

Consultation Response

The housing corporation: regulatory code and guidance

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Shelter

We welcome the Housing Corporation proposals for updating its regulatory approach. In 2000/1 Shelter helped over 5,000 housing association tenants who had a housing problem. On the basis of this experience there are three key areas of housing association's practice it is essential that the Corporation effectively regulates:

- Lettings policy, particularly in relation to applicants nominated by local authorities as being in priority housing need
- Management of tenancies and the need to pursue all other avenues before seeking possession
- Balancing business case decisions on management issues with the needs and circumstances of individual residents and potential residents.

(i) will the Regulatory Code provide an effective regulatory framework? (Paragraphs 2.1 to 3.7)

We welcome the proposed Regulatory Code. We would however recommend three amendments to the code.

1. Assisting local authorities in the discharge of their duties to homeless people.

We welcome the inclusion of a requirement to assist local authorities in the discharge of their duties to homeless people in section 3.6.1 of the Code. We would recommend that the wording of the section is amended slightly so that it refers to 'homeless people' rather than 'the homeless':

3.6.1 to homeless people and others in priority housing need

Equally we would recommend that 3.6.2 is amended so that it refers to 'vulnerable people'.

2. Housing associations role in homelessness strategies

Section 3.7 of the Code requires that housing associations' strategies and policies should link into local housing strategies. Once the Homelessness Bill has been enacted it will be important that regulatory code includes a specific reference to the need for housing associations to link into new homelessness strategies.

Housing associations will be key partners in the development and the delivery of homelessness strategies. The statutory provisions on homelessness reviews and strategies that apply to local authorities should be supported by an explicit requirement for housing associations in the Regulatory Code.

Local authorities will be required to develop a strategy for:

1. Preventing homelessness

2. Securing that sufficient accommodation is and will be available for people in their district who are or may become homeless
3. Securing the satisfactory provision of support for people who are or may become homeless or who have been homeless and need support to prevent them becoming homeless again

Clearly housing associations, and transfer associations in particular, will be key partners in the development and delivery of homelessness strategies. Given housing associations central role to delivering successful homelessness strategies there should be an explicit requirement in the Regulatory Code to contribute to them.

The importance of housing associations contributions to homelessness strategies has been emphasised during the passage of the Homes Bill and Homelessness Bill and commitments were made to reflect this in the Housing Corporation's new regulatory framework.

When the Homes Bill received its second reading in the House of Lords, Baroness Dean of Thornton-le-Fylde said the following on housing associations, homelessness strategies and the role of the Housing Corporation:

"We are currently revising our 1997 Performance Standards and Regulatory Guidance. We give that guide to the housing associations that we regulate. We require them to meet those standards. We have already published a draft regulatory code which has been welcomed in the sector and by other stakeholders. We are also currently working on our Statutory Housing Management Guidance. That will be out for consultation in mid May. The coming together of those developments will feed positively into what the Government are seeking and what the bodies supporting the Bill are seeking in Part 2. An essential requirement is not only a homelessness strategy but a prevention of homelessness strategy. We shall be working with local authorities to implement those strategies through the lettings policies of housing associations and how they sign up to the local policies with local authorities."

In the same debate Parliamentary Under Secretary of State Lord Whitty confirmed commitments made in the House of Commons Standing Committee stage of the Bill's passage:

"We agree that there should be strong co-operation between local authorities and registered social landlords. Registered social landlords are already under a statutory obligation to co-operate with local authorities. The Bill will

require local authorities to consult registered social landlords. ...the Housing Corporation will strengthen its regulatory guidance, procedures and funding arrangements to ensure that registered social landlords co-operate effectively with local authorities without the need for further statutory requirements. That co-operation is necessary if we are to achieve the aims of Part 2 and deliver improved facilities for the homeless."

In the Standing Committee of the Homelessness Bill the Parliamentary Under Secretary of State with responsibility for housing, Sally Keeble also said of the role of housing associations in homelessness strategies:

"I share the concern that has been expressed that registered social landlords should play their part, but I believe that that will be best achieved through revised guidance and enhanced regulation by the Housing Corporation as the statutory regulator of the registered social landlord sector."

To give effect to these commitments there should be an explicit reference to Homelessness Strategies in section 3.7 of the code in addition to the reference to housing strategies.

3. Responsive lettings and housing management

Section 3.5.4. of the Code potentially covers a very wide range of issues relating to the services and functions of housing associations. Two of the issues that are likely to be covered by this section relate to lettings and the management of tenancies.

Given the very broad nature of this section of the Code some additional wording is required to make it clear that it should cover lettings and management issues where there is a need to balance the needs of the individual residents or potential residents against business factors and the community as a whole. It is important that housing associations take the individual circumstances of households into account in such decisions because of the high proportion of vulnerable and low income tenants in the sector who may face greater difficulties in sustaining their tenancy or securing accommodation in the housing market.

