



Tenants Services Authority (TSA)

A new regulatory framework for social housing in England: A statutory consultation

Summary paper 3: Regulation in practice

“Equipping the profession for today and tomorrow”

November 2009

Summary paper 3: Regulation in practice

This is the third summary paper in a series of three which summarises the new regulatory framework for social housing in England published by the Tenant Services Authority (TSA) on 12th November 2009.

Other summaries include:

- Summary paper one: Overview of the regulatory framework
- Summary paper two: National and local standards.

This paper gives an overview of how the TSA proposes to assess compliance against the standards, encourage sector-led improvement and use its formal regulatory and enforcement powers in practice.

Supporting improvement: sector-led improvement

The new regulatory framework places much greater emphasis on providers to be responsible for self-improvement; in particular they should:

- Develop effective scrutiny mechanisms, for example through:
 - self-assessment
 - boards or councillors
 - tenant scrutiny
 - external validation and accreditation services.
- Develop a strong approach to self-improvement, including:
 - learning from each other
 - sharing of good practice
 - benchmarking
 - peer review.
- Use service improvement plans
- Increase their accountability to tenants by developing local standards.

Planned and existing resources to help providers deliver sector-led improvement include:

- The Improvement and Development Agency and Regional Improvement and Efficiency Partnerships
- Best practice bank to be developed by the TSA
- Supporting the work of other bodies such as CIH
- Examining the potential of accreditation schemes.

The approach to monitoring performance and assessing compliance

With effect from 2010/2011 regulation will be shaped to support the local government performance framework, identify and address poor performance and use a co-regulatory approach. Responsibility for compliance sits firmly with providers' governing bodies, and requires transparency, accountability to tenants and their involvement in scrutiny of performance.

The regulator will assess compliance through the annual report to tenants (see below), performance information and possibly other sources such as complaints. During the first year the focus will be on the poorest performing landlords.

Annual report to tenants

All providers with more than 1000 properties will be required to publish for tenants' benefit an annual report on how they will comply with standards, including local standards. The deadline for submitting the first report to the TSA is 1st October 2010 (thereafter reports will be due on 1st July annually). In the first report, landlords have to:

- Set out plans for meeting all the national standards
- Identify any gaps in service and improvement plans
- Show how compliance against standards will be monitored
- Set out intentions for developing local standards with tenants.

Subsequent reports will require landlords to include an assessment of their performance against the national standards in the previous year, including tenant scrutiny of performance and the use of external validation, peer review and benchmarking.

Performance information

During the first year of the new framework performance, information to assess compliance will be extracted from existing sources. TSA will also continue to collect financial performance data from non-local authority providers. In the longer term, the TSA is keen to develop a more sophisticated, co-regulatory approach to assess compliance, and further discussion with stakeholders is expected before April 2010, followed by formal consultation.

Annual information about the performance of providers against the standards will be made publicly available by the TSA.

Inspection and the Audit Commission

The TSA and the Audit Commission will work closely together in commissioning housing inspections, disseminating good practice and the exchange of information needed for Comprehensive Area Assessments (CAAs).

The TSA will identify who should be inspected (e.g. to investigate poor performance in more detail). The Audit Commission, using a methodology to be agreed, will undertake inspections on the TSA's behalf. The methodology will be reviewed to reflect the new regulatory approach and standards. Key Lines of Enquiry (KLOEs) will be replaced by April 2010. The Audit Commission will lead on this supported by the TSA.

For 2010/11, ALMO inspections to access funding will continue under existing arrangements.

Complaints about a provider's performance

The TSA considers complaints to be a key source on providers' performance and full details on how the TSA will deal with complaints made directly to them are set out in the consultation document: http://www.cih.org/policy/upl_docs/TSA%20-%20Statutory%20Consultation.pdf

A risk-based approach and regulatory activity

The risk-based approach, still under development, is to enable the TSA to engage with providers who are failing (or at risk of failing) against the standards and to identify risks affecting the sector

as a whole. At-risk providers can therefore expect more engagement with TSA than those who are complying, although there may be more routine engagement on financial viability issues.

TSA staff roles

The TSA has set up new directorates to cover Risk and Assurance and Tenant Services:

The Risk and Assurance teams' main focus is on the governance and viability of organisations and any enforcement actions required where providers do not comply with regulatory requirements. They will also lead on intervention when necessary. Providers should expect to be contacted by:

- Senior Risk and Assurance Managers if they own more than 10,000 homes
- A multi disciplinary assurance team responsible for providers with 1,000-10,000 homes.

The Tenant Standards teams will work with providers and tenants to ensure that the new regulatory framework and national standards are understood, implemented and complied with. They will focus on poorer-performing providers.

Publishing regulatory assessments

The TSA intends to publish its assessments of providers' performance to:

- Help inform tenants
- Drive up performance of individual providers
- Provide assurance about the sector to other stakeholders.

In 2010/11 the TSA will only publish assessments on viability and governance standards (but not for local authorities) as it will not have sufficient information on other standards.

Formal Regulatory and Enforcement Powers

The TSA will use its formal powers should a providers' poor performance warrant it. It is required to consult on its use of these powers: this document covers the general principles and a supplementary consultation document covers the detail. Guidance on powers relating to local authorities are subject to parliamentary approval, and consultation on some powers will take place later.

Monitoring and investigatory powers

The TSA has a number of statutory powers to monitor compliance. These powers apply to all existing RSLs and local authorities and any new not-for-profit and profit-making providers from 1st April 2010:

- Collect information and documents
- Arrange a survey
- Arrange an inspection
- Direct an inquiry
- Direct an extraordinary audit.

