



ARCH RESPONSE TO TSA CONSULTATION ON REGULATORY FRAMEWORK

BACKGROUND

The Association of Retained Council Housing (ARCH) is pleased to have the opportunity to respond to the consultation on the TSA regulatory framework.

ARCH was set up as an organisation for councils whose tenants have chosen the local authority as their landlord. ARCH brings councils who own and manage housing together to get the best deal for their tenants. Therefore it was particularly important for ARCH to respond to the TSA consultation as a collective voice for councils who own and manage their own housing stock.

RESPONSES TO QUESTIONS

- 1. Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?**

In the broadest terms ARCH accepts that the criteria laid out in the consultation are a reasonable basis to develop the new framework. It must also be clearly stated, in accordance with the LGA request that any regulatory framework will be in “total consistency” with the LPF. We would also want to see a principle established which commits the TSA to ensuring that regulation, and the cost of that regulation, is kept to a minimum and that there is a demonstration of the cost benefits, to all stakeholders of the regulatory framework in place. We would make the following observations:

- We agree that the methodology for developing National Standards should be based on clear criteria. Common expectations, as expressed through the National Conversation, are not necessarily a good or appropriate means of establishing national priorities. We are concerned that the National Conversation itself was limited, with timescales inappropriate to this level of consultation, and results from this should be treated with a degree of caution.

- Whilst we accept that the TSA is obliged to comply with government directions, such directions may be perceived as being politically motivated towards achieving government objectives and may not accord with local requirements and local circumstances.
- To add to this, the setting of criteria to enable the TSA to meet its objectives will, in effect, enable the TSA to set standards across the full range of landlord services. In doing so we have concerns, as outlined in the introduction to this letter that the role of the TSA may grow exponentially and have the effect of increasing the regulatory burden on local authorities.

There is a potential conflict between the setting of national standards and the agreement of local standards if residents do not wish to see a national standard applied locally. It would be helpful if the TSA could set out its view should such a situation arise.

Additionally, any standards must have regard to them being too aspirational and effectively undeliverable either in terms of cost or in terms of what is being required (for example if tenants do not want to be empowered but do want the landlord to concentrate efforts and available funds on delivering better services).

The requirement to publish an annual report on achievement against national and local standards within two months of the close of the financial year is unrealistic and we would expect to publish any performance information in line with the corporate approach of the Council. We would suggest an alternative target date of 1st October every year.

Principle VIII also needs to be expanded to identify the incremental nature of the development of the TSA regulatory role. The TSA will not be fully formed as a regulator at the 1st April and this needs to be acknowledged as does the consequences of this.

The use of external validation, whilst a useful tool, should not be mandatory and our view is that, given the likelihood of disparate local standards, this will be difficult to achieve in practice.

With regard to the intention to concentrate on poor performing providers we would query why this is a stated target for 2010-11 only? It would seem appropriate for the majority of the regulators resources to be concentrated on this area for a period of some years in line with the stated aim of intervention on a 'by exception' basis.¹ We would also expect any fee structure to be proportionate to the level of intervention.

2. Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?

¹ A new regulatory framework for social housing in England (Chapter 2, paragraph 2.3 p.17) – TSA Nov. 2009

We welcome the decision to reduce the number of proposed national standards from 14 to six and for the focus on local standards. However, Arch is aware that in the discussion paper released in June 2009 the 14 standards were grouped into 6 themes and in the draft consultation document there are 6 standards but they still cover the 14 areas/standards from the discussion document so it could be argued that there has not been an actual reduction in national standards. We also welcome the decision not to issue any Codes of Practice and the assumption that circulars issued by the predecessor organisation, the Housing Corporation, will not be incorporated in the standards framework as such items work against the presumption of delivering a service to meet local needs and expectations.

We note that you are not proposing to prescribe the definition of the term local. Whilst we appreciate that such terms cannot be prescriptive there is a concern that too open ended or indeed a non definition could lead to demands for local standards where in effect it is not practical or in any way cost effective to set them (e.g. for a particular block or small estate). We would expect the TSA to take a common sense approach to such issues.

3. Does it seem reasonable to extend the same approach to those providers owning fewer than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?

We would support a proportionate response to providers owning fewer than 1,000 properties and would not expect the full breadth of standards to be applied.

