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Deputy R.D. Johnson
Chairman
Environment, Housing and Infrastructure Scrutiny Panel
Morier House
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19 January 2018

Dear David,

P.120/2017 Social housing in Jersey: introduction of a regulatory framework

I am writing following our meeting on 4th January when we discussed the above proposition. In order to support the Scrutiny Panel's consideration of the draft social housing regulation proposals, I have set out below a response to several questions that I understand members had raised after our meeting.

The regulatory framework

At the outset, it is important to reiterate the objectives of social housing regulation. The proposals in P.120/2017 are intended to:

- Protect and promote the rights and interests of current and future social housing tenants.
- Safeguard public and private investment in social housing provision.

The principle of regulation received wide support from stakeholders during the consultation, though I recognise that the eventual regulatory framework must be proportionate to the local social housing sector. The consultation identified two options: a contractual approach or statutory regulation.

Contractual and statutory regulation can both establish various performance requirements for social housing providers, and the rights and obligations of the parties. Nevertheless, contractual regulation does not provide sufficient powers to direct or enforce the behaviour of social housing providers.

This is not to say there are currently significant issues with social housing providers, but the ability to maintain oversight and control over the performance of social housing providers is required in order to deal with the risk that, at some point, a social housing provider may not demonstrate satisfactory performance. In these situations, it is important to have a set of regulatory tools available in order to ensure that social housing providers continue to meet the aforementioned objectives.

Contractual regulation can include powers such as injunctions through the Court, but this solution lacks the transparency that is paramount in any regulatory system, and lacks the urgency with which a regulator might need to take action in order to protect the rights of a tenant. Accordingly, setting out the range of enforcement powers in legislation is much clearer and more robust, especially when the potential consequences are so far-reaching.

Regulation must be considered in the context of the approximately £20 million that is paid each year from the Income Support budget to social housing providers. This is the single largest expense in the Income Support budget, and there is an expectation that significant and regular flows of public funds will be subject to regulatory oversight in order to ensure that that investment is being used correctly and delivers value-for-money.

The Treasury is, of course, the principal stakeholder for Andium Homes and there is a Memorandum of Understanding between the Minister and the company. This is a shareholder relationship that is, out of necessity, influenced by the requirement for Andium Homes to repay its investment. It does not, however, deal with housing policy matters such as rent levels, communication and engagement, or support for vulnerable tenants among other matters, which fall outside the financial imperative.

I have therefore determined that statutory is the preferred option – this includes the appointment of an arm's-length regulator, the position of which can only, of course, be created through statute. The establishment of a regulator will enable full separation of the policy and regulatory functions of the Minister for Housing, which was envisaged by P.33/2013. Separation of these functions will help the regulator take a long-term and holistic view of the social housing sector, acting as a conduit between tenants, social housing providers and government in the delivery of homes and housing services.

There is no need for regulation to be burdensome, and a straightforward legal framework provides clarity to all parties about the regulatory requirements and their respective rights and obligations.

In order to minimise the impact of statutory regulation, a 'co-regulation' model has been adopted in the proposed regulatory framework. Under this approach, government will establish the structure of regulation, including the appointment of a regulator, and social housing providers will be responsible for undertaking monitoring, assessment and reporting of their performance against the regulatory requirements. As such, the regulator will not take a proactive role in monitoring compliance with the regulatory requirements on condition that individual social housing providers present appropriate evidence of their performance.

The co-regulation approach recognises the primary responsibility that the governing bodies of social housing providers have for the performance of their organisation, and that they are accountable to stakeholders for the standard of services delivered, and for dealing with problems that might arise.

A regulatory framework also benefits social housing providers. It provides a tool that they can use to assess and monitor their performance, and ensure the provision of good quality services. In a similar way, it enables innovation and best practice to be shared across the entire social housing sector. This point was raised by the former Health, Social Security and Housing Scrutiny Sub-Panel, which stated that regulation must not simply address the risk of service failure, but should encourage growth and consumer-oriented service delivery.

In this regard, one of the roles of a regulator will be to provide best practice guidance and to support the capacity of social housing providers to grow and access new funding. In addition, evidence from other countries has shown that regulation enables social housing providers to access private funding at competitive rates. For private lenders, the presence of statutory regulation is an important aspect of due diligence when deciding to lend and provides assurance that appropriate oversight exists to mitigate the potential risks to their investment.

Existing regulation

The existing legal framework for rented accommodation would not sufficiently meet the objectives of regulation. In essence, legislation is intended to regulate the business activities of social housing providers in individual cases, whereas the proposed social housing regulation will provide a broader system for monitoring, assessing and reporting on the performance of the sector as a whole.

For example, the Residential Tenancy (Jersey) Law 2011 establishes the legal route a social housing provider (and private landlords) must follow in order to evict a tenant. However, it does not address how many evictions a social housing provider has carried out over a given period. If, say, one social housing provider had evicted 10 tenants over a year, whereas another had evicted none, a regulator would wish to know why there was a difference between their performances in view of its objective to protect the rights of tenants.

Furthermore, if one social housing provider had failed to meet the Decent Homes Standard across its portfolio (as evidenced by interventions under the Public Health and Safety (Rented Dwellings) Law), but another had achieved the Decent Homes Standard on all its properties, a regulator would, again, wish to understand the reasons why there was such a difference and take action to ensure the social housing provider had a plan to meet the Decent Homes Standard.

This type of information is not only important for the regulator. Consistent, sector-wide information helps tenants to understand how their landlord is performing compared to another, and empowers them to hold their landlord to account for service delivery.

Moreover, existing laws focus on specific matters such as tenancy management and the standard of accommodation; they do not deal with other matters such as rents; communication, complaints and engagement with tenants; support for vulnerable people; and the contribution that social housing providers makes to broader community initiatives. These matters will be covered by the regulatory framework proposed in P.120.

Review of the Residential (Tenancy) Jersey Law 2011

There has not been a review of the Residential Tenancy Law since it came into effect, but I am aware that there are areas to the Law where changes could be made in order to strengthen the legislative framework for rented accommodation. For example, it may be possible to amend the Law to:

- establish the right of a landlord to enter a property with reasonable notice;
- establish minimum notice period requirements when a break clause is included in a tenancy;
- prevent “retaliatory evictions” where a tenant makes a complaint about property standards;
- introduce standard tenancy terms for repair and maintenance obligations; and
- introduce retrospective tenancy deposit protection.

These potential amendments are separate to social housing regulation and would apply to the entire rented sector, including private tenancies. A full review of the Residential Tenancy Law has not been identified as a priority at this point, and would need to be considered by the next Minister. However, it is important that we keep the effectiveness of legislation under review, and it would be opportune to do so in the near future as we continue to strengthen regulation of the rented sector.

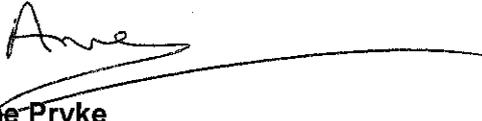
Rent increases (link to RPI)

The Retail Price Index (RPI) is a standard method by which landlords may choose to increase the rent they charge. It is considered best practice to link rent increases to RPI,

reflecting the additional costs that a landlord may experience as a result of inflation in the costs of goods and services.

I am conscious that the debate on P.120 is fast-approaching. Should you or Panel Members have any further questions before the debate, my officers and I would be happy to respond and provide you with additional information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anne', with a long horizontal flourish extending to the right.

Deputy Anne Pryke
Minister for Housing