

## Written evidence submitted by Campbell Tickell [RSH 094]

### Introduction

Campbell Tickell is a multi-disciplinary management and recruitment consultancy focusing primarily on the public and not-for-profit sectors. We have particular expertise in the social housing sector and extensive experience of its regulatory regime. We have drafted guidance for the Regulator of Social Housing and its predecessors, authored a series of reports for the Regulator on learning from problem cases, and undertaken numerous governance, risk and finance reviews of registered housing providers prompted by regulatory concerns. We welcome the opportunity to share our views in this Call for Evidence by the Levelling Up, Housing and Communities Committee.

### Summary

In our response to this Call for Evidence, we wish to emphasise three main points:

- a) The Regulator of Social Housing has operated well within the constraints set upon it by legislation. Through its risk-based approach to regulation, it has protected social housing assets, addressed failings in the governance and financial viability of individual providers, and averted the potential of significant harm to the sector as a whole.
- b) However, its objectives as set by legislation have proved too narrow, not least in the light of recent events. We welcome the proposed changes which will broaden the Regulator's role in assessing compliance with the Consumer Standards and which have strengthened the role of the Housing Ombudsman. The direction of travel is positive, but new legislation is required at an early opportunity to enable the Regulator to fulfil its proposed expanded role.
- c) We must also note that the Regulator will require additional resources to successfully deliver on its wider remit. Furthermore, the sector as a whole faces significant resourcing constraints if it is to deliver required building safety remediations, meet carbon-neutral targets and ensure the quality of existing homes, all whilst continuing to develop greatly needed additional units of social housing.

We now address the questions set out in the Call for Evidence, in turn.

### 1. How widespread and serious are the concerns about the quality of social housing?

Leading figures across the sector have been significantly concerned about the reports of poor-quality social homes, as reported first by ITV News. These reports come from multiple landlords, including some of the largest in the sector, and from across different areas of the country; they are clearly more than isolated instances of poor quality.

We at Campbell Tickell facilitate a private chat group for Chief Executives of social landlords, with over 220 members. Members on this group have repeatedly shared their concerns about these cases; in response, many have undertaken steps to improve their understanding of their stock, their approach to resolving issues concerning damp and mould in their properties, and the cultural response to tenants who experience such issues.

There are also other causes for concern about the quality of social housing. 64% of the homes owned by housing associations were built before 1981, 37% before 1964,<sup>1</sup> and 73% of local authority housing stock was built between 1945 and 1980.<sup>2</sup> Some of these older properties in the sector are

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<sup>1</sup> 2021 Statistical Data Return

becoming increasingly expensive to maintain to decent standards, with infrastructure issues becoming significantly challenging.

In recent years, the income available to social housing providers has been constrained. The rental income for the sector was reduced during the four years of 1% rent reductions between 2016 and 2020. Although providers have been able to increase rents following this period, they were additionally faced with increased operating costs due to the Covid-19 pandemic. And, as we discuss further below, providers must now meet the cost of both retrofitting homes and building safety remediation. These reductions to income and increased costs have made it more challenging for providers to improve the quality of their existing stock.

However, it is important to note that the vast majority of homes in the sector are of decent quality. According to the 2021 English Housing Survey, the quality of social housing stock is significantly better than that in the private rented sector. Modelling shows that 21% of dwellings in the social rented sector failed to meet the Decent Homes Standard in 2020, compared to just 13% in the social rented sector. This should not mean the sector can be complacent about quality; 13% still represents over 500,000 homes and therefore millions of people living in non-decent homes, and as will be discussed further below there are limitations to the requirements of the Decent Homes Standard. But it still shows that most people living in the social rented sector are in homes of decent quality.

## 2. What is the impact on social housing providers' resources, and therefore their ability to maintain and improve their housing stock, of the need to remediate building safety risks and retrofit their homes to make them more energy efficient?

