



Every tenant matters: a review of social housing regulation

A report by Prof. Martin Cave into the system of regulation of social housing.

Key issues

New independent regulatory body proposed
Responsibility for regulation of all social housing providers
Objectives of continued high quality social housing, empowering and protecting tenants and expanding the availability of choice of provider in the provision of social housing

1. Introduction

This report was commissioned by the Secretary of State for Communities and Local Government because, "in the twenty first century we need a regulatory system that enables social housing to respond more effectively to people's changing needs. That gives tenants more opportunity to have their say, and demand action on the issues that matter to them. And that ensures Government gets the most out of its investment."

The terms of reference for the review are to establish those objectives for social housing regulation and to propose, from a range of options, the system which the review recommends, and the institutional arrangements which will be most capable of achieving the objectives.

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The report can be found at <http://www.info4local.gov.uk/documents/publications/276640>.

2. Background

The foreword by the Secretary of State for Communities and Local Government notes that the current system of social housing regulation was introduced 30 years ago and that society has changed enormously since then including tenant's expectations. It notes that satisfaction with social housing is relatively high compared to other public services but has started to fall in recent years. Equally people have come to expect greater influence over the services they receive.

The report opens by describing the scale of social housing provision with 4 millions homes and 8.4 million people covered by the review. The 4 categories of provider are local authorities, ALMOs, housing associations and unregistered bodies including the for-profit sector.

The current regulators for local authorities are the DCLG. ALMOs are regulated by the relevant local authority. Housing associations and for-profit developers are monitored by the Housing Corporation. Furthermore local authorities, ALMOs and housing associations are subject to inspection from the Audit Commission.

3. Is regulation of social housing necessary?

The report notes that the question of regulation must be addressed in contexts which include the provision of social housing at affordable rents, below market prices. The issue of the need for social housing has been addressed in the recent Hills Report (Ends and Means: the future of social housing in England) and this report came to the view (supported by the Secretary of State) that the main principles underpinning current social housing policy should remain.

Professor Cave feels that the provision of social housing at affordable rents (which are below market prices) creates a system which makes it very difficult for tenants to switch between the two sectors. It puts tenants at risk of poor treatment by some providers who are under limited pressure to offer good service and choice because some tenants have no alternative but to remain in the affordable sector. Under competitive market conditions (i.e. the private sectors) there is a built in corrective force to poor service and inefficient provision which does not exist in the current social housing market. As a result there is a strong case for a regulatory function in the social housing sector to protect tenants who do not have the same options as would be open to those paying market, rather than affordable, prices. The fact that housing determines the wider quality of life in a neighbourhood means that poor quality of service has impacts upon communities as well as individuals. Good and bad housing services thus permeate widely, creating beneficial or detrimental external effects – a further reason for ensuring effective regulation.

The report goes on to note that taxpayers have an interest in ensuring that their investments in the supply of social housing generate satisfactory returns in the public interest, an outcome that regulation can help to secure.

4. Current regulation

Although the report notes that the current regulatory system has delivered many benefits it describes some shortcomings. These include inadequate concern for tenants, over-regulation of some providers and excessive administrative burdens, inadequate separation of policy and regulation, poor incentives for efficiency and a failure to fully utilise available capacity to expand provision in the housing association and private sectors.

Three principal objectives for the regulation of social housing have been identified in the report as

- ensuring continued provision of high quality social housing
- empowering and protecting tenants
- expanding the availability of choice of provider at all levels in the provision of social housing

The report goes on to say that the regulatory system itself should achieve these objectives with a minimum degree of intervention and should apply the same approach, where possible, across all providers of social housing.

5. The consequences of focusing on tenants

The report notes that a key structural feature of social housing provision, demand exceeding supply, makes it vital to enhance tenant power and ensure their protection.

Although there are a broader range of services relevant to housing (such as educational or training services) the review concludes that a regulatory system should cover only core housing services. The report identifies examples of both individual and collective choices which tenants make and justifies the importance of tenant empowerment. The review identifies a range of ways of empowering tenants which go some way to eliminating the current imbalance in bargaining power between provider and tenant.

6. The need for an independent regulator

The report states that regulation is best accomplished by an independent regulatory body created by statute. It should be assigned duties and given powers to collect information and enforce its decisions, with a Board of executive and non-executive directors, appointed by the Secretary of State.

A range of options to regulation are considered and the review concludes that the approach should be based on

- eliminating unnecessary regulation
- encouraging co-operative activities by providers (e.g. voluntary benchmarking)
- having providers supply data to the regulator to enable risk-based analysis and a scale of regulatory interventions if necessary and
- maintenance of a quick response capability to deal with emergency situations such as tenants at serious risk or a provider in financial danger.

