

Response to a Consultation on Proposals for a New Regulatory Framework for Social Housing Providers in Northern Ireland

1.0 Introduction

Housing Rights welcomes the opportunity to respond to the Department for Social Development's (the Department) consultation on *Proposals for a New Regulatory Framework for Social Housing Providers in Northern Ireland*. Housing Rights understands the Department's position on needing to review the regulation process at this juncture with the changing dimensions of social housing.

At the outset, Housing Rights would like to state its belief that safeguarding the interests of tenants and other users of social landlord services should be central to whatever regulatory regime is eventually put in place. Housing Rights recently responded to the Department's consultation on tenant participation, whereby it set out its views on the positives which can emanate from greater tenant and user participation and we believe that tenant and user involvement should also be a core feature of an effective regulatory system.

The Department states that *"In social housing...there is a need for regulation above and beyond the generic case...social housing tenants have a particular need for regulation that protects and empowers them."* Housing Rights agrees that the main aim of any regulatory system should be to protect the interests of social tenants and other service users. Social tenants want to live in accommodation which is safe, in good condition, affordable and they want to have a landlord that listens and responds to their concerns and suggestions. Typically many social tenants have a lack of economic power and, consequently, the choices which they can exercise within the housing market are limited. It is important therefore that their interests are protected within a robust regulatory framework. There is a need to ensure that their landlord is working within a prescribed set of standards and providing an appropriate standard of accommodation and service.

Although the question of who will actually carry out the role of Regulator will be the subject of another consultation exercise, Housing Rights strongly believes there is real benefit in having an independent Regulator who is free from any perceived constraints and conflicts of interest. Independence will enhance confidence and trust in the regulatory process, both for users and lenders.

2.0 Summary

Housing Rights:

- **Believes that it is important that all tenants and services users of social landlords can expect to receive the same level and quality of service regardless of the landlord.** Further clarification would therefore be welcome on the scope of the proposed regulatory standards, particularly on whether or not they will extend to the Northern Ireland Housing Executive (NIHE) services for homeless persons and the management of mixed tenure buildings.

- **Is pleased that the proposed consumer standard has been given prominence in the proposals and would like to see this widely publicised and promoted.** There is a need to ensure that tenants and other service users are aware of the standard and can assess how landlords are meeting the standard.
- **Understands that a balance needs to be struck between safeguarding tenants and not over-burdening landlords with regulation.** There is some concern however that the move to a risk-based system could be to the disadvantage of tenants particularly if the Regulator is only required to step in where there has been or is a risk of serious detriment.
- **Supports greater tenant scrutiny in the regulation of landlords as a means of protecting consumers and enhancing services.** Given the recent commitment contained in the Tenant Participation Strategy, Housing Rights would welcome greater detail on how the Department proposes to involve tenants in the regulatory process.
- **Agrees that the Regulator should have access to a range of powers** when enforcing the standards and again would seek reassurance that the power of the Regulator to become involved would not be restricted to when matters reach a critical point.
- **Believes that the interests of homeless people as consumers, needs to be protected** by the new regulatory regime in the same way as the rights of tenants and other service users.

3.0 Remit of the regulation

Housing Rights believes that it is important that the tenants and services users of social landlords receive a good quality of service regardless of which landlord they are dealing with; whether that be the NIHE or a Registered Housing Association (RHA). In addition to tenants, there are many other users of social landlord services, e.g. homeless persons, people on the housing waiting list, who are equally concerned as to how social landlords are regulated and how well they perform against any set standards.

Further clarification would be welcome on the following areas:

- Whilst there is reference early on in the consultation document that "...the new framework that is proposed in this document will apply to all social housing providers, including any new ones..." it largely goes on to refer to only the RHAs. **Will the NIHE come under the remit of the new regulatory framework?** As the largest social landlord in NI, Housing Rights would be concerned that, if it does not extend to NIHE a large number of tenants and service users could potentially be excluded from the safeguards which the regulatory process offers.
- If the NIHE is to come under the remit of the new framework, which of their functions will be subject to it. **Will only landlord services be covered?** Or will all of their services, included homelessness services, be included?

Homeless people are some of the most vulnerable people in our society. It is therefore crucial that the services which they receive are properly regulated and required to meet certain standards.

- The number of mixed tenure buildings has grown significantly over the last number of years. In the experience of Housing Rights from advising people living in mixed tenure buildings, the very nature of the living arrangements in mixed tenure buildings can raise difficulties in respect to the management of the building, including its private and communal areas. Tenants, landlords and owner-occupiers all have a different legal and occupation interests with varying needs and demands. **There is a need for the Department to consider what role, if any, the new regulatory framework will have in assuring the quality of services provided by social landlords in mixed tenure developments.**

4.0 The regulatory standards

Overall, Housing Rights welcomes the three standards that are being proposed and supports the principle that regulation should be easier and simpler for landlords to comply with. This will hopefully allow resources to be concentrated on providing quality services to tenants and users.