The total estimated costs for retrofitting homes to meet carbon-neutral targets across the social housing sector are extremely high. Research by Inside Housing in 2020 found that the average estimated cost of decarbonisation per social home is £20,742, rounding up to a total cost of £104bn across the entire sector.<sup>3</sup> The Government's 3.8 billion decarbonisation fund, announced in the 2021 Spending Review, although welcome, covers less than 4% of this cost.

Building remediation also carries a significant cost; the G15 group of the largest housing associations in London forecast that they will need to spend £3.6bn by 2036 on building safety works, which they report as the equivalent cost of building 72,000 additional affordable homes.<sup>4</sup>

These works may not be economically viable in all cases; in the Housing Sector Survey run by Savills, landlords estimated that around 17% of their housing stock may be uneconomical to upgrade. Just under half of the social landlords surveyed said that financial capacity is the biggest constraint on their ability to meet net-zero targets.<sup>5</sup>

These additional costs obviously have a significant impact on social housing providers' resources. However, it is clear that they are being prioritised. Even with the additional demands placed on providers by the Covid-19 pandemic, social landlords have increased their spend on building safety works, as can be seen in the £32m of additional spending on major repairs expenditure in 2021.<sup>6</sup> The

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1039214/2020-21\\_EHS\\_Headline\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039214/2020-21_EHS_Headline_Report.pdf)

<sup>3</sup> <https://www.insidehousing.co.uk/news/news/cost-of-retrofitting-all-social-homes-in-the-uk-to-zero-carbon-to-top-100bn-exclusive-research-reveals-68674>

<sup>4</sup> <https://www.insidehousing.co.uk/news/news/london-has-36bn-fire-safety-costs-impact-development-plans-73017>

<sup>5</sup> <https://www.insidehousing.co.uk/news/news/more-than-one-in-six-social-homes-uneconomical-to-upgrade-to-net-zero-research-finds-72443>

risk, of course, is that providers will not at the same time be able to cover the costs of other essential repairs and maintenance work. Smaller providers are more likely not to have factored these additional costs into their business plans.

In our view, the impact is likely to be more on the delivery of additional housing than on the quality of existing homes, particularly for the larger providers which manage most of the country's housing stock. Several housing associations have explicitly stated that they are cutting their development plans in order to meet fire safety costs; for example, L&Q, the country's largest developing housing association, is reducing its housebuilding target by 70% from 10,000 new homes per year to 3,000.<sup>7</sup>

### 3. Is the current regime for regulating social housing fit for purpose?

An important point in our evidence is to stress that the Regulator of Social Housing (RSH) has been effective and successful in meeting its purpose as set out in the Localism Act 2011. This established the RSH's primary focus as risk-based regulation and reduced the emphasis that had previously been placed on consumer rights and accommodation quality.

The RSH has succeeded in fulfilling its role as a risk-based regulator, giving primacy of focus to protecting social housing assets. It has prevented the collapse of financially unstable housing associations, notably Cosmopolitan which was rescued from insolvency by intervention by the Regulator, and maintained the level of engagement in the sector by lenders. Following the Cosmopolitan case, it has taken steps to prevent any other social housing providers coming as close to financial collapse by introducing in-depth economic and governance assessments. As a result, it has protected the reputation of the sector and its ability to assess private funding.

The 'In-Depth Assessment' (IDA) process which the Regulator has introduced for all Registered Providers with more than 1000 homes has been a particular success. In our view it has focused the work of Boards on the things that really matter, and has driven a sector-wide improvement in the quality of governance.

However, the terms within which the Regulator must operate are not fully fit for purpose. The Regulator is prevented from proactively monitoring compliance with the consumer standards, those that directly cover the quality of social housing and engagement with residents. Its powers of intervention can only be used where there is 'risk of serious detriment' to residents. This is a high bar, which has been seen to prevent the Regulator from intervening in cases of disrepair and squalid conditions.