7. The proposed system of regulation

The report states that an independent social housing regulator should be established by statute, with specified duties and powers relating to the ownership and management of social housing.

The Secretary of State would have powers to direct the regulator in two areas. Firstly as a result of tax-payers' contribution to social housing, Government is entitled to set strategic directions for housing standards. The regulator would define both physical standards of accommodation and services ancillary to housing such as those from the Respect agenda as well as a relevant timetable. Secondly the Government has a legitimate interest in the overall level of rents and would set a strategy for rents with the regulator turning such a strategy into regulations imposed on housing providers for example specifying limits on annual rent increases.

The regulator should have the power to require social housing providers to engage constructively and co-operate with local authorities so supporting the local authority's leadership and place-shaping roles.

Housing providers will also be required to supply information to the regulator in a form disaggregated by local authority area, including data on tenant satisfaction, which will be published. The regulator should also be under an obligation to investigate and respond to appropriately documented local authority complaints about providers.

8. Basic strategy for regulating providers

The review envisages that providers will annually furnish data on tenant satisfaction, tenant involvement and choice, standards of housing and service provided, financial projections (for housing associations only), average operating costs and rents. Complaints data will also be provided to the regulator.

While the regulator will focus on poor performance and serious complaints, performance that is merely satisfactory will continue to attract attention. The review envisages significantly lower levels of regulation as performance improves over time.

Where cause for concern is found the regulator will, where appropriate, institute a graduated series of actions which can culminate in extreme cases in a requirement to change the management of the stock and in the case of some providers, a power exercised by the Secretary of State or the regulator to take control of the assets.

9. Organisational arrangements

The review proposes that both the Housing Corporation and the Audit Commission should be controlled by the regulator which would sub-contract particular tasks, including inspection. Having considered and dismissed the options of having Communities England or the Audit Commission as the lead body, the review favours

the creation of an independent social housing regulator which would provide a fresh start at implementing a new approach wholly focused on social housing.

The review feels that the Government should also establish and fund a national tenant voice to express tenant's interests nationally. A single Ombudsman service for social housing should also be established to take over from the existing arrangements where two are in place.

10. Recommendations

A series of 36 recommendations are made, the majority to the Secretary of State and the remainder to the regulator. They cover the establishment of a regulator, duties, aims and powers of the government, regulator and providers. They include the creation of a national tenant voice, a single Ombudsman, the power of the regulator to cap annual increases in rent, the power to de-regulate rents where appropriate and the power to apply a range of remedial and enforcement measures.

Recommendations for the regulator include introducing measures which stimulate competition for management of social housing services, implementing a strategy for managing information requirements on providers and making it available to the public as well as developing a range of ways of triggering interventions.

11. Comments

APSE welcomes this review as timely bearing in mind that fact that the existing arrangements were put in place 30 years ago and circumstances have moved on. APSE supports the focus on improving services and tenant empowerment and agrees with the argument made for a regulatory function to protect those who live in and contribute to social housing. The Hills report concludes that social housing will have a role to play in the foreseeable future and so it follows that the need for a regulator will also remain.

The Cave report refers to the existing arrangements, specifically the role of the Audit Commission and Housing Corporation and their regulatory responsibilities. There is a danger that a new body installed on top of the existing two will simply increase levels of potential duplication and confusion and this must be avoided.

The Government has been very active in its promotion of progress made by local authorities and other related bodies such as housing associations in terms of improved service to users, enhanced involvement and performance management. Within the context of Best Value, the Audit Commission and Housing Corporation have been mentioned on a regular basis as one of the contributory factors to that success. Clearly there is a significant amount of experience held within these organisations which must not be lost during the creation of new arrangements.

The report notes that neither the Audit Commission nor the Housing Corporation is in a position to take on the lead regulatory role. It will be interesting to see whether these two organisations are willing to stand by and accept such a suggestion without making

their own case for a more influential role than the other. Throughout the process of establishing the organisational arrangements the end product must be kept in mind – an effective framework for the benefit of tenants – rather than a result for either the Commission or Corporation.

