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| <b>21 November 2023</b>   |                              | <b>ITEM: 8</b> |
| <b>Housing Overview and Scrutiny Committee</b>  |                              |                |
| <b>Social Housing (Regulation) Act 2023</b>   |                              |                |
| <b>Wards and communities affected:</b><br>All   | <b>Key Decision:</b><br>None |                |
| <b>Report of:</b> Ryan Farmer – Housing Strategy and Quality Manager  |                              |                |
| <b>Accountable Assistant Director:</b> Ewelina Sorbjan – Assistant Director, Housing Management and Development |                              |                |
| <b>Accountable Director:</b> Ian Wake – Corporate Director, Adults, Housing and Health                          |                              |                |
| <b>This report is</b> Public  |                              |                |

## Executive Summary

In recent years, significant events, notably the Grenfell Tower fire tragedy in 2017, highlighted issues in social housing, particularly tenant involvement. More recent incidents, such as Awaab Ishak's death and regular Housing Ombudsman findings of severe maladministration in the sector has strengthened and maintained focus on these concerns.

Government responses like the Social Housing Green Paper (2018) and Social Housing White Paper (2020) aimed to enhance regulation, seeking to achieve better conditions in social housing across the sector, with an intolerance for failing landlords.

The Social Housing (Regulation) Act 2023, which received Royal Assent on 20 July 2023, has emerged against this backdrop.

The act triggers a proactive shift in social housing regulation, emphasising standards and addressing landlord failures. The Act outlines its purpose as being to "reform the regulatory regime to drive significant change in landlord behaviour."

This Act holds exceptional importance for Registered Providers of Social Housing (RPs), marking a transformative phase in social housing. Those overseeing RPs must grasp its significance, comprehending its impact on the wider housing landscape, landlord responsibilities, and tenant rights.

### 1. Recommendation(s)

#### 1.1 Housing Overview and Scrutiny Committee are asked to note and comment on the contents of this report.

**1.2 Housing Overview and Scrutiny Committee are asked to consider the topics contained within this report for the purpose of informing the delivery of future briefing notes or member-officer sessions relating to the regulation of social housing.**

## **2. Introduction and Background**

2.1 In late 2020 the Government published its social housing white paper, *The Charter for Social Housing Residents*. Within this document, the government set out its intentions to ensure that residents in social housing are safe, listened to, live in good quality homes, and have access to redress when required.

The charter outlines the following seven elements that every social housing resident should be able to expect:

- to be safe in your home
- to know how your landlord is performing
- to have your complaints dealt with promptly and fairly
- to be treated with respect
- to have your voice heard by your landlord
- to have a good quality home and neighbourhood to live in
- to be supported to take your first step into ownership

2.2 Further to establishing these aspects, the Government announced plans to strengthen the Regulator of Social Housing. It aims to empower the regulator to be proactive in monitoring and enforcing the consumer standards that social housing landlords are held to, and requiring landlords to:

- be transparent about their performance and decision-making so that tenants and the regulator can hold them to account
- put things right when they go wrong
- listen to tenants through effective engagement

2.3 The Social Housing (Regulation) Bill was laid before Parliament on 8 June 2022, with the aim of facilitating a new, proactive approach to regulating social housing landlords on consumer issues such as safety, transparency and tenant engagement, with new enforcement powers to tackle failing landlords. It received Royal Assent on 20 July 2023 and became the Social Housing (Regulation) Act 2023

2.4 The Act reforms the regulatory regime to drive significant change in landlord behaviour to focus on the needs of their tenants and ensure landlords are held to account for their performance.

2.5 The Act has three core objectives:

- To facilitate a new, proactive consumer regulation regime
  - To achieve this, the Regulator's statutory objectives will now include safety and transparency and it will have new powers to support this.

Significantly, the 'serious detriment' test will be removed paving the way for action to be taken by the Regulator in a greater number of cases of breaches of the consumer standards.

- To refine the existing economic regulatory regime
  - Whilst the emphasis is on improving consumer regulation, it is clear that this is not to be at the detriment of the economic standards. The Act also seeks to maintain and refine the Regulator's current economic regulatory role. Ensuring that providers are well governed and financially viable remains a core priority for the Regulator.
- To strengthen the Regulator for Social Housing's powers to enforce the consumer and economic regimes.
  - Strengthen the Regulator's enforcement powers The Act will strengthen the Regulator by giving it new enforcement powers, seeking to ensure it can effectively intervene when required. This is particularly the case in relation to the consumer standards in order to underpin the importance of these.

