



**BY E-MAIL**

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Dear Amanda

**PlaceShapers Group response to the statutory consultation on a revised regulatory framework for social housing**

The PlaceShapers Group is a national voluntary alliance of around 70 community-based housing associations. Between us own or manage almost half a million homes. We believe in putting the tenant at the centre of what we do, in working closely with local authority and other partners at both an operational and strategic level and in providing more than simple landlord services. We also believe that there is strength and benefit in maintaining a diverse, non-profit making independent housing sector. We have come together as a group in order to ensure that the voice of community based HAs is heard and to create opportunities for our growing membership to support improved service quality through collaborative initiatives.

We would therefore like to start our response to the TSA's statutory consultation on the revised regulatory framework by welcoming the Government's endorsement of your co-regulatory approach and the lighter-touch outcomes based focus to regulatory engagement. This approach puts the responsibility for meeting regulatory standards very firmly on individual governing boards, which is where we agree it should be.

We consider that, in the context of the Localism Act and Government directions to the TSA, much of what is proposed in the revised standards is understandable and appropriate. However, we have some issues relating to how the standards will operate in practice and the extent to which, in some places, the text as currently drafted perpetuates a prescriptive process-led rather than outcome-focussed approach. Our comments are set out below and are arranged in order of the questions you have posed. We have limited this group response to issues that we consider to be of particular importance to our membership as a whole. It is likely that many of our members will also submit individual returns and that these may include more detailed comments on the perceived implications of the revised standards at a local level.



### **Question 1: Principles of co-regulation**

We have three comments on this section of the revised framework:

- 1. Principle 2 (Meeting Regulatory Standards), paragraph 2.8:** We feel it important that all “private providers” are put on a level playing field. The operating environment for not-for-profit housing association providers is such that we need to become very different commercially focussed businesses and the shape of the sector will change as a result. For many of us this means that we may well not “look” like we do now in a few years time and it would be unfortunate if regulation got in the way of necessary innovation. There is also the need to avoid duplication where business activities such as care services are more properly regulated by other agencies. We therefore believe that the principle you propose applying to for-profit providers should apply equally to not-for-profit providers – i.e. that economic regulation will “apply to the management of affairs only in so far as they relate to the provision of social housing”. We accept that this is a complex area and would welcome further discussion of the issues involved, including our unease about the potential disposal of social housing assets to for-profit providers.
- 2. Principle 3 (Transparency & Accountability), paragraph 2.10:** PlaceShapers welcome the focus on increased transparency and accountability and we will be evaluating options for a collaborative approach on this subject over the next few months.
- 3. Principle 6 (Value for Money), paragraph 2.16:** We understand the Government’s expectation that the regulator will provide an annual performance report on value for money within the sector. In the light of past experience, we anticipate that there may be value in the regulator engaging with the sector on the methodology to be used for producing this report and its suggested content. A co-regulatory approach in this respect will increase sector “buy-in” to the outcome and will enable regulatory staff to learn from sector experience as providers’ own skills in assessing vfm in the round improve. We would be pleased to assist with this task.

### **Question 3: Revised Value for Money standard**

We have three key comments on the revised Value for Money standard:

- 1. Social return on investment:** The PlaceShapers Group welcomes the recognition that a social return on assets resulting from a provider’s neighbourhood and community investment activities is a legitimate value for money outcome. We work at the heart of our communities and deliver considerable benefits beyond our landlord services as evidenced in our recent publication “Localism that works”. Many of these gains are difficult to quantify but without doubt they contribute extensively to the Government’s welfare agenda. Our concern therefore is to ensure that the sector and regulatory staff have the skills and tools with which to assess such social value effectively. These are underdeveloped as yet with the risk that this key aspect of vfm will receive less attention than it deserves. Understandably therefore the practical application of this standard is of crucial importance to us and we are keen to work with the TSA as it shapes its own internal guidance on this matter.



2. **Specific expectation regarding maximising future returns on assets:** Whilst we understand the desire to develop over time a greater understanding of return on assets we remain concerned with the reference to the need for strategies to “maximise” future returns. Firstly, we believe that many will read this as indicative of an approach that is focussed purely on financial returns and secondly we feel that it is inappropriate for the regulator to be making a specific expectation on this point because this is in effect prescribing to boards what their business strategies – and level of risk - should be.
  
