

Highbury Group

Reforming social housing regulation: The Government's proposals

Roger Jarman, February 2021

Introduction

On 17th November the Government published its long awaited Social Housing White Paper (SHWP) for England (entitled 'The charter for social housing tenants') following the Grenfell Tower disaster in 2017ⁱ. After the fire Ministers undertook an extensive 'listening' exercise to ascertain the concerns of social housing tenantsⁱⁱ. This followed complaints that the representations of the tenants of the West London tower block had been ignored by their landlord – particularly on safety issues. A year after the fire a Green Paper was published setting out the Government's initial proposalsⁱⁱⁱ. After a further two years the White Paper has emerged with some significant differences to the policy options set out in 2018.

This paper focuses on the regulation proposals in the SHWP although the proposals on extending home ownership are briefly covered. Following the summary of the Government's proposals, the concluding commentary assesses the nature of the *volte face* in the Government's approach to housing regulation since Grant Shapps (then Housing Minister) in 2010 declared the Tenant Services Authority – the short lived housing regulator created under the Housing and Regeneration Act 2008 - was 'toast'.

The proposed regulatory framework (plus home ownership proposals - Chapter 7)

Safety (Chapter 1)

Building and fire safety is a paramount concern for tenants and Ministers recognise this. The SHWP sets out what the Government will do to enhance safety measures for those living in social housing. Government will:

- a) Legislate to strengthen the RSH's consumer regulation objectives to explicitly include safety.
- b) Legislate to require social landlords to identify a nominated person responsible for complying with their health and safety requirements.
- c) Expect the RSH to prepare a Memorandum of Understanding with the Health and Safety Executive to ensure effective sharing of information with the Building Safety Regulator.
- d) Launch a consultation on requiring smoke alarms in social housing and introducing new expectations for carbon monoxide alarms.
- e) Consult on measures to ensure that social housing tenants are protected from harm caused by poor electrical safety.
- f) Continue to work with the Social Sector (Building Safety) Engagement Best Practice Group and the Building Safety Regulator to ensure tenant voices are heard.

Performance information (Chapter 2)

Ministers want tenants to be able to hold landlords to account by accessing and evaluating information available on the performance of providers. Accordingly Government is proposing to:

- a) Create a set of tenant satisfaction measures for landlords on things that matter to tenants.
- b) Introduce a new access to information scheme for social housing tenants of housing associations and other private registered providers of social housing, so that information relating to landlords is easily available.
- c) Ensure landlords provide a clear breakdown of how their income is being spent.
- d) Require landlords to identify a senior person in their organisation who is responsible for ensuring they comply with the consumer standards set by the Regulator of Social Housing.

Complaints (Chapter 3)

Ministers want tenants to secure swift and effective resolution of complaints. The Government has acted to address some of these concerns by speeding up access to the Housing Ombudsman through removing the need for tenants to either go to a 'designated person' or wait eight weeks before approaching the Ombudsman directly. This is being enacted through the Building Safety Bill. Also the Housing Ombudsman service has been expanded and given new powers so it can make decisions more quickly and can take stronger action against landlords where needed. Under the SHWP the Government plans to go further by:

- a) Providing tenants with consistency across landlord complaint handling by ensuring landlords self- assess against the Housing Ombudsman's Complaint Handling Code by 31 December 2020.
- b) Launching a communications campaign to ensure tenants know how to raise complaints and have confidence in the complaints systems that operate in the sector.
- c) Legislating to ensure clear co-operation between the Housing Ombudsman and the RSH to hold landlords to account more effectively when things go wrong.
- d) Making landlords more accountable for their actions by publicising the details of cases determined and published by the Housing Ombudsman.

Consumer regulation (Chapter 4)

Government is re-booting consumer regulation to ensure landlords adopt the right behaviours and can be held to account for their actions by tenants. Specifically Ministers plan to:

- a) Transform the consumer regulation role of the RSH so it proactively monitors and drives landlords' compliance with improved consumer standards.
- b) Remove the 'serious detriment test' and introduce routine inspections for the largest landlords (those with over 1,000 homes) every four years.
- c) Change the regulator's objectives to explicitly cover safety and transparency, and work with it to review its consumer standards to ensure they are up to date and deliver its revised objectives.
- d) Give the regulator the power to publish a Code of Practice on the consumer standards to be clear what landlords are required to deliver.
- e) Strengthen the regulator's enforcement powers to tackle failing landlords and to respond to new challenges facing the sector.
- f) Hold local authorities to account as landlords, including how they manage Arms Length Management Organisations and Tenant Management Organisations, to make sure they deliver a good service to tenants.
- g) Require the regulator to set up an Advisory Committee to provide independent and unbiased advice on discharging its functions.

