

# The Cole Report: delivering cross-domain regulation for social housing



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for social housing**

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## Foreword

In publishing Martin Cave's report (*Every Tenant Matters*) last summer we acknowledged that society has changed beyond recognition since the current system of social housing regulation was introduced. As have the landscape of social housing and tenants' expectations. We also recognised that people have come to expect greater influence over the services they receive.

There is little evidence, if any, to suggest that those changes in expectations are in any way linked to landlord type. From the perspective of the tenant it matters less who the landlord is and more that they are receiving a high quality service that meets their needs. That is why there is such widespread support for providers of social housing being regulated by a single body in order that common expectations can be set.

Since publication of the Cave Review the debate has quickly moved on and is no longer about whether we should opt for a cross-domain regulator but is focused instead on how to best to achieve that.

The experience of the tenant must remain central, but it is important to recognise that, while all providers deliver common core services to tenants, housing is one of a diverse range of services delivered by local authorities. The Government has introduced major reforms to the local performance framework, intended to help deliver local priorities more effectively and to improve quality of life.

Any new regulatory system for housing must be consistent with the principles of the local performance framework: one of Professor Ian Cole's main tasks has been to consider how this can best be achieved. Any new regulatory system cannot ignore this fundamental difference in how providers are constituted.

None of us should pretend this is easily achievable, but through the enthusiasm and commitment of the Advisory Panel, which Ian has ably chaired, those involved came to a shared view on how best to overcome some difficult issues. I am grateful for the contributions of everyone who has been involved to date.

Looking ahead, what matters is not just establishing a domain-wide system of regulation, but that the system helps to bring about high quality social housing in a fair and transparent manner. We need to ensure that social housing plays its broadest role, including helping people towards economic independence. We will be setting out our objectives and plans for reform in a green paper which we will publish towards the end of 2008, and the new regulator will be fundamental to helping deliver this. Going forward we will also look at how the Tenant Services Authority can support the implementation of the conclusions reached by the Review of Council Housing Finance.

The Cole Report makes clear recommendations to Government, which we will take account of as we work up the detail of the provisions necessary to make cross-domain regulation a reality. This is an exciting time as we move towards establishment of the new Tenant Services Authority having secured assent for the Housing and Regeneration Act 2008.

We remain committed to closely involving tenants, local authorities and other interested parties as we seek to move this work forward as quickly as practicable.

A handwritten signature in black ink, appearing to read 'Caroline Flint', written in a cursive style.

**Rt. Hon. Caroline Flint MP**

Minister for Housing and Planning

# 1. Policy background and the aims of the Advisory Panel

- 1.1 Social housing in England is currently regulated in a variety of ways. Some aspects of regulation are common to all providers of social housing, while others are specific to a particular sector or type of landlord. The regulatory machinery that has developed in an incremental manner over the past 30 years has produced a complex array of powers, procedures and responsibilities in its wake. It is now widely accepted that the framework needs to be reviewed in order to provide a simpler, more effective and more balanced system across the social housing sector as a whole.
- 1.2 The Housing Corporation is currently the statutory regulator of housing associations (which in future will be known as 'registered providers'). On registering with the Housing Corporation, associations become Registered Social Landlords, and they are subject to its regulatory guidance and statutory powers. Local authorities that own and manage their own housing stock, or those that own stock and contract out the management to Arms Length Management Organisations (or other management bodies), are subject to a different regulatory regime.
- 1.3 In December 2006, the Government invited Professor Martin Cave to undertake a comprehensive independent review of social housing regulation<sup>1</sup>. The specific aims of the review were to establish objectives for social housing regulation and to propose a system of regulation, and an institutional framework, capable of achieving those objectives.
- 1.4 The Review concluded that the continued regulation of social housing was rendered necessary by virtue of its contribution to delivering housing at 'affordable' rather than market prices. The Review noted that many landlords in the sector were committed to providing the quality and choice of services that their tenants want. However, tenants find it more difficult to switch between providers than would be the case in the open market. Landlords can experience limited pressure to offer a good quality service and choice to tenants. Therefore, the Review concluded, there is a strong case for regulation, in order to protect tenants and enhance the quality of housing services.
- 1.5 The Cave Review proposed a new system for the regulation of social housing based on the following objectives:
- to ensure continued provision of high quality social housing

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<sup>1</sup> *Every Tenant Matters: A review of social housing regulation* – published June 2007, Communities and Local Government

