

Response:

Rents for social housing from 2020-21

A Ministry of Housing, Communities and Local Government consultation

8 November 2018

Summary of key points:

- The Government proposes that registered providers can increase social and affordable rents by CPI +1% each year from 2020/21 for at least five years.
- The Federation welcomes this proposal, which provides the right balance between maintaining affordability for tenants, protecting the welfare budget, and providing financial certainty for investment in new and existing homes.
- Housing associations have shown that they carefully consider affordability for tenants when setting rent levels, and across the sector use existing flexibilities in a balanced way. We suggest that to avoid ambiguity the wording around flexibility reverts to that used in the previous rent standard.
- The definition of specialised supported housing differs from that used in the previous rent standard and risks unintentionally excluding schemes developed under the old definition. We suggest the wording used in the previous rent standard is maintained.
- Introducing a convergence mechanism to allow social rents below formula rent to be gradually brought up to formula rent would further help housing associations deliver the balanced rent-setting policies that the Government and housing associations seek.

Introduction

This is the formal response of the National Housing Federation to the consultation by the Ministry of Housing, Communities and Local Government (MHCLG) on rents for social housing from 2020-21 onwards. The Federation is the voice of housing associations in England and our members are united by a common purpose – to ensure everyone can live in a good quality home they can afford.

The Federation and our members welcome the Government's commitment last year to a return to a CPI +1% rent settlement from 2020/21. It restores an approach that is fair to tenants and the public purse, while giving housing associations security over their future income to invest in delivering quality services to existing residents and building much needed new homes. We now welcome the opportunity to respond to the detailed proposals for how this will be implemented.

Background

Housing associations are independent, public-benefit organisations driven by social purpose. Their financial foundation is rental income generated from submarket rented housing. This income supports day-to-day housing management and repairs. It represents a stable long-term revenue stream against which housing associations can leverage significant private finance to invest in building new homes.

The Regulator of Social Housing (and its predecessors) have imposed regulatory restrictions on housing association rents since 1999. In 2013, the Government announced that rent increases would be restricted to CPI +1% a year for ten years from 2015. This ten-year settlement was overridden by the Welfare Reform and Work Act 2016 which imposed, for most social rents and affordable rents, a new requirement to cut rent by 1% in each of the four years 2016/17 through 2019/20. This consultation covers the period following this rent cut.

Housing associations' approach to rent-setting

Housing associations exist to serve those in housing need and this underpins their approach to setting rents. Although rents are regulated, housing associations do have a degree of flexibility over rent-setting. Evidence shows that associations use this thoughtfully and responsibly to balance their responsibility to keep rents affordable for tenants, to reduce demand on the welfare budget, and to guarantee sufficient income to manage existing homes well and deliver new homes.

In particular, regulation has allowed housing associations the flexibility to set social rents within a 5% tolerance of formula rent. The Federation has shown previously that within the +/-5% tolerance around formula rent, more rents are set below formula than above, and on average the sector is at formula rent.

However, housing associations will consider the longer term impact of their decisions when setting rents. Experience in recent years has been that housing associations that set lower rents – in order to promote affordability for tenants and reduce welfare spending – have seen their finances disproportionately and negatively affected by subsequent rent regulation. In particular, this has come about from the end of the convergence mechanism, and the 1% rent cut.

Convergence

In an effort to address large historic variations in social housing rents that had built up over many years, in 2002 the Government introduced a rent convergence formula under which rents were to be brought into alignment. This was largely successful, with the majority of social housing rents reaching formula rent by 2015. However, rent convergence was withdrawn in 2015, before all rents had reached formula. We estimate that 4.6% of social rent properties are still let at rents below formula rent (i.e. more than 5% below, given the +/-5% flexibility on formula rents).

The end of the convergence mechanism means that some housing associations are now trapped with lower rental income in the long term. This is particularly unfair for those who chose to increase rents by less than the maximum allowed during the period, in order to reduce the impact on tenants. It also means that, in future, associations will be hesitant to increase their rents by less than the full amount permitted by regulation, because the absence of a convergence mechanism means that such a decision is effectively irrevocable.

