

New deal for social housing—accountability of social housing providers

17/09/2018

Local Government analysis: The second of a three-part series, this analysis examines the proposals for increased transparency and accountability for providers of social housing in the government's Green Paper 'A new deal for social housing' (the Paper). Andrew Lane, a barrister at Cornerstone Barristers specialising in social housing and property, discusses the risk of relying on data gathering to measure the proposal's effectiveness on improving tenant engagement and increased flexibility surrounding 'right to buy'.

Original news:

Green paper seeks to hand more power to social housing tenants, LNB News 14/08/2018 59

What does the green paper propose in relation to ensuring greater transparency and accountability of social housing providers to tenants in relation to their complaints?

The government consulted earlier this year on how to make current in-house complaints processes better, raise consumers' awareness of redress schemes and improve the accessibility, speed and transparency of alternative dispute resolution processes (see 'Strengthening consumer redress in the housing market').

In terms of current thinking, bearing in mind that the government will be formally responding to the aforementioned consultation later in the year, the Paper proposes a number of measures to provide for greater transparency and accountability and a speeded-up complaints procedure (the second of the five principles underpinning the Paper) with greater powers of enforcement (the third principle).

These include:

- strengthening mediation opportunities
- removing the 'democratic filter' (ie reference first to a designated person such as a local MP or councillor), or reducing time when the Housing Ombudsman can investigate anyway, regardless of the filter, from eight to four weeks
- improving the effectiveness of the designated person role, having an awareness campaign in respect of the landlord's complaints process and/or supplying details at tenancy sign-up
- improving awareness of external advice, perhaps by the establishment of 'a single advice or advocacy service'
- providing for formal reporting and publication in respect of a landlord's complaint handling
- allowing the Regulator of Social Housing (Regulator) to draw up a code of practice to include time-limits for resolution

How does the green paper propose increasing transparency and engagement with tenants in the management of their homes and communities?

Better, more up to date and more focused public data, as proposed in Chapter 3 of the Paper, is an essential prerequisite to effective and informed tenant engagement in the workings of the landlord. In short, and as Sir Francis Bacon wrote in the sixteenth century, 'knowledge is power'.

This could take the form of identifying key performance indicators and publishing league tables on functions such as repairs, safety, handling complaints, engagement with residents and neighbourhood management. This would be underpinned by possible financial benefits and dis-benefits to the landlord, including in respect of access to funding (in particular with regard to the £9bn Affordable Homes Programme), depending on performance.

As for the question of safety, unsurprisingly high on everyone's agenda post-Grenfell, there will be a pilot project established with a small group of social landlords designed to 'innovate and trial options for communicating with and engaging with residents on safety issues'.

There is also a push to look at the effectiveness of tenant management organisations and warm words for community-based housing providers set up on a co-operative or mutual model 'and to be managed, either entirely or mainly, by their residents'. Part of this 'push' may be in the form of the encouragement of a local authority stock transfer programme to community-based housing associations.

How effective are these proposals likely to be?

There are a lot of fine, and no doubt genuine, words in the Paper centred around true tenant engagement and input (and much has been put out for (further) consultation). While the co-operative or mutual models of landlord provide an obvious, real and structural role for true tenant engagement and 'say', league tables are less obvious in their effect.

Not only will their success depend upon the wording and range of performance indicators measured, the accuracy of the data collected, their publication and dissemination and the effectiveness of any redress open to individuals or group of tenants (eg will they be a 'consumer rating' for regulation purposes), but also there is also the issue of 'blunt instrument' and 'tick box regulation'.

For example, with a landlord's repair service, there are obvious measures to be assessed, not least the time taken to respond to complaints and tenant satisfaction with the eventual service. However, while important, these might not only produce a skewed or limited picture of the service but also promote information over quality and service.

What proposals are made to the Regulator's role in relation to holding local housing authorities to account in a similar way to registered providers?

It has been eight years since the last review of social housing regulation, announced in June 2010. The Paper does not pretend to provide all the answers as to where it goes from here and indeed is used to seek views on how the current regulatory framework is operating by means of a call for evidence.

It believes the Regulator, possibly made more accountable to Parliament, may be the best body to draw up and monitor the performance targets it is so keen on (as discussed above) and to publish the much-vaunted league tables.

What does the said related call to evidence into regulation of social housing envisage happening in relation to future regulation, in particular in relation to joining up of regulatory regimes in the light of the Dame Judith Hackitt Review of Building Regulations and Fire Safety?

The first principle underpinning the Paper, and the aim for a new, fairer deal for social housing residents, is 'a safe and decent home'. It recognises that, in terms of oversight, residents need to know what questions to ask and where responsibilities lie and to have accurate and up-to-date information readily available to properly inform the whole process.

To an extent, this mirrors the approach to be found in Dame Judith Hackitt's final report published on 17 May 2018.

There is a specific call for the Decent Homes Standard to be reviewed and updated (it being noted that the private rented sector has tougher regulation), it being last reviewed in 2006 to reflect the Housing Health and Safety Rating System.

Finally, the Paper considers, and seeks views on, whether there should be a more hands-on role for the Regulator in respect of consumer matters (eg the modification or abolition of the 'serious detriment' test).

Have the controversial elements of the HPA 2016 on fixed term tenancies and higher value properties been officially consigned to history?

The simple answer to this question must be yes, along with a number of policies from the Coalition era such as 'pay to stay'. However, this does not mean that fixed terms tenancies or the voluntary right to buy are consigned to history.

What does the Green Paper tell us about the government's approach to social housing, and the voluntary right to buy for housing association tenants?

The government's encouragement of home ownership across the board remains, as is clear by the greater flexibility offered to shared ownership arrangements and the simple language of the Paper at various points. However, contrary to previous policies and pronouncements, there is at least an acknowledgement that social housing—both local authority and housing association—plays a crucial role in helping meet the urgent demand for housing in England. The Prime Minister says in the foreword:

'This government is committed to getting more of the right homes built in the right places, sold or rented at prices local people can afford—and that includes building a new generation of council homes to help fix our broken housing market.'

Despite that reference to the question of affordability, there is in fact in the body of the Paper a singular lack of appreciation of the role that lets at an 'affordable rent' (introduced in 2011), as opposed to lets at a social rent, have played in pricing many households out of such accommodation. No doubt the government would say, as the Secretary of State does in his foreword, that this issue is addressed in other programmes and prior announcements, such as the Affordable Homes Programme 2016-21.

As for the Voluntary Right to Buy, this was a key aspiration of the 2015 Conservative Party manifesto and its funding is provided for in the Housing and Planning Act 2016 by means of local authorities being required to sell off their higher value vacant properties. While that means funding has been closed off in the Paper, it is the case that the latest pilot project, in the Midlands, has recently been launched with a government expectation of 3000 sales.

Interviewed by Max Aitchison and Samantha Gilbert.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

FREE TRIAL

The Future of Law. Since 1818.