The examples below demonstrate how some associations are failing to comply with the existing regulatory requirements which require housing associations to be responsive to the needs of vulnerable tenants and to only seek possession where all other reasonable steps have been taken. We would recommend the addition of the following wording to section 3.5.4:

, and take into account the needs of individual residents and potential residents in the development and application of housing management and lettings policy;

Lettings

When considering whether to refuse to offer accommodation to an applicant for housing nominated by the local authority, associations should seek to achieve a balance between the housing needs of the applicants and any factors that may on the face of it present management problems (such as previous rent arrears or anti-social behaviour). As social landlords, housing associations should have some regard to the consequences, both for the individual household and the local authority, of refusing to provide accommodation.

A Shelter survey of stock transfer local authorities found that 25% of authorities that had transferred some or all of their housing stock found it less easy to discharge their duties to homeless people and others in housing need. The proportion of authorities reporting that transfer had affected the discharge of their housing functions increased amongst was greater (46%) amongst LSVT authorities that had transferred their stock in the last five years. (Out of Stock, Shelter 2001).

A woman with two children came to Shelter for advice on her homelessness application. The client had previously been evicted for rent arrears from a transfer association in 1995 when she had been a joint tenant with her husband. The relationship ended shortly afterwards. She had since been living in the private rented sector. She had made a homelessness application because her landlord had sought possession under section 21 (of the Housing act 1988) and she had been subject to harassment and threats from neighbours. The council admitted that they owed her a homelessness duty but were unable to meet their obligations because the client had had rent arrears with the transfer association and they would not offer her accommodation (even though the arrears occurred over six years ago). Shelter contacted the transfer association who said that they would offer her a tenancy if she paid off £1,000 of the £2,000 arrears she owed. The client is in receipt of income support and cannot afford to pay off the arrears. The transfer association eventually agreed to house her following Judicial Review proceedings against the local authority.

Possession actions

We are concerned about the number of clients that are coming to Shelter for assistance when they face possession action by a housing association. In 2000/1 Shelter advised over 5,000 households who were housing association tenants. Of these over 1,500 sought advice because they were subject to a possession order. This is against a background of increasing numbers of possession actions being taken by social landlords as a whole. In 2000 social landlords were granted over 26,600 possession orders, this has doubled over the last six years.

When deciding to initiate possession action against residents for arrears or other breaches of their tenancy agreement housing associations should balance the need to manage the tenancy with the circumstances of the household. This is particularly the case where possession is sought on a mandatory ground, which will deny the courts the opportunity to consider all the circumstances of the case.

The current performance standard G1.3 includes a requirement that housing associations should only seek possession once all other reasonable steps have been taken. Housing associations are not complying with the current requirement (see below). We are concerned that under a less prescriptive regulatory framework some housing associations may adopt a more draconian approach to housing management.

Evidence from individual cases also shows that some housing associations are seeking possession as a first, rather than a last, resort before alternative approaches have been tried. Also we have concerns about the disproportionate use of mandatory ground 8, and section 21 in the case of shorthold tenancies, to recover possession.

A refugee family, made up of a single parent woman and 4 children under 11, were nominated to a housing association by a London borough homeless persons unit. She accepted the offer of an assured tenancy which started in February 2001. The property was unfurnished and client applied for a Social Fund grant, which was refused in the first instance, but subsequently granted. The family did not have any essential furniture (such as beds or a fridge) and could not possibly move into an empty property. It took her a few months to sort this out. When she moved in, in May 2001, she claimed housing benefit which was backdated for only 4 weeks, leaving arrears of 10 weeks rent. The housing association has started possession proceedings and there will be a hearing in October. They are using grounds 8, 10 and 11. The local CAB has approached the housing association's head office and requested them to write off the arrears, which they have refused.

A case in the South East concerned a 19 year old woman who had been in care for much of her life. The social services department of the local authority found accommodation for her in a supported housing project run by a housing association. The accommodation was found for this client as part of a package of support. She was given an assured shorthold tenancy, initially for a fixed term of six months and this was then allowed to continue as a periodic tenancy. The client's rent was paid by means of housing benefit. The accommodation and support is vital to her well-being but, largely because of the complicated welfare benefits scheme she relied on, she fell into arrears with service charges. After about twelve weeks of problems, she found that she was in debt to the association by the sum of

£67. The association responded by giving her two months notice under section 21 of the Housing Act 1988 and seeking an order for possession, making use of the accelerated possession procedure. As notice had been given as required under section 21, when the papers were considered by the District Judge, an order for possession was made.