- to empower and protect tenants
  - to expand the availability of choice of providers at all levels in the provision of social housing.
- 1.6 The Review also recommended that the design of the new system should be based on achieving the objectives with the minimum degree of intervention, and that the same approach should, where possible, apply across all providers of social housing. It suggested that *'a more consistent and uniform approach is therefore desirable, which puts providers on a level regulatory playing field and identifies which best meets tenants' needs'* (Executive summary: p10). This approach has become widely known as 'cross-domain regulation'.
- 1.7 Many of the recommendations put forward by Professor Cave in his report (*Every Tenant Matters*) were immediately accepted by Government. This included the recommendation that the new regulatory regime should apply both to housing associations and for-profit providers. Other recommendations in the Cave Review were brought into the consultation paper *'Delivering Housing and Regeneration: Communities England and the future of social housing regulation'*, which was issued in June 2007.
- 1.8 In terms of the prospects for cross-domain regulation, the consultation paper stated that the Government saw the attractions of bringing local authority-owned housing under the same regulatory regime as housing associations, but wanted to explore in more detail how this might work. The responses to the consultation paper provided strong and enthusiastic support from the local authority, arms-length management organisation (ALMO) and housing association sectors for a cross-domain approach to be adopted.
- 1.9 The future regulation of the local authority housing sector is also taking place in the context of the introduction of a new performance framework for local government (see Annex A). Housing is one of many services delivered by local authorities, and the new regulatory system therefore needs to be broadly consistent with the regime for other local government functions. The Government has recently negotiated new priorities for local authorities, following on from the 2006 Local Government White Paper *Strong and Prosperous Communities*, and the implementation of the relevant provisions of the Local Government and Public Involvement in Health Act 2007. Under this system, councils report performance against a single set of 198 national performance indicators. Thirty-five of these indicators are selected as the basis of targets in their Local Area Agreement (LAA). Assessment is to be undertaken through a single Comprehensive Area Assessment (CAA), with coordinated and risk-based inspection. Intervention only follows if self-improvement and peer support fail to produce the necessary improvement in the service.

- 1.10 In October 2007, the Government announced that it acknowledged that there was a strong case to bring local authorities under the scope of the regulator's remit, but thought that further work with stakeholders was needed to work through the detail, especially given the recommendations of the Cave Review and the introduction of the local performance framework. The Government therefore appointed me to chair an advisory panel tasked with producing recommendations on how to deliver a cross-domain approach to regulation. The full Terms of Reference and membership of the Advisory Panel are provided at Annex B. In short, the Panel was asked to review how far the framework for the regulation for housing associations being introduced in the Housing and Regeneration Act 2008 could be transferred to the local authority and ALMO sectors, to identify any issues of incompatibility between the sectors that could not easily be resolved, and to seek a workable compromise on such issues.
- 1.11 In announcing the formation of the Panel, the Government stated its intention that cross-domain regulation should be in operation within two years of the establishment of the new regulator for social housing, to be known as the Tenant Services Authority.

## 2: The focus of the Advisory Panel's work

2.1 The Panel met in full on four occasions between January and June 2008. This was supplemented by less formal meetings with selected Panel members, to discuss particular issues in more depth. In addition, two tenants' workshops were held – one with ALMO tenants and one with tenants of retained council housing stock. The focus groups were coordinated by Marilyn Thornley and Phil Morgan of the Tenant Participation Advisory Service (TPAS), and were attended by myself and Peter Fenn of Communities and Local Government. The focus group discussions were written up by TPAS and made available to all members of the Panel. Panel members were consulted on the draft recommendations and many of their responses were incorporated into the final recommendations in this report.

### Delivering for tenants

2.2 The Panel has been mindful throughout of the title of the Cave Review – *Every Tenant Matters* – and it has sought to reflect this tenant-centred approach in its own deliberations and recommendations.

2.3 The Cave Review put forward a number of reasons why the social housing domain should be subject to a single regulator:

- Tenants should receive an equally good service across all parts of the domain (ie no matter who their landlord happens to be). This is more difficult to secure if the providers are regulated by different bodies with different expectations and standards. This is the essence of the argument for a level playing field, which in turn is fundamental to perceptions about fairness of treatment by tenants in different sectors of social housing.
- There are important issues, such as access to housing, choice-based lettings and mobility between providers that cut across different sectors. It would be sensible to address these on a domain-wide basis.
- It should be possible for tenants to compare performance across all providers (especially those operating in their locality) so that they can challenge their landlords to improve, make choices about their housing options as far as possible based on comparable information and to provide opportunities for good practice to be spread more widely.
- There are some failures that may be common across providers (for example, offering tenants sufficient choice in the way services are delivered) and these could be dealt with more effectively by a single regulator.