### **3. The Regulator of Social Housing**

- 3.1 The changes introduced through the Social Housing (Regulation) Act 2023 intend to bolster economic and consumer regulation, fostering safer, transparent, and efficient social housing provision.
- 3.2 The Housing and Regeneration Act 2008 outlines the Regulator of Social Housing's core objectives: economic and consumer regulation. These objectives are amended through the Social Housing (Regulation) Act 2023 by enhancing the consumer regulation objective to prioritise "safe" and "energy efficient" social housing, as well as transparent interactions with tenants.
- 3.3 The Act mandates an "Advisory Panel" to be established to provide advice and information on matters which may impact RPs and the provision of social housing, and must include representatives from across the housing sector, with specific emphasis on tenant involvement.
- 3.4 The Regulator gains expanded authority to collect documents and information, removing previous restrictions, and also makes it an offence to knowingly and recklessly provide false information to the Regulator.
- 3.5 The Act addresses fees, permitting the Regulator to charge for unsuccessful applications and setting fees to cover all costs.

### **4. The Housing Ombudsman**

- 4.1 The Social Housing (Regulation) Act 2023 aims to enhance collaboration between the Regulator and the Housing Ombudsman, enabling quicker information exchange for improved tenant protection. Both organisations are now obliged to publish and review a memorandum of understanding, outlining their cooperative framework. An initial memorandum was issued on 1st

September 2020, specifying communication, cooperation, and information sharing.

- 4.2 Furthermore, the Housing Ombudsman will now be consulted by the Secretary of State when establishing standards and issuing directions to the Regulator. Similarly, the Housing Ombudsman must involve the Regulator in consultations for amendments to its scheme. These changes strive to create a more unified regulatory approach and effective complaint resolution, ultimately benefiting and protecting tenants.

## **5. Registered Providers of Social Housing**

- 5.1 The Act empowers the Regulator to conditionally register an RP based on regulatory compliance at the point of registration, expanding from the current position which only concerns constitutional, financial and management aspects. The change permits consumer standard evidence to be requested and considered before registration.
- 5.2 The Act clarifies the position regarding compulsory deregistration for significant breaches of consumer standards. It provides a simple legal basis for the removing an RP from the register. Whilst it is expected this would only be used where an RP commits a serious breach of standards and is unwilling or unable to rectify the situation, it is not necessary for this to be the case. The consequences of deregistration can be severe, affecting RP funding, tenants' rights, and may even affect their benefit claims.
- 5.3 In response to a recommendation from the Hackitt report (Building a Safer Future: Independent Review of Building Regulations and Fire Safety), the Act mandates that RPs assign a designated employee to act as a lead for their health and safety compliance. The lead's roles include monitoring, risk assessment, reporting, and advising. The Act safeguards the lead from liability, affirming that ultimate responsibility lies with the RP. Enforcement powers can be used to tackle RP non-compliance with the requirement for a health and safety lead.
- 5.4 The Act also extends Secretary of State's power to enforce electrical standards in rented accommodation to all RPs during tenancies, which may also expand to mandatory checks of electrical installations and PAT testing of all electrical appliances provided by social landlords as part of a tenancy, depending on the outcome of a consultation which began in 2022.

## **6. Standards**

- 6.1 The Act empowers the Regulator and the Secretary of State to establish new regulatory standards. A code of practice for consumer standards, though not binding, offers detailed RP expectations.
- 6.2 The Act places particular importance on the professionalism of the Housing sector, creating an additional standard for competence and the conduct of those managing social housing.

- 6.3 The requirement is that “senior housing executives” will require a foundation degree or level 5 qualification, whilst “senior housing managers” will require a level 4 qualification in housing management. A “senior housing executive” is defined as an employee or officer of an RP who has responsibility for the day-to-day management of the provision of services and is part of the RP’s senior management.
- 6.4 “Senior housing managers” are defined by reference to the Institute for Apprenticeships and Technical Education’s definition of “senior housing and property managers” which lists the following as examples:
- Neighbourhood housing manager
  - Neighbourhood investment manager
  - Property manager
  - Voids and lettings manager
  - Assets manager
  - Incomes manager
  - Resident involvement manager
  - Supported housing manager
  - Leasehold manager
- 6.5 The "serious detriment" test for Regulator intervention has been removed, aligning consumer standards with economic ones. Until this point, the Regulator has needed reasonable grounds to suspect a breach of the consumer standards has, or could, cause serious detriment to tenants before intervening. However, this requirement has been deleted, allowing for the Regulator to exercise its enforcement powers for any breach or suspected breach proactively.