Greater focus was given to quality stock management and maintenance under previous regulatory regimes. Previously, the Audit Commission conducted inspections of social housing as part of the Regulatory regime, directly assessing housing quality and engaging with tenants, and liaising with the Regulator (The Housing Corporation and then the Tenant Services Authority). This was a driver of improvements across the sector during its ten-year period of operation. With no such investigations permitted following the Localism Act 2011, it is our view that some landlords have not treated housing quality as a sufficient priority.

We therefore welcome the Government's proposed changes to consumer regulation which will reintroduce greater powers for the Regulator to intervene in matters related to the quality of homes and landlords' engagement with their residents. We would stress that this expanded role must be

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<sup>6</sup> [2021 Global accounts of private Registered Providers \(accessible version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544422/2021_Global_accounts_of_private_Registered_Providers_accessible_version.pdf)

<sup>7</sup> <https://www.insidehousing.co.uk/news/news/lq-to-cut-yearly-housebuilding-target-by-70-as-fire-safety-costs-bite-70072>

accompanied by increased resources for the Regulator if it is to successfully deliver on its wider remit.

We would also highlight another limitation of the current regulatory regime. There is not sufficient focus on supporting new provision of social housing. The registration requirements which aspiring providers of social housing must meet are prescriptive, and not always flexible enough for smaller organisations. These crowd out potential new providers of social housing, which the Regulator should welcome, having regard to the pressing need for significantly more social housing supply. In saying this, we accept that the new registrations process does need to ensure that prospective Registered Providers are capable of meeting the economic regulatory standards as well as the consumer standards.

#### 4. How clearly defined are the roles of the Regulator of Social Housing and the Housing Ombudsman?

In certain areas, the roles and responsibilities of the Regulator and the Ombudsman can appear to overlap. There is insufficient public information on roles and processes. This could become even less clear once the Regulator's role in relation to consumer standards is strengthened and it begins assessing performance on housing quality and resident engagement.

We would draw attention to two areas where we believe there is a lack of clarity. Firstly, it is clear that individual tenants should turn to the Ombudsman after reaching the end of their landlord's formal complaints process. However, if a group of residents have a shared or collective issue concerning their landlord, they could easily be unsure of where to turn. The Ombudsman stresses that it deals with individual complaints.

The only way in which it could consider a group case is if it accepts an individual case as a lead case, with the lead complainant clearly representing other named individuals who have experienced the same issues. This is burdensome for residents to arrange, particularly those acting as the lead case. We would recommend clarity, following the changes to consumer regulation, on how groups of residents can raise concerns about the performance of their landlord.

Secondly, the roles of the two organisations in responding to systemic issues is also not clear. In September 2020, the Housing Ombudsman Scheme was revised to enable further investigation into systemic issues for the first time.<sup>8</sup> The Ombudsman is currently conducting a thematic investigation into damp and mould, after identifying a high rate of maladministration on such cases. If it finds systemic issues, the Ombudsman will make recommendations and can refer the case on to the Regulator. However, it is not clear what the Regulator would do with that information, both now and under the proposed new consumer standards.

#### 5. Does the current regime allow tenants to effectively resolve issues?

The role of the Housing Ombudsman is largely well designed for individual tenants to raise issues. The process can be frustrating for tenants, as they must fully exhaust internal complaints procedures before they can raise their issue with the Ombudsman. It is nonetheless important that the Ombudsman does not duplicate the role that should be filled by internal complaints processes, not least because it would not have the resources to do so.

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<sup>8</sup> <https://www.housing-ombudsman.org.uk/wp-content/uploads/2021/03/Housing-Ombudsman-Systemic-Investigations-Framework-.pdf>

However, this results in some individuals spending years trying to resolve an issue through their landlord's internal complaints process before they can access the Ombudsman. This is exacerbated by the current 'democratic filter' which in most cases adds an additional eight-weeks before tenants can raise their issue with the Ombudsman. We welcome the proposal to remove the democratic filter contained in the Building Safety Bill, now at report stage in the House of Commons.