- There is a strong trend in regulation practice to regulate on a domain-wide basis (eg Ofcom for the communications industry and Ofgem for energy).
- 2.4 The Cave Review took evidence from tenants and drew on the findings of the Tenant Involvement Commission set up by the National Housing Federation in early 2006, and the *Leading the Way* work led by the Chartered Institute of Housing on direct tenant involvement in regulation. More recently, five sessions were run by TPAS with 300 tenants, with the support and attendance of Communities and Local Government on the Tenant Empowerment Consultation in autumn 2007. This was supplemented by the two workshops held specifically to inform this Panel's deliberations.
- 2.5 These consultations all identified that tenants support a single regulatory approach for a variety of reasons:
- Tenants see the main advantage of cross-domain regulation as establishing a level playing field – tenants were clear they wanted all landlords to be assessed on equivalent terms. Tenants argued that satisfaction with a good quality service was their paramount concern and all landlords needed to be judged in a consistent way.
  - Tenants wanted standards to be set across the domain that would help drive continuous improvement, by establishing aspirational 'stretching' standards for landlords, not just a minimum level of standards that landlords had to achieve.
  - Tenants wanted the regulator to achieve a balance between establishing a set of nationally agreed standards and allowing for a degree of flexibility for local negotiation over standards. This would offer all tenants some consistent degree of protection against poor performance across the country, while acknowledging that the local context, and local housing market conditions, should also be taken into account.
  - Tenants want to have access to good information about the performance of their own landlord and other providers in the locality, their rights and how the regulatory system works. They need to know how to use the levers available to help drive up landlord performance: the question of 'tenant triggers' is an important element in a risk-based regulatory regime.
  - The regulator will have to demonstrate its independence by deed as well as by statute. Tenants will judge its effectiveness by what it does, not what it says, to raise standards. It must ensure that landlords keep promises and are held properly to account for their actions if performance falls below reasonable expectations.
  - The regulator must take landlords' policies and practices to enhance tenant involvement as a crucial indicator of overall performance, if it is to demonstrate that it is serious about encouraging landlords to develop and extend the opportunities they offer tenants in helping to shape their housing service.

2.6 The views of tenants provided some clear signals about the direction of change anticipated for the standards of service in social housing. But if their expectations were clear enough, the new regulatory regime is not of course being fashioned from a clean slate. Being a landlord is not a core function for all local authorities. This raised the question whether, as a distinct function, it should lie outside the local performance framework or not. There were different views within the Panel about this crucial issue. The need to strike a balance between the demands for cross-domain commonality, on one hand, and the distinctive requirements on local authorities under the new performance framework on the other, was therefore at the heart of many of the debates and conclusions reached by the Panel about the future shape of social housing regulation.

## Delivering for local authorities

2.7 The local government sector supports the principle of cross-domain regulation, not least for reasons of equity. Despite important recent developments such as choice-based lettings, many people accessing social housing do not have an option to select a particular type of landlord. The outcome will often depend on the nature of their housing need and the availability of accommodation in social housing at that point in time. Tenure configurations are becoming more fluid. Local authorities have nominations rights over some local housing association properties, housing associations may have acquired ex-council right to buy stock as part of regeneration programmes, the council may have transferred its entire stock to a housing association, and so on. In these circumstances, it makes no sense for the landlord of one tenant to be subject to an entirely different regulatory regime than the landlord of their neighbour.

2.8 Local authorities are therefore supportive of the principle that tenants should not be disadvantaged by artificial distinctions between providers and that they have a right to expect equivalent protections, regardless of their landlord. There is support for a regulatory framework that provides greater consistency in a world of increasing diversification and interchange among providers and managers. Almost all the respondents to the 2007 Communities and Local Government consultation document on the future of regulation, supported the concept of domain regulation, as well as the Cave Review's advocacy of a more limited and risk-based approach.