## **7. Tenant Satisfaction Measures**

- 7.1 The Act has granted the Regulator authority to direct RPs to gather, process, and publish data on their regulatory performance, introducing Tenant Satisfaction Measures (TSMs) in line with the Social Housing White Paper commitments. These TSMs are intended to assess how well social housing landlords in England are providing good quality homes and services.
- 7.2 In December 2021, the RSH published their proposed suite of TSMs and invited landlords, tenants and anyone with an interest in social housing to give their views about the proposals. The council’s Housing service began work to understand the proposals and to pull together a cohesive response to the consultation. Our response to the consultation was submitted in March 2022, prior to the conclusion of the consultation period.
- 7.3 In March 2022, the monthly general perception tenant satisfaction survey for the housing service was amended to reflect the Regulator’s requirements for TSMs as set out in their proposals. Data collection on the proposed suite of TSMs began in April 2022.
- 7.4 In September 2022 the Regulator published a list of the new TSMs, the TSM Standard and their requirements for the TSMs. Following this publication, the Housing service made a small number of amendments to its general

perception tenant satisfaction survey to reflect the Regulator's requirements. Data collection for the final suite of TSMs began in October 2022.

- 7.5 The period for the collection of data which will be submitted to the Regulator as part of formal returns began in April 2023, in line with the Regulator's requirements. The Housing service will continue to collect the requisite TSM data throughout the 2023/24 financial year, and in all future years while the regulatory requirement remains.
- 7.6 In Summer 2024, landlords with 1,000 or more homes will be required to submit their first year (2023/24) of TSM data to the Regulator, and it is anticipated that the first year of national TSM data will be published in Autumn 2024.
- 7.7 There are 22 tenant satisfaction measures in total which cover 5 main themes with an additional overarching theme of overall satisfaction. These themes are:
- Keeping Properties in Good Repair
  - Maintaining Building Safety
  - Respectful/Helpful Engagement
  - Effective Complaints Handling
  - Responsible Neighbourhood Management
- 7.8 The Housing service has developed a Tenant Satisfaction Dashboard in Power BI to track performance on TSMs and is updated monthly with updated data from the range of satisfaction surveys undertaken. The TSM suite also features prominently on the Housing Performance Scorecard which is updated monthly with updated data.
- 7.9 At the beginning of July 2023, Housemark, a leading data and insight company for the UK housing sector, released provisional benchmarking data for all landlords who have submitted data relating to tenant perception measures for the 2022/23 year. This voluntary activity saw between 48 and 214 other RPs provide data depending on the specific TSM being assessed.
- Using this data, a TSM benchmarking dashboard has been created in Power BI and is now available across the Housing service, allowing the council to compare its performance with other participating social housing providers for the 2022/23.
- 7.10 Further details of the suite of TSMs and the results of the benchmarking activity for submitted 2022/23 data can be found in Appendix B.

## **8. Monitoring and Enforcement**

- 8.1 The Act empowers the Regulator to expedite property condition surveys by reducing the notice period for entry to 48 hours. It also introduces the provision to obtain a warrant to allow entry if necessary, such as when a property is vacant or where entry has been refused, with the additional

assurances that the property will be left as secure as it was found after attendance.

- 8.2 The Act also empowers the Regulator to authorise individuals to swiftly enter premises for emergency remedial action, addressing failures by an RP. This authority applies when specific conditions are met, including:
- a completed survey of the property by an authorised person
  - the belief of the Regulator that the RP has failed to maintain the property in accordance with consumer standards and there is imminent risk of harm to the health and safety of occupiers as a result
  - the RP failing to comply with an enforcement notice to require it to take action to remedy the failure.

When these conditions are met, an authorised person will be instructed to conduct necessary works to prevent imminent harm. Entry is granted without a warrant, providing that there has been at least 24 hours' notice given. The Act introduces penalties for RPs or employees of RPs which obstruct authorised personnel from entering the property to conduct emergency remedial action.

