

# How we have responded to feedback



**TSA**

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This document provides a 'bridge' between the responses we received on Building a New Regulatory Framework, a discussion document we published in June 2009, and the formal proposals we put forward in our statutory consultation. It should be read in conjunction with:

- National Conversation: Phase One Findings (June 2009) – describes the findings of research we carried out to identify what tenants and landlords are seeking in the new regulatory framework
- Building a New Regulatory Framework (June 2009) – the discussion document in which we set out our initial ideas for the framework including the areas that might be covered by standards
- National Conversation: Phase Two Summary of Responses received (October 2009) – in which we summarise the key themes in the feedback we received on the June discussion document
- A New Regulatory Framework for Social Housing in England (November 2009) – our statutory consultation on proposals to take effect from April 2010

The content of this document is for background information: it does not form part of our statutory consultation. For full details of our formal proposals, please refer to A New Regulatory Framework for Social Housing in England.

## How we have responded

In Part 1 of this document, we describe the way we have responded to feedback on the key questions on the overall regulatory framework (Questions 1-6 and 13-18 in our June discussion document).

Part 2 discusses the key questions on the objective for standards in the new framework (Questions 7-12 in our June discussion document).

## Part 1

# How we have developed the standards (Questions 1-6 and 13-18)

### **Q1. Do the main findings from the National Conversation have resonance with your experience?**

Respondents endorsed the key messages we distilled from the National Conversation research. We have taken confidence from this, that the propositions we put forward in the June discussion document been based on sound evidence of stakeholder feedback.

### **Q2. Does our approach to regulation seem a reasonable basis on which to proceed and one best designed to ensure we achieve improvements for tenants, whilst generating a sense of ownership from landlords?**

### **Q3. Do our key propositions for shaping the new standards framework seem a reasonable basis on which to proceed?**

We were greatly reassured that our principles for a co-regulatory approach that aims to shift the dynamic of tenant-landlord relations were widely welcomed and supported by respondents. The evidence of more than 700 written responses to our discussion document encourages us that a wide range of stakeholders have engaged with

that process, which we hope will continue through the statutory consultation on our proposals and afterwards. We also acknowledge that many respondents wanted to see further details of what co-regulation could mean in practice, and particularly how individual landlords will experience it.

In our statutory consultation document published in November 2009, we describe more clearly the foundation concepts for co-regulation and establish boundaries to the extent of self-regulation by landlords and our expectations of this. We also describe in more detail how and in what circumstances providers can expect regulatory engagement with us, including how we will use our powers.

In our proposals, we have adopted an approach to standards which is as far as possible outcome focused and seeks to avoid detailed prescription. We propose not to introduce any new TSA Codes of Practice for April 2010. This is because we are mindful of our statutory objectives to minimise regulatory burdens and free providers from red tape, allowing them to design appropriate and innovative ways of meeting the outcomes we expect. Our approach also responds to feedback expressing caution about excessive detail in standards and

Codes of Practice, in case this potentially confuses the understanding of the regulatory framework and undermines the co-regulatory approach by being unduly prescriptive. We recognise that making our requirements overly complex could also be disproportionate, especially in relation to smaller providers.

The standards framework will apply to all registered providers. We intend to continue discussions with smaller landlords (those with fewer than 1,000 properties) during the statutory consultation period so that we develop with them a proportionate and tailored approach that reflects the risk profile.

#### **Q4. Does the initial list of areas for national standards and our approach to diversity and tenants with care and support needs seem appropriate?**

The statutory consultation proposes a simpler structure based around six standards that combine areas with closely related objectives and service delivery links. The original 14 areas and two cross-cutting themes are all incorporated, since these were supported by respondents as correct to be included in the new framework. We have sought to rationalise the presentation, responding to feedback

to make them simpler to understand and avoid overlaps.

