

## Written evidence submitted by Local Government Association (LGA)

### 1. About the Local Government Association (LGA)

- 1.1. The Local Government Association (LGA) is the national voice of local government. We are a politically led, cross-party membership organisation, representing councils from England and Wales.
- 1.2. Our role is to support, promote and improve local government, and raise national awareness of the work of councils. Our ultimate ambition is to support councils to deliver local solutions to national problems.

### 2. Summary

- 2.1 Good-quality supported housing fulfils a vital role in helping people with additional needs to live well and independently, as well as providing short-term and transitional housing that prevents people becoming homeless or rough sleeping. This includes people who are homeless and need additional mental health or substance misuse support, people fleeing domestic abuse, prison leavers, care leavers and people leaving national asylum seeker services.
- 3.1 Most exempt accommodation is commissioned by local authorities, is delivered by reputable organisations, and is subject to local authority oversight through contractual mechanisms and is of good quality. However, as we highlighted to the Levelling Up, Housing and Communities Committee, [councils have been concerned](#) for some time that an increasing number of exempt accommodation providers are falling short in providing good quality, personalised support for people in vulnerable circumstances. In particular, issues have been identified with providers (for example, charitable or private sector organisations) who deliver supported housing that is not commissioned or approved by a local authority (for people who may need support but may not be eligible for council funded social care) as there are no contractual mechanisms for councils to quality assure and monitor standards.
- 3.2 At present, councils have limited levers to control the quality or supply of non-commissioned exempt accommodation in their communities. We have long raised that a weak regulatory framework for supported housing and a lack of local oversight powers for councils – combined with increased demand for housing for single people, issues with funding model for supported housing and outdated Housing Benefit regulations – have created the conditions for a small minority of unscrupulous non-commissioned providers to enter the market to exploit the higher rents that can be charged for exempt accommodation.
- 3.3 Councils have identified a trend of landlords moving into providing exempt supported housing, primarily as a high return investment model. This issue has grown significantly over recent years, resulting in an increase in vulnerable people being housed in poor-quality houses of multiple occupancy (HMOs) with unsuitable or no additional support provided. These developments have had a significant, detrimental impact on vulnerable people who have been housed in poor-quality accommodation without the support they need, as well as being poor value for money for the public purse.
- 3.4 Given the impact of poor-quality exempt accommodation on individuals and

communities across the country, there is an urgent need for central government action. The LGA wants to work with Department for Levelling Up, Housing and Communities (DLUHC), Department for Work and Pensions (DWP), the Department of Health and Social Care (DHSC), the National Housing Federation and other partners, to ensure that exempt accommodation is consistently good quality, provides the right support and represents value for money.

3.5 We welcome measures in the Supported Housing (Regulatory Oversight) Bill which will allow local authorities to better regulate the quality of exempt supported accommodation through a licensing scheme and enforcement of a new set of 'National Supported Housing standards.' This legislation will be a vital step in closing gaps in the regulatory regime for supported housing, which have not been addressed to date.

3.6 However, we have significant concerns about the capacity of councils' housing teams to undertake all of the new responsibilities that are proposed. It will be vital for Government to fully fund the measures for them to be effective. The requirement to produce a Local Supported Housing Strategy, to gather and share information, and to operate licensing schemes will count as new burdens and will need to be funded as such. We would welcome clarification on whether funding for this is included in the £20 million announced as a part of the Bill. Even where new burdens funding is provided, there may still be challenges in terms of ensuring sufficient staffing, particularly given existing workforce challenges in local government.

3.7 In addition to the Supported Housing (Regulatory Oversight) Bill, further measures should be considered to empower councils to manage the supply of supported housing in their communities, effectively implement an enforcement regime, and ensure value for money. These must include:

3.7.1 A thorough review of supported housing funding to ensure there is sufficient funding to respond to local need, including addressing funding for support costs when a person does not meet the threshold for social care support and addressing the subsidy gap that councils with housing responsibilities face in relation to non-registered supported housing.

3.7.2 Introducing a requirement for planning permission for exempt supported accommodation, to strengthen local oversight of new supported accommodation in an area

3.7.3 Strengthening Housing Benefit regulations and providing a more robust definition of 'care, support or supervision', to allow councils to effectively scrutinise benefit claims and ensure value for money

### **3. Spending on supported housing**

4.1 In the last financial year, [it is estimated that councils spent £1 billion on exempt accommodation](#), a figure that has increased over the last three years.