Federation's views

The Federation welcomes the return to a regulatory regime where housing associations are permitted to raise social and affordable rents by up to CPI +1% each year. Longer term certainty over a positive rent settlement is vital for delivering new homes.

The financial case for building new homes is often more sensitive to certainty over rents than over future grant, which illustrates the importance of a stable and positive rent settlement. The Government's announcement last year has already given housing associations additional confidence to plan for new housing developments in future years.

The detailed proposals for implementing this settlement, contained in this consultation, provide welcome certainty over the future direction of housing association rents, and welcome continuity with the pre-2016 approach. In addition to answering the consultation's specific questions, we would like to draw attention to four specific issues:

1. [Responsibility in rent setting and the need for a convergence mechanism.](#)
2. [Social rent flexibility.](#)
3. [The 2020 limit.](#)
4. [Specialised supported housing definition.](#)

We expand on each of these issues in the sections below, followed by [our answers to the consultation questions](#).

1. Responsibility in rent setting and the need for a convergence mechanism

The consultation document states that "CPI +1% is a ceiling (rather than an expectation) for registered providers' annual rent increases. Providers will be free to apply a lower increase, or to freeze or reduce rents, if they wish to do so."

In recent years, housing associations have devoted considerable resource to analysing how to set their rents in order to balance affordability for tenants, pressure on the welfare bill, and financial certainty to invest in existing homes and build new ones. Drawing on this analysis, many housing

associations might decide against introducing the maximum CPI +1% rent increases on some or all of their homes in any particular year.

However, the proposed rent policy introduces a significant disincentive to doing so, because a decision made in one year is then irrecoverable in future years – the property's rent is held down until relet, potentially many years ahead. This has been the case since the convergence mechanism was withdrawn in 2015.

There are three benefits to reintroducing a convergence mechanism for social rents that are below formula rent:

- It would give housing associations the confidence to consider charging less than the maximum rent where they consider this desirable, in the knowledge that they have the flexibility to increase rents again via the convergence mechanism if that becomes necessary in future.
- It would allow housing associations to complete the process of rationalising rents that have been historically below formula rent, to make the system fairer for tenants and easier to administer. Allowing all properties to converge on formula rent – as housing associations were able to do between 2002 and 2015 – restores equity between tenants.
- It allows housing associations to plan for higher future incomes in some circumstances, and therefore invest more in delivering quality services to existing residents and delivering new homes. When convergence was removed in 2015, some individual housing associations estimated it would cost them up to £20m over the ten year rent settlement.

We suggest that rent convergence is introduced using the same approach adopted between 2002 and 2015. Under this policy, landlords were allowed to charge up to £2 per week more than the standard rent settlement on properties with rents below formula rent. Taking inflation into account, £2 per week in 2002 is the equivalent of £3.15 per week today. Therefore, we suggest that landlords be allowed to charge up to an extra £3 per week for properties with rents below formula rent.

The impact of a convergence mechanism

We have undertaken some modelling on the potential impact of introducing a convergence mechanism – using both aggregate sector-wide data and property-level data – on 62,000 properties from five housing associations.

Using national data, we estimated that there are 79,000 properties with rents more than 5% below formula rent. If convergence at £3 per week was implemented for all 79,000 properties from 2020/21, 95% would reach formula rent (within tolerance) by 2024/25. This change would have a minimal impact on the cost of Housing Benefit. Assuming that two thirds of total rent is paid by Housing Benefit, the maximum additional cost would be £61m per year by 2024/25. We expect the figure would be considerably less than this because, in practice, not all housing associations would use convergence to maximise their rents.

Using property-level data from five providers, we found that 5.6% of their properties are currently more than 5% below formula rent. With a £3 per week convergence mechanism in place, this would reduce to 1.2% by 2024/25, and would generate a 1% increase in rental income compared to implementing the proposed rent settlement with no convergence mechanism.