Tenant engagement (Chapter 5)

Ministers believe stronger tenant engagement will give tenants a clearer voice so that they can hold landlords to account. Accordingly Government will introduce the following changes:

- a) Expect the RSH to require landlords to seek out best practice and consider how they can continually improve the way they engage with their tenants.
- b) Deliver a new opportunities and empowerment programme for tenants, to support more effective engagement between landlords and tenants, and to give tenants tools to influence their landlords and hold them to account.
- c) Review professional training and development to ensure tenants receive a high standard of customer service.

Decent Homes plus (Chapter 6)

Ministers heard that tenants are proud of their communities and want greater investment in them. Government wants to ensure that social tenants have good quality decent homes and neighbourhoods, including access to green space and support for wellbeing. As a result Government will:

- a) Review the Decent Homes Standard, including access to and the quality of green spaces.
- b) Tackle anti-social behaviour by enabling tenants to know who is responsible for action and who can support and assist them if they are faced with anti- social behaviour.
- c) Consider the results of the allocations evidence collection exercise findings to ensure that housing is allocated in the fairest way possible and achieves the best outcomes for local places and communities.

Home ownership (Chapter 7)

Here Ministers claim they are continuing to increase the supply of good quality social homes, and working to give as many residents as possible the right to purchase their own home. As part of the commitment to boosting owner occupation, the Government is:

- a) Investing £11.5 billion to build up to 180,000 affordable homes – the highest single funding commitment to affordable housing in a decade. Around half of these new homes will be for affordable home ownership.
- b) Implementing a new, fairer and more accessible model for Shared Ownership.
- c) Implementing a new Right to Shared Ownership for tenants of housing associations and other private registered providers who live in new grant funded homes for rent.
- d) Emphasising through our new National Design Guide the importance of building beautiful and well-designed social homes.
- e) Introducing a new Affordable Homes Guarantee Scheme.
- f) Encouraging local authorities to take advantage of our removal of the borrowing cap to build more council homes.

Commentary

The White Paper has been a long time in gestation. A newly elected minority administration led by a weakened Theresa May had to respond to the ramifications of the Grenfell Tower disaster in June 2017. The resulting Green Paper marked a major change in approach with the Government acknowledging that consumer regulation in some form had to be reintroduced following its effective demise after 2010.

The Green Paper seemed to suggest that performance indicators would play a major role in holding social landlords to account and there was much discussion about the value of league tables to grade providers. Performance indicators (or Tenant Satisfaction Measures) form part of the reforms set out in the SHWP but their role has been downgraded in the new framework. Other proposed reforms in the Green Paper have also been downgraded or ditched including measures to address the stigmatisation of social housing tenants and, additionally, the creation of a 'national tenant voice' as first proposed in the Cave Review of 2007.^{iv}

By contrast the inspection of landlord services becomes an important element of housing regulation going forward. In the Green Paper 'inspection' is referred to only once – and then (bizarrely) in relation to the financial performance of housing associations. In the SHWP 'inspection' features 24 times – and this is squarely about consumer regulation. This is evidence that Boris Johnson's Government has taken a markedly different approach to housing regulation than its predecessor. Ministers and their advisers appear to be behind the strengthened regulatory proposals in the White Paper. The RSH would perhaps have been more comfortable with a less intrusive focus on consumer regulation. Certainly regulatory engagement with providers on consumer standards will be very different from the RSH's assessment of housing associations against the governance and finance standards.

