

NFA RESPONSE TO BUILDING A NEW REGULATORY FRAMEWORK DISCUSSION PAPER

General Comments

1. The discussion paper is a commendable first draft which sets out the core issues for a new regulatory framework across the whole social housing domain. The final standards, however, need to be accessible and readable and more clearly linked to the top four issues highlighted by tenants.
2. The TSA should not compromise on standards but will need to consider the impact not only of different funding regimes but also of different stock profiles. ALMOs, LSVT housing associations and traditional retained stock councils will, by and large, be managing older estates than the remaining housing association stock in their areas, and the most intractable stock is concentrated in ALMOs and LSVTs.
3. Until the difficulties with the HRA subsidy system and the decent homes funding issue are resolved a number of authorities, particularly those with ALMOs, will struggle to achieve the aspirational standards in all areas that tenants are entitled to achieve.
4. Specific reference to diversity and supporting vulnerable tenants should be incorporated within all the standards rather than dealt with as a separate standard but the TSA could also set out some separate overarching principles. A similar approach should be applied to VFM.
5. There should be set national standards which are broad enough to be equally applicable to different types and sizes of landlords with more detailed but higher level local standards set by negotiation. Local standards should not be used to bypass national standards but equally national standards should not be so specific and top down as to inhibit local decision making. The TSA should not regulate local standards (so long as they do not undermine national standards) but should ensure all providers have genuine dialogue with their residents in the development of local standards which can provide a real opportunity for tenants to more actively engage in the management of their homes.
6. The decent homes standard is quite a basic standard and in many councils with ALMOs higher local standards are applied. In the longer term we would want to move towards a decent neighbourhood standard and a higher energy efficiency standard. However, due to the programming of the Decent Homes funding a significant number of ALMOs will not achieve decency by 2010. This should be reflected in the standard description such as “(except where a different target date has been agreed)” rather than “(with some limited exceptions)”
7. Timing is a major issue – the TSA will not be able to do everything by April 2010 and get it all right at the same time – we suggest the TSA should concentrate on essentials and doables now, and develop some of the more complex areas later.
8. Codes of Practice should be limited in both number and scope to only the most essential issues as they can limit innovation and local decision making – good practice guidance that offers alternative approaches relevant to local circumstances is a more appropriate response to the very many different types of organisation subject to regulation.

9. The NFA recognises the need to avoid duplication where other forms of regulation may already apply. We understand that local authorities are also subject to the local government performance framework and that, where this applies, the TSA will not have a regulatory role. Nevertheless, in the case of ALMOs we feel that there are strong arguments for the TSA to consider governance and viability issues since they are unlikely otherwise to be effectively accommodated within the local government performance framework.
10. Similarly, the inability of the TSA to regulate in relation to leaseholders is of serious concern since, in many ALMO managed authorities, leaseholders make up such a high proportion of the stock and the service and have issues very relevant to the overall management of estates which are not adequately covered by other regulators.

Q1: Do the main findings from our National Conversation research have resonance with your experience and are we drawing the correct messages for the development of the new regulatory framework?

- Yes, the four main priorities as identified in the national conversation present no surprises from the perspective of our members.

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?

- The NFA supports the co-regulatory approach in principle.
- However, we are concerned that the indirect approach to ALMO and TMO managed property could create confusion for tenants and be a potential obstacle to service improvement. We would suggest it would be more effective and efficient if the TSA should always deal direct with ALMOs initially (copying the council in where appropriate) and only go directly through the council (as the landlord and statutory regulated body) where there is a performance concern. Councils, via the LGA, would need to be agreeable to sign up to such a principle.
- Comparability of information between the sectors is a potential issue.
- Where existing external accreditation is widely accepted as representing a quality standard then it would seem sensible to use such accreditation, rather than reinventing the wheel, but perhaps offering an alternative for organisations for which certain types of accreditation are not relevant or realistic as some accreditation schemes can be prohibitively expensive for small providers.

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

- Standards should not be compromised and must be independently verified – setting only minimum standards will reduce the drive for excellence. However, the standards must also be sufficiently broad and straightforward to ensure applicability to the very diverse nature of the sector and must not inhibit local decision making.
- The NFA believes that attempting to define a measure of excellence (as per KLOEs) can help both landlords and tenants to track improvement in their services.
- Proscriptive Codes of Practice should be avoided unless absolutely essential as these will otherwise inhibit innovation and local decisions – one size cannot fit all.

- The NFA believes the development of local standards offers enormous opportunities for further developing tenant empowerment and real engagement in the management of their homes. It is essential that the development of local standards is a genuine exercise in local accountability and is not used as a vehicle to circumvent national standards.
- In view of the limited time available to establish the new regulatory system we believe the TSA should concentrate on quick wins and on the key priorities identified by tenants rather than aiming to have everything completely in place by April 2010.

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

- We believe that rather than a specific value for money standard the TSA should be looking at asset management and use of resources while vfm should be a crosscutting theme across all standards.
- It is unclear where rent collection and arrears sits and whether LA/ALMO stock is, in any event, included but this is a pretty basic part of the service in terms of income management. It does not really fit, however, within the theme of the tenancy agreement which is where rents are placed.
- Similarly service charges are not mentioned.
- The exclusion of ex-RTB leasehold properties an issue since this is such a large part of many ALMOs portfolios and has potentially a major impact on other standards including decent homes, anti-social behaviour and security.
- Tenancy support for vulnerable tenants in general needs housing should be included in the service offer to tenants.
- Governance and viability should apply to ALMO managed housing.