2.9 At the same time, there is strong commitment in central and local government to managing and monitoring the performance of councils through the local performance framework. Because local authorities take the lead on service provision and place shaping, government and councils have developed a framework that assesses their performance in the round, rather than on a discrete service-by-service basis. It is therefore crucial for government that the future regulation of the

local authority landlord function is carried out in a manner that supports rather than countermands this principle.

- 2.10 In line with the recommendations of the Cave Review, local authorities want a regulatory system that is cross-domain and tenant-driven, but deregulatory in emphasis. The regulator's powers and mode of operation should be limited to what is necessary to protect the interests of tenants. The regulator should not seek to interfere in, or compromise the capacity of, individual landlords to set their own priorities, policies and performance measures, in discussion with tenants and as appropriate to the local context. In a similar light, the regulator should also refrain from placing new demands on local authorities without a prior and rigorous assessment of any potential additional burdens this may create and any consequences for the broader delivery of services.
- 2.11 Many of the Panel's discussions were therefore concerned with developing a cross-domain approach and acknowledging the deregulatory emphasis of the local performance framework. Much of this debate revolved around the distinctive position of social housing as a service: with independent and local authority arms of similar size, with one lodged within a wider framework of accountability and provision, and the other as a more self-contained sector.

### 3. Delivering cross-domain regulation: acknowledging difference, aiming for equity

- 3.1 During the Panel's deliberations, a number of stakeholders, in particular local authorities, highlighted the importance of establishing clear parameters on the regulation of local authority landlords within the context of the new performance framework for local authorities and their delivery partners. This framework includes the introduction from April 2008 of a single National Indicator Set, the negotiation of Local Area Agreements, and the introduction of Comprehensive Area Assessment (CAA) which is currently being developed by local service inspectorates. The CAA will replace the current Comprehensive Performance Assessment (CPA) regime from April 2009. It was also important to give due attention to the different governance and financial arrangements that apply to local authorities, in comparison to housing associations. The recommendations therefore had to consider domain differences of both process and structure.

#### Regulation and the local government framework: (1) standard setting and performance measurement

- 3.2 The new local performance framework announced in the Local Government White Paper of 2006<sup>2</sup> aims to strengthen a commitment to better service delivery against local as well as national priorities, and to improve residents' quality of life. A key aim of the framework is to reduce unnecessary burdens on local authorities, to enhance the scope for local innovation and to spread best practice. At the same time, there are provisions to deliver targeted support where service standards are deemed to be 'at risk'.
- 3.3 At heart, this approach to regulation is very similar in intent to that recommended in the Cave Review. Both regimes are centred on the need to realign the delivery of services and the measurement of performance to keep step with the increased expectations of service users. Tenants are no different. As users of social housing services, they expect more say, more personalised services and higher standards – standards that they can compare for themselves against those of other service providers.

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<sup>2</sup> *Strong and Prosperous Communities* – the Local Government White Paper – published October 2006, Communities and Local Government

- 3.4 The Cave Review was forthright about the need to place tenants at the heart of the regulatory system, and not just at the receiving end of services delivered to them. This approach is also reflected in the expectations on local authorities in the new performance framework, in that they will increasingly be expected to open up governance and accountability through robust measures to help empower citizens and communities.
- 3.5 Both approaches also recognise the importance of reducing unnecessary burdens on good performers and giving them the freedoms and flexibilities they need to further develop and deliver services that reflect locally driven priorities. The Cave Review advocated an approach whereby a provider meeting the required standards and not experiencing substantial complaints should be allowed to continue to deliver the service without prospective intervention by the regulator. Similarly, in the new performance framework, the inspectorates will be focusing on risk and will only undertake specific assessments when they have concerns, triggered by indicators of poor performance or information which give rise to cause for concern.
- 3.6 The challenge for the Panel has not been about trying to harmonise competing principles – it has been about how these principles are translated into practice. The Panel has therefore sought to ensure that regulation of local authority landlords upholds, rather than undermines, some key Government commitments made to local authorities under the new performance framework, namely:
- to require local authorities to report progress, for the purposes of performance management, through the 198 indicators contained in the National Indicator Set. These indicators will be the only performance measures applied to local government; targets will be set against indicators only as part of Local Area Agreements. Two of these indicators are directly about the landlord housing service (one on progress in meeting decent homes targets, and one on tenant satisfaction)
  - to reduce the totality of data burdens on local authorities by 30 per cent by 2010
  - to create an integrated approach to intervention, avoiding uncoordinated actions by Government departments or regulators which could be detrimental to overall performance.
- 3.7 The first two of these stipulations posed questions for the Panel about standard setting in the local authority sector, and about the information the regulator would need to help it judge whether any standards it sets are being met. For example, a direct transfer across to local authorities of the regulator's powers in the Housing and Regeneration Act 2008 to set standards for housing associations could breach the commitment to hold to the 198 agreed performance measures in the National Indicator Set. Furthermore, if the regulator had the power to make routine requests

for additional information from local authorities (whether used to performance manage or not), this could undermine efforts to reduce reporting burdens on local authorities overall. The Panel's proposed resolution of this issue is set out in the next chapter.