We have embedded requirements for equality and diversity and tenants with support needs in our expectations of how providers will achieve all the standards across the framework. These areas are linked into the Tenant Involvement and Empowerment standard, since they intrinsically rely on a focus on understanding tenants' needs and expectations, customer profiling and tailoring services that is common with the approach required to deliver good customer service and choice to all customers. In this way, addressing diversity and supporting vulnerable tenants are 'mainstreamed' across the whole regulatory framework. In addition, the importance of catering for diverse communities and those with support needs is brought out through specific references in this standard and others. We believe that this approach is endorsed by the majority of feedback from extensive engagement we have carried out with specialist groups, including our separate Equality and Diversity and Vulnerable People advisory groups.

Our commitment to equality and diversity is also expressed within the ten principles that define the regulatory framework.

**Q5. Do our initial thoughts on the areas where local standards might supplement national standards seem appropriate?**

**Q6. How do you think the tensions should be managed with regard to whether local standards are within or outside of the regulator's intervention and enforcement powers?**

We propose to focus our requirements on local standards to ensure that landlords carry out the necessary engagement with their tenants, so that local offers are developed inclusively and in areas that tenants think are necessary. The outcomes for the processes we think landlords need to carry out are enshrined in the requirements of the Tenant Involvement and Empowerment standard. This clearly means that if landlords do not involve tenants in the development of local offers, we can step in to investigate further. Respondents generally thought that it was not TSA's role, as a national regulator, to understand the factors driving local priorities in sufficient detail to pass judgement on the content of locally agreed standards as a routine activity: that judgement must lie with tenants and landlords working together, and the proposed standard is designed to ensure that this happens.

We also do not propose to set a definition for local, allowing instead that landlords with their tenants can arrive at a meaningful interpretation that could extend to the different needs of client groups, as well as different localities.

**Q13. Does our approach to monitoring information appear a reasonable basis on which to proceed?**

For reporting on the year 2010-11, we are proposing no changes to the standardised data returns that are currently submitted by landlords. This has the advantage of addressing respondents' feedback that we should ensure we rely on this information where it is 'used and useful', and minimise any additional burden at this time.

We are proposing to introduce an annual report on standards from landlords, prepared principally for their tenants to assist transparency, comparability and help their engagement in discussions with landlords about performance. Within the co-regulatory approach, and using the power given to us in the 2008 Act, this will be a self-assessment report on progress against the requirements of the new standards framework, including local standards. It also provides a way for us to take account

of landlords' own monitoring information, while avoiding us prescribing a fixed format for it.

TSA will use providers' annual reports on standards to gain key assurances and contextual information, and it will be taken together with other sources of intelligence such as complaints about providers' performance to support our assessment of compliance against the standards. We acknowledge that for the new standards, the existing standardised data may be an imprecise match and may be insufficient on their own as a direct measure of compliance. If our overall assessment reveals indications of performance concerns, we will ask the landlord for further information. This approach was supported in feedback on the discussion document.

We intend to begin a dialogue with stakeholders during 2010 to establish an appropriate strategic approach to future data demands. We recognise that when there are changes to existing standardised data returns, there can be significant administrative complexities and possibly some costs for landlords. We are also committed to working within the local authority data requirements of the Local Performance Framework, and minimising regulatory burdens where appropriate. We therefore think it is important to maximise the value of any prospective changes to the data we ask for, and that

we should take time through an inclusive process with providers of all types to consider and develop any such changes as might be necessary.

#### **Q14. What are your views on the potential options for a grading system for assessing relative performance of landlords?**

We know that in the main, respondents highlighted the need for any grading system to be easily understood and transparent. On the service delivery standards in particular, we were urged to focus on key facts and information on each of the standards, to design an approach which is fair and comparable across different landlords. This should also take account of the context within which the landlord is operating.

We endorse these aspirations although clearly there are links to, and tensions with, the existing approach to the data we collect as described above. We are committed to presenting the performance data we have in a transparent and accessible way, but we propose at this stage that we should not ascribe a more subjective 'regulator's judgement' or grading on the service delivery standards based purely on this information. In our proposed approach to assessing compliance, we will take performance data into account as one of the sources we use to

identify where we need to ask further questions about a landlord's performance, in order to ensure we are addressing the need to improve poorest performance where tenants are being let down.

In respect of housing associations' performance on governance and financial viability, we know that lenders and landlords themselves place great value in and derive confidence from the regulator's opinion. We will continue to make the detailed analyses necessary in order to continue publishing regulatory judgements in these areas.