Furthermore, and as raised in the previous question, the current regime does not effectively allow group concerns to be raised before problems happen. This was exposed by the tragedy at Grenfell Tower: resident groups repeatedly raised concerns about the quality of their accommodation and its poor fire safety standards. The safety issues subsequently identified in the Grenfell Tower also emphasised the importance of a proactive system which conducts external assessments of stock quality.

## **6. Do the Regulator and ombudsman have sufficient powers to take action against providers?**

As has been discussed in previous questions, the current regulatory regime does not sufficiently empower the Regulator to take action against issues under the consumer standards. It can only intervene once there is evidence of 'risk of serious detriment' to residents. We welcome the proposed changes to consumer regulation which will increase the Regulator's powers in this area.

The powers of the Regulator to respond to governance and financial failings of providers are sufficient. It has used them effectively to identify providers' issues and require improvements before they crystallise, and at the other end of the spectrum to ensure that failing providers are taken over before complete collapse, thereby protecting social housing assets and the sector's reputation.

There are recognised difficulties for the Regulator in exercising its powers. Our main concern is that the Regulator may feel constrained in using its full powers due to the consequences that may then arise. Almost all developing Registered Provider landlords have entered into loan agreements with their lenders, under which they would be in default if they were the subject of any statutory intervention by the Regulator.

It is therefore possible, if not likely, that the Regulator would effectively make the Registered Provider's problems worse by intervening, by creating a financial problem alongside whatever the original presenting problem was. For this reason, the Regulator has tended not to use its statutory powers, whereas in the past this was a more frequent occurrence. Indeed a new mechanism has largely replaced the statutory intervention, namely the 'Voluntary Undertaking' under which the Registered Provider formally undertakes to carry out certain actions, which may be roughly analogous to the results of statutory action, but without creating an event of default with lenders.

On the whole, we believe the Ombudsman has sufficient powers to take action against providers. However, we have noted inconsistencies in the level of compensation providers are required to pay when the Ombudsman rules in favour of residents. We would recommend that levels of compensation should be reviewed and perhaps systematised to a greater extent to ensure that they are a fair and consistent reflection of the detriment suffered by successful complainants.

## **7. Will the reforms proposed in the social housing White Paper improve the regime and what progress has been made on implementing those reforms?**

As previously mentioned, we welcome the strengthening of consumer regulation proposed in the social housing White Paper. The Regulator has begun to set out how it will implement the changes required. However, most of these changes can only be made after Parliament passes legislation to

update its objectives and legal powers. We would strongly encourage the Government to prioritise this in its legislative planning.

In the absence of the required legislation, the Regulator is taking the steps it can to encourage the sector to prepare for the new regulatory regime. It has been emphasising to the sector the importance of holding comprehensive, accurate stock condition data, so that issues can be identified and rectified, and also of ensuring engagement with tenants is both meaningful and effective.

Sector best practice documents are already being updated to reflect the commitments in the White Paper. For example, the National Housing Federation's 2020 Code of Governance was revised to ensure that adoptees place residents at the heart of strategic decision-making and have robust oversight of measures to keep residents, other customers and staff safe.<sup>9</sup> 159 Registered Providers have already adopted this Code according to the 2021 Statistical Data Return, representing 12% of the sector. A further 396 use the 2015 version of the Code and should be taking steps to comply with the 2020 version within the current financial year.

## 8. What changes, if any, should the Government make to the Decent Homes Standard?

The Decent Homes Standard sets out only the minimum acceptable standards for social housing properties. Social landlords should have been aiming for higher standards in their stock in any event. The Standard should be updated to better reflect the sector's understanding of truly decent standards. Additionally, it should be emphasised that void properties must also meet the Decent Homes Standard before tenants occupy them. At present some providers focus more on quick turnaround times to reduce rent loss than on ensuring relet properties truly meet decency standards.