## Regulation and the local government framework: (2) coordination of interventions

- 3.8 The second major issue for the Panel concerned powers available to the regulator to intervene in cases of underperformance. The regulator will have a range of new inspection, intervention and enforcement powers (based on modern regulatory good practice) in order to intervene in the interests of tenants and improve standards. Under the provisions of the Housing and Regeneration Act, the Tenant Services Authority will not undertake inspections itself but will commission inspections – for which the Audit Commission will be the inspector of housing services. However, it is not a straightforward case of extending the regulator's powers vis-à-vis housing associations to the local authority sector. The new performance framework emphasises the importance of an integrated approach to intervention that avoids a proliferation of uncoordinated actions by Government departments or regulators which could be detrimental to local authority performance. This possibility arises because the landlord service is one of a suite of services delivered by local authorities. As a result, a 'gatekeeping' function on regulatory actions will be performed by the Audit Commission in the local authority sector. Tenants will need to be reassured that any delays in the regulator taking action to address their concerns will be as short as possible. Tenants will not want their concerns to be left waiting, while an integrated approach is being assembled.
- 3.9 There are obviously other, more constitutional differences between local authorities and housing associations in terms of financial accountability, forms of representation, and so on, and these are dealt with in the recommendations in the following chapter.

## 4. The Advisory Panel's recommendations

- 4.1 The new social housing regulator (to be known as the Tenant Services Authority) has been established in the Housing and Regeneration Act 2008. The Panel has not sought to reappraise any of the measures for the regulation of the non-local authority sector covered in the Act (which was undergoing its passage through Parliament as a Bill during the time the Panel sat).
- 4.2 The Panel's recommendations are primarily directed to the Secretary of State in order to inform preparation of the necessary legislation. However, they will have important implications for how the Tenant Services Authority undertakes its future role as a cross-domain regulator and how it works with tenants, local authorities and other agencies in the transitional period before it takes on full responsibility for local authority landlord services.

### **Recommendation 1**

Measures in the Housing and Regeneration Act 2008 should apply across the social housing domain with the exception of any changes and adaptations necessary to recognise the wider context in which local authorities operate (the principles of the local performance framework) and any fundamental differences in governance between local authorities and other types of provider.

### **Recommendation 2**

The Tenant Services Authority (TSA) should be responsible for the regulation of landlord services provided by local authorities. It should not have a direct role in regulating a council's strategic and other housing functions (which would be undertaken by the Audit Commission, as part of the local performance framework).

### **Recommendation 3**

Registration with the regulator should be limited to local authorities that retain ownership (regardless of management arrangements) of general needs social housing stock.

To support Recommendations 2 and 3, legislation will need to delineate clearly those areas of service over which the regulator will exercise its functions. It will also need to make provisions for the registration / deregistration of local authorities in line with their status as stock holders.

### **Recommendation 4**

All local housing authorities that own housing stock should automatically be registered, following appropriate legislation, with the TSA.

### Recommendation 5

The primary regulated body in the local authority sector should be the owner of the stock (regardless of whether it has contracted out the housing management function to a third party). This is comparable to arrangements in the housing association sector. Local authority landlords would therefore remain directly responsible to the TSA for landlord services provided by ALMOs, Tenant Management Organisations (TMOs) and other types of management organisation.

### Recommendation 6

The TSA should be empowered to charge annual or occasional fees from local authorities. This would be subject to an assessment of new burdens upon authorities and, where they are identified, the securing of the necessary resources.

The Regulator's fundamental objectives (set out in the Housing and Regeneration Act 2008 and summarised in Annex C) are intended to set out the purposes for which the regulator can act, and the matters it must weigh in the balance in deciding how to act. In doing so they provide a constraint on how the regulator may exercise its functions.

### Recommendation 7

The TSA's objectives should remain common across the domain, except when this would risk duplicating other regulatory activity or existing audit processes.