2. Social rent flexibility

The draft policy statement says (paragraph 2.14) that “the policy contains flexibility for registered providers to set rents at up to 5% above formula rent (10% for supported housing – as defined in paragraphs 2.35–2.36 below). We expect providers to use this flexibility in a balanced way, and not set all rents at 5% (or 10%) above the formula rent.”

The 2015 Rent Standard Guidance explained that flexibility “is intended to allow registered providers discretion in dealing with local factors.” We believe that this policy intent remains, but that the wording in the draft policy statement risks introducing ambiguity over how it could be applied.

As the Federation has argued previously, evidence shows that the housing association sector uses flexibility in a balanced way – with more rents set below formula rent than above, and the average rent being formula rent.

However, in the current proposed drafting it is unclear whether this expectation is intended to apply across the sector, or to each individual provider. There may be circumstances when providers would take local factors into consideration and prudently choose to charge the majority or all rents up to 5% above formula rent on relet, while others might choose to charge less. These decisions would be based on consultation with tenants, and analysis of local affordability and markets.

We urge the Government to make it clear that this balanced approach represents an expectation of overall behaviour across the sector, and should not be read as a requirement to be enforced on any individual provider. Based on past experience, we agree that such an expectation is reasonable, and we share it, but we suggest that for the avoidance of doubt the policy statement should revert to the wording in the 2015 Rent Standard.

3. The 2020 limit

The Draft Direction (paragraph 2) defines the 2020 limit as “the average weekly rent for the tenant’s accommodation in the fourth relevant year within the meaning of section 23(6) of the Welfare Reform and Work Act 2016”, increased by CPI +1%. We understand and agree with the policy rationale for this measure, but believe it currently risks not meeting the policy intent with respect to homes that are relet to a new tenant during the fourth relevant year. This includes:

- a social rented home that is initially below formula rent and then is relet to a new tenant at formula rent
- a social rented home that is initially at formula rent and is converted to affordable rent on relet to a new tenant during the year
- an affordable rented home that is at a rent below 80% of market rent, and relet to a new tenant at a higher rent during the year.

In all these cases, the average rent for the year would give a misleading figure covering two different tenancies.

Instead, we suggest the wording is clarified to make it clear that in the event of relet to a new tenant, the 2020 limit is the annualised average weekly rent since the new tenancy began.

4. Specialised supported housing definition

The draft policy statement uses a new definition of specialised supported housing and we are concerned at the significant changes in the definition of specialised supported housing compared to the existing rent standard.

We appreciate that this new definition is taken from the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016, but feel that it is inappropriate and unnecessary to transfer this over into the new standard. These regulations will no longer be in force at the point at which the new rent standard becomes relevant. These regulations were written to achieve the single purpose of enacting the obligation to reduce rents over a four-year period for certain social housing properties and attempted to translate the spirit of the existing rent standard into the legislation governing the rent standard.

This does not make it fit for the purpose of defining appropriate exemptions from the new standard that will apply for the foreseeable future, and is the basis on which a landlord will set rents on new properties and appraise the financial viability of both new and existing supported housing schemes.

The regulator estimates that there are around 10,000 units of specialised supported housing, and the changes in the definition raises questions on:

- the ongoing viability of schemes developed under the existing definition
- how the regulator will investigate and deal with housing associations found to be operating schemes that meet the current but not the new definition.

More importantly, it has the potential to undermine the housing security of a number of vulnerable people with high support or care needs.

MHCLG is working closely with the supported housing sector and local authorities on the design of a new system of greater oversight for Housing Benefit spend in supported and sheltered housing. Private registered providers own or manage over 70% of the country's supported housing, and the Government has been clear on [its ambition to maintain and expand supply](#).

The regulation of rents and service charges is an important check in public spending on all supported housing, and already provides significant oversight in terms of rent setting, with a very limited number of exceptions as listed in the current rent standard.

Policies on rent regulation, housing supply and oversight need to work together. They all need to recognise the complexity of some supported housing schemes in terms of the range of funding sources, and the type and design of building needed for particular client groups.

