Submission

Local decisions: a fairer future for social housing

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The National Housing Federation represents 1,200 independent, not-for-profit housing associations in England and is the voice of affordable housing. Our members provide two and a half million affordable homes for five million people.

The Federation welcomes the opportunity to respond to the Government's consultation on the future of social housing. We welcome several of the proposals to address challenges around allocations, mobility, homelessness and overcrowding. But we also have concerns about specific changes, particularly against the backdrop of benefit cuts which will affect some of the poorest people in society. We are asking for the key principle of flexibility to be placed at the heart of reforms around tenure, and we accept with caveats moves to reform social housing regulation. We trust the unfortunate timing of this consultation, concluding as it does after the publication of the Localism Bill, will not prevent the Government from carefully considering our submission. We look forward to working with officials and ministers to ensure the eventual legislation provides the best possible outcome for social housing.

1.0 Tenure reform

1. The Local Decisions consultation paper proposes giving social landlords the ability to offer tenants time-limited, “flexible” tenure. For housing associations, this would involve the use of assured shorthold tenancies, in which the tenancy will not be ended on shorthold grounds within a time that is set out at the start of a tenancy. The duration of a tenancy might typically be two, five or ten years, depending on the circumstances, allowing a landlord to review whether the tenant still requires social housing towards the end of the tenancy. This is in contrast to the usual open-ended (so-called “lifetime”) tenancies traditionally granted by housing associations.

2. The Federation agrees it is important that social landlords should be able to target their resources where they are most needed, given the shortage of affordable housing that has resulted in severe undersupply in some parts of the country. The flexibility afforded by variable lengths of tenure will allow associations to strike a necessary balance between careful management of resources and the maintenance of viable and sustainable communities.

3. Landlords, working in conjunction with tenants and other stakeholders, are best placed to decide what duration of tenancy is likely to be appropriate for a particular household or neighbourhood. Decisions over lengths of probationary periods, if any, should similarly be a matter for landlords. We do not think it is necessary or helpful for the Secretary of State or Tenant Services Authority to impose detailed regulations that would dictate associations’ operational decisions.
4. It is important that the “flexibility” proclaimed by Government does indeed result in greater freedom for social landlords. There are risks that housing associations that wish to develop will face pressure to let all their properties – both new and re-lets – on time-limited tenures as a condition for accessing funding. It is important that associations should remain able to grant full assured tenancies where they deem it appropriate to do so.

5. The Federation will be responding separately to a consultation on revisions to the tenancy standard (including the use of flexible tenure and the introduction of intermediate rents, at up to 80% of market value) run by the Tenant Services Authority\(^1\). The deadline for responses is 2 March 2011. In summary, we believe the standard should focus on the key principle of providing affordable housing based on need. It should be for providers in consultation with tenants to take operational decisions about how this is best achieved. Any decision to grant certain groups of tenants a social home for life should not be a matter for the tenancy standard. Although landlords are likely to conclude in a number of circumstances that various categories of tenants, such as older people or those with long term illness or disability, should be provided with social housing for life, it is important landlords retain the flexibility to decide this.

6. Under the Government’s proposals the landlord should consider well before a flexible tenancy comes to an end whether the tenant still requires social housing and if so on what terms. Where the landlord decides the tenant no longer requires social housing the tenant must be given at least six months’ notice and should have an opportunity to require the landlord to undertake an internal review. In addition to this formal review process we envisage that landlords using flexible tenure will work with tenants throughout the entire course of the tenancy so they know where they stand, supporting them in planning for the end of their tenancy and considering their potential housing options. Landlords have raised concerns about the impact of the six months’ notice on the likelihood of people paying their rent in the final months of their tenancy.

\(^1\) [http://www.tenantservicesauthority.org/upload/pdf/Affordable_Rent_-__Revs_tenancy_standard.pdf](http://www.tenantservicesauthority.org/upload/pdf/Affordable_Rent_-__Revs_tenancy_standard.pdf)
7. Housing associations will be expected to “have regard” to new tenancy strategies, produced by local housing authorities in consultation with housing associations. It is important that the statutory basis for the strategies makes clear they are intended to be high level, outcome-focused documents. Local authorities should not dictate or determine policies of individual housing associations. Detailed specifications and arrangements should be for housing associations to determine, taking into account the needs of the people they serve, the sustainability of the communities in which they work and their business and investment plans.