4.2 The accommodation element of supported housing and some eligible housing-related service costs are funded by Government through Housing Benefit. Exempt supported accommodation is exempt from usual benefit rules which normally limit the amount of money that can be claimed for housing costs, in acknowledgement of the higher costs associated with certain types of supported or supervised accommodation. The ability for providers to charge higher rents for exempt accommodation is important, as the costs of managing shared supported housing units would not be financially viable if the same Housing Benefit and welfare rules applied as general needs social housing.

4.3 Where residents meet the threshold for social care, the care or support element can be funded through councils' social care budgets. However, where this is not the case, there is no public stream of funding for residents' care and support costs. Some providers – such as

charities – meet these costs themselves, while other providers cover costs by levying a service charge on residents. This puts residents in the position of having to pay additional charges for care using their Universal Credit entitlement, which can consume a significant proportion of their disposable income. [Crisis has highlighted](#) that some providers may have reclassified some support costs as housing-related costs so that they can be covered by Housing Benefit, which has pushed up rents.

3.8 Government urgently needs to provide a sustainable solution for funding of care and support costs, where a person does not meet the threshold for social care support. There have been numerous government reviews of supported housing funding, most recently in 2018. This review decided that housing costs for all types of supported housing would continue to be funded by Housing Benefit and did not fully address the issue of funding for care and support costs.

4.4 For some councils responsible for housing with a proportionately high number of non-registered exempt accommodation providers, their main concern is the Housing Benefit subsidy gap they face. Councils receive 100 per cent subsidy in relation to social housing landlords, but only 60 percent in relation to charitable landlords and 0 per cent if the person is not classed as vulnerable. This shortfall is a further budget pressure on already stretched council budgets, especially smaller district councils. [East Staffordshire Borough Council](#) is among the councils that have raised concerns about the subsidy gap. Across England, in 2020-21 the [Housing Benefit Subsidy loss](#) faced by councils ranged from £0 to £3.7 million. For 23 councils, the subsidy loss was over £1 million. Giving councils with responsibility for housing the powers they need to address value for money concerns will save public money and start to close the subsidy gap. However, it should be noted that most exempt accommodation Housing Benefit claims from charitable non-registered landlords will be legitimate and therefore the Government must act to close the Housing Benefit subsidy gap councils face.

4.5 We need a thorough review of supported housing funding, which addresses funding for support costs when a person does not meet the threshold for social care support and the subsidy gap that councils with housing responsibilities face in relation to non-registered supported housing. This will give certainty to reputable providers and ensure commissioners have the necessary transparency to ensure quality standards and value for money.

4.6 There is a need for further research into what exempt accommodation should cost to provide, but this must recognise that costs will vary according to the level of support that is required, the local housing market and the financial model for individual schemes. Anecdotal evidence suggests that in some places exempt accommodation is costing too much because of artificially high rents, especially through the lease-based model for registered providers when it has been established with the explicit aim of maximising investor profit. Councils and other public sector bodies also face increased expenditure from addressing the consequences of poor-quality exempt accommodation and support, both for individuals and communities.

#### **4. Provision of supported housing**

4.1. Some exempt accommodation is commissioned or approved by councils or other public sector organisations. In these cases, quality is monitored and managed through contractual arrangements. In two-tier areas the district and county council will have different roles and responsibilities in the provision of supported housing, with district councils having responsibilities for the housing element of supported housing and county councils having responsibility for the support/ care element.

4.2. There are many other providers of exempt supported accommodation that is not commissioned by councils or other public bodies, including registered charities, voluntary and community organisations, and independent providers. Where supported housing has not been commissioned or approved, and where people may need support but may not be

eligible for council funded social care, then there are no contractual mechanisms for councils to quality assure and monitor care and support services in this type of supported housing.

- 4.3. People can be placed in non-commissioned exempt accommodation through a variety of referral routes from multiple agencies, including self-referrals. There is no requirement to notify the council in advance, so the council is unable to check whether the accommodation and support are suitable. Councils do scrutinise Housing Benefit claims for exempt accommodation, but they do not have effective powers to challenge unreasonably high rent claims and few levers to challenge concerns about care and support by an uncooperative non-commissioned provider unless there are safeguarding issues.