### Recommendation 8

It should be recognised that certain objectives are already applicable to local authorities and provide adequate safeguards for tenants and these should be retained and operationalised through the new CAA process. They are:

**Objective 4** – to ensure that registered providers of social housing perform their functions efficiently, effectively and economically.

**Objective 5** – to ensure that registered providers of social housing are financially viable and properly managed.

**Objective 9** – to guard against the misuse of public funds.

These objectives focus on governance, financial viability and propriety, which is appropriate to be introduced for registered providers but would be covered by the Audit Commission, as part of the local performance framework, for local authorities.

### **Recommendation 9**

The Secretary of State should be provided with the power to add, remove or amend fundamental objectives as they apply to local authorities through secondary legislation (subject to consultation). This recognises that changes may be introduced in future which would merit a re-evaluation of the objectives that should apply to local authorities. For example, this might be necessitated by changes in the way council housing is financed.

Cross-domain regulation would be commonly held to mean that the regulator's role should extend across all providers of social housing through applying common principles, wherever practicable. Those principles would include the independence to set standards about the nature, extent and quality of accommodation, facilities or services which landlords provide in connection with social housing. They would also include risk-based assessment of performance by reference to any standards set and powers to take proportionate enforcement action if landlords fail to meet them.

### **Recommendation 10**

The regulator should have powers to set high level standards across the domain, but any new performance indicators for local authorities would be set by Government as part of the agreed National Indicator Set. Across the domain it is envisaged that standards should as far as possible be based on outcomes and only as detailed as necessary to achieve underlying objectives. The Panel has recognised the Government's commitment to introduce performance indicators for local authorities only through the National Indicator Set, and that this might be breached, were the TSA to impose additional indicators.

High-level standards would provide a strong steer to all landlords about the most important aspects of providing a good service. This would help inform tenants as to the performance expected of their landlord and the outcomes they should be aiming to achieve. The standards might of course include the strength of commitment by the provider to enhancing tenant involvement. However, standards of this nature could not include setting targets or prescriptive service requirements. They could, for example, state that landlords should be responsive in dealing with complaints but could not set expectations that they must respond to all complaints within five working days. Of course standards set in statute, or in subsequent case law, would have to be adhered to by landlords to whom they apply.

### **Recommendation 11**

Mechanisms should be put in place to enable the regulator to discuss with the Government (and other interested bodies) how to enhance the National Indicator Set from 2011 onwards, where the regulator is of the view that new or revised performance indicators on the housing service would be justified in seeking to deliver its objectives in a more effective manner.

The Panel is in agreement that the TSA will need to be able to access enough information from local authorities to enable it to deliver its objectives and conduct robust risk assessments (notably to assess delivery against standards). The Panel is also agreed that one of the main benefits of cross-domain regulation for tenants should be publication, by the regulator, of performance information by provider at the local level. The regulator will be required to issue a statement on how complaints (including the issue of ‘tenant triggers’) will be handled to ensure that the principle of putting tenants at the heart of regulation is realised in practice. The Panel also supports the principle of allowing tenants to assess more readily the performance of their landlord against other landlords in the same area (‘benchmarking’).

### **Recommendation 12**

The regulator should rely on data that are publicly reported for other purposes in making its assessment, in alignment with the local performance framework. The publicly reported data would include the National Indicator Set, the more detailed information on tenant satisfaction provided by the STATUS survey, which housing authorities with stock must carry out to support the indicator on tenant satisfaction. It would also include voluntary performance measures used by local authorities, and through routine data returns providing contextual statistical information.

### **Recommendation 13**

Where the regulator’s assessment identifies a significant risk to services for tenants, the regulator should be given powers to require additional information from local authorities. This would make it better placed to decide what improvement support or intervention action should be taken.

### **Recommendation 14**

The regulator should have the power to commission an inspection if it has evidence of risk to justify it (ie if it has reason to believe tenants may be disadvantaged by problems with the way their landlord is delivering services).

### **Recommendation 15**

The regulator should agree inspection activity with the Audit Commission and other regulatory bodies (in line with gate-keeping arrangements which will apply across inspectorates under the local performance framework, as set out in the Local Government and Public Involvement in Health Act 2007).

### **Recommendation 16**

Mechanisms should be introduced to ensure that, in the unlikely event that an inspection had not taken place within an appropriate time frame, tenants are provided with a clear explanation of the reasons for this (particularly if this prevented or delayed the regulator from making subsequent interventions).