Complaint resolution and the role of an enhanced Housing Ombudsman service feature in both the Green and White Papers. This can in part be attributed to the Ombudsman role being held by Richard Blakeway, a former aide to Boris Johnson at the Greater London Authority. It also reflects that the retreat from consumer regulation throughout the 2010s left a vacuum that could be filled by an ambitious Housing Ombudsman. In response to the publication of the SHWP Richard Blakeway said: "We have a central and positive role to play in the government's plans to evolve the sector. The White Paper recognises the key role we perform and the work we are doing to create a cultural shift in the sector. There are a number of new areas featured in the paper which combined seek to strengthen and embed our existing role as well as potentially expand our scope."^v The evolving relationship between the Regulator and the Ombudsman will be worth watching in the next few years.

With some of the proposed reforms Ministers must be wary about reopening the debate about the status of housing associations. Not so long ago associations were designated as public bodies because of the extent of State influence over the sector. This was only reversed in late 2017.^{vi} Moves to make housing associations subject to provisions akin to the Freedom of Information Act might bring this issue back to the fore.

The White Paper is necessarily light on detail about many aspects of the new regulatory regime. The nature of the proposed inspection framework will be subject to considerable scrutiny by providers, their representatives and others. MHCLG and RSH officials will be looking at the inspection methods of the Audit Commission and assessing how much can be reproduced for the 2020s. KLOEs (key lines of enquiry) may be worth resurrecting in a modern form.

KLOEs were used by the Audit Commission to assess social landlords against criteria that differentiated between poor, fair, good and excellent performance. The KLOEs enabled assessments of current performance and also made judgements on 'prospects for improvement'. They set out examples of the range of services that might be expected from providers performing at the lowest level to the highest level and all points between. The KLOEs covered the full range of services provided by social landlords including Repairs and Maintenance, Anti Social Behaviour and Rent Collection. KLOEs could be updated in the modern era by making much better use of new technology to capture real time data about tenant satisfaction (for instance).

The RSH already employs a four point scale to measure the adherence of providers to the governance and finance standards. So there are similarities with the former inspection framework but the RSH adopts a different approach in some respects to that followed by the Audit Commission during the 2000s. For instance G1 grades under the RSH framework require providers to meet all their legal requirements. Three star/Excellent performance by landlords (equivalent to G1) expected more than simple adherence to the law – providers in that context would have been expected to have demonstrated that their service delivery was above and beyond compliance with the legal minimum.

The White Paper re-focuses the attention of providers on improving services to their existing tenants. This marks a change from the recent past where providers – especially housing associations - have largely concentrated on their new build activities. Development of new housing will still be important but the RSH will henceforth pay significantly more attention to consumer regulation than it has hitherto.

In conclusion, the Government’s proposals finally bring to fruition the vision of Professor Martin Cave when he carried out his review of social housing regulation in 2007 for the then Labour Government. Under the SHWP, a stand-alone regulator separate from the funding arm for social housing will fully assess the performance of all social landlords against a revamped and strengthened set of consumer standards. Inspection will be a key part of the armoury available to the RSH and enforcement measures will be significantly enhanced. The oversight of consumer services will sit alongside the governance and finance regulation of housing associations as well.

But there are still gaps in the proposed regulatory framework. The current proposals do not cover the regulation of local authority strategic housing services such as homelessness or meeting housing needs. And if we are seeking a true level playing field, perhaps the large providers of private rented housing – with over 1,000 homes, say - should be subject to regulation by the RSH. Give it another ten years.....

Note: a longer version of this paper was published by Housing Quality Network in January 2021

ⁱ <https://www.gov.uk/government/publications/the-charter-for-social-housing-tenants-social-housing-white-paper>

ⁱⁱ In the White Paper the term ‘tenant’ and ‘resident’ are used interchangeably. In this paper the term ‘tenant’ is used throughout. Tenants here refer to all service users of social housing landlords, including, for instance, shared owners and other leaseholders.

ⁱⁱⁱ <https://www.gov.uk/government/news/social-housing-green-paper-a-new-deal-for-social-housing>

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https://webarchive.nationalarchives.gov.uk/20070701140243/http://www.communities.gov.uk/pub/422/EveryTenantMattersAreviewofsocialhousingregulationReportbyProfessorMartinCave_id1511422.pdf

^v <https://hqnetwork.co.uk/news/sector-reacts-to-social-housing-white-paper-4222>

^{vi}

<https://www.ons.gov.uk/news/statementsandletters/statementonclassificationofenglishhousingassociationsnovember2017>