

CABINET (HOUSING) COMMITTEE

22 SEPTEMBER 2011

IMPLEMENTING SOCIAL HOUSING REFORM: DIRECTIONS TO THE SOCIAL HOUSING REGULATOR

REPORT OF HEAD OF LANDLORD SERVICES

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RECENT REFERENCES:

PHD321 - Government Consultation on Local Decisions: A Fairer Future for Social Housing dated 17 January 2011

EXECUTIVE SUMMARY:

In January 2011, the Council responded to the consultation paper, "A Fairer Future for Social Housing" which set out Government plans for Social Housing Reform as a key priority within the Localism Bill.

The Government is now seeking views on proposals to issue specific directions to the Social Housing Regulator on a number of areas previously consulted on, including Tenure Reform, Mutual Exchanges, Tenant Empowerment, Affordable Rent and Quality of Accommodation.

This report details the key issues included in the latest consultation and provides recommended responses to the key questions in the consultation paper, which requires responses by 29 September 2011.

RECOMMENDATIONS:

That the draft responses to questions detailed in the Appendix form the Council's response to the Consultation on Implementing Social Housing Reform.

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DETAIL:

1 Background

1.1 As part of their proposals for social housing reform through the Localism Bill, the Government are currently consulting on proposed regulatory changes required to make the reforms work in practice. This consultation outlines the areas on which the Secretary of State proposes to direct the social housing regulator to set standards. These are:

- a) **Tenure reform:** to allow social landlords to issue flexible tenancies, subject to conditions, to make better use of existing and future stock. In implementing these reforms, the rights of existing secure and assured tenants will be protected.
- b) **Mutual exchange:** to require landlords to enable access to internet-based mutual exchange schemes allowing tenants who want to move the best possible opportunity of finding a match, making the scheme truly national for the first time.
- c) **Tenant involvement:** to strengthen landlord accountability to tenants and support the Tenant Cashback model, providing new opportunities for social housing tenants to get involved in commissioning repair and maintenance services for their homes.
- d) **Rent:** to make changes to reflect the introduction of the Affordable Rent model.
- e) **Quality of accommodation:** to clarify that providers are expected to maintain their stock at a decent level.

1.2 This report summarises the proposed regulatory changes and recommends suggested responses to the Government proposals. The deadline for response is 29 September 2011.

2 The Direction on Tenure Reform

2.1 Following the commencement of the Localism Bill, the Council can **choose** to offer flexible tenancies for a fixed term for any **new tenants** (the rights of existing secure and introductory tenants are unchanged). New tenants will initially be granted an introductory tenancy and if this 'probation' period is completed successfully, the tenancy would convert to a flexible tenancy.

- 2.2 The draft direction included in the consultation paper requires all providers to “*offer and issue tenancies which are compatible with the purpose of the housing, the needs of the individual households, the sustainability of the community and the efficient use of their housing stock*” which replaces the existing standard of “*offering the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community*”.
- 2.3 The flexible tenancy will be for a fixed term and the tenant will have similar rights to a secure tenant (as set out in the Housing Act 1985) during the fixed term, including the Right to Repair, Right to Buy and the same grounds for possession will be available to the Council. Flexible tenants will not however have a statutory right to improve their property or be compensated for those improvements (as is the case with introductory tenants).
- 2.4 Whether a tenant will be able to remain in their property at the end of the fixed term will depend on the Council’s ‘tenancy policy’ which sets out the circumstances in which tenancies may or may not be renewed (see below). An assessment will need to take place no later than 6 months before the end of the fixed term to consider the tenants current circumstances in conjunction with the tenancy policy.
- 2.5 Where a tenancy is not being renewed, a notice would have to be served (at least six months before the end of the fixed term) setting out the reasons why another tenancy will not be granted and offering a right to review. Further notice must be given at least 2 months before the end of the term. If the tenant refuses to leave the property, possession proceeding would have to be instigated.
- 2.6 At the end of the fixed term, the Council would have an unqualified right of possession in domestic law, as is the case with introductory tenancies. The court could only refuse possession if the correct procedure had not been followed or if the court is satisfied that the decision not to renew the tenancy was otherwise ‘wrong in law’. The court could then direct us to undertake a further review of tenant’s circumstances.
- 2.7 However, in view of the recent Supreme Court cases (*Pinnock & Powell, Hall & Frisby*) which clarified tenants may mount a Human Rights challenge where the landlord has an unqualified right of possession, Landlord Services must be prepared for potential proportionality defences by tenants.
- 2.8 The Council in its role as a registered provider will be required to produce a ‘tenancy policy’, reflecting the overarching objectives of the Council’s ‘tenancy strategy’. The policy will set out:
- a) The kinds of tenancies that will be granted
 - b) If tenancies are granted for a fixed term, the length of those terms
 - c) The circumstances in which different kinds of tenancies will be granted
 - d) Any exceptional circumstances in which tenancies for a term of less than 5 years will be granted