8. We would be concerned if a local authority decided it wanted every property in its area to be let for the shortest allowable term, or by contrast let on very long term tenancies irrespective of the impact on investment plans, whether for political or other reasons. We feel that either type of prescriptive view may be at odds with a common sense approach to achieving sustainable outcomes for individuals and communities. We also have some concern that local authority strategies will change frequently as their political leaderships change.

9. We welcome plans to give landlords more freedom over tenants’ succession rights while maintaining the statutory right of one succession to a resident spouse or partner. We agree this should be limited to a spouse or partner of a deceased tenant unless the would-be recipient was already a successor. We also agree there should be a clear statutory basis for landlords to grant by contract succession rights beyond the statutory minimum.

2.0 Empty Homes

1. Housing associations are committed to doing more to help bring empty homes back into use and meet housing need. We welcome the Government’s commitment to this with £100m in the spending review to support housing associations refurbish more than 3,000 empty properties, and look forward to making sure this money is well used. We will be watching with interest to see whether the recently announced changes to Empty Dwelling Management Orders will have any impact on the ability of local authorities to bring empty properties back into use.

3.0 Allocating social housing
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1. The National Housing Federation welcomes the overdue review of allocation procedures and legislation. These have failed to address housing need over a number of years, as set out in last year’s report of the Mobility Taskforce,\(^2\) commissioned by Housing Minister Grant Shapps and chaired by Federation chief executive David Orr. We agree that fundamental reform is needed and we welcome the comprehensive nature of the proposals. We do, however, have several concerns, as set out below.

2. The proposal to scrap the obligation on local authorities to maintain open waiting lists and enable them to decide what categories of people may qualify for social housing raises concerns that people who are vulnerable or who are in housing need could in effect be excluded from housing. Any decisions to disqualify applicants who lack local connections, for example, could lead to even fewer opportunities for people to move across local authority boundaries, whether in search of work or for other reasons.

3. Significantly, the new qualification test will take priority over standard measures of housing need. It means that, while “qualifying” people with urgent housing needs (homeless households, others owed a housing duty, people occupying insanitary or overcrowded housing, those needing to move on medical or welfare grounds or those who need to move to a particular locality) will still be entitled to receive ‘reasonable preference’ over other qualifying applicants, those considered not to have qualified in the first place will have to try elsewhere.

4. The effects of this change will need close scrutiny. Despite the many advantages of local flexibility, we would be keen to ensure the allocations system did not lose sight of the overall imperative to address genuine housing need. We note the Secretary of State will hold an effective veto with powers to prescribe classes of persons who are, or are not, to be treated as “qualifying persons”, and to prescribe criteria that may not be used by local housing authorities in deciding what classes of persons are not qualifying.

\(^2\) Report of the Mobility Taskforce, August 2010
5. We would like more details on the kind of categories of people the Government considers appropriate for local authorities to define as qualifying or not qualifying, for housing assistance, and the circumstances in which it would expect to intervene by prescribing classes of persons or criteria. We would be concerned if a local authority was able to use its qualifying powers to discriminate against vulnerable groups. The development of qualifying criteria should be governed as far as possible by objective measures of housing need rather than moral judgements. We intend to discuss with Government how the Secretary of State might operate his or her new powers in regard to these categories.

6. It is important that local authorities develop their allocation schemes, setting out their priorities and procedures for allocating housing, with substantial input from housing associations. We believe that there should be a move away from the assumption in many areas that almost all of housing association lettings should go to people coming through the local authority allocation scheme.

7. Already in England, 83.6% of all new housing association lettings are made to households nominated by local authorities via nomination agreements. In areas of high demand, or for new developments, nominations can reach 100% of all lettings. Housing associations need the flexibility to house a proportion of tenants from sources other than local authority nominations, such as referrals from specialist homelessness agencies and through their waiting lists. In this way they can ensure they meet a range of housing needs across the income spectrum of people who are unable to secure decent housing on the open market, and support the development of mixed and sustainable communities.