### **Q15. What are the best ways we might incentivise good landlords' performance**

We intend to maintain our commitment to 'excellence' and to develop our role in supporting best practice, as a most effective way to encourage improved performance and self-improvement by landlords. We will work, among other ways, alongside established approaches that support improvement in the local authority sector.

Some respondents suggested that financial incentives could also be effective, such as by linking grant funding by the Homes and Communities Agency (HCA) to performance on standards. On that particular point, we are able under the

2008 Act to direct the HCA to withhold grant in circumstances of severe failure, but we do not believe that this power – designed to be used where there is concern about performance – should be used to offer incentives linked to HCA grant funding to strive for excellent performance. We expect to work with the HCA on how we ensure that decisions on funding reflect the performance of landlords in delivering services as well as their ability to develop new homes.

### **Q16. What are your views on our high level approach to dealing with landlord failure (or risk of failure) to meet standards?**

We propose to adopt an approach based initially around how we can support landlords to remedy problems themselves. This principle was endorsed by respondents. The factors we will take into account in deciding whether further intervention is necessary by us are described in more detail in the statutory consultation document, together with the supplementary guidance document on how we propose to use our powers.

Complaints are important to us as a source of regulatory information, whether made directly to us or through our analysis of Ombudsman cases. Our approach to this is set out within our proposed

statutory guidance detailing how we will deal with complaints about providers' performance.

The 2008 Act does not allow us to introduce a mechanism by which tenants' complaints would be able to trigger regulatory action directly in the way some have suggested. The Act requires the TSA to be proportionate and risk-based in the way we use our powers, including regulatory intervention powers, and these mean that we must take due consideration of all relevant circumstances.

**Q17. What approach should we adopt to reviewing the criteria for registration under the new regulatory framework?**

We propose that the registration criteria should be designed to reflect the 2008 Act objectives to open the market to a broader range of providers. The proposed registration criteria will be the same for all applicants irrespective of the type and nature of the organisation, both non-profit and profit-making, and that the registration process should be proportionate to the scale of the activity proposed. We have also made provision for tenant feedback as part of the proposed registration process, where applicants have a track record of providing housing.

The proposed registration criteria are linked to the standards, particularly the areas of governance, viability and tenant involvement. In the approach to setting the minimum requirements, we have been mindful of feedback to ensure that stakeholders' confidence in the sector is maintained, including the assurance that landlords derive from 'being registered'.

**Q18. Do you have any views on how we ought to review the system for provider permissions under the new regulatory framework?**

We have proposed a wider general consent for disposals, where issues are non-contentious, in order to streamline administrative burdens. We have included provisions that ensure the landlord's approach takes into account tenants' interests and local considerations, since these were key considerations in respondents' feedback.

Our view is that it is important to balance some local authorities' interests in disposals with housing associations' freedom as independent bodies, and their ability to manage competing priorities in the way they make business decisions in keeping with their asset management strategies. Our expectations will continue to be that housing

associations will work in partnership with local authorities to develop their strategies. We believe that a balanced approach is achieved through our requirement that housing associations should engage in meaningful and timely consultation with local authorities before applying to the TSA for consent.

## Part 2

# How we have developed the standards (Questions 7-12)

### **Q7 What objectives should we have in mind in shaping the standards?**

In arriving at proposed draft standards, we have taken account of our strategic principles on the objectives for standards (that they should as far as possible be clear, succinct, based on outcomes and avoid prescribing detailed processes). The standards are also based on our proposed approaches for local standards and the cross-cutting themes as detailed in Part 1 above. In this part, we capture the main themes of our proposals within the statutory consultation which are built on responses to each of the discrete standard topics initially put forward in the June discussion document.

The proposed standard that covers tenant involvement and customer service and choice will run through the way in which we would expect services to be delivered for all standards that follow below.