- e) The circumstances in which tenancies may or may not be reissued at the end of the fixed term in the same or in a different property
- f) The way in which a tenant may appeal or complain about the length of the fixed term offered, the type of tenancy offered and against a decision not to renew on expiry of fixed term
- g) How the needs of those households who are vulnerable by reason of age, disability or illness, households with children, including through the provision of tenancies which provide a reasonable degree of flexibility
- h) The advice and assistance that will be given to tenants in the event of a tenancy not being reissued.

2.9 The Council will not be able to grant fixed term tenancies until the tenancy policy is in place.

2.10 In its response to the Government consultation on “Local Decisions: A Fairer Future for Social Housing” in January 2011, the Council raised a number of concerns with the potential implementation of flexible tenancies. However, this consultation is not seeking responses on providers views of flexible tenancies but focuses on how they will work if they are used. Whilst the draft directions seek to not be prescriptive, it give little guidance on the application of flexible tenancies in practice and the draft responses to questions as detailed in the appendix seeks further clarification on how this will be determined.

3 The Direction on Mutual Exchanges

3.1 The Localism Bill provides a power for the Secretary of State to direct the Regulator on the content of a Standard for registered providers on “methods of assisting tenants to exchange tenancies”. It is intended that this be used to ensure the implementation of a nationwide social home swap programme by requiring landlords to provide tenants access to internet based home swap services, with support for those without internet access.

3.2 The Council already meet this requirement through its subscription to “Homeswapper”, a national system on which all applications for mutual exchanges are managed and made available nationally.

4 The Direction on Tenant Involvement and Empowerment

4.1 The Government is proposing that tenants should have a range of opportunities to influence and be involved in *“the scrutiny of their landlord’s performance and the making of recommendations to their landlord about how performance might be improved”*. It is expected that providers should welcome scrutiny via a tenant panel (or equivalent group). They will also be required to provide timely performance information to tenants to support effective scrutiny.

- 4.2 The City Council already meet the requirements of this part of the direction through their work with TACT and other resident bodies and through the publication of the annual report to tenants.
- 4.3 The direction will also seek to give tenants greater opportunities to be involved in the management of repair and maintenance services to their home. It refers to a specific example (Tenants Cashback Scheme) which would allow tenants the option to carry out their own minor, non-urgent repairs and then to claim the cost back from their landlord. The idea is that tenants who choose to take up these opportunities will be able to take more responsibility for the upkeep of their homes and neighbourhoods, share in resulting efficiencies, and “bank” the savings or invest them collectively in wider community projects (eg. providing estate play equipment etc.). They may also gain practical and transferable skills. Other perceived benefits include the strengthening of bonds between neighbours, and freeing up access to the “maintenance pie” for smaller local traders/contractors.
- 4.4 The intention is that the proposals will not be prescriptive in nature, but registered providers will be expected to offer opportunities to their tenants to be involved in managing repairs and maintenance services and to share in savings made. The Tenant Cashback scheme is currently being trialled by a small number of providers.
- 4.5 The City Council already works closely with tenant groups and TACT to review maintenance programmes and policies. TACT’s Property and Contracts Group have for many years challenged standards and performance and have played an effective role in shaping the current service.
- 4.6 However, specific schemes to promote direct involvement of tenants in carrying out their own repairs have a number of drawbacks. One long-running “self-help” scheme (Northern Ireland Housing Executive – scheme operating since 1980) has seen take-up dwindle as their repairs service has improved. In reality, ensuring quality is achieved through such schemes is likely to negate any potential savings in most cases.
- 4.7 It is proposed that the response to the consultation raises concerns regarding this and reserves judgement on the benefit of such schemes pending the outcome of the current Tenant Cashback trials, particularly those that already meet Decent Homes and have high satisfaction levels in relation to the quality of homes and repairs and maintenance services..