3. **Specific expectation regarding assessment of alternative delivery models:** The PlaceShapers Group was born in part as a reaction to what we regarded as a period of inappropriate “merger mania” within the sector. Whilst we of course accept that there will be occasions when a merger between providers may be in the best interests of those organisations and their tenants, we do not believe that there is evidence to confirm that the general efficiency gains predicted as a result of mergers have been delivered. Indeed we understand that forthcoming research is likely to confirm the contrary. In this context, it is disappointing that the revised standard specifically mentions merger as an alternative delivery structure that should be assessed. Notwithstanding this argument, the expectation as currently worded is not outcome focussed. Merger (or demerger or stock disposal as additions to the other examples you suggest) is a potential means to an end. The requirement is for value for money improvements and it should be for providers to decide how to achieve this. We therefore consider that the penultimate expectation should be shortened so as to exclude the quoted examples of alternative delivery models.

#### **Question 5: Revised Tenant Involvement and Empowerment standard**

We have one comment on the wording of this revised standard. This relates to the **second required outcome: Involvement and empowerment** and specifically the penultimate bullet point concerning **the management of repair and maintenance services**. As with our third comment on the value for money expectations above, the insertion of “such as commissioning and undertaking a range of repair tasks...” seems to go beyond the outcome focussed remit of the standards. We understand that this may result from Government direction but ask for reconsideration of this point. It is up to providers to determine with residents how best to improve the repairs and maintenance services and tenants undertaking their own repairs and sharing in any savings is just one of a range of options that we may or may not choose to pursue. That should be for us to decide and the standard should not prescribe any particular approach.

#### **Question 6: Revised Home standard**

We consider that there is a potential conflict between your proposed **specific expectations 1.1 and 2.1 in this standard in relation to compliance with the Decent Homes Standard**. The assumption that all homes are maintained to DHS at all times is not consistent with a prudent, planned and cost-effective approach to planned maintenance. A cost-effective approach may mean a decision to hold certain properties “non decent” until a programme of improvements for a whole estate is undertaken whereas an expectation that decent homes are maintained at 100% could lead to an inefficient “pepperpot” approach to improvements. The wording as



currently drafted does not give landlords any discretion in the matter and will lead, potentially, to numerous requests for the approval of temporary periods of non-compliance – a level of detail that is not in keeping with the stated “backstop” role in consumer regulation. Is it not possible to say, for example, instead that compliance with the DHS should not fall below 98% in any one year and that if this is to happen then regulatory consent should be sought? This would allow providers to plan for cost effective improvements within a known tolerance level of temporary non-compliance.

#### **Question 7: Revised Tenancy standard**

We have two comments on the specific expectations sections of the revised Tenancy standard:

1. **Mutual exchanges:** We welcome the expectation in clause 1.8 that providers will sign up to an Internet based mutual exchange service.
2. **Appeals against tenancy length / type:** We have a slight anxiety that the wording of 2.1.6 as currently drafted implies that tenants or prospective tenants may be able to appeal against a provider’s policies on tenancy length or type and seek to have these overturned. Our expectation is that complaints and appeals should only be heard if a customer considers that the provider has not acted in line with its approved policy and that local panels and the Ombudsman would not be able to challenge a policy that had been properly approved after due consultation.

#### **Question 9: Regulating the economic standards:**

We have two comments on this section:

1. **Regulation the provision of social housing only:** We have already commented on this issue with reference to co-regulatory principle 2.8 above. The same issue of differential treatment for not-for-profit providers arises in clause 4.3 of this section. We consider this to be inappropriate for the reasons already stated.
2. **Risk based approach and annual engagement:** We have a general comment relating to regulatory capacity here. Whilst we welcome the continued emphasis on resources being deployed to those most exposed to risk we do worry that staff will still get involved with unnecessary matters of detail which will get in the way of the proportionate outcome focussed response. Linked to this is a related concern about the skills and capacity the regulator will have going forward to translate the principles of the revised approach into reality. We would be interested to hear more about your plans to secure and retain the resources you will need at the implementation stage.

#### **Question 10: Regulating the consumer standards:**

Our final comment relates to the proposed new **serious detriment test**.

There are two points we wish to make on this. Firstly, there are a lot of good organisations where things go wrong sometimes. Usually these are isolated events that do not reveal systemic failures and we are pleased to note that your proposed assessment criteria in the main refer to tenants (plural) and the need for evidence of wider or recurring failures.



Nevertheless, we are concerned that regulatory staff may be minded to conclude that serious detriment has arisen on the basis of an individual case. This links to our second point – a focus on individual cases will inevitably mean regulatory staff getting involved in complaints and there are of course to be new mechanisms for dealing with these. We therefore consider that, except in exceptional circumstances to be defined, a serious detriment finding should only result when the regulator is satisfied that this applies to a whole group of tenants.

We look forward to working with the TSA over the coming months to help shape the final standards and, crucially, to assist in the development of mechanisms for ensuring that they are applied effectively in practice.

Yours sincerely,

A handwritten signature in grey ink that reads 'Tony Stacey'.

**Tony Stacey**

Chair

[www.placeshapers.org](http://www.placeshapers.org)