

Building a new regulatory framework

Response by Grant Thornton UK LLP to discussion paper

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?

We agree that the main findings from the research generally reflect our experience of working with over 150 landlords (registered providers).

The concept of resident involvement in the management of registered providers is widely accepted and embedded in the 2008 Act. We draw attention to the following:

- there is a risk that the consultation process will have raised service expectations that cannot be delivered within tight resources and at a level which, for example, are not easily available to home owners
- we were surprised that the consultation with landlords did not result in queries about the merits of having tenants on the Boards of registered providers ie. there are views that there are better ways of involving tenants in management and this may be a necessary debate in seeking high quality governance
- we recognise the sentiment that landlords will prefer a regulatory system of mandatory national minimum standards with local discretion. Apart from anything else we see this as vital for good governance. It will be difficult to attract high quality board members if their role is to primarily enforce rigid, national standards.

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?

Although the concept of "co regulation" may prove difficult to define and implement in practice, it must be right in principle and stand the best chance of securing ownership throughout the sector.

Our experience shows that in other sectors there is little confidence in self-regulation. On the other hand the intrusive nature of a truly direct regulatory regime would not be affordable, let alone practical or welcomed by landlords.

We understand the rationale for deploying senior regulation staff in managing relationships with the very largest registered providers. However, there have been a number of failures amongst the smaller providers in recent years and the regulatory

process needs to ensure there is enough regulatory engagement with smaller providers so that timely intervention can be achieved on a graduated basis rather than "after the event" enforcement notices and changing management. A regulatory conundrum is that the largest providers may create the greatest impact in the event of failure, although the likelihood of this happening should be less given their ability to attract the best management and Board members.

Some thought should be given to Figure1 headed "The TSA's approach to developing regulation". This creates a rather simplistic view of co-regulation and perhaps does not recognise the input from others, not the least of which may be funders and local authorities.

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

Yes - the key propositions for national standards, relating to how services are provided, financial viability/governance and economic, efficient and effective delivery of services, seem a sensible way forward and a fair reflection of legislative requirements.

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

The initial areas for national standards and the approach to diversity and tenants with care and support needs are set out rationally. We suggest that the following should also be considered either explicitly or within the current headings:

- service offer - there is an important overriding criteria that the service offer leads to "sustainable communities" which should perhaps be made more explicit
- themes B and C - should these standards also pay some attention to tenant responsibilities as well as what in effect are "rights"?
- whilst we agree that the approach to diversity is best reflected within each of the relevant national standards, we are uncertain that this approach is optimal for tenants with care and support needs. This is a specialist area which has not had significant regulatory involvement or understanding in the past. There may be a case for a more explicit standard on this issue.

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

There may be a case for local standards in respect of the value for money (VFM) theme (although this may depend on how the national standard is drafted) eg:

- what if tenant involvement leads to demands for higher cost/greater range of services?
- is there a case for recognising the different economies of scale that may exist between the various sizes of registered provider?
- how will the national standard address the different problems faced by registered providers where some additional resource input may be required to resolve issues?
- the national conversation suggests that tenants require the "softer" human elements of service which may lead to higher cost resource devoted to housing management
- local demographics may also be an issue in relation to VFM

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?

Primarily the TSA should see its intervention and enforcement role if the national (minimum) standards are not met.

Otherwise the main case for intervention relates to the levels of tenant satisfaction with the progress on local standards. We see a risk that if the TSA seeks to extend its intervention and enforcement powers to cover local standards there could be a disincentive to set stretching local standards that could lead to real improvements in service delivery to tenants.

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

A further objective may relate to ensuring the refurbishment/development of properties with due consideration to demographic changes. Provision of accommodation should take into account medium/long term requirements as well as short term issues.

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

n/a

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

Rent - there may be a need for an explicit reference to service charges (as applicable) as this appears to be an area where there is inconsistency, sometimes a lack of transparency and different

interpretations (i.e. pay in advance, arrears, sinking funds) across providers/regions.

What objectives should we have in mind in shaping the national standard that relates to governance?

What are your views on the options presented?

At present as recognised in the paper there is a plethora of documentation about the attributes required for good governance. Our preference is to focus on Option 3 mainly because it addresses the issue of good governance through good behaviour. Many associations can demonstrate good governance through systems/controls/policies/processes but it falls down if Board members do not have the necessary personal standards, competencies and behavioural approaches required to be a good Board member. Option 3 appears to give the best chance of addressing this issue, although we accept that it may be the most difficult to police and some thought will need to be given to the most appropriate means of demonstrating adherence to the principles

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

The standard should cover:

- basic management of short term cash flow management and covenant compliance over the next 12 months
- understanding the medium term financial health over the next 5 years
- longer term financial viability to ensure borrowings can be repaid within the required timeframe

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

Objectives should cover:

- the need to maximise the value obtained from what are effectively public resources
- the incentives to landlords to improve value for money - what else will they be allowed to do?
- ensuring continuous improvement
- encouraging innovation and partnerships to get better value
- demonstrating VFM through benchmarking and peer reviews
- ensuring the effectiveness element of VFM is not overlooked
- avoiding crude, short term fixes such as national percentage reductions in costs across the sector
- ensuring due priority is given to registered providers with apparent, unexplained high costs and to those with apparent unexplained low costs

The TSA may wish to consider the extent to which it can promote VFM by discussing good practice around VFM approaches etc. i.e. perhaps there is a case for publications

entitled "learning from good practice" as well as "learning from problem cases".

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

There may be a need to clarify the position on data quality with certain systems (e.g. PIS) but with other data seemingly accepted at face value.

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

If there is a requirement for a grading system we prefer an approach which keeps it as simple as possible. The national standards will no doubt be explicit, and the grading should focus on whether these are being met or not (rather than trying to comment on the extent of compliance).

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

n/a

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

n/a

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

n/a

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

n/a

Who should I contact for assistance?

If you have any comments on this document or would like to contact us, please contact your local office or:

Arthur Merchant
Head of Housing
T 020 7865 2472
E arthur.merchant@gtuk.com