The report does state that further work will need to be done to clarify the scale of the new organisation but it recommends that there is a good argument for having regulation funded by contributions from the providers of regulated services. Within the context of ‘a radical new approach to social housing regulation’, it is to be expected that the scale of any new body will be small and so overall contributions will not exceed those currently paid for regulation. There are a number of factors which justify this expectation. The improvements in service performance that have emerged from the social housing sector over the recent past lead APSE to believe that the need for some elements of the current regulatory framework have reduced namely, the collection of large amounts of data and the rota of inspection visits. The Government has stated elsewhere that it will attempt to reduce the burden of information requests made to local authorities and the same approach should be passed on to other housing providers. The move towards more self assessment backs the argument for less intrusive regulation. Ownership of any future regulatory framework by the providers is vital if it is to be effective and involving those providers as much as possible will aid this aim. This means that providers’ existing procedures should incorporate an approach which prevents the circumstances requiring intervention of any kind occurring. With the above in mind it would be hoped that any new regulatory organisation would be small in scale with an emphasis on building capacity within providers - a role which is just as important as regulation.

There remains an opportunity to promote self help amongst the social housing sector. As a provider of a national benchmarking service APSE agree with the support given for voluntary benchmarking and hope that the new regulatory body will promote good practice across the sector as the first line of support for those providers struggling with services.

The report refers to the need to apply the same regulatory approach, where possible, across all providers of social housing as a principle underlying the design of the regulatory system. Such an approach should not result in a system which attempts to collect identical information from each provider, analyse it in the same way and act upon it in line with a single response. There are any number of different factors which influence service providers and their level of performance and any regulatory system must be flexible enough to accommodate these. The charge of inflexibility was one regularly made at the Audit Commission in the early days of Best Value and this lesson must be learnt. Although the general objectives of social housing providers should be similar, the system should not be organised to meet the needs of the regulator but to reflect the needs of tenants and the myriad of differing circumstances that they live in.

The report claims that “tenants, who are more interested in the service than in the nature or status of the provider” is true – they are more interested in the service but it is important to remember that they are not disinterested in the provider. When given an opportunity to choose who that provider should be, increasing numbers are voting to

stay with local authority providers rather than move to registered social landlords. Amongst other things, this reflects the fact that tenants are interested in issues such as local accountability, opportunities for interaction with local decision makers and the chance to define who their service provider will be. The message for the regulator is that local accountability and involvement are vital issues for tenants. Although providers may be operating within a strategic framework, local interaction between providers (who have an influence upon the range of services impacting upon issues relevant to housing and neighbourhoods) and users will remain the most effective path to service improvement. APSE acknowledges that there is a role for organisations with different management arrangements (stock retaining councils, ALMOs and registered social landlords) and has lobbied for all to have similar access to the same level of resources. However if local interaction between tenants, other citizens and local organisations is to be real, the local council must be involved. It has a role either as a direct housing provider or with strategic housing responsibilities as well as its community cohesion, leadership, place shaping and wider neighbourhood agenda interests.

The report states that “while the regulator will focus on poor performance and serious complaints, performance that is merely satisfactory will continue to attract attention”. This statement could give the impression that the new organisation will have a greater level of resources than will be the case. Previous regulatory schemes have promised more than were subsequently able to deliver, leaving providers to question the support for the regulators from Government. Any new regulator must ensure either that it is adequately resourced to meet its stated objectives or look to focus attention on poor performers whilst leaving the majority to continue a recent history of improvement.

APSE welcomes the intention that the regulator should support the supply of new social housing. Although this may not initially fit the traditional aims for a regulator it is a vital issue bearing in mind the level of demand in the sector. Local authorities and housing associations have proved in the past that they are adept at building and managing housing stock. The leadership role currently being promoted for local authorities means they will put housing at the centre of a range of council provided services which can have a major impact on the quality of life of local people. Such services include community safety, warden services, refuse collection and street cleansing, parks and open spaces and street lighting as well as community cohesion and area management.

A point made in the conclusion to the Hills report is important, “if social housing is to fulfil its potential, new approaches are needed”. This message must be carried into the work of a regulatory body. It must be ready to consider new approaches to regulation, work with the providers whilst appreciating the resource restrictions many work under, be prepared to trumpet good practice and promote knowledge sharing and most of all consider the needs of tenants and their local circumstances.

The issue of standards is critical. The report notes that the Government is entitled to set strategic directions for housing standards and that the regulator would define both the physical standard of accommodation and services ancillary to housing. APSE has been calling for a wider ‘Decent Neighbourhoods Standard’ to replace the current ‘Decent

Homes Standard' which will cover issues such as energy efficiency, communal facilities and environmental sustainability as well as others including community cohesion, crime and disorder reduction, neighbourhood empowerment and sustainable construction. The regulator should be willing to work with organisations such as APSE who are helping to develop a new view for the future of housing.

APSE looks forward to the Government's response to the Cave and Hills reports following the recent publication of the Housing Green Paper 'Homes for the Future'.

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