

HOUSING MANAGEMENT CONSULTATIVE COMMITTEE

Agenda Item 81

Brighton & Hove City Council

Subject: Tenant Services Authority arrangements for regulating the council's landlord services

Date of Meeting: 29 March 2010

Report of: Director of Housing, Culture & Enterprise

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Key Decision: No

Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Tenant Services Authority (TSA) will become the regulator of the council's landlord services from 1 April 2010 when, subject to the Secretary of State making a formal Direction, it becomes responsible for regulating all social housing landlords including local authorities. After formal consultation, the TSA published its regulatory framework and standards for landlords on 16 March 2010.
- 1.2 This report outlines the content of the regulatory framework for social housing in England from April 2010 for noting by the Committee.

2. RECOMMENDATIONS:

- 2.1 (1) That the Housing Management Consultative Committee note the contents of this report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The TSA was created under the 2008 Housing and Regeneration Act as an independent regulator of providers of social housing (known as 'registered providers'). Its objectives include ensuring:
- that actual or potential tenants of social housing have an appropriate degree of (a) choice, and (b) protection;
 - that tenants of social housing have the opportunity to be involved in its management; and
 - that registered providers of social housing perform their functions efficiently, effectively and economically.

The TSA aims to ensure tenants are able to be involved in decisions that affect them, their homes and neighbourhoods and to protect tenants if their landlord performs poorly. Its model for regulating landlords is one where tenants are at the heart of shaping, influencing and monitoring the services they receive. This 'co-regulation' model sees landlords self-regulating involving their tenants, with the TSA intervening on an exception basis where landlords fail to improve.

- 3.2 The TSA's powers cover tenants of low-cost rented accommodation and low-cost home ownership, though not leaseholders. This reflects government's view that leaseholders have a degree of choice to move out of social housing (unlike most tenants) and are protected by other regulations and legislation. However, the TSA considers the improvements its regulation will have for tenants are likely to have positive 'spill over' effects for leaseholders and it also encourages providers to include leaseholders and other residents in their involvement strategies.
- 3.3 The TSA took over the regulation of housing associations in December 2008. From 1 April 2010, government intends the TSA to become responsible for supervising all social housing landlords, including councils which own housing stock. It proposes to issue a statutory instrument putting the relevant powers in place and to make a Direction to include local authorities under the TSA's regulatory powers, in line with the recommendations of the independent Cave review of social housing regulation in 2007. The aim is to ensure tenants receive an equally good service, no matter who their landlord happens to be.
- 3.4 At the centre of how the TSA will regulate social housing landlords are six TSA standards which providers must meet. These describe the outcomes landlords must deliver and the TSA's specific expectations about how providers will achieve those outcomes. They are not intended, however, to prescribe detailed processes landlords should follow. The TSA considers the primary focus for discussions on service delivery and improvement should be between landlords and their tenants rather than between the regulator and the provider. So providers must involve their tenants in deciding how to meet the outcomes for each standard and offer tenants the opportunity to agree 'local offers' on service delivery that reflect local priorities. A summary of the TSA's standards and required outcomes for them is at Appendix 1.
- 3.5 The standards on governance and financial viability will not apply to local authorities as the Audit Commission already has responsibility for overseeing these aspects of councils' performance and different legislation and regulations apply. The TSA has committed to working with the Audit Commission in regulating council landlords and supporting the Local Performance Framework. It intends to minimise the additional burden on council landlords by making best use of information landlords already have available.
- 3.6 The TSA states that responsibility for meeting the standards lies with the boards and councillors that govern landlords' service delivery. As part of the co-regulation approach, it expects honest and robust self-assessment that is evidence based, using external validation, independent audit and peer review where appropriate. Tenant scrutiny is also a key part of the co-regulation model and landlords must support tenants to build their capacity to make co-regulation effective.

3.7 Providers will be required by 1 October each year to publish a report for their tenants (and shared with the TSA) on how they are meeting the TSA standards, including their local offers. These annual reports should:

- assess how they are currently meeting the standards, including how they measure our compliance
- note any gaps and improvement plans
- include their offer to tenants against the standards over the next year, including local service offers
- refer to how the provider has gained assurance on the outcomes reported, including how tenants have been involved in scrutinising performance and, where appropriate, use of external validation, peer review and benchmarking
- detail how tenants have been involved in producing and scrutinising the report.

The first report should include plans for developing locally tailored offers or provide a progress update for their tenants. The TSA will make annual reports publicly available to improve transparency and promote continuous improvement.

3.8 All providers must meet the TSA's standards and the service delivery standards require landlords to deliver the commitments they make in their annual report. Where providers do not meet the standards or deliver the performance outcomes promised to tenants the TSA expects there initially to be a dialogue to support the landlord's self-improvement. If that is insufficient, the TSA will have a range of intervention and enforcement powers to investigate further and ensure that services to tenants are improved to meet the standards. For councils, those powers would include collecting information; arranging an Audit Commission inspection or survey; directing an inquiry or extraordinary audit; appointing advisors; enforcement notices; directing a tender or transfer of management; directing the Homes and Communities Agency not to invest; placing restrictions on disposals or transfers of property; appointing advisers to a local authority and censuring a local authority officer or agent during or following an inquiry. The TSA undertakes to take a proportionate and generally graduated approach in exercising its powers, seeking first to agree the way forward with the landlord and consider any remedial strategies or voluntary undertakings the provider proposes.