In another case, a single person with mental health problems sought advice from Shelter, having been moved into accommodation let on a shorthold by a housing association. This client had, beforehand, had a room in a hostel for homeless persons run by the same association. The client had been told that the Association would recover possession of the dwelling let to him on the shorthold tenancy because they could not provide sufficient support for him. They proposed to move him back into the hostel. The client was very anxious not to move back to the hostel and felt that his health would suffer. This was, clearly, a very complicated and difficult case but the route to possession chosen by the housing association effectively prevented any of this complexity being considered by the Court. The decision to give notice under section 21 of the 1988 Act may have been taken without full consideration by the Association of the tenants concerns.

In another case a young single woman had been granted an assured shorthold tenancy by a housing association. She had problems with her housing benefit claims. She had a clear entitlement to benefit but the administration of the scheme by the local authority was incompetent and arrears of rent soon mounted. The association obtained a possession order on Ground 8 and obtained an outright order. At this late stage, housing benefit was then paid by the local authority and the arrears were cleared. Nonetheless, the association decided to enforce the order. Before approaching Shelter, this client had taken advice from a solicitor and the local authority's own housing advice centre both of whom asked the Housing Association not to enforce the order. The association refused.

Transfers

In 2000/1 Shelter also advised over 700 housing association residents who were seeking a transfer. In many cases their transfer request was not being accepted because they had some rent arrears. In some of these cases the decision to not allow a transfer was made without any regard to the circumstances of the household, either in terms of the unsuitability of their existing accommodation or that a move to more appropriate accommodation might help them to get out of their debt.

In some cases the housing association has stated that they operate a 'blanket policy' and are therefore unable to take into account the individual circumstances of the household. The following cases demonstrate how some housing associations have not been responsive to the needs of their residents in their approach to transfers.

A 75 year old woman came to Shelter for advice because she needed a transfer. She had been into hospital and had both her legs amputated. Her home was not suitable for a wheelchair. So she asked to be moved to a suitable property. Whilst she had been in hospital an overpayment had been made on her housing benefit. Her application for a transfer was turned down because of the arrears and some damage to the walls of her property that had occurred because it was not suitable for a wheelchair user. Shelter wrote to the housing association requesting that they exercise some discretion over their rent arrears policy in this case. They refused stating that they would only waive the policy in cases where there was statutory overcrowding or unfitness. A local church group intervened by paying off the arrears and helping her redecorate her home and her application was then accepted.

A single man, aged 32, came to Shelter for advice. He had been medically discharged from the army. On his return to the family home, a three bedroom housing association property he discovered that his wife had abandoned the property and left the rent account with arrears of £2,000. His wife had been claiming housing benefit but not paying any rent. She had handed in notice on the property and the housing association wrote to him informing that he would become a trespasser at the end of the notice period. Fortunately for him the notice turned out to be invalid and he was able to stay following advice from Shelter. The tenant requested a transfer to a smaller property which would make it easier for him to pay of the arrears. The housing association refused the transfer request on the grounds that he had arrears. The housing association have made no attempt to pursue his ex-wife for the debt despite the client providing them with her address. His ex-wife has now served a valid notice and the housing association are seeking possession on this basis. If the association had granted the transfer request he would not be facing homelessness and the association may have recovered more of the arrears.

These examples of Shelters clients demonstrate how important it is that housing associations apply the spirit of section 3.5.4 in their approach to housing management and lettings. The importance of these issues is such that we feel the addition of more prescriptive wording along the lines that we have recommended above is warranted.

(ii) are we right to propose that the Code should apply to all associations? (Paragraphs 4.1 to 4.3)

We agree that the Code should apply to all housing associations.

(iii) are our proposals for regulating an association's activities appropriate? (Paragraphs 4.1 to 4.3)

We agree that the Code should cover all aspects of housing associations activities.

(iv) are our proposals the right way to assess compliance with the Code? (Paragraphs 5.1 to 5.7)

We welcome the proposals on assessing compliance with the Code. The proposals for the new Inspection regime will also be a welcome and progressive development to the regulation of housing associations.

We note the detailed proposals on the Guidance to support the Regulatory Code (The Regulatory Code: Guidance), include a requirement for associations to monitor the number of homeless households nominated by a local authority that are accepted and rejected and the reasons for rejection. This proposal is welcome, although we would recommend that it covered all nominated households with priority under the local authorities allocation scheme.

We would welcome a similar provision on possession actions. Housing associations should be required to monitor the number of possession actions they seek, the grounds on which those actions are based and the number of cases that actually lead to eviction. This could be collated through the Regulatory Statistical Return or CORE monitoring and would provide a mechanism for monitoring compliance with the proposed expected outcome that possession should only be sought when all other avenues have been explored.

(v) are our proposed transitional arrangements for assessing compliance with the Regulatory Code realistic? (Paragraph 5.8)

We welcome the proposed transitional arrangements.

(vi) is the proposed framework for regulatory guidance compatible with our new regulatory approach? (Paragraphs 6.1 to 6.8)

We support the proposed framework for regulatory guidance and will provide detailed comments in our response to the proposed guidance contained in the consultation paper The Regulatory Code: Guidance.