5 Affordable Rent

- 5.1 The Government is proposing to update the existing direction on rents to reflect the introduction of the new Affordable Rent model (up to 80% of market rent when a property forms part of a Housing Supply Delivery Agreement as part of the Homes and Communities Agency Affordable Housing Programme. The formula for traditional social rents will remain unchanged. The Government intends that the resulting standard will continue to apply to private registered providers only. It is therefore proposed that no detailed comment is made in the response to the Consultation on this matter

6 Direction on the Quality of Accommodation

- 6.1 Changes are needed to the existing quality of accommodation direction to reflect the fact that the original date for compliance with the Decent Homes Standard (31st December, 2010) has now expired. The fixed date for compliance will be removed, and replaced with a requirement for compliance with immediate effect rather than within a certain period.
- 6.2 Under sections 6(3)(a)&(b) of the above proposed standard , the regulator is required to set a standard that , wherever possible, ensures accommodation :
- a) has no category 1 one hazards
 - b) is in a reasonable state of repair
 - c) has reasonably modern facilities and services, and
 - d) includes facilities or services for the provision of a reasonable level of thermal comfort
 - e) currently at the standard set out in the Decent Homes Guidance is at least maintained at that standard
- 6.3 Registered providers will be expected to maintain their stock at a decent level on an ongoing basis, by investing capital and using their asset management strategy to ensure pre-emptive improvements are delivered so that their homes do not fall into a non-decent state. Temporary exemptions to the standard for specific homes will only be given in exceptional circumstances.
- 6.4 It is proposed that the Council supports this proposal and requests that more specific guidance be provided on the requirements within the Decent Homes Standard regarding energy efficiency, which was not covered in any detail in the original standard.

OTHER CONSIDERATIONS:

7 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 7.1 Relevant to the priorities set out in the Active Communities Change Plan.

8 RESOURCE IMPLICATIONS:

- 8.1 None

9 RISK MANAGEMENT ISSUES

- 9.1 None at this stage.

10 TACT COMMENTS

- 10.1 TACT will be meeting to consider all reports for this Committee on Wednesday 21 September. It has not been possible to consult the full group on the reports prior to dispatch to members. However, the initial comment below has been provided by the Chair of TACT. Additional views of the wider group will be reported verbally if necessary at the meeting.
- 10.2 In section 1-1.1 Background - TACT has been involved with many of the subjects attending conferences and meetings,
- 10.3 Section 2.The Direction on Tenure Reform - TACT feel this could give rise to concern, however TACT feel many items could prove difficult to implement, and concerns are already being raised regarding Human Rights around the country.
- 10.4 On the other hand the Council already implement some of the items, such as Mutual Exchange, Tenant Involvement, to name but a few. This is a learning curve for many, and TACT will be watching closely how things develop, and will keep an open mind, some changes may have to come in the future, but will need closely monitoring, and have to be open and honest, not underhanded and at the expense of the tenants rights. Governments past and present have come up with badly thought out schemes that did not live up to expectations, let us hope this is not another in a long line of failures. Tenants can but hope, for they will suffer the consequences if not.

BACKGROUND PAPERS

Background papers held in Landlord Services

APPENDICES:

Draft Response to Consultation Questions on the Implementing Social Housing Reform: Directions to the Social Housing Regulator

Implementing Social Housing Reform: Directions to the Social Housing Regulator Consultation

Draft Responses to Specific Questions:

Tenure Reform

Question 1: Does the draft direction on tenure set out the relevant factors that registered providers should consider when deciding what type of tenancy they should offer and why?

Although it is appreciated the regulator wants to give the provider greater flexibility on the type of tenancy a provider can offer, further guidance on when it is more appropriate to use one tenancy type over another would be beneficial. For example, when should secure tenancies be granted over flexible tenancies? Further clarity would be beneficial for providers, especially if the regulator is looking for constancy across the housing sector.