Housing Rights is particularly pleased with the new consumer standard and the prominence that it has been given. This is a positive step and fits in with the Department's recent proposals for greater tenant and user participation. As an organisation, we agree that consumers should be at the forefront of any business, including the day-to-day workings of social landlords. This can only be a good thing for helping to drive up standards. However, the term 'consumer' should be defined as much wider than tenants and we would ask for clarification from the Department that the new standards will apply to all service users and not just tenants.

Housing Rights believes there is real merit if the standards, especially the consumer standard, are widely publicised and made easily accessible to tenants and other service users. **Housing Rights would like the proposal to include recommendations on how the standards, especially the consumer standard, should be communicated amongst tenants and other service users.** This degree of openness and transparency would help to promote landlord accountability and establish consumer and market confidence in the standards as a genuine tool for service improvement.

Housing Rights considers this to be of particular importance especially as there are no proposals at present to provide a legislative basis for the standards. Housing Rights understands that a lengthy period is required to introduce a new piece of legislation and would not wish to see progress on the new standards being unnecessarily delayed at this stage. **We believe that the Department should give consideration to enshrining the principles of the standards governing the performance of social landlords in future legislation.** The Housing (Scotland) Act

2010 provides a useful reference as to how this could be drafted, including procedures for the regular review and revision of the standards.

5.0 Monitoring and enforcement

Housing Rights recognises the merit of moving away from an overly restrictive regulatory system which can place an unnecessary burden on some landlords who are already performing to a high level. We also understand that, especially in times of financial strain, the Department needs to be prudent about public expenditure and ensure value for money is being delivered. It is critically important therefore that an appropriate balance is found which avoids excessive monitoring of the work of landlords whilst simultaneously safeguarding public investment and the standard of services provided to users. Housing Rights is not confident that the proposals in the document will achieve this balance.

According to the proposals, the number of inspections will be significantly reduced and it is intended that inspections will only occur *"where the Regulator became aware of an issue of concern"*. The proposed rating system would seem to indicate that there will only be active intervention by the Regulator when a landlord is assessed as not meeting the requirements set out in the standards and working with the landlord is not an option (rating level 4).¹ Housing Rights is not confident that the new regime will be robust enough to protect tenants and other users. It appears that intervening at a late stage will most likely mean that there has already been a significant failing on the part of the landlord. **Housing Rights would welcome more discussion around putting adequate protections in place and how consumers can be involved in that process.**

Housing Rights would not, at this point, wish the regulatory framework in NI to mirror the system currently in place in England. According to the Homes and Communities Agency (HCA), *"For the consumer standards our role is reactive in response to referrals or other information received. Our role is limited to intervening where failure to meet the standards has caused or could have caused serious harm to tenants."*²

In contrast to NI, the system for redress in England is multi-layered. Tenants have a number of ways by which they can make a complaint. After going through the internal complaints procedure of their landlord they can then approach their local Councillor, MP or Tenant Panel for assistance. Following, this they can refer the complaint to the Housing Ombudsman.

Here in NI, local councils do not have a remit when it comes to social housing. There are no Tenant Panels and there is no dedicated Housing Ombudsman. The NI Ombudsman deals with a wide range of complaints, not just housing, but has limited

¹ See page 37 of consultation

² A guide to regulation of registered providers, HCA, May 2015, <https://www.gov.uk/government/publications/a-guide-to-regulation-of-registered-providers/a-guide-to-regulation-of-registered-providers>

resources. Housing Rights has submitted a number of cases to the NI Ombudsman. In our experience, it is typical for NI Ombudsman to take at least a year to finish their investigations and reach a conclusion.

The current lack of options for redress in NI raises a compelling reason for provisions to be made for the Regulator to get involved with tenant and user concerns at an earlier stage than that which is being proposed. Light touch regulation in relation to the consumer standard in the present context would, in our view, present a significant risk to tenants and service users. **Housing Rights would like the Department to reconsider the adequacy of the measures which would actually be available to tenants and service users where they have concerns about the standard of services provided.**

In terms of enforcement, Housing Rights agrees that the Regulator should have access to a range of enforcement powers such as notices, penalties and compensation awards and that having such powers can act as an effective deterrent. All too often, consumers can have a lack of confidence in regulatory bodies when they consider that not enough action is being taken to address their concerns. **Further information is needed on when the Regulator's enforcement powers would be used and how strong their response would be.**

5.1 The rating system

The new rating system should mark a positive step in improving standards in the social rented sector. Again, Housing Rights is encouraged that the consumer standard is the first to be considered when it comes to applying a rating. The rating system sets out to measure a range of landlord behaviours and actions; from full compliance with all of the standards, right up to serious failures. The rating system should be able to provide tenants and other users with an important overview of how their landlord is performing.