- 8.3 The Act introduces provisions for the Regulator to require an RP to create and implement a performance improvement plan if regulatory standards are not met. This proactive approach replaces reliance on voluntary undertakings or enforcement notices. Grounds for plans include non-compliance or risk of non-compliance with regulatory standards, failure to follow TSMs directions, a requirement to protect the interests of tenants, or broken voluntary undertakings.
- 8.4 A notice issued by the Regulator will prompt plan creation, with the subsequently developed plan subject to the Regulator's approval. Approved plans must be shared with tenants upon request. Appeals and consequences for non-compliance include enforcement notices, financial penalties, compensation to tenants, and managerial and advisory appointments by the Regulator.
- 8.5 The Act streamlines the inspections and inquiries of the Regulator, allowing the Regulator to use its staff and appointed organisations. The Act gives the power to the Regulator to be able to issue fines to all RPs, with the previous cap of £5,000 removed entirely, potentially becoming a significant compliance tool. Managerial appointments can now be made to organizations, with a reduced representations period from 28 to only 5 days. Enforcement powers now have expanded grounds for the removal or suspension of an RP's officer where they have obstructed or failed to cooperate with an inquiry or with the regulatory functions of the Regulator.

## **9. Current Action**

- 9.1 As previously outlined within this report, Appendix B contains an overview of the benchmarking activity which the council has undertaken to compare

against other housing providers which have voluntarily provided data so far, across perception and non-perception measures.

- 9.2 The performance indicators for the Housing service are being aligned to the TSMs as set out by the Regulator, and regular updates are shared widely. A new approach and performance improvement plan has been established which will be used across the Housing service.
- 9.3 These plans are designed to provide transparency of measures which are at risk of underperformance or are performing below expected levels. They will sit as a foundation, establishing a baseline, setting an appropriate target, identifying risks and barriers, and outlining current and future actions. The aim is to ensure that swift remedial action is taken to deliver the best possible service to residents and return or maintain the performance measure to a satisfactory level.

## **10. Reasons for Recommendation**

- 10.1 The general role of Overview and Scrutiny Committees as outlined within the constitution includes the consideration of any matter which affects the area of Thurrock or its inhabitants.
- 10.2 From a policy development perspective, Overview and Scrutiny Committees will conduct research, community and other consultation in the analysis of policy issues or proposed projects and possible options. They will also Review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas.
- 10.3 As outlined within the council's constitution, the specific functions of the Housing Overview and Scrutiny Committee listed within its terms of reference include reviewing and scrutinising:
- the formulation of policies and strategies to govern the Council's housing activities
  - service issues, including the repairs service, local budgets, customer profiling and personalised services (particularly for older residents)
  - the Housing Revenue Account budget
  - the provision, planning and performance of all housing functions
- 10.4 The legislative and regulatory changes which are introduced through the Social Housing (Regulation) Act 2023 are significant and wide-reaching, and will impact the operational and strategic approaches taken in delivering Housing services in the future.
- 10.5 With this in mind, it is appropriate that members of the Housing Overview and Scrutiny Committee receive adequate opportunity to be informed of the duties and responsibilities of the Housing service in response to the Act and have the chance to further develop their understanding through member-officer interaction and the provision of appropriate resources.

## **11. Engagement (including Overview and Scrutiny, if applicable)**

11.1 In the context of this report, prior engagement is not applicable. However, this report sets a recommendation for members of Housing Overview and Scrutiny Committee to consider future opportunities for member-officer engagement regarding understanding the regulation of social housing.

**12. Background papers used in preparing the report** (including their location on the council's website or identification whether any are exempt or protected by copyright):

- None

## **13. Implications**

### **13.1 Financial**

Implications verified by: **Andy Michaelides**  
**Housing Accountant**

An Impact Assessment was prepared for the passage of the Bill by the Government and covered the implications of the Bill for the regulator and both PRPs and local authority landlords.

It was identified that the majority of the measures did not have monetisable costs and were aimed at ensuring behavioural change in the sector. There are however non-monetisable costs associated with these measures. Some of the measures covered by the Impact Assessment identified that further development would be required to understand exactly how they will be put into practice, which may subsequently affect costs and benefits.

It has been stated that a fuller assessment of the measures will be completed by the regulator at a later stage, in relation to the regulatory requirements it sets.

It is not anticipated that there will be any costs for social housing tenants.

