

HOUSING (SCOTLAND) BILL - MINISTERIAL SOUNDING BOARD

Minute of the second meeting of the Ministerial Sounding Board held on Tuesday 20 April 2010 at Victoria Quay, Edinburgh

Present

Aidan	Grisewood	Scottish Government (acting chair)
Douglas	Edwardson	Association of Local Authority Chief Housing Officers
Alan	Ferguson	Chartered Institute of Housing Scotland
Jennifer	Wallace	Consumer Focus Scotland
Cllr Harry	McGuigan	Convention of Scottish Local Authorities
Kennedy	Foster	Council of Mortgage Lenders
Martin	Hayward	Equality and Human Rights Commission
Jim	Harvey	Glasgow and West of Scotland Forum
Danny	Mullen	Regional Network of Registered Tenant Organisations
John	Blackwood	Scottish Association of Landlords
Hanna	McCulloch	Scottish Disability Equality Forum
Lorna	Paterson	Scottish Federation of Housing Associations
Iain	MacInnes	Scottish Tenants Organisation
Rosemary	Brotchie	Shelter Scotland
Ilene	Campbell	Tenants Information Service
Lesley	Baird	Tenant Participation Advisory Service
Rena	Smith	Tenants Regulation Advisory Group
Ian	Ballantyne	Veterans Scotland
William	Fleming	Scottish Government
Linda	Leslie	Scottish Government
Ian	Spence	Scottish Government – minutes

Apologies

Alex	Neil, MSP	Minister for Housing and Communities
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In attendance: Eni Bankole, COSLA; Tessa Brown, Ged Millar and Stephen Garland from the Scottish Government; Michael Cameron, SHR, for item 4.

1 Welcome and opening remarks

Mr Grisewood welcomed members to the second meeting of the sounding board for the Housing (Scotland) Bill. He explained that he was deputising for Mr Neil, who sent his apologies, having been asked at short notice to stand in for the Deputy First Minister at a public engagement.

2 Minutes of meeting on 2 March and matters arising

Mr Grisewood said that the minutes of the previous meeting had been circulated in draft form and amended in the light of members' comments. The final version had been circulated with the agenda.

In relation to the action point on page 5, Mr Fleming stated that the Bill Team had circulated a short note outlining how the SHR co-operated with other regulators and providing links to the relevant Memoranda of Understanding. He noted that Mr Harvey had raised concerns about the Bill - in response to the EU Services Directive - removing the requirement for an RSL to have a registered office in Scotland and had suggested that the Bill could reflect the approach taken by the Welsh Assembly Government. Mr Fleming noted that this was a complex issue and invited Mr Harvey, and others with an interest, to meet for a more detailed discussion immediately after the Sounding Board. Mr Harvey noted that it raised an important policy principle about the future shape of RSLs in Scotland and their accountability to their tenants and members.

3 Topic 1 – Reforms to the Right to Buy (RTB)

In light of discussion at the previous meeting, Mr Grisewood invited views on the possibility for a more radical reform of RTB, including a general simplification of the system. He reminded the members of Mr Neil's caveat that any proposed amendments to the Bill had to be capable of commanding support in the Parliament; and that the SNP manifesto pledged to respect tenants' existing rights. Ms Wallace urged the Government to consider how the Bill might stabilise and simplify RTB entitlements, and to publish clear guidance so that tenants could understand their rights before seeking to exercise them.

There was a lengthy discussion on how the reforms to RTB might be simplified, ways in which the reforms might go further and what the impact of those reforms would be on existing tenants' rights and on landlords' capital receipts and their capacity to fund future investment.

There was support among members for ending RTB altogether (which in any event would be the long-term effect of the provisions in the Bill as introduced), with individual organisations suggesting a variety of amendments to the provisions in the Bill to simplify and extend the reforms. There was some discussion about two specific proposals, put forward by Shelter, for more radical reform: (a) extending the modernised RTB to all existing tenants, and (b) ending the RTB for all new tenants including those transferring or succeeding to a tenancy.

While there was general support for the second of these proposals, views were mixed on the first since it would reduce the rights of existing tenants, which Ministers were committed to respecting. There was also a view that the effects of RTB had not all been bad, as they had made a contribution to mixed communities. Some members were concerned about the financial implications of further restrictions on the RTB.

A number of members agreed that landlords should have flexibility and the right to sell properties when circumstances dictated. However, Mr Mullen said he would be concerned about any proposal to give landlords a 'carte blanche' right to sell (without the existing safeguard of the need to seek consent from the Scottish Government or the SHR).