8. In developing their allocation schemes, it is reasonable that local authorities should have regard to the creation of sustainable neighbourhoods. This will include, at times, considering the benefits of ‘under-occupying’ properties to ensure that families may grow in the same home. For example, in cases where children of different sexes are currently young enough to share a bedroom but will not be for much longer. It is unfortunate, therefore, that under the Government’s plans for welfare reform, working-age families who ‘under-occupy’ could face losing part of their housing benefit. It would be preferable if the focus was shifted to encouraging the development of new lettings policies that afforded under-occupiers more favourable opportunities to move.

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3 Continuous Recording of Lettings (CORE) 2009/10. Percentage of new general needs lettings – including internal transfers, transfers from other landlords and mobility schemes – which came either from local authority nomination or from a common housing register or a common allocations policy held with the local authority or via a choice based lettings scheme.

4 Report of the Mobility Taskforce, August 2010
9. Existing social housing tenants in search of a more suitable home, or who want to move to take up employment opportunities or to be nearer their family, are among those who are ill-served by the current allocation system. In 2009/10, only 12.8% of new lettings by housing associations went to internal transfers. The proposal to enable local authorities and housing associations to offer available properties to existing tenants seeking a transfer before opening them up to general applicants coming through local authority allocation schemes is therefore a welcome move, recommended by the National Housing Federation and the Mobility Taskforce, which should increase mobility in the sector.

10. We believe that local authorities, with their partner housing associations, should be required to set out how they will meet the needs of their transferring tenants in their allocation schemes.

11. The provision that existing tenants who are given reasonable preference for having urgent housing needs may still get housing under the main allocation framework should provide additional safeguards. However, we believe that all existing tenants should be able to choose to seek to move via the local authority allocation scheme and would like the Government to confirm that this will be possible.

12. The development of allocation schemes has the potential to address the concerns of those who have called for reasonable preference categories to be overhauled to allow for more flexibility. A push for transparency in allocations criteria – including the right of applicants to request information to enable them to assess how their application is likely to be treated under any scheme – should boost public confidence in the system.

4.0 Mobility

1. We are concerned that the Localism Bill gives the Secretary of State new powers to direct the regulator about mutual exchanges. We believe that these additional powers are unnecessary and could be operated in a way that undermines the independence of housing associations in meeting their social business objectives.

5 CORE 2009/10.
2. We do not understand the need for the proposal to direct registered providers through regulation to join web-based mutual exchange services that provide details of every potential swap property in the market. At least 200,000 tenants are already registered with mutual exchange services and there is a wealth of local initiatives amongst social landlords to boost mobility. Most tenants who register for mutual exchanges are seeking moves over a short-distance and are already able to draw on a substantial number of potential swaps.6

5.0 Homelessness

1. The current homelessness and allocations systems, and the way they interact, create a perception that applicants can maximize their chances of moving into settled social housing if they present the worst possible case and are accepted as unintentionally homeless and in priority need and move into temporary housing provided by the local authority until they have an offer of social housing. In our analysis,7 many households therefore feel compelled to follow this route where they might have preferred to stay on living where they were, including with families and friends, if they had a reasonable expectation of being housed through the waiting list at some point in the near future.

2. At the same time, the system does not meet the needs of many other individuals and households who are in housing need but fall outside the statutory definition of being homeless and in priority need.

3. We therefore understand moves to end the automatic link between the main homeless duty and preference for permanent housing through local authority allocation schemes. Letting local authorities discharge their homelessness duty by offering priority need households “suitable” accommodation in the private rented sector – with or without their agreement – should reduce costs by preventing families from insisting on staying in expensive temporary accommodation until a social home becomes available.

