Housing Scrutiny Sub-Committee 25 February 2010

New Tenant Services Authority (TSA) Regulations

All Wards

Report authorised by: Dorian Leatham, Executive Director of Housing, Regeneration and Environment

Executive summary

This report outlines the new Tenant Services Authority (TSA) proposals on standards to regulate social housing and provides an overview of areas where the Council could potentially have concerns about meeting these standards.

As part of considering the implications of the TSA’s regulations, the report also outlines the sanctions available to the TSA for Landlords who fail to meet the proposed standards.

The report will also set out feasible solutions that Lambeth could put in place to ensure that the Council’s positions itself to meet the requirements of these standards.

Summary of financial implications

There are no financial implications for the Council.

Recommendations

That the report be noted.
Consultation

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<td>Dorian Leatham</td>
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<td>Paul Cooper</td>
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<td>Greg Carson</td>
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<td>Cllr Lib Peck</td>
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Report history

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Background Documents

Appendix –TSA Consultation Response (Lambeth Council)

1. Background:

1.1. This report deals with the emerging role of the the Tenant Services Authority (TSA) and how that role may affect how social housing providers operate. In response to the Cave Review recommendations, the Government set up the Tenant Services Authority in December 2008 to take a comprehensive approach to the regulation of affordable housing provision and overhaul the methods by which this is undertaken.

1.2. The Government has expanded the range of organisations (which include both profit and non-profit making companies) that can provide affordable housing, and the TSA is to also regulate Local Authorities from April 2010. The generic name for affordable housing providers are social housing providers, and they incorporate Registered Social Landlords (RSLs).
1.3. Since being established, the TSA has conducted extensive consultation about the purpose of its new set of regulations and how this should be undertaken.

1.4. The TSA has published a list of consultation questions to seek the views of social housing providers on its new proposed regulations and to ensure that the powers given to it in the Housing and Regeneration Act 2008 are adequately implemented. The consultation period ended on 5th February 2010. Lambeth Council’s responses to the consultation can be found in the Appendix.

2. **The key proposals of the TSA regulations are:**

2.1. Establishing a clear framework of standards for all social housing providers.

2.2. Developing a range of formal and informal monitoring and enforcement powers that encourage social housing providers to take responsibility for their businesses, e.g. in correcting failures and problems, and promoting improvement.

2.3. Basing regulation on the principle of co-regulation. The idea is that organisations are best able to understand their own needs and requirements. The organisations’ boards should take responsibility for themselves, as explained in the previous point, but whilst self-determination is to be emphasised, regulation is to be more than self-regulation.

2.4. Giving tenants opportunities to get involved, prioritising the position of tenants in regulation.

2.5. Protecting public and private investment in social housing.

2.6. Reducing the burden of regulation by moving to a system of general consent as opposed to regulating through specified codes of practice.

2.7. Conducting activities in an open, fair and transparent basis and

2.8. Ensuring good governance, and the reputation and viability of the social housing sector.

3. **Ten principles which will shape the new regulatory framework**

3.1. The TSA will set national standards based on clear criteria.

3.2. The standards should be clear and based on outcomes rather than detailed prescription.

3.3. The standards framework will require providers to agree local standards with their tenants for areas of services that are relevant to them locally.

3.4. Every tenant matters. Providers will be expected to understand and respond to the particular needs of their tenants.
3.5. The TSA will promote transparency in the reporting of performance.

3.6. Good governance is a universal principle.

3.7. The TSA will promote effective ways of validating and benchmarking performance.

3.8. In 2010/11 The TSA will focus on tackling the worst performers.

3.9. The TSA will encourage sector-led improvement, with providers offered the opportunity for speedy self-improvement where problems are identified.

3.10. The TSA may act with little notice if it decides that is what is needed by circumstances.

4. Standards to be used by the TSA to regulate social housing providers

4.1. A Tenant involvement and Empowerment Standards - This standard primarily covers customer services, equality and diversity and complaints. Landlords will be expected under this standard to treat all their tenants fairly and to provide them with ample opportunity to get involved in the management of the Landlord’s organisation.