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

- Yes, it provides an opportunity for revisiting expectations with tenants.
- The TSA will need to find a way to enforce landlords taking local standards seriously although encouragement and support should be the first course of action.
- Local standards must not fall below national standards.
- Definition of local must be flexible, it could be local authority based, or area based or estate based depending on local circumstances.

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?

- Guidance on good practice in developing local standards would be helpful.
- Mediation should be an option where tenants and landlords fail to agree.

Q7: What objectives should we have in mind in shaping the national standards that relate to the service offer to tenants?

- Financial viability (e.g. HRA and recent cuts to Decent Homes funding) will seriously affect the quality of accommodation standard for councils and ALMOs.
- Objectives should be meaningful for tenants, measurable and realistic and should consider the needs of future tenants as well as existing tenants.

Q8: What objectives should we have in mind in shaping the national standards that relate to tenant empowerment and involvement?

- Landlords should be open to scrutiny by tenants provided it informs but does not jeopardise the governance and decision making process.
- Expanding tenant empowerment to hard to reach groups and offering greater opportunities for real decision making should be actively encouraged by TSA.
- Landlords should be encouraged to use different, and more direct, forms of communication rather than just letter writing and the TSA could help disseminate good practice information on ways of doing this.
- Where there are dispersed communities or scattered stock with no local landlord presence then other providers in the area, such as ALMOs, have a potential role to play in leading and co-ordinating tenant engagement. The TSA could help in actively encouraging this.

Q9: What objectives should we have in mind in shaping the national standards that relate to the tenancy agreement?

- Rent levels are subject to externals, such as government policy, position of HRA etc so a directly comparable standard fair to all providers and tenants is difficult at present but is an aspiration to work towards.
- Except where there are otherwise good grounds tenancies in general needs housing should normally be secure.
- Choice based allocations should be considered the preferred lettings standard for most general needs housing.
- Tenancy agreements should balance rights and responsibilities of both tenants and landlords.

Q10: What objectives should we have in mind in shaping the national standard that relates to governance? What are your views on the options presented?

- The anomalous position for regulation of ALMOs will need some explanation for tenants. While the legal framework with the council as landlord is understood and certain functions, such as rents and allocations policies, will remain with the local authority there is a case for considering whether the TSA should have an interest in ALMO Governance since this is critical to the efficient running of an organisation and the ALMO structure and Board is modelled on that of housing associations rather than local authorities. It is therefore sensible that the same, or similar, governance standards should apply.

Q11: What objectives should we have in mind in shaping the national standard that relates to viability?

- Similarly the TSA should also have an interest in ALMO viability. ALMOs obtain their income from a management fee paid by the local authority. Since the HRA is a landlord account it might be expected that the major share would be paid to the ALMO since its purpose is to manage and maintain the stock. However, there is no consistency in how this is applied and no monitoring of local authority practice nor are local authorities given any guidance on what is reasonable. Many ALMOs have suffered year on year cuts in their management fee despite rents being increased. If the income received by the ALMO reduces to such an extent that they cannot deliver an adequate service then tenants have very limited options. Similarly, if the HRA subsidy system is not dramatically improved

as an outcome of the current review then the majority of ALMO managed stock will start to fall back out of decency within the next few years. Those round 6 ALMOs currently threatened with an effective cut of their decent homes programme are particularly exposed since most brought forward next year's major repairs allowance into this year (at the government's request) in order to start spending on decent homes works and they are now confronted with no money for anything other than emergency works in future years.

Q12: What objectives should we have in mind in shaping the national standard that relates to value for money?

- VfM would best be considered as a crosscutting theme which should be embedded in all standards, rather than as a separate standard.

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

- The local authority PIs do not offer a reasonable basis for comparing performance between organisations.
- The further development of benchmarking clubs such as HouseMark should be explored.
- The different financial regimes make direct comparison difficult at present but clarification of definitions in measuring performance is essential.

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

- Any grading system should be clear, transparent and easily understood and the Audit Commission star rating system has been successful in achieving this and in driving up performance. Tenants and landlords alike can understand a ranking system, even if it can be over simplistic, while a narrative is less comprehensible.
- Any system must take into account financial viability and the impact of government policy (such as the cut in decent homes funding) plus the difficulties in managing certain types of stock or tenancies or particular areas blighted by deprivation or accessibility issues (such as dispersed stock in very rural areas).

Q15: What are the best ways we might incentivise good landlord performance and encourage best practice?

- Access to decent homes funding and SHG has, for ALMOs but not other providers, been dependent on first improving services and this has had a significant impact on performance – this policy should now be extended across the board to all other providers, it concentrates minds wonderfully.
- Practical support works better than penalties. The TSA should consider establishing a help team (along the lines of the DWP Housing Benefit and NFA Support Framework systems) to link practitioners from high performing organisations to help mentor struggling organisations.
- Reduced fees for high performers willing to help others could be another incentive.
- Awards schemes and systems like the Innovation and Good Practice grant and IDeA Beacons can also help drive innovation and good practice.

Q16: What are your views on our high level approach to dealing with landlord failure (or risk of failure)?

- Clarity is needed on the process by which the TSA would deal with failure in an ALMO or TMO, particularly where the TSA and local authority may have different views about the organisation's performance, or about the reasons for failure.

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

- ALMOs and TMOs that remain managing agents only may not need to become registered providers.
- However, those ALMOs that have already pre-qualified for SHG should not have to undergo another registration process but should be automatically registered.
- ALMOs that are registered providers in their own right should not, however, be required to pay a further registration fee since their local authority will have already paid a fee for them.

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

- There needs to be a simple and streamlined general consents approach for non contentious decisions but with safeguards to ensure tenants' interests protected.