Enforcement Powers (non local authority providers)

The TSA also has a wide range of enforcement powers through which it can require the provider to take action to resolve an identified failure or other problem. The following can be used for providers who are not local authorities (* indicates powers that are new to the TSA and did not apply to the Housing Corporation):

- Enforcement notice*
- Penalty fine*
- Award compensation*
- Direct a tender of management*
- Direct a transfer of management*
- Appoint a manager*
- Direct a transfer of land
- Make and execute an amalgamation of an industrial and provident society*
- Direct restrictions during or following an inquiry
- Remove an officer in circumstances such as bankruptcy
- Appoint new officers.

The following general powers also apply to non local authority providers:

- Give financial assistance
- Direct Homes and Communities Agency not to invest
- Direct how sums in a disposals proceeds fund are used, allocated or paid
- Settle the affairs of providers that become insolvent
- Petition to wind up a provider
- Transfer net assets on dissolution
- Place restrictions on disposals or transfers of property.

Enforcement Powers (local authority providers)

The following relevant general powers already apply to local authorities:

- Direction to Homes and Communities Agency not to invest
- Collect information and documents
- Place restrictions on disposals or transfers of property.

The government intends to give the TSA the following additional powers:

- Appoint advisors to a local authority
- Enforcement notice
- Censure a local authority during or following an inquiry
- Direct a tender of management
- Direct a transfer of management.

How the TSA will use its powers: general

The approach to using its powers is underpinned by the TSA's fundamental objectives, its standards (and any associated codes of practice) and statutory requirements. Where the TSA suspects a failure to meet standards or that a provider has mismanaged its affairs it will consider using its regulatory powers to investigate further and this may result in more formal use of its enforcement powers. The TSA may use its powers in whatever combination is appropriate.

Principles underpinning the approach to using its powers: what providers can expect

The TSA will adopt the following principles:

- Use self-improvement and remedial strategies proposed by the in the first instance.
- Adopt a graduated and proportionate response if enforcement powers are used.
- Seek to balance the interests of the provider, its tenants, its key stakeholders and the impact on public funds in any particular case.
- Be proportionate, consistent, accountable and transparent - in its relationships with the provider, tenants and other stakeholders.
- Explain the grounds and reasons for taking action and normally give notice of any action.
- Assess the most appropriate course of action taking into account the particular circumstances, level of risk and potential impact associated with the provider; tailor its regulatory engagement accordingly and always take action commensurate with the materiality of the breach or failure.
- Consider any remedial action or voluntary actions proposed by the provider.
- Take into account any significant changes in circumstances and adapt the approach accordingly.

The TSA may also act with little or no notice should circumstances warrant it.

How the TSA will engage with providers

The TSA will aim to be transparent and follow these principles when using its formal powers:

- Maintain a dialogue with the provider, including about issues giving rise to concern, when it may want to use a power and explaining the power being considered before giving notice of the power.
- Give the provider the opportunity to respond with information which will be considered by the TSA as to whether it will use its powers or accept voluntary undertakings.
- Notify the provider of any decision and the reasons for it.
- Give providers information on how to appeal against or challenge decisions and any related timescales.

Factors that may lead to a provider being considered for investigation and enforcement

In broad terms, formal action will be based on these factors:

- Seriousness of the failure or problem identified
- Urgency with which the problem or failure needs to be addressed
- Level of risk associated with the provider and the potential impact of its failure
- Degree of assurance given by the provider to the TSA in relation to action it will take to resolve the issue
- Resources available to the provider to resolve the problems
- Proportionate use of resources that need to be applied to regulatory engagement with the provider.

Supporting corrective action and improvement

The TSA may propose an Action Plan to bring about improvement and will normally work with the provider to agree how the plan could best be implemented. The aims to be pursued will vary from case to case but will be underpinned by the TSA's fundamental objectives and its standards.

Investigative and enforcement activities will cease once the provider has completed corrective actions to the TSA's satisfaction.

Checks and balances on the use of the powers

There are a number of checks and balances in the 2008 Act which apply to the TSA's use of its powers:

- The Regulators' Compliance Code
- Various considerations that it must make before exercising an enforcement power, and
- Rules about considering voluntary undertakings.

Eligibility for TSA registration and regulation

Providers on the TSA's existing register, and all applicable local authority providers, will automatically be included in the new register of providers from 1st April 2010. After that date, new providers will have to satisfy certain criteria. The main ones are:

- To be, or intend to be, providers of social housing in England
- To be English bodies
- To satisfy other criteria established by the TSA.

Advice is given on how these apply in detail.

Assessment by the TSA

Eligible providers will then be assessed by the TSA. The criteria it can use can be about:

- An applicant's financial situation
- Its constitution
- Other arrangements for its management.

The TSA sets out some detailed principles about how the criteria will be framed, which in summary are to meet or be on the path to meeting:

- The requirements of the governance and financial viability standard
- The requirements on tenant involvement and empowerment
- The service delivery standards.

Also:

- A non-profit applicant must have within its objects the provision of social housing, not-for-profit status and non-distribution of assets to members
- A for-profit applicant must agree assurances with the TSA to prevent inappropriate leakage of public funding to unregistered organisations.

Registration and deregistration processes

The TSA sets out principles as to how the registration process will work. If deregistration is instigated by the TSA, the criteria are set out in the 2008 Act. The TSA sets out principles for

voluntary deregistration which are mainly about making arrangements to protect public funds and the interests of tenants.

Other detailed points are:

- The register is a public document divided into the main categories of provider.
- Fees can be charged for registration, but there are no current plans to do so.
- The TSA will consider the future of the current Housing Management Accreditation Scheme.