Ms McCulloch stated that while SDEF supported the current reforms, it was concerned about the potential impact that the proposal to designate pressured housing types could have on the housing options available to disabled people. She stressed the need for decisions on designations to be taken in the context of Local Housing Strategies and for robust equality impact assessments to be carried out as part of the decision making process. Mr Hayward agreed and commented on the need for a thorough impact assessment of the reforms.¹ Members commented that there was a difficult balance to be struck between individuals' home ownership aspirations and the needs of the wider community, including people with disabilities, for affordable rented housing. They suggested that there might be other ways to assist those who wished to own a home, for instance through a Tenant Incentive Scheme, or the Government's Low Cost Initiative for First-Time Buyers (LIFT) which helped tenants into the private property market, while safeguarding social housing stock.

Summarising the main points from the discussion Mr Grisewood noted that:

- There was broad support for extending the restrictions on RTB further, but there were tensions between this objective and Ministers' stated commitment not to interfere with the rights of existing tenants, and also the need to secure sufficient Parliamentary support for any further reforms.
- There would be an opportunity to discuss the scope for pursuing further restrictions in subsequent legislation when the Government's Discussion Paper on housing, which was designed to initiate a thorough debate on the subject, was published in May.
- In considering proposals for additional reforms it would be important to consider whether they might have differential impacts on particular groups (such as people with disabilities).
- There was an awareness that further restrictions could have financial implications, although these would vary considerably depending on an individual landlord's circumstances.

¹ Links to the equality impact assessments published with the Bill are circulated with these draft minutes

- There were broader issues around a desire for greater consistency and greater flexibility, including ensuring that local authorities and RSLs had the ability to sell houses as part of a wider strategy.

Mr Garland asked the meeting for its views on the proposal that tenants who are considering buying their houses should meet the cost of valuations, which at present are met by the Scottish Government. As matters stand, a tenant can ask for an unlimited number of valuations. The members agreed that tenants should meet this cost.

Mr Garland also raised the question of home owners who, finding themselves in financial difficulty, sell their house to an RSL under the Mortgage to Rent scheme. He asked whether they should be allowed subsequently to buy the house back under the RTB. Members agreed that people in that situation should not have any RTB entitlement.

4 Topic 2 – Modernising regulation

Mr Grisewood welcomed to the meeting Michael Cameron, the Acting Chief Executive of the Scottish Housing Regulator. Mr Cameron said that he was happy to have the opportunity to start discussing with stakeholders how regulation should develop under the new, independent body that the Bill was establishing, keeping in mind two key targets - the 2012 homelessness target and the 2015 Housing Quality Standard.

He noted that, following a review of its approach to regulation, the SHR had introduced a risk based and proportionate approach, which preceded, but proved wholly consistent with, the conclusions of the Crerar review of scrutiny. It allowed the SHR to direct its resources at higher risk areas and to tackle them in a proportionate way. The SHR also undertook thematic studies, and last year published a report on homelessness and – in its *Shaping Up* report - an assessment of the sector as a whole. Mr Cameron noted an intention behind the Bill's provisions on regulation was for Government policy and the new SHR to focus more on the outcomes achieved by social landlords and less on prescribing how landlords went about doing so. He also noted that the recent economic downturn had heightened regulatory attention on costs, efficiency and borrowing capacity of RSLs. He advised that the SHR published a range of comparative information on landlords' performance which gave landlords tools to benchmark their performance.

Mr Cameron talked about the SHR's role in relation to local authority landlords. He said that the SHR had started its final baseline inspection of a local authority (Fife Council) that morning. He explained that the SHR has been working with other inspectorates and auditors to develop the joint code of practice for scrutiny, a draft of which was with COSLA and SOLACE for comment. The scrutiny bodies had worked with Audit Scotland to develop a shared risk assessment framework. Through this, the SHR retained a clear focus on the 2012 homelessness target and the 2015 Scottish Housing Quality Standard target. This involved an annual process to identify risks to performance and issues which might need a scrutiny response, tailored to be proportionate to the risk. The output from this process would be an

assurance and improvement plan which set out a three year programme of scrutiny for each local authority. It would form the basis of the new SHR's approach to regulating the performance of local authority landlords.

Mr Cameron explained that these arrangements would continue under the modernised regime and that the SHR would develop its regulatory practice for local authority landlords in light of them, as well as the provisions in the Housing Bill and broader scrutiny policy.

Mr Cameron noted that the Bill would allow the new SHR to place the onus on all social landlords to carry out self-assessment and self-reporting against the outcomes in the Charter. The new body would continue the current body's strong focus on the organisational and financial viability of RSLs.

Tenant representatives expressed concerns about the ability of landlords adequately to demonstrate 'continuous improvement' through self-assessment. Mr Cameron noted that many landlords were very good at involving tenants in self-assessment and evaluation work and some had piloted tenant led inspections. He was keen to see the new SHR develop robust arrangements that commanded the confidence of all stakeholders. Involving tenants in how the SHR monitored and assessed landlords' performance would be a key element in achieving that objective.

