordable Rent homes both in the

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<sup>8</sup> Hansard (9 December 2010) Written Statement by the Minister for Housing and Local Government on Localism Bill and Social Housing: Affordable Rent

<sup>9</sup> CLG (November 2010) *Local Decisions: a fairer future for social housing* (paragraph 2.6)

first instance or should they face an income shock, e.g. unemployment, while already a tenant.

17. We note that the notes accompanying the Welfare Reform Bill, introduced to the House of Commons on 16 February 2011 state that 'the Secretary of State may limit the amount of rent that claimants' are treated as liable to pay – in the short to medium terms, housing benefit for social rented sector tenants (including those who rent with the new shorter tenures and affordable rents), will continue to be based on actual rents in both housing association and Local Authority properties, including in the new 'affordable rent' tenure, subject to the new size criteria'. This gives some assurance for the short to medium term but not for the long term and highlights the need for a safeguard as noted above.

Yours sincerely,

Roger Harding

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Shelter