However, Housing Rights does have some reservations about the proposed operation of the rating system:

- The award of a rating under the new system may not be sufficiently secure in protecting tenants and other users. It appears from the proposal, that the rating given to a landlord will be very much dependent on the landlord supplying their own evidence on how they are meeting the standards. There is an inherent risk in this approach if the only assessment of the situation is based on the landlord's subjective evidence. Without a mechanism for independent scrutiny in place, self-assessment may not always reflect the reality of the situation. **There should therefore, also be methods of gathering supplementary data/feedback e.g. directly from tenants and other users on landlord's performance.**
- Greater guidance is required on how, it is being proposed, the rating system will work in practice and when the Regulator could step in to take action. Would there have to be serious failures (rating 4) on all three standards, or would one

serious failure be enough for an inspection to be required? What happens at a rating of 3 when compliance is not yet at a serious failure stage, but is still a cause for concern?

The rating system offers a great opportunity for consumers and landlords alike to be able to compare and contrast landlord performances. **Housing Rights believes it is imperative therefore that the ratings attributed to each landlord are made publicly available.** It would provide an invaluable source of information for consumers both on the areas of strength and areas for improvement attributed to a particular landlord and could provide useful information on any actions by either the landlord or the Regulator that are being taken to rectify such shortcomings. Landlords could also identify areas of good practice amongst their peers and utilize the information to help improve their own services to match or exceed their peers.

Housing Rights believes that, within a robust and reliable regulatory framework which has the confidence of landlords and users, making the regulation results public would help protect tenants and users and help to drive business improvement throughout the sector. **Consideration should be given to an online comparison tool, similar to that created by the Scottish Housing Regulator.** This allows social tenants, service users and landlords to compare the financial and service performance of all registered social landlords against the standards and outcomes of the Scottish Social Housing Charter.³

5.2 Tenant scrutiny

Housing Rights believes that user scrutiny is paramount within any new regulatory scheme. It is vital to the protection of consumers and the continuous improvement of services. With a move towards greater tenant participation and a consumer standard at the forefront it is important that the right mechanisms are put in place to ensure that tenants and other users not only have a voice at delivery level, but that they are also empowered to play an active role in the regulation process.

Despite the importance of tenant scrutiny, there appears to be little detail in the proposals that have been issued. **Housing Rights would like the Department to consider including further detailed proposals on tenant scrutiny in their final document.**

Given the relatively modest level of engagement with tenants/users to date, it is recognised that in order to make the scrutiny process effective, it would be crucial for appropriate training, support and resources to be put in place for both tenants and landlords. Sufficient time and resources would need to be allocated to allow this to happen.

³ <https://www.scottishhousingregulator.gov.uk/find-and-compare-landlords>

6.0 Impact assessment

The Department has conducted a series of impact assessments in relation to the consultation proposals. The Department did not identify any adverse impacts. However, Housing Rights believes that if the proposed regulation system is not extended to cover the services for homeless people then there could potentially be an adverse effect on this client group.

In the year 2013-14, a total of 18,862 households presented as homeless to the NIHE. This is a substantial number of service users. The interests of homeless people can often be easily ignored, leading to social exclusion. **But as the statistics illustrate they are important consumers of social landlord services and, as such, in Housing Rights' view, their needs should be protected as part of the regulation of social landlord services.**

Housing Rights would like to see the new regulatory regime display an inclusive approach similar to that which operates in Scotland. The Scottish Housing Regulator's statutory objective is to *"safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords."*⁴

Housing Rights would ask the Department to ensure that homeless people are not disadvantaged under the regulatory system that is devised.

7.0 Conclusion

In conclusion, Housing Rights broadly welcomes the proposals for a new regulatory framework for social housing providers. The Department has put forward its reasons for overhauling the current regulatory regime and Housing Rights acknowledges the overall rationale behind the proposals; especially as part of the wider reform of social housing.

However, there are a number of issues raised throughout this response which Housing Rights would ask the Department to consider:

- That proper mechanisms will be put in place to ensure that the Regulator does not wait until there is a risk of serious detriment to tenants and/or their homes.
- That tenants and other service users are put at the heart of the new regulatory regime. It is widely recognised that having consumers playing an active role in regulation can help ensure that standards are met and that it is good for business.

⁴ Regulation of Social Housing in Scotland Our Framework, Scottish Housing Regulator, 2012, <https://www.scottishhousingregulator.gov.uk/sites/default/files/publications/Our%20Regulatory%20Framework.pdf>

- That there is rigorous scrutiny of the evidence provided by social landlords and the outcomes of the rating system are made widely available and easily accessible to all interested parties, including tenants and other service users, other landlords and those providing the finance to social landlords.
- That there is greater clarification as to when the Regulator will step in to take action; whether that be to work alongside the landlord to improve standards or to use their powers of enforcement.
- That the standards should be ultimately enshrined in legislation to afford better protection to tenants and service users and to better reflect the Government's commitment to raising standards in social housing.
- That the ratings results should be made publicly and easily accessible. It is only by being open and transparent that consumers can truly scrutinize service providers.
- That the Department should ensure that homeless people are not disadvantaged under the new regulatory system which is devised.

Housing Rights would be happy to contribute to any future discussions which the Department may undertake regarding the new regulatory framework or to provide clarification on anything contained in this response.

We will be pleased to provide additional information in support of this response. For further information contact:

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