The Decent Homes Standard also needs to be adapted to meet the requirements of modern daily life. The Standard requires that properties have 'reasonably modern facilities and services', but the requirements for this criterion have not been updated since 2006 and are therefore significantly out of date. For example, it should set minimum standards for broadband accessibility to ensure that all tenants can have adequate internet access. Furthermore, we believe the requirement that properties must have *either* a reasonably modern kitchen *or* bathroom is insufficient: both should now be required.

Greater attention should be placed on ensuring the infrastructure around homes is also decent. For example, ensuring that drainage functions adequately, particularly in areas with predominantly older housing stock. We would also recommend that separate standards are implemented for flats, as distinct from houses and bungalows, because the safety standards are different.

Overall, we would encourage the Government to update the Decent Homes Standard so that it meets the recommendations as set out by the Good Home Inquiry.<sup>10</sup>

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<sup>9</sup> [https://www.housing.org.uk/nhf\\_catalog/publications/code-of-governance-2020/#:~:text=The%202020%20Code%20of%20Governance,of%20governance%20and%20board%20excellence.&text=This%20code%20sets%20out%20the,sector%20should%20seek%20to%20attain.](https://www.housing.org.uk/nhf_catalog/publications/code-of-governance-2020/#:~:text=The%202020%20Code%20of%20Governance,of%20governance%20and%20board%20excellence.&text=This%20code%20sets%20out%20the,sector%20should%20seek%20to%20attain.)

<sup>10</sup> <https://ageing-better.org.uk/publications/good-homes-for-all-proposal-to-fix-englands-housing>

## 9. Should the Decent Homes Standard be amended to include energy efficiency and other means of mitigating climate change, and if so how?

We would strongly encourage the Government to amend the Decent Homes Standard to include requirements on energy efficiency. Providers should be required to report on energy efficiency ratings across their stock profile, highlighting where units fail to meet standards.

In determining new energy efficiency standards, two key aspects should be considered: the impact on service charges and therefore affordability for tenants; and the long-term maintenance requirements of green energy installations. New standards should not increase the problem of fuel poverty and should not impose burdensome maintenance costs for landlords.

## 10. Should all providers of social housing, not just councils, be required to register with the Regulator?

Landlords must bear ultimate responsibility for the quality of their social housing. This responsibility should not be delegated to any other party, such as a management contractor. Managing agents should not be required to register with the Regulator in place of landlords. Social housing providers which contract out the management of their homes must have sufficient assurance mechanisms in place to ensure that they always have confidence in the level of service being provided to their tenants.

## 11. What challenges does the diversification of social housing providers pose for the Regulatory system?

The diversification in models for the provision of supported housing has posed a challenge to the Regulator. The Regulator has recently found that several organisations which claim to provide specialised supported housing, and therefore claim to be eligible for higher rent and service charge fees, do not provide the required level of support to residents to meet this classification. In other cases, a number of such organisations have been found in breach of the Regulator's Governance and Financial Viability Standard.

This has left residents, who are often extremely vulnerable with complex needs, lacking the support that they require. The current regulatory regime does not sufficiently focus on the provision of support in supported housing, or indeed on tenancies in general. While care is regulated by the Care Quality Commission (CQC), support provision is not directly regulated by any regulatory body.

We would suggest the Government could learn from the system in Scotland, where housing support provision is regulated by the Care Inspectorate.<sup>11</sup> Any moves in this direction, whether under the remit of CQC or the RSH, would need to be adequately resourced and conducted by staff with sufficient experience and understanding of housing support provision. If no significant changes are made to the Regulatory regime for supported housing, as a minimum the Regulator would benefit from having specific expertise in this area.

Additionally, the diversification brought by new for-profit providers of social housing has introduced challenges for the Regulator. These organisations commonly have different operating models than not-for-profit providers and it is not clear that the current regime is adequately designed to cover all of these organisations. We note the proposal from the Regulator that its statutory intervention powers should be extended to cover all Registered Providers, and also welcome this.

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<sup>11</sup> <https://www.careinspectorate.com/index.php/housing-support>

*December 2021*