## 5. Regulation of supported housing

- 5.1 At present, councils have limited levers to control the quality or supply of non-commissioned exempt accommodation in their communities. We have long raised that a weak regulatory framework for supported housing and a lack of local oversight powers for councils – combined with increased demand for housing for single people, issues with funding model for supported housing and outdated Housing Benefit regulations – have created the conditions for a small minority of unscrupulous non-commissioned providers to enter the market to exploit the higher rents that can be charged for exempt accommodation.
- 5.2 An exempt accommodation provider can set up and largely operate outside of the regulatory framework with neither councils, the CQC (unless social care is commissioned) nor the Regulator of Social Housing (RSH) having sufficient oversight powers. The Regulator of Social Housing (RSH) has regulatory oversight of registered providers. However, over the last decade, registered providers of social housing, including supported housing, have not been subject to proactive regulation or inspection. The RSH does not have the powers or remit to proactively regulate consumer standards and can only use its enforcement powers where there is, or is risk of, serious detriment. Its current remit is largely limited to matters of financial viability and governance, with only on private providers which own 1,000 residential units or more subject to proactive regulation.
- 5.3 Recently, the long lease-based model for supported housing has come under scrutiny by the RSH, particularly the governance and financial arrangements of some registered providers that lease all or most of their housing stock from other organisations, typically private investors. [The RSH has published a number of regulatory judgements and notices where it has identified concerns about the governance or financial viability of these providers.](#)
- 5.4 It is positive that the RSH has strengthened the due diligence scrutiny that takes place when a landlord applies to become a registered provider, specifically when they intend to provide supported housing. We would like the RSH to formally seek the views and experiences of councils. It could also include a formal mechanism for intelligence sharing between RSH officials and councils in relation to supported housing providers that are a cause for concern to either party (for example in relation to geographic areas of operation of a current landlord or where a landlord proposes to provide supported housing).
- 5.5 Supported accommodation is also exempt from many local regulatory levers over housing, which is a further incentive for the minority of providers who use exempt accommodation status to maximise income while delivering poor quality services for their residents. Houses in Multiple Occupation (HMO) that are used for exempt accommodation and managed by registered providers are exempt from licensing under Housing Act 2004 and from Management of Houses of Multiple Occupation (England) Regulations 2006. Family housing that has exempt status is exempt from some council powers, including Article 4 Directions.
- 4.7 Councils with housing responsibilities have an important oversight role when checking that Housing Benefit claims comply with the requirements set out in legislation. In the case of non-commissioned provision, this can be the only opportunity to scrutinise and identify

concerns with value for money. While councils can use powers under the Housing Benefit regulations to restrict unreasonable supported exempt accommodation rent increases in limited circumstances, the significant practical difficulties with doing so means that this rarely happens.

- 4.8 Councils with responsibility for housing often do not always have a clear picture of the costs to enable them to scrutinise claims. There can be a lack of transparency about accommodation and eligible service costs (funded by Housing Benefit) and support costs (which cannot be funded by Housing Benefit), as some providers have been identified to reclassify support costs as housing costs which pushes up rent prices.
- 5.4. Another key challenge is that there is no clear statutory definition of what “care, support and supervision” means in the Housing Benefit regulations. Case law set out in *Bristol City Council v AW* [2009] UKUT 109 (AAC) indicates that “a satisfactory test for determining whether support of more than a minimal amount is provided is to ask whether the support provided was likely to make a real difference to the Claimant’s ability to live in the Property”. The ambiguity of this definition means that a council cannot refuse to pay Housing Benefit if the evidence provided showed that “more than minimal” support was being provided, even if that support did not meet a residents’ needs. The definition of support within Housing Benefit Regulations should urgently be reviewed, with the aim of providing a more robust definition of “care, support and supervision” against which councils can assess compliance.