#### **a) Quality of accommodation**

This standard is subject to a direction from the Secretary of State and we propose to base our requirements on the direction itself, also incorporating CLG's existing guidance on the

Decent Homes Standard. Many landlords have future work programmes in place based on this guidance, which allows landlords to aim for higher than the minimum specification. Local standards can be specified in this area, which will allow tenants and landlords together to agree an approach to possible higher specifications, which could extend to energy efficiency enhancement as well as wider environmental improvements, should these be financially viable within the landlord's funding constraints. CLG's Decent Homes Standard guidance also requires providers to have regard to accessibility and mobility issues for tenants' different needs.

We will work with CLG to provide clearer information to tenants that generally raises greater awareness of the details of the Decent Homes Standard and make it easier to understand.

#### **b) Repairs and maintenance**

Our proposals for this standard address tenants' key demand to ensure that providers focus on delivering a service which responds to tenants needs and minimises waste (eg designed to be 'right first time'), and supports the organisation in meeting statutory requirements (health and safety) and quality standards related to the fabric of the

building. This is also an area for local standards, through which we would expect tenants to be able to influence targets towards their needs and aspirations, as well as providing for those who require additional support through aids and adaptations.

### **c) Neighbourhood and estate management**

Our proposal is that this standard should principally address the management of communal areas associated with landlords' housing. Where this is situated on estates and within neighbourhoods, this may also contribute to wider sustainability agendas but that is not the primary objective of this standard. The focus is on delivering management of the local environment through local standards, requiring landlords to provide opportunities for the development of locally agreed specifications. These must take into account tenants' views and encourage partnership working with other landlords, particularly to accommodate proportionate responses so that tenants are clear about their landlord's role in the local neighbourhood.

In line with this focus on effective partnership working, we have changed the name of this requirement to Neighbourhood Management,

placed alongside similar requirements within a Neighbourhood and Community standard.

### **d) Local area co-operation**

Our proposals for the requirements on local area co-operation are also based within the Neighbourhood and Community standard, centring on the need to deliver effective co-operation and partnership working, and for all landlords to contribute to the Sustainable Community Strategy where they are able to. The standard requires landlords to identify the role they will play in areas where they have properties, allowing their governing bodies flexibility to decide with their tenants how to engage proportionately in specific activities and partnerships, taking account of their presence and impact in the area.

### **e) Anti-social behaviour and security**

Our proposals in this area are now linked into the Neighbourhood and Community standard, recognising again the importance of co-operation and partnership in creating and maintaining 'safe' communities, as well as the intrinsically 'local' nature of tenants' experience of anti-social behaviour.

We therefore propose that this is also an area where local standards should be agreed between landlords and tenants, in order to establish a range of factors within landlords' management of anti-social behaviour that are important to tenants. This would be the way in which landlords tailor flexible responses to local circumstances, develop a range of appropriate and proportionate intervention strategies, recognising throughout the particular needs of vulnerable tenants.

#### **f) Customer service and tenant choice**

We are proposing to focus the requirements in this area within the overall objectives of Tenant Involvement and Empowerment standard, since involvement and good customer service are key foundations to the way we would expect landlords to treat and respect their tenants. Also firmly embedded within these requirements is our expectation that landlords will understand the range of diversity and care needs of their tenants, and use this information to influence the design, delivery and communication of all their services. We consider that offering tenants choices is also an important part of servicing tenants' needs.

#### **g) Tenant involvement and empowerment**

The importance of the relationship and requirements between tenants and their landlord runs throughout our regulatory framework and is intrinsic to delivering the full potential of a co-regulatory system. In the specific requirements of the Tenant Involvement and Empowerment standard, we propose to embed the expectations that will give practical effect to the development of our principles around: local standards; tenant scrutiny and accountability; landlords' responsibilities to support tenants' involvement and develop their capacity to engage effectively; and ensuring that tenants who want to are offered opportunities to influence the way their landlord delivers services, including through appropriate levels of tenant membership on their governing bodies or service delivery committees.

The proposals for our requirements take into account the Direction that Government has issued to us to establish a standard for tenant involvement, which we believe is a foundation for empowering tenants, and reflects our fundamental objectives in this area.

## **h) Complaints**

The proposals in this area are now linked to the wider outcomes on customer service, tenant involvement and understanding tenants' needs. Specifically on dealing with tenants' complaints, we propose that landlords should deal with them promptly and courteously, using them as a source of feedback to inform future policy and service improvement. To ensure greater transparency and accountability to tenants, we propose that landlords should demonstrate how they have taken tenants' complaints into account by publishing an annual digest that covers both the complaints received, their outcomes and the impact/learning derived from the landlord's response.