4. Do our proposals on how we will approach the regulation of local authorities appear reasonable?

We welcome the TSA's statement that they wish to avoid unnecessary burdens. However, as stated above we are concerned that as drafted the regulatory framework proposed does not provide sufficient comfort that the TSA will support the LPF and be in conformity with the objectives of the LPF. The TSA has set out its intention to look at a range of performance data and require submission of annual reports. The new regulatory framework should not duplicate measures that are already in place and should embody the 'Count Once and Use Numerous Times' (COUNT) principle adopted by the Audit Commission. It is also noted that the CAA is the last in the listing of information that will be reviewed. It would be helpful if the TSA could explain the rationale for this.

We would wish to see the Memorandum of Understanding between the TSA and the LGA before commenting on the approach to the Local Performance Framework.

In responding to this point we must query some of the statements made in the consultation document. Paragraph 5.8 states that the TSA may refer issues to the Audit Commission 'Where we believe, on the basis of clear evidence, that financial management is not satisfactory...'. We would ask how the TSA expects to make such judgements, without the submission of any financial reporting data?

We would also reiterate our position that the TSA should regulate both ALMO's and TMO's directly. In this respect we note that the regulatory guidance does not identify TMO's (apart from the Glossary) as an entity that provides housing management services and therefore fails to identify or acknowledge the potential challenges of requiring such organisations to for instance set or agree local standards where these are necessary.

5A Does the proposed text for the Tenant Involvement and Empowerment standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct, and as outcome focused as possible?**

In regard to involvement and empowerment, ARCH members have been undertaking this for nearly 40 years and completely support the objective of involving and empowering residents to the level of their choice. It is important that this standard emphasises that, whilst it is important for Councils to ensure that the opportunities and support are available, involvement and empowerment in itself should not be a requirement in itself. Residents should be clear that receiving a high level of service should not be dependent upon their involvement. A high level of service should be provided anyway. In this respect perhaps there should be further consideration as to the language used here in terms of the tenant (and leaseholder) being a consumer and customer?

We would appreciate some clarification from the TSA on whether the review of the framework for tenant participation compacts (TPC) (which CLG have intimated will be happening in the near future) will have an impact upon the tenant involvement and empowerment standard. This is in light of CLG stating that the standard should not exceed the requirements set out in the national framework for TPCs.

Arch also has some concern over the use of the word 'choice' in this standard. Within the financial constraints imposed upon local authorities the concept of any choice is severely limited in its application. If this is an attempt to allow residents a greater freedom to choose, for instance, the time and date of appointments then we agree with a move from strict adherence to repair times that do not accord

with residents' wishes. However, the definition needs to be more clearly stated for the previously mentioned reason.

With regard to the issue of complaints, we broadly agree with the standard set other than where it requires the landlord service to differ from the corporate standards set as a local authority. Issues such as complaints apply across the range of services provided by a local authority and are monitored by existing arrangements. Given the stated objective of the TSA not to impose additional burdens on local authority landlords we do not believe this is an area where a national standard should be set.

5B Does the proposed text for the Home standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

Although we broadly agree with the standards as drafted we would welcome further clarification as to the use of the word 'choice' in terms of the provision of repairs and maintenance services (this is not we assume choice of contractor although tenants are often involved in the selection of contractors through the tendering process). Also in respect of 1.3 setting a local standard that is higher than the standard set out in 1.1 is laudable but dependent on resources being available to set and deliver against such a standard.

5C Does the proposed text for the Tenancy standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

The standards on rent and tenure are sufficient as drafted.

We broadly agree with the standard on Allocations but would have welcomed a drive towards a more consistent approach across registered providers, in their approach to working with local authorities as this produces the greatest difficulties in meeting identified housing need. The wording at 1.1 page 54 should also recognise (or it should be acknowledged in the preamble) that local authority landlords will already be co-operating with local authorities in meeting strategic housing objectives. As with 1.4 local authority landlords will also allocate as they are required to meet annual allocation plan requirements and in line with the Council's Allocation Scheme.

Additionally, greater emphasis on addressing the needs of vulnerable people would have been welcome.

5D Does the proposed text for the Neighbourhood and Community standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

The standards on neighbourhood management and local area co-operation are reasonable. However, we would urge the TSA to acknowledge that local authority housing management services will already be co-operating with local strategic partnerships and if they are not this will be picked up in the LAA OR CAA assessments. The TSA does not need to separately monitor this area for LA's outside these existing regulatory processes.

We agree with an approach which encourages plans for improving neighbourhoods as this is particularly important for Councils in their place making role. However, it must be recognised that such activities need to be proportionate to the resources available and the challenges identified.