4.2. A Homes Standard - All Landlords will be expected to “ensure all homes are warm, weather proof and have modern facilities”. This standard explicitly expects homes to meet the Decent Homes Standard or higher.

4.3. A Tenancy Standard - This standard applies to all landlords and covers allocations, rent and tenure. The allocation aspect of the standard requires landlords to rent their properties in a ‘fair, transparent and efficient way that takes into account the housing needs and aspirations of tenants and potential tenants’.

On tenure providers are required to issue the ‘most secure form of tenure compatible with the purpose of the housing and sustainability of the community’.

It is important to note that the “tenancy” requirement will not apply to Local Authorities. In Directions to the Tenant Services Authority – Summary of responses and government response (Communities and Local Government, November 2009), it is stated that: “…it is the government’s intention to direct on local authority rents at a later time.”

4.4. A Neighbourhood and Community Standard - This standard requires Landlords to work in partnership to tackle anti-social behaviour and to keep communal areas clean.

4.5. A Value for Money Standard - All providers will need to show they are managing their resources to provide ‘cost-effective, efficient, quality services’.

4.6. A Governance and Viability Standard - The TSA stresses the importance of good governance for all providers. This standard will not apply to local authorities or ALMOs, where the TSA will need to work with the Audit Commission if it has any concerns.
5. Sanctions available to the TSA for Landlords who fail to meet the proposed standards

5.1. The sanctions that the TSA has proposed to use against landlords who fail to meet its standards include intervention using its powers, using enforcement notices, compensation to tenants, transfer of management and removal of officers. It is, however, important to note that the TSA has stated that not all of the powers are applicable to all Landlords (In our response to the TSA we –Lambeth – have expressed our concern about the inconsistency that that may cause).

6. What Lambeth can do to prepare

6.1. There are a number of challenges facing social housing provision in Lambeth. Many aspects of service delivery will need to be improved. It is, therefore, important to make a full assessment of what the TSA’s regulations mean for the Council. For example, the TSA will use complaints as a way of deciding if there has been a failure in landlords meeting the requirements of a standard, especially where tenants groups are concerned. The Client team is actively engaged in ensuring that Lambeth Living in particular improves its complaints processes and procedures to meet the requirements of the TSA.

6.2. The TSA will be supported by the Audit Commission in regulating social housing providers. Their joint working arrangement which has been set out in a memorandum of understanding has implications for our impending audit and the work required to work towards successful ALMO inspections

6.3. It is unclear if our smaller Registered Social Landlord partners will be subjected to all of the TSA’s requirements, but clearly these requirements will be important for the larger RSL landlords. Once the TSA makes its position clear on this issue, Lambeth will consider ways in which to support our partners.

The table below shows some of the Registered Social Landlords with fewer than 1000 properties who may be affected if the TSAs requirement is extended to them.

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<th>Associations by stock owned, i.e. 100 to 1,000 units</th>
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<tr>
<td>1. ASRA</td>
<td>294</td>
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<tr>
<td>2. Anchor Housing Trust</td>
<td>177</td>
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<tr>
<td>3. City of London Arms Houses</td>
<td>186</td>
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<tr>
<td>4. Ekaya</td>
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<td>5. Sanctuary Housing Association</td>
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<td>6. Servite Housing Association</td>
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<td>7. St Mungo’s Housing Association</td>
<td>157</td>
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<tr>
<td>8. The Guinness Trust</td>
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<td>9. Wandle Housing Association</td>
<td>274</td>
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<tr>
<td>Total</td>
<td>2,516 (10% of total stock)</td>
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Also, as a Strategic Housing Authority, TSA regulations that allows for timely, visible and transparent way of gathering RSL information would be helpful for Lambeth in ascertaining which RSLs to develop further partnership agreements with.

6.4 For services and the costs of the services that result in service charges there is an additional requirement. Registered providers will need to give their tenants the opportunity to agree a local standard (in line with the requirements of the Tenant Involvement and Empowerment standard). The TSA expects equality and diversity to be woven into all its standards. United Resident Housing Association (an ALMO managed by Lambeth) currently exceeds the 80% required by the Audit Commission in collating resident profile data across 3 of the 6 equality areas, namely age, gender and ethnicity. The Client team has put in place a Resident Profiling Project to transfer good practice at United Resident Housing to Lambeth Living as well as bringing other areas such as disability, sexual orientation and faith up to the required standard. This project puts us in a good position to identify the profile of our leaseholders and tenants and serves as a spring board in weaving equality and diversity into the TSA’s standards.