There was some debate about whether the provision – at section 45 of the Bill - for tenants to bring significant performance failures to the SHR's attention was sufficient. Tenants and representative bodies (including Consumer Focus and CIH) argued that the Bill should include a specific measure to enable tenants to trigger inquiries by the SHR.

Landlords considered that regulation in the past had sometimes been disproportionate and burdensome. They agreed that tenant participation would be an important part of the SHR's monitoring and assessment activities, but argued that social landlords must be given a chance to deal with matters of concern before the SHR became involved.

Councillor McGuigan commented that it was important for landlords to build trust with their tenants and emphasised the importance of a flexible approach which was able to reflect how local circumstances affected the way that services were delivered. Mr Harvey asked how the SHR would involve tenants' organisations and landlords in developing its approach to monitoring and assessment. Mr Cameron explained that he envisaged SHR setting core requirements as the basis for all landlords to undertake self-assessment and report their performance against the Charter. In doing so, he believed that the new SHR would want to avoid being overly prescriptive about how landlords undertook self-assessment. He noted that an element of verification would be needed to give the SHR confidence in the information being reported and that tenants and service users would be involved in that process.

Ms McCulloch noted that it would be important to go beyond the usual tenant involvement to ensure that the Government, landlords and the SHR got the views

and experiences of the most vulnerable tenants. She suggested that the Bill might be amended to include a specific duty to consult equalities representatives. Mr Hayward commented that research into the impact of other legislation had shown that a duty, similar to that in the Bill in respect of the SHR, to encourage equal opportunities, has had little impact.

During the discussion it was agreed that the tenant participation duties on social landlords in the Housing (Scotland) Act 2001 provided the basis for tenant involvement in decisions affecting them. This included the consultation process that the Government envisaged for identifying the outcomes in the Charter as well as involving tenants in landlords' self-assessment and reporting of those outcomes.

In summing up this part of the discussion Mr Fleming said that the Government's approach to modernising regulation had not been to establish a uniformly 'light' style of regulation. Rather, it had been to allow for the new SHR to determine the right approach, whether more or less light or heavy, as required by the circumstances and risks in each particular case. He noted that regulation tended to be most effective when it encouraged positive changes in the behaviour of regulated bodies. In that sense, he saw the new SHR's duties to report on landlords' performance as the key means by which the SHR could challenge and encourage all landlords – through programmes of self-improvement - to match the performance of the best. The range of enforcement and intervention powers in the Bill were intended to give the SHR the ability to adopt a heavier approach where that was justified, but they were reserve powers that could be invoked where landlords were not achieving self-improvement, or in other ways were failing their tenants and other service users.

Mr Fleming noted in particular comments about the need to amend the Bill so as to increase the direct involvement of tenants in how the SHR performed particular functions. He pointed to section 4 of the Bill, which provided for the SHR to consult and involve the representatives of tenants and other service users in how it performed its general functions. As the general functions included monitoring, assessing and reporting on – and if necessary intervening in respect of - landlords' performance, tenant and other representatives would have extensive influence over how the new body developed and operated. He noted too that the provision at section 45 would not prevent the SHR from establishing arrangements by which tenants might trigger an inquiry were circumstances to warrant such a move.

Ministers would consider these and the other views that Sounding Board members had expressed. They would also have to reflect on any conclusions on regulation that the Local Government and Communities Committee set out in its report on the Bill. In light of these considerations, they would decide how to amend the Bill's provisions on regulation. In determining how to proceed, they would need to strike a careful balance between further enhancing the role of tenants and other service users, perhaps by amending sections 4 or 45, and enabling the new SHR to respond flexibly to a range of circumstances. He observed that placing very specific duties on the SHR in terms of involving tenants and others ran the risk of creating a cumbersome organisation, whose discretion to act effectively on behalf of tenants and others was fettered, particularly when it came to having to respond quickly to urgent or unforeseen issues.

5 An alternative term for 'social housing' – discussion

Mr Grisewood suggested that this agenda item be carried forward as the meeting had over-run. Members agreed.

6 Any other business

There being no other business, Mr Grisewood thanked the members for attending and closed the meeting.

7 Agenda and Date of Next Meeting

The next meeting will focus on:

- a) Private sector issues
- b) Scottish Social Housing Charter
- c) An alternative name for 'Social Housing'

The next meeting is scheduled for **Tuesday 25 May 2010, 11.00 a.m.**, at Victoria Quay, Edinburgh.

Please note the change from the usual start time of 10.00 a.m.