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6 Report of the Mobility Taskforce, August 2010
7 Fairer access to social housing: a consultation proposal from the National Housing Federation
4. However, we feel this approach is brought into question by the Government’s moves to cap housing benefit payments in the private rented sector, place an overall cap on the amount of benefits a household can receive (at £26,000 per week for a family) and reduce housing benefit by 10% for people claiming Jobseeker’s Allowance for a year. Such measures raise questions about the affordability and suitability of private rented sector accommodation as settled accommodation for homeless people. We are concerned that people will find themselves in accommodation they cannot afford, creating a cycle of homelessness.

5. We therefore believe that no-one should be placed in private rented sector accommodation for which more rent is charged than they would be entitled to receive in local housing allowance. Neither should a working household not in receipt of benefits be forced to start claiming them in order to be able to afford such accommodation. This is particularly important against the background of the Government’s plans to reduce Local Housing Allowance to cover only the cheapest third of properties in a local area, a move which will make more of the private rented sector unaffordable, and therefore less attractive, to more people. Failure to impose sufficient safeguards risks pushing more households into a benefits trap from which many will struggle to escape.

6. We agree that any offer in the private rented sector should be for a fixed term of at least 12 months – and that the homelessness duty should recur if the applicant has a priority need and re-applies for accommodation after becoming unintentionally homeless again within two years of accepting a private sector offer.

7. However, it is vital that appropriate guarantees are put in place. We would ask for clarification on how an authority might be expected to define “suitable” accommodation. While the consultation paper states that relevant factors include the size and condition of the accommodation, its location and affordability, the subsequently published Localism Bill is sparse in detail.

8. Only accommodation from private landlords who meet certain standards should be considered for use by local authorities or housing associations. We would encourage local authorities that have not already done so to develop accreditation or registration schemes to ensure quality is maintained. Alternatively, consideration should be given to the development of a Decent Homes Standard for private rented accommodation to ensure an adequate supply of suitable alternatives to social housing exists.
9. It should also be emphasised that the private rented sector should be considered only as one option for achieving a successful outcome for homeless households – and not a default. Social housing will still be more appropriate for some. We would encourage local authorities to focus more attention on advice and support to provide families with good housing options.

10. It remains the case that the underlying problem with access is the shortage of affordable housing. Building has failed to keep pace with demand and waiting lists have soared in the past decade from 1.04m households in 1999 to 1.75m households in 2009. Meanwhile about 260,000 households in the social rented sector are living in overcrowded conditions. Without more social housing, in spite of the measures outlined above, the choices available to people seeking a home will remain severely constrained.

6.0 Overcrowding

1. We welcome reconsideration of the legal framework governing overcrowding and we agree that current statutory overcrowding standards, as set out in Part 10 of the Housing Act 1985, are outdated. Using the Housing Health and Safety Rating System as an alternative foundation for measures to tackle overcrowding in social as well as private rented accommodation should be explored.

7.0 Reform of social housing regulation

1. The Federation welcomes the Government’s acceptance of our argument that robust, effective and independent financial regulation is essential to the success of the sector. Given the Government’s decision to abolish the Tenant Services Authority and transfer its regulatory functions to the Homes and Communities Agency, we support the creation of a dedicated regulation committee of the HCA to discharge those functions. We are in discussions with the TSA and HCA about the practicalities of operating the separation of investment and regulatory functions.

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8 Local Decisions: a fairer future for social housing
2. It is welcome that the emphasis of regulation should be on matters of governance and finance. We support the proposal to withdraw the regulator from some of its consumer protection activities, empowering tenants to hold landlords to account and scrutinise service delivery, and allowing the regulator to focus on investigating and addressing more serious failures against service standards.

3. We are, however, concerned about the new rule that tenants’ complaints cannot be made directly to the Housing Ombudsman and must be referred through an MP, councillor or designated tenant panel. We believe this is too prescriptive, adds an unnecessary additional level of bureaucracy for tenants to have to go through, and could lead to genuine complaints not being heard. Some tenants will be uncomfortable with disclosing sensitive personal information on the back of a complaint to these individuals or groups, where they might not be in approaching an independent Ombudsman. We would like the Localism Bill to be amended to allow tenants to make direct complaints to the Housing Ombudsman as is currently the case.