6.5 In terms of charges for tenants, Lambeth has made clear in its response to the TSA that we will be against any future charges to tenants resulting from any additional services provided by the TSA. Our residents have strongly expressed their wishes against paying for any additional TSA services, especially as any annual fees will have to come from Lambeth’s Housing Revenue Account.

7 Comments from Executive Director of Finance and Resources
7.1 There are no financial implications arising from this report or its recommendations, as this report is for information only. However, it should be noted that financial implications will arise if the TSA makes recommendations or imposes sanctions for breaking its code of regulations.

8 Comments from Director of Legal and Democratic Services
8.1 Section 81 of the Housing and Regeneration Act established a corporate body known as the Office for Tenants or Social Landlords, which is the TSA. The Objectives of the TSA are statutorily defined and are set out in paragraph 2 above.

9 Results of consultation
Not Applicable

10 Organisational implications
Not Applicable

10.1 Risk management
Not Applicable
10.2 Equalities impact assessment
Lambeth will need to consider incorporating equality and diversity into its local residents consultation standards. The TSA expects social housing providers to embed equality and diversity in all their standards.

10.3 Community safety implications:
The Tenant Services Authority requires housing associations to work with local authorities in preventing and dealing with anti-social behaviour.

10.4 Environmental implications
Not Applicable

10.5 Staffing and accommodation implications
None

10.6 Any other implications
None

11 Timetable for implementation
APPENDIX

Key consultation questions – TSA Regulations

1. Does our approach to co-regulation as expressed through our ten principles seem a reasonable basis on which to develop the new framework from 1 April 2010?

Lambeth is concerned with enforcement of the framework as a whole. We are particularly concerned with how the TSA aims to foster partnership amongst landlords in order to keep the integrity of the self assessment process.

The TSA’s approach encompasses dealing with the worst performing Landlords. This we understand will to some degree involve the use of fines and enforcement notices. Part of the rational behind the new regulations is also to encourage new landlords to come on board. We think the TSA will need to ensure that the sanctions for poor performers do not discourage new landlords from coming on board.

2. Does our approach to setting national and local standards appear reasonable for the requirements that will apply from 1 April 2010?

There are two main concerns here. The TSA has to make sure that there is no tension between Local and National Standards. Also what the TSA means by “local standards” will need to be fully defined. Local standards may be interpreted differently by different organisations leading to inconsistencies.

3. Does it seem reasonable to extend the same approach to those providers owning less than 1,000 properties, taking into account their size and risk profile in a proportionate approach to compliance?

The TSA is considering which requirements will apply to smaller providers, with fewer than 1000 homes. This requirement is particularly pertinent to Lambeth in so far as the neighbourhood and community standard is concerned. Lambeth does have a number of smaller Landlords (RSLs) operating within the borough. It is, therefore, important for us to ascertain exactly what the TSA’s requirements will be for our smaller partners within the borough. Our smaller partners are not immune from the issues of ASB, however, it is important for us to know the extent to which we as a big Landlord can provide support to them.

4. Do our proposals on how we will approach the regulation of local authorities appear reasonable?

The TSA has stated that it intends to use a series of powers that will include enforcement notices, fines, compensation to tenants, and removal of officers. There are issues around the level of consistency with which these powers will be applied.
5. Does the proposed text for the following standards:

- Address priorities for tenants whilst taking into account our duty to have regard to the desirability of registered providers being free to choose how to provide services and conduct their business?

Lambeth is pleased that the TSA has included a requirement for tenants to receive clear information.

- Express requirements of providers in a way that is clear, succinct and as outcome focused as possible?

5A. Involvement and Empowerment

Yes, we think the requirements under this standard are clear, succinct and outcome focused. However, we do have some concerns.

Services
For services and the costs of the services that result in service charges there is an additional requirement. Registered providers will need to give their tenants the opportunity to agree a local standard (in line with the requirements of the tenant involvement and empowerment standard). Lambeth will have to make a decision on how much further the Council has to go to ensure that its consultation processes with tenants on service charges meet the requirements of the TSA.