3.9 Housing Management officers have already analysed the division's current performance against the draft standards proposed in the consultation document, including any actions in business plans. A thorough analysis will now be undertaken against the final TSA standards. The quality of accommodation section of the Home standard states registered providers shall ensure that tenants' homes meet the Decent Homes Standard by 31 December 2010 and continue to maintain their homes to at least this standard after this date. The recently agreed 3 year capital programme for the council's stock will achieve decency by the end of 2013. However, the TSA may agree an extension to the December 2010 date where this is reasonable and will make a judgement about the extent to which availability of public funds, for council providers in particular, is the primary or exclusive grounds for the inability to comply with the standard. As well as producing the required reports and plans, the council will ensure that the resident involvement strategy which is currently in course of development with the Tenant Compact Monitoring Group meets all the TSA's requirements.

4. CONSULTATION

- 4.1 The TSA's formal consultation on its proposed regulatory framework was reported to the Committee in December 2009.
- 4.2 A copy of the summary formal consultation document was sent to all council tenant and resident associations for information and comment. All council tenants and leaseholders were informed of the development of the TSA's proposals through *Homing In* newsletters, including contact details for the TSA for more information and to have their say.
- 4.3 Staff from both Housing Management and Housing Strategy divisions were informed of the proposals through internal briefings and invited to comment on them.
- 4.4 All council members were informed of the consultation and invited to comment.
- 4.5 The council sought the views of housing association representatives on the consultation documents at the Social Landlords Forum meeting in January 2010.
- 4.6 The comments of the Committee were collated with those received from all stakeholders and summarised in a response to the consultation circulated at the meeting of the Housing Management Consultative Committee in February.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 Any financial implications arising from the new regulatory framework will be included in the monthly targeted budget monitoring forecast for 2010/11 and considered in future HRA budget setting.'

Finance Officer Consulted: Monica Brooks

Date: 17/03/10

Legal Implications:

- 5.2 Sections 192 to 269 of the Housing and Regeneration Act 2008 confer upon the Tenant Services Authority extensive regulatory and enforcement powers in relation to social housing. The report briefly mentions some of them. The new standards referred to in the report have been set under Sections 193 and 194, which empower the Authority to set standards for registered providers as to the nature, extent and quality of accommodation, facilities or services provided in connection with social housing and management of financial affairs. In exercising this power the Authority was required to have regard to the desirability of registered providers being free to choose how to provide services and conduct business. No individuals human rights are adversely affected by the report's recommendation

Lawyer Consulted:

Liz Woodley

Date: 17/3/10

Equalities Implications:

- 5.3 The TSA's Tenant Involvement and Empowerment standard will require registered providers to understand and respond to the diverse needs of tenants in meeting all of the standards. This states registered providers shall treat all tenants with fairness and respect and demonstrate that they understand the different needs of their tenants, including in relation to the seven equality strands and tenants with additional support needs.

Sustainability Implications:

- 5.4 The proposed TSA standards promote the use of engagement and partnership with tenants to support sustainable communities. The Neighbourhood and Community standard includes a requirement for registered providers to co-operate with relevant partners to help promote social, environmental and economic well being in the areas where they own properties.

Crime & Disorder Implications:

- 5.5 The Neighbourhood and Community standard will require registered providers to work in partnership with other public agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

Risk and Opportunity Management Implications:

- 5.6 Risks of not meeting the TSA's standards are set out in paragraph 3.8 of this report.

Corporate / Citywide Implications:

- 5.7 In regulating the councils' landlord function the TSA has committed to work closely with the Audit Commission to avoid any overlap or duplication, for example in the Commission's role in Comprehensive Area Assessments (CAA). It states it will also help support the Audit Commission in its CAA role, for example by providing information it has on how providers generally in an area contribute to local outcomes. The TSA states its standards are designed to support the principles of the Local Performance Framework and the independent role of the Audit Commission in respect of local authorities' governance, financial management and approach to value for money.
- 5.8 Although the TSA does not have specific powers to set standards for governance and viability for local authority providers, if through its work it had reason to be concerned there may be an issue with a council landlord's governance and/or financial management it would refer the matter to the Audit Commission.

SUPPORTING DOCUMENTATION

Appendices:

1. Tenant Services Authority standards and required outcomes

Documents In Members' Rooms

None

Background Documents

1. *The regulatory framework for social housing in England from April 2010* Tenant Services Authority, March 2010

http://www.tenantservicesauthority.org/upload/pdf/Regulatory_framework_for_social_housing_in_England_from_2010.pdf