Supported housing can present a considerable overall saving to the public purse compared to other more institutional accommodation, and the regulator should have a degree of discretion and flexibility to assess the appropriateness of the rent levels in a particular scheme.

Comments in detail on the definition of specialised housing

Section five of the draft policy statement sets out the following definition:

Schemes where:

- i. there was no public assistance, or
- ii. if there was public assistance, it was by means of a loan (secured by means of a charge or a mortgage against a property).

This is a significant tightening of the definition compared to the existing standard because it omits the reference to 'negligible' public assistance. It is likely that a number of schemes currently operate on rents set at levels outside the rent standard, even though some element of public subsidy has gone into some aspect of the building.

The definition mirrors the existing standards in requiring a 'high level of support' to be provided, but goes on to specify that such support must 'approximate' to the services or support which would be provided in a care home. The existing definition accepts that a care home and supported housing are different models and simply refers to the 'only acceptable alternative being a care home'.

Supported living can help reduce dependency – this is one of the benefits of this form of housing provision when compared to residential care or hospital accommodation, which imposes a more institutional structure of care and support. Given that 'approximates' is very difficult to define in practice, we suggest that this additional requirement is dropped.

The new definition requires the accommodation to be provided "under an agreement or arrangement" with a local authority or a health service, whereas the guidance requires the scheme to have been "commissioned in line with health, social services or Supporting People strategies and priorities". The new definition requires the rent charged, or to be charged, to comply with the agreement or arrangement. Formal arrangements may not include written reference to rent levels and for existing schemes may have been agreed some time ago. It is not clear if this agreement is required on an ongoing basis.

Given the difficulty in applying this additional requirement to existing schemes, it is suggested that it be dropped.

Answers to consultation questions

Question 1: Do you agree that the rent standard should apply to local authority registered providers from 2020?

The Federation does not have a view on whether the rent standard should apply to local authorities.

Question 2: Do you agree that the same requirements should apply to both local authorities and private registered providers?

The Federation does not have a view on how the rent standard should apply to local authorities.

Question 3: Do you agree with the proposal to permit registered providers to increase rents by up to CPI+1% each year?

Yes, we agree that registered providers should be able to increase social and affordable rents by up to CPI +1% each year. This provides welcome certainty over the future direction of housing association rents, and welcome continuity with the pre-2016 approach. We believe CPI+1% strikes

the right balance between maintaining affordability for tenants, containing pressure on the welfare budget, and giving housing associations the certainty and income stream to invest in building new homes.

We urge the Government to clarify the wording of the '2020 limit' to make clear that, where a property has been relet to a new tenant during the year, it is only the average weekly rent since the relet that should be taken into account in determining the 2020 limit.

Question 4: Do you agree with the proposed direction as it relates to social rent properties?

Yes, we agree with the proposed direction.

We recommend clarifying that the 'balanced' approach to using the +5% flexibility in social rent represents an expectation of behaviour across the sector as a whole, rather than a requirement that can be enforced against any specific provider. This would replicate the previous approach and recognise that, although different providers face different pressure, evidence shows a balanced approach to rent setting across the sector.

We urge the Government to reintroduce a convergence mechanism for rents below formula rent.

Question 5: Do you agree with the proposed direction as it relates to affordable rent properties, including the proposal relating to the re-setting of affordable rent?

Yes, we agree with the proposed direction, and with the proposal that where affordable rented homes are relet to an existing tenant the rent increase should be capped at CPI+1%. This would ensure existing tenants do not experience a significant uplift in rent.

Question 6: Do you agree with the proposed arrangements for making exemptions from the rent standard on financial grounds?

Yes, we agree with the proposed arrangements, which are important to ensure the regulator has powers to respond to specific circumstances affecting individual providers in rare cases where this might be necessary.

Question 7: Do you have any other comments on the proposed direction (including the draft Policy Statement)?

The definition of specialised supported housing differs from that used in the previous rent standard, which risks excluding schemes that were developed in accordance with the previous standard. We recommend the definition from the previous rent standard is used, as outlined above.