We propose that more detailed service targets, for example a specification for 'promptly', should be developed, agreed and monitored locally with tenants.

## **i) Rents**

We have taken for our requirements in this area the Direction issued to us by CLG following their consultation earlier this year. The standard principally reflects a continuation of the rent restructuring regime, which housing associations

are familiar with. The Direction – and therefore this standard – does not apply to local authorities, pending Government's review of council housing finance arrangements.

## **j) Tenure**

Our proposals in this area confirm our intention not to change the requirement that registered providers must offer the most secure form of tenure compatible with the purpose of the housing and sustainability of the community. The standard therefore is intended to reflect the current requirements on providers, and not to introduce any change in policy. We believe this supports our fundamental objective to ensure that actual and potential tenants have an appropriate degree of choice and protection.

The proposed standard also recognises the statutory and legal requirements that apply to the use of tenancy agreements, which include for example introductory tenancies. We have not sought to prescribe in the standard the circumstances in which their use would be acceptable, since a range of good practice advice on this already exists and is available to landlords.

## **k) Allocations**

Our proposals for this standard focus on three main objectives:

- encouraging landlords to make best use of their accommodation, working in partnership with local housing authorities to meet local housing need
- ensuring landlords' allocations and lettings policies are clear, accessible and understandable by tenants and potential tenants
- ensuring landlords consider tenants' needs and circumstances when they are moving into a new home

We have avoided an overly prescriptive approach to this standard, in favour of an expectation that local standards and local lettings policies may be the vehicle for addressing more detailed arrangements if tenants so wish.

We have been mindful in the development of this standard that a range of existing legislative obligations apply to landlords, including revised statutory guidance to local authorities that has recently been consulted on by CLG .

## **l) Efficiency and value for money**

We believe a Value for Money standard is a necessary part of the regulatory framework. This reflects the TSA's statutory objective in relation to efficiency, economy and effectiveness and to provide a basis on which tenants can expect to engage with their landlords on the extent to which value for money is achieved in the services they receive. Our proposal is that landlords should assess themselves on how and whether value for money is achieved in their activities across the standards framework; and to use appropriate information, shared with tenants to ensure they can contribute to the assessment process and provide challenge to their landlord.

We acknowledge that the Use of Resources assessment within the Comprehensive Area Assessment (CAA) process considers value for money across the range of local authority functions, and we will work with the Audit Commission to ensure that in practice there is effective information exchange and no duplication for landlords. However, we believe our requirements will appropriately enable tenants of local authorities to scrutinise value for money secured in the delivery of the differing housing services, at a level beneath that on which the CAA will focus. We are therefore

consulting on a proposed Value for Money standard that applies across the domain. We will link this to the work the Audit Commission undertakes in relation to the annual 'use of resources' judgement it makes in respect of local authorities across all their functions.

#### **m) Governance**

The proposed Governance standard draws together the strengths from the three options put forward in the June discussion document, reflecting the wide-ranging support expressed for all three potential approaches. In this way we seek to put outcomes for tenants at the heart of the governance requirement, take away the burden of prescription, allow flexibility and scope for a truly co-regulatory approach, and build in incentive to drive up standards whilst the key elements of good governance. This approach also provides flexibility to landlords to run their business according to a suitable and appropriate code of practice, to make best use of established good practice from across the sector and the corporate environments, whilst retaining accountability to the TSA for their performance within it.

The Governance standard, will apply only to non-local authority landlords registered providers.

#### **n) Viability**

Our proposals reflect the widespread support from respondents for a national standard with discrete requirements on viability. We propose to build on the inherited approach and to continue with our practise of carrying out an independent assessment of financial viability that provides assurance to landlords' boards, lenders and other stakeholders. The proposals focus on requirements which are clear and transparent and highlight the importance of landlords' financial management, risk and control framework and proper board oversight.

The Viability standard, like the Governance standard, will apply only to non-local authority landlords.

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