Question 2: Does the draft direction on tenure set out the right minimum requirements for a registered provider's tenancy policy?

The draft clearly states the issues that must be covered in the providers tenancy policy. Again more guidance on what the regulators views are on each of the issues would be helpful.

Question 3: Does the draft direction set out the right minimum protections for tenants of registered providers?

The draft clearly sets out the minimum requirements regarding the length of fixed term tenancies and the rights of tenants which are not dissimilar to the current rights of introductory tenants (in relation to the tenants charter) and secure tenants (in relation to ending a tenancy).

The changes in relation to succession are welcomed and tenants are given appropriate protection in relation to mutual exchanges.

Security of tenure is dependant on a providers policy. Although tenants are afforded some protection through an appeals process and a requirement to provide advice and assistance on finding alternative accommodation, many tenants will be unhappy that they no longer have a tenancy for life. The regulator and the Courts must ensure provider's policies are fair and reasonable in respect to this issue. Further guidance on issues such as what circumstances would warrant a fixed tenancy not being renewed would be helpful.

Mutual Exchanges

Question 4: Do you agree with the principle and detail of our proposed direction on mutual exchange?

This is probably the clearest of all the directions and we are in agreement with the requirements proposed and are in the main, already adhering to this proposal.

Tenant Involvement and Empowerment

Question 5: Do you agree with the principle and detail of our proposed revisions to the direction on tenant involvement and empowerment?

We agree with the regulators recommendations on strengthening the ability of tenants to hold providers into account. Winchester tenants already scrutinise our performance in key service delivery areas in a variety of ways and make recommendations on how service could be improved. Performance information is supplied to tenants on scrutiny groups/panels on a regular basis to assist them with this

Question 6 - What type of models for involving social tenants in repair and maintenance services are registered providers likely to offer, how many tenants might participate in these, and what costs and benefits might they result in?

Whilst there are a number of models for involving social tenants in repair and maintenance services ranging from consultation and scrutiny on programmes, targets and policies to more direct schemes such as Right to Repair, Tenant Cashback and ultimately Tenant Management Organisations, the demand for such schemes is likely to be greater in areas where the landlord has failed to deliver effective services to its tenants.

There is a real risk that landlords may incur significant costs gearing up for scheme that in practice finds a low take-up rate (i.e. similar to "Right to Repair"). One long-running "self-help" scheme (Northern Ireland Housing Executive – scheme operating since 1980) has seen take-up dwindle as their repairs service has improved.

Unless there are fairly rigorous protocols in place (eg. pre and post-inspections - which would arguably negate any savings from the start) there is a real risk of "phantom" repairs being claimed for and little chance to guarantee quality of work.

There is clearly some opportunity for well qualified and skilled tenants to work with providers to reduce maintenance costs (such as suitably qualified tenants installing their own kitchens with units provided by the landlord for example)

However, it is unlikely that sufficient potential savings can be realised to help fund Council landlords to introduce effective schemes that seek to develop and improve tenant skills in maintaining their own properties. Whilst such schemes have real

merits, it is difficult to see how they can be funded on any significant scale within the management and maintenance allowances that currently fund Council housing. In saying that, there is a positive appetite within the sector to learn from good practice and where positive outcomes can be demonstrated from pilot schemes, it is important that these are well publicised to allow all providers to assess the suitability and appropriateness to their circumstances.

The City Council has introduced a programme of Estate Improvements and has set aside specific funding for works across the district and all tenant groups are consulted on priorities for the programme. This could be taken further by providing specific allocations to each group for them to determine how to spend. This may potentially restrict flexibility in programme delivery, but will certainly give tenants more say in how resources are committed.

Quality of Accommodation

Question 7 - Do you agree with the proposed revisions to the Quality of Accommodation direction to reflect the expiry of the original target date for compliance?

Yes.

Question 8 - Energy efficiency is implicit in the revisions to the Quality of Accommodation Direction; should we make it more explicit?

Yes, although the existing Major Repairs Allowance for Council housing stock provides limited resource to invest in this area. It is important to note that any requirements to achieve specific standards within existing stock will require investment that would need to be incorporated into future cost projections for Council landlords.