Based on the analysis conducted for the Impact Assessment, financial implications arising from the Bill are likely to include, but are not limited to, the following:

- Introducing new requirements for social housing landlords relating to electrical safety checks. The largest source of cost is predicted to come from the requirements on registered providers to perform 5 yearly electrical safety checks. The total cost for the electrical safety policy over the initial 10-year period is estimated at around £56.04 million for PRPs and £31.37 million for LAs.
- Requiring landlords to identify a nominated person responsible for compliance with their health and safety requirements. It is estimated that

the policy will cost the sector approximately £4.15 million in the year it is introduced. Between 2025 and 2035, it is estimated that this measure will cost housing associations £35.8 million and LAs £5.9 million.

- Requiring the regulator to establish a set of Tenant Satisfaction Measures (TSMs). These are currently in development by the regulator, and the regulator has carried out its own Impact Assessment.

Any changes to the existing fees regime to reflect the new role of the regulator in relation to consumer regulation will be subject to further consideration in the development of the new regime, including further consultation with stakeholders, and is not in the scope of this impact assessment.

The Department for Levelling Up, Housing and Communities estimates that the cost to providers of social housing as a result of the combined effect of the measures in the Bill is £173.90 million over the 10-year appraisal period.

As the council responds and reacts to this new legislative and regulatory regime, any changes in service delivery which may lead to additional expenditure or may attract opportunities for savings will be assessed and scrutinised appropriately.

## 13.2 Legal

Implications verified by: **Godwin Mangse**  
**Interim Principal Lawyer Housing & Litigation**  
**– Legal Services**

In addition to the Social Housing (Regulation) Act 2023, the main legislation relevant to the regulation of social housing is:

- the Housing Act 1996;
- the Housing Act 2004;
- the Housing and Regeneration Act 2008;
- the Localism Act 2011;
- the Housing and Planning Act 2016;
- the Homelessness Reduction Act 2017; and
- the Legislative Reform (Regulator of Social Housing) (England) Order 2018.

The main legislation relevant to the housing ombudsman scheme is section 51 of, and Schedule 2 to, the Housing Act 1996.

The Housing and Regeneration Act 2008 (HRA 2008) established the framework for the regulation of social housing. The HRA 2008 created the Homes and Communities Agency (HCA) and set out its objectives and powers. The HRA 2008 also created a new social housing regulator, the Office for Tenants, and Social Landlords, and set out its objectives and powers.

The HRA 2008 was later amended by the Localism Act 2011 in response to the Review of Social Housing 2010 (also known as the “Shapps Review”). The Review of Social Housing concluded that the Tenant Services Authority (TSA) (the operating name of the Office for Tenants and Social Landlords) should be abolished and its regulatory functions transferred to the HCA and vested in a statutory committee within the HCA. The Localism Act 2011 transferred the functions of the TSA to the HCA.

The legislative framework established by the HRA 2008 was further amended by the Housing and Planning Act 2016 (HPA 2016) which reduced regulation of social housing and local authority influence over PRPs. The HRA 2008 reduced regulation by, among other things, removing various requirements for the regulator’s consent of PRP activities and reducing the regulator’s powers to appoint managers or officers of PRPs.

In 2018, the Legislative Reform (Regulator of Social Housing) (England) Order 2018 made the regulator a standalone body separate from the HCA, in line with a recommendation from a Tailored Review of the HCA.

In accordance with the remit of the Housing Overview and Scrutiny Committee, Members are asked to review and scrutinise the recommendation outlined in this report.

### 13.3 **Diversity and Equality**

Implications verified by: **Rebecca Lee**  
**Team Manager – Community Development**

Strengthened consumer regulation and the renewed focus on tenant involvement and engagement through both the Charter for Social Housing Residents and the Social Housing (Regulation) Act 2023 ensures that the resident voice is put at the heart of Housing services. It is expected that the involvement and engagement with residents through the shaping and delivery of Housing services will grow as the council’s response to new regulation and legislation matures.

As expected, any changes in service delivery as a result of this new legislation and regulation will feature the completion of a Community Equality Impact Assessment as a fundamental element of the council’s responsibilities and response to the public sector equality duty.

### 13.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder and Looked After Children

Not applicable.

## **14. Appendices to the report**

Appendix A – Tenant Satisfaction Measures and Indicative Benchmarking

### **Report Author:**

Ryan Farmer

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