

MAIDSTONE BOROUGH COUNCIL
RECORD OF DECISION OF THE CABINET MEMBER FOR
REGENERATION

Decision Made: 30 October 2009

Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009 Consultation

Issue for Decision

To consider the response to the Communities and Local Government's consultation document on the registration of Local Authorities under the new Cross Domain approach to the regulation of social housing.

Decision Made

That the response to the consultation document (as set out in Annex A of the Report of the Director for prosperity and Regeneration) be approved.

Reasons for Decision

The consultation deadline is 30 October 2009. The consultation document includes the draft Registration Order and it is anticipated that the Order will be laid before Parliament this session.

The Cave Review of Social Housing Regulation, published in July 2007, recommended the creation of a stand-alone, independent regulator of social housing across the domain i.e. in respect of both housing association and local authorities (commonly known as cross-domain regulation).

The Cole Report¹ was asked to review how far the framework for the regulation for housing associations being introduced in the Housing and Regeneration Act 2008 could be transferred to the local authority and arm's length management organisations (ALMO) sectors. It was tasked with identifying any areas of incompatibility between the sectors, and to seek workable compromises.

When examining the present landscape of Local Authority/ALMO/Housing Association/Charity social housing provision, the Cole Report admitted that "Tenure configurations are becoming more fluid. Local authorities have nominations rights over some local housing association properties,

¹ The Cole Report "Delivering Cross-Domain Regulation for Social Housing", 2008

housing associations may have acquired ex-council right to buy stock as part of regeneration programmes, the council may have transferred its entire stock to a housing association, and so on.” *This confusing landscape is to be simplified with one cross-domain regulator, but in so doing non-stock holding local authorities will be disadvantaged if they are excluded from shaping the regulation of Registered Social Landlord (RSLs) operating in their area.*

The Tenant Services Authority (TSA) became the regulator of housing associations in December 2008, using interim powers previously held by the Housing Corporation. The TSA does not currently regulate local authority landlords. Under the proposals the TSA would, for the first time, work across the whole domain of social housing in order to raise the standard of services for tenants, no matter who their landlord.

The TSA's new powers of regulation are based on the registration of social housing providers. The term Registered Social Landlord (RSL) will be replaced with the term Registered Provider of Social Housing (RP). It is proposed that the TSA would regulate all local authority landlords in a largely similar way to housing associations. This would include local authorities whose stock is managed by another organisation, for example, arm's length management organisations (ALMOs) and tenant management organisations (TMOs). It is also proposed that all local authorities which currently retain ownership of social housing stock (regardless of their management arrangements) would be automatically registered with the TSA.

The TSA would focus its regulation on landlord services (those services which are delivered to tenants, for example repairs and maintenance and customer service). *It would not regulate local authorities' wider strategic role, or other housing functions which are not limited to those local authorities that act as landlords.* This limited role is set out in the Cole Report (Recommendation 2), which naturally has the effect of limiting the scope of this consultation.

Given the proposed scope of regulation above, Maidstone BC, as a non-stockholding authority, would seemingly not need to consider registration. *But, in order to develop our strategic housing function further, we want to be an organisation which the TSA would be obliged to consult with concerning the regulation of RSLs operating in its area.*

Whilst Annex A of the report of the Director for Prosperity and Regeneration is our formal response to the consultation, the following four paragraphs (quoted in full) are of particular relevance to the Council and are discussed below.

Section 1, paragraph 9:

‘The new regulatory framework should also help support local authorities in delivering their strategic housing responsibilities (which are held by all

local authorities regardless of whether they are landlords). These responsibilities include developing sustainable community and housing strategies and tackling homelessness. The TSA will have a role in ensuring that housing providers actively engage with local strategic priorities.'

The TSA rightly acknowledges that all local authorities have a strategic housing function, and that they (the TSA) are an essential partner in helping to deliver sustainable communities. The TSA recognises the contribution of all local authorities in creating places where people want to live. The last sentence of paragraph 9 is of particular importance since it implies that the TSA will actively work to ensure that housing providers support our (and our partners') local strategic priorities in respect to housing. Thus, the TSA may seek to impose something akin to a 'duty to co-operate' upon RSLs (RPs) where they will have to support the local areas wider housing ambitions. *Despite the ambition set out in the last sentence of Section 1, paragraph 9, officers consider that the consultation should be wider in scope and has missed an opportunity to enable Local Authorities to exercise their strategic housing role fully.*

Section 2, paragraph 4:

'The TSA would focus its regulation on landlord services (i.e. those services which are delivered to tenants, for example repairs and maintenance and customer service). It would not regulate a local authority's wider strategic role and other housing functions which are not limited to those local authorities that own social housing stock. Those functions would continue to be assessed by the local public service inspectorates as part of the Comprehensive Area Assessment (CAA) – and information from the TSA about social housing outcomes in local areas would also form part of the evidence for CAA.'

and Section 3 paragraph 1:

'We propose that the TSA would focus its regulation on landlord services (i.e. those common services which are delivered to tenants, for example repairs and maintenance and customer service). It would not regulate local authorities' wider strategic role, or other housing functions which are not limited to those local authorities that act as landlords. Those outcomes would be assessed by the local public inspectorates and, as stated, information from the TSA about social housing outcomes in local areas would also form part of the evidence for the inspectorates' CAA (see Section 2, paragraph 4).'

These two paragraphs anticipate the TSAs role in providing evidence on housing outcomes to other public inspectorates (i.e. the Audit Commission) for CAA purposes. It follows that all local authorities, when providing 'local place leadership', would want to have some influence over the performance of the social housing providers operating in their area.

This could be achieved either through a duty to co-operate (as above), or through Overview and Scrutiny, or a combination of the two.

Section 3 paragraph 7:

'Local authorities who do not own stock

Where an authority does not own housing stock at the point at which the TSA registers local authorities but subsequently acquires, or intends to acquire, stock then it would be placed under a duty to notify the regulator so that it can be registered. Accordingly, since we propose that local authorities would be registered only where they own social housing stock, they would be removed from the register where the TSA is satisfied that they have disposed of all such stock.'

Given that no time limits are put forward concerning what period of grace a local authority has before it notifies the TSA to be registered/deregistered, *it may be advantageous if a category of registration such as 'Strategic RP' or 'Associate RP' be made available for those non-stockholding authorities who think they may (either temporarily or permanently) acquire stock. Such a registration status could be advantageous if, for example, the Council enters into a time-limited special purpose housing delivery vehicle/partnership arrangement with a developer.*

Alternatives considered and why rejected

The Council could choose not to respond to the consultation document but to do so would miss an opportunity to influence the implementation of an important part of the Cross Domain regulatory regime that could impact on how Maidstone achieves its ambitions for housing in the future.

Background Papers

The Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2009 – CLG

'Every Tenant Matters' 2007 – The Cave Review – CLG

'Delivering Cross-Domain Regulation for Social Housing' – The Cole Report 2008

Housing Strategy 2005, reviewed 2007 - MBC

Homelessness Strategy 2008 - MBC

Signed:
Councillor Malcolm Greer
Cabinet Member for Regeneration

Date:.....

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Scrutiny Manager by: 6 November 2009.