## **6. Proposals to reform the regulation and oversight of supported housing**

- 6.1 In response to the growing issues in exempt supported housing the Government has run a pilot programme in five areas to test approaches to improving standards and enforcement in supported housing and introduced a National Statement of Expectations (NSE) for Supported Housing in 2020, which was welcome.
- 6.2 The LGA has broadly welcomed the Supported Housing (Regulatory Oversight) Bill, which was introduced as a Private Members Bill and has secured Government support. If passed, the Bill would allow local authorities to better regulate the quality of exempt supported accommodation through a licensing scheme and enforcement of a new set of ‘National Supported Housing standards.’ This legislation will be a vital step in closing gaps in the regulatory regime for supported housing, which have not been addressed to date.
- 6.3 The LGA have previously called for the introduction of an accreditation or licensing scheme, to better regulate standards of accommodation and care in supported housing. We therefore welcome measures in the Bill which would enable the Secretary of State to introduce licensing schemes. This would make providers’ exempt accommodation status subject to council approval and conditional on meeting a good quality of accommodation and care, giving councils greater powers to manage provision in their area and drive-up standards.
- 6.4 Having oversight of all supported housing provision within their area would also help councils understand what provision exists, and allow them to plan for adequate provision to meet local need. It would also tackle issues such as preventing ‘self-referrals’ or providers giving a home to people from other council areas without sharing vital information. It is important that the licensing or accreditation scheme is proportionate, while still ensuring high-quality provision. There is a concern that if the scheme is too costly or burdensome, smaller, good-quality providers could be pushed out of the market, which could lead to an increase in homelessness.
- 6.5 We are supportive of the Bill’s proposal to introduce of a set of National Supported Housing Standards. This will build on the work of the Government’s [Supported housing: national statement of expectations](#) which set out recommendations for standards in the accommodation element of supported housing. Whilst the majority of supported housing

providers demonstrate a high level of commitment and high standards, a set of national standards will help to drive up quality across the sector as part of an effective local inspection and enforcement regime.

6.6 The Bill would introduce a new duty on local housing authorities to carry out a review of the supported exempt accommodation in their districts and, in light of that review, publish a “supported housing strategy” for the provision of supported exempt accommodation. As supported housing strategy must assess the current availability of supported exempt accommodation in a district; the need for supported exempt accommodation in a district, and such other matters as may be specified by the Secretary of State in regulations. Councils are already statutorily obliged to have a homelessness and rough sleeping strategy, and the Bill will require a separate supported housing strategy which may cover some of the same issues.

6.7 We would welcome clarification on whether there will be a requirement for this new strategy to be produced as a separate document. A separate document would be particularly burdensome in local authorities with small numbers of supported housing units in their area. Consideration should be given as to how existing processes and strategies can be used to assess exempt accommodation needs at a local level, rather than the development of a whole new strategy and the associated requirements.

6.8 While we welcome the measures in the Bill, we have significant concerns about the capacity of councils’ housing teams to undertake all of the new responsibilities that are proposed. It will be vital for Government to fully fund the measures for them to be effective. The requirement to produce a Local Supported Housing Strategy, to gather and share information, and to operate licensing schemes will count as new burdens and will need to be funded as such. We would welcome clarification on whether funding for this is included in the £20 million announced as a part of the Bill. Even where new burdens funding is provided, there may still be challenges in terms of ensuring sufficient staffing, particularly given existing workforce challenges.

6.9 To ensure any scheme is effective and sustainable, local authorities should have the flexibility to set fees locally so that they are reflective of actual operation costs of running the scheme. Initial set-up costs will also need to be met by new burdens funding. We would welcome working with Government to develop a costed model for strengthened local oversight and enforcement, building on the work of the pilots, and the long-term savings it could achieve for councils and Government.

## **7. Further measures to improve the regulation and financial sustainability of supported housing**

7.1 In addition to the Supported Housing (Regulation) Bill, further measures should be considered to empower councils to manage the supply of supported housing in their communities, effectively implement an enforcement regime, and ensure value for money.

7.2 We are calling on Government to introduce a requirement for planning permission for exempt supported accommodation. This would help to further strengthen local oversight of new accommodation in an area, by enabling a local planning authority to take into account the need for supported exempt accommodation, as outlined in its supported housing strategy, when deciding whether to grant planning permission. We would welcome clarification from Government as to why exempted supported accommodation cannot be specified as a separate use-class now, to maximise local oversight of provision.

7.3 Alongside this, Government must:

- 7.3.1 Undertake a thorough review of supported housing funding to ensure there is sufficient funding to respond to local need, including addressing funding for support costs when a person does not meet the threshold for social care support and addressing the subsidy gap that councils with housing responsibilities face in relation to non-registered supported housing.
- 7.3.2 Strengthen the Housing Benefit regulations and provide a more robust definition of 'care, support or supervision', to allow councils to effectively scrutinise benefit claims and ensure value for money.

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