With regard to the standard on anti-social behaviour we would refer to our comments in the introduction to this response concerning potential for the exponential growth of regulation. With its reference to the Respect Standard for Housing Management (and implicit acceptance of this standard becoming mandatory) this concern is demonstrated by expecting adherence to a very prescriptive standard. We would expect that the standard should be at a level higher than that drafted. We also understand that the Respect Standard is in the process of being re-drafted which makes it difficult to comment fully until the revised draft is available.

Paragraph 3.2 seems to be focused on registered providers rather than local authorities and therefore not in keeping with the principle of co-regulation. The different challenges facing both sectors are therefore not reflected in this standard.

We believe that this standard requires re-drafting to make it far more succinct and outcome focused than is the case at present.

5E Does the proposed text for the Value for Money standard:

- **address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?**

- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

We are surprised that the TSA feels the need for such a standard when there is already sufficient requirement, related regulation and audit within the local authority sector to both achieve and demonstrate value for money.

This standard therefore should not apply to local authority landlords as it is duplication.

5F. Does the proposed text for the Governance and Financial Viability standard:

- **allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?**
- **express requirements of providers in a way that is clear, succinct and as outcome focused as possible?**

We do not propose to comment on this standard as it does not apply to local authorities. We do note that again the TSA states that it will work closely with the Audit Commission if “any issues” arise in your work on service delivery regulation. We would urge the TSA to be mindful to not over stepping its responsibilities and becoming involved in areas of regulation which are not its responsibility and may foster duplication.

6 Does our approach to monitoring and compliance against the standards and regulatory requirements seem a reasonable basis for ‘how’ we regulate in 2010-11?

The stated approach to monitoring and compliance is broadly acceptable. We would expect the approach to monitoring and compliance to be proportionate and as stated above to continue to focus on service delivery issues in the poorest performing providers rather than the generality of providers.

However, we would make the following comments.

One consequence of setting non-prescriptive targets as part of the standards is that it may be difficult to compare performances between landlords as methods of delivery may be too diverse to allow for direct comparison.

We would also re-iterate our concern that 1st July is too soon after the end of the financial year for a full report to be published to residents. We would suggest an alternative date of 1st October in each year.

7 Does our approach to dealing with complaints seem reasonable?

We agree that the approach to complaints as drafted appears to be broadly reasonable. There is the question of costs to the TSA, and potentially tenants, of investigating some forms of complaints. There could be a position taken that complaints of any form (other than where there is an immediate threat to life and limb) will only be investigated where internal complaints processes have been exhausted. The TSA also needs to consider the role of the Local Government Ombudsman (LGO) and Housing Ombudsman (HO) in regards to dealing with complaints. At present the LGO and HO enable residents to progress with a complaint once the local authority complaints procedure has been exhausted. Does the TSA envisage that they would deal with complaints in addition to or instead of these organisations?

Additionally, the TSA will need to demonstrate to providers that they have the ability and skills to investigate such complaints. In this respect we also note that TSA staff roles and directorates are only just being established and that they need to be operational by the 1st of April?

8 Is our general approach to using our formal regulatory and enforcement powers reasonable?

Whilst we agree that the general approach to using the formal regulatory and enforcement powers is reasonable, we would raise a query over the power to direct a tender of the management service.

Where the management service is split between different providers (ALMO, TMO or contractor), will the failure to provide an acceptable service by one management provider result in the tendering of the services provided by all? The consultation is silent on this issue and we would appreciate clarification of the point.

Similarly, we would be grateful for clarification of the approach to be adopted when a service is deemed to require sanctions of this nature yet resident satisfaction remains at a reasonable level. Will residents have any influence on any action taken by the regulator? Clarification would also be appreciated on the more practical elements of the TSA taking enforcement action. Information on timescales involved before the TSA decides to use its regulatory and enforcement powers are not clear at present and more information is needed.

9. Do our proposals for establishing registration and deregistration criteria seem reasonable?

This section appears to be largely irrelevant to local authorities addressing, as it does, requirements about governance and financial viability over which the TSA has no remit for the local authority sector.

Given the restrictions on the ability of local authorities to raise private finance, we would, again, strongly urge the TSA to rescind the levying of registration fees on the local authority sector. If the TSA does decide

to levy fees on the local authority sector we would hope that it would take a common sense approach to this and take into account the size and resources of the providers.

10. Does our approach to issuing directions on Accounts and the Disposal Proceeds Fund seem reasonable?

We do not propose to comment on this question as it does not apply to local authorities.