Charge to Tenants
There has been strong resistance from residents to pay for the additional services of the TSA through their rents (any annual fee would need to come from the HRA). For an interim period at least this cost is being picked up separately as they relate to entirely new expectations. We would be against any future charges for this service falling directly onto residents.

5B. Home

We think this requirement is also clear, succinct and outcome focused

5C. Neighbourhoods and Community

Again this standard is clear and succinct

5D. Tenancy

This standard is clear and succinct

5E. Value for Money

Communication
Lambeth may have to make changes to its financial strategy and budget processes to implicitly state how it will deal with decisions on allocation and priority. The requirements of the TSA in this area are unclear. The Audit
Commission’s approach is to require local councils to include such communication under their local and national standards. Will this still be the case or will the TSA place an extra burden on Local Authorities to communicate this differently not only in their financial and budget documents but directly to tenants as well.

**Scrutiny**
The proposed VfM standard requires that a governing body be set up to monitor the performance against this standard at least once a year. The TSA used the word “scrutiny” rather than review. The extent to which the governing body will have to “scrutinise” performance needs to be made clear and Lambeth will need to ascertain the extent to which this could be a burden to the organisation.

5F. Does the proposed text for the Governance and Financial Viability standard:

- Allow registered providers to choose how to conduct their business whilst ensuring the security of social housing assets for current and future tenants?

In Lambeth’s view, this standard is flexible on how registered providers go about delivering their services. The rationale behind the standard is also a good one. Challenging providers to manage their resources more effectively to ensure their viability is one that all providers should readily subscribe to.

6. Does our approach to monitoring and compliance against the standards and regulatory requirements seem a reasonable basis for ‘how’ we regulate in 2010-11?

The TSA has decided to work towards replacing the current Key Lines of Enquiries (KLOES)

The main concern with this decision revolves around if a new set of KLOES would be compatible with the TSA’s new regulatory framework.

On one hand the TSA wishes to reduce the burden on social landlords by being less prescriptive. On the other hand the TSA is proactively encouraging the use of new guidance and standards in a range of areas.

7. Does our approach to dealing with complaints seem reasonable?

Complaints and how we handle them is important to Lambeth. It is encouraging to see that the TSA has given complaints a high importance in its new approach to regulating Landlords. The TSA as we understand it will use complaints as a key source in deciding if there has been a failure in landlords meeting the requirements of a standard, especially where tenant groups are concerned. We hope that other landlords see the integration of complaints as reasonable and a step in the right direction in helping tenants to report failures in areas such as tackling anti-social behaviour and lack of consultation with tenant groups.
In terms of setting 'local standards', and dealing with complaints, one of the major differences between the Council owned stock and RSL dwellings is the relationship that residents have with elected members. At the very least we would hope that the standard would indicate a clear expectation on the part of RSLs for addressing this in balance.

8. Is our general approach to using our formal regulatory and enforcement powers reasonable?

The TSA’s general approach to using regulatory and enforcement powers seem reasonable. However, for enforcement to be effective the methods and the way in which landlords are assessed and deemed fit for purpose is equally important.

There is little if anything by way of rewards for the better housing providers in the TSA’s proposals. Rewards in some form or another could have a positive impact on performance.

There are other concerns in relation to the role of the LG ombudsman. The Ombudsman’s role could be rendered redundant or could duplicate that of the TSA in certain areas.

Even though we (Lambeth) strongly suspect that the TSA will not have direct regulatory functions over our ALMO, the TSA will need to make clear whether its relationship with Local Authorities in general extends to ALMOs managed by Local Authorities. This point has been raised by other Local Authorities.

What Lambeth Council will like to see from the TSA are case study examples that will provide some guidance on what is expected of us.

9. Do our proposals for establishing registration and deregistration criteria seem reasonable?

We are not certain if this is in relation to RSLs. For example if an RSL becomes de-registered then the TSA looses control in terms of requiring it to meet its standards.

10. Does our approach to issuing directions on Accounts and the Disposal Proceeds Fund seem reasonable?

Yes it does.