### **Recommendation 17**

In line with good regulatory practice and commitments under the local performance framework, the regulator should only intervene, or recommend intervention by the Secretary of State, if a landlord does not take the opportunity to improve itself (with peer or other support where required).

- 4.3 The Housing and Regeneration Act 2008 will provide the TSA with a range of new intervention and enforcement powers where a registered provider is systematically failing to deliver an appropriate service for tenants. The Panel wants to ensure a suitable framework is in place to enable it to act in a similar manner where problems arise with the performance of local authorities. The Panel recognises the merit of aligning any actions made by the regulator with the local performance framework.
- 4.4 The Panel could not achieve unanimity on the respective powers of intervention for the TSA to operate independently and where it was necessary to make recommendations to the Secretary of State to intervene. The balance of opinion within the Panel was that Government should legislate to provide the regulator with powers to intervene in local authorities where there are equivalent intervention steps in the new performance framework. This approach should provide the regulator with an effective range of intervention powers to act in the interests of tenants, while maintaining the commitment to a common approach to intervention in local areas. It was suggested that the TSA should be required to consult with the Secretary of State before using an enforcement notice or undertaking other more stringent interventions, to ensure alignment with the local performance framework. However, there were strong objections to this approach from local government representatives. They felt that the TSA should only be able to make recommendations to the Secretary of State on interventions.

4.5 The Panel was also unable to achieve a unanimous view on whether financial penalties, including powers to direct local authorities to pay compensation to tenants, should or should not be granted to the regulator at this stage. Any potential compensation awards proposed by the regulator would be likely to be substantial, aimed at all (or a significant proportion of) tenants, rather than individuals, for whom the Local Government Ombudsman would remain the first port of call. Some members suggested that these types of intervention were not compatible with the current mechanisms for financing landlord services, as the ring-fenced nature of funding meant that any compensation payments would simply leave fewer resources available for landlord services. Other Panel members argued for a common approach to both the local authority and housing association sectors. It was not possible to resolve these different views, and the issue will need to be revisited in the light of both future discussions on intervention powers and the findings of the current review of council housing finance.

## 5. The next steps

- 5.1 The Panel hopes that the Government will give serious and prompt consideration to all the recommendations listed in the previous chapter. We think that this will provide the framework to develop cross-domain regulation in social housing. However, the Panel is also acutely aware that any framework will not of itself guarantee an effective and tenant-responsive regulatory regime. Any such framework has to be adaptive and develop organically to incorporate future changes in the policy, institutional and financial landscape, without losing sight of the core principles set out both here and earlier in the Cave Review.
- 5.2 Given the recent appointment of Peter Marsh as Chief Executive Officer Designate for the TSA and Anthony Mayer as the Chair Designate of the TSA Board, it will be essential to develop a dialogue with them about the Panel's recommendations to ensure as smooth a transition as possible to the new regulatory regime.
- 5.3 Future developments of note will include some or all of the following:
- the establishment in forthcoming legislation of the National Tenants' Voice (NTV) – clearly an effective relationship between the TSA and NTV will be crucial to ensure that 'every tenant matters'
  - the outcome of the current review of the national subsidy regime for council-owned housing stock
  - the introduction of Comprehensive Area Assessments and a new role for the Audit Commission
  - the opportunity for potential future revisions to the local performance framework and the national indicator set
  - further changes in the patterns of ownership in the social housing sector
  - the recommendations of the current review of the future role and function of the private rented sector chaired by Julie Rugg
  - further development of the ALMO sector, after the Decent Homes programme has concluded
  - the review of Tenant Participation Compacts taking account of changes across the social housing sector, as signalled in the recent *Communities in Control* White Paper
  - the development of locally negotiated performance review processes, between landlords, tenants and other stakeholders
  - the development and dissemination of good practice in regulation, inspection and review procedures.

5.4 The Panel hopes that this report will help to provide a more level playing field for tenants in the local authority and housing association sectors. The broad rules of the game have been designed and the referee appointed, but it is the way the game is then played on the pitch that will be most significant factor. Only then will it be possible to judge whether, and to what extent, a regulatory system has been devised that will deliver better and more responsive services for all tenants in social housing. We hope our recommendations are taken up and that they will then help to make this goal more achievable in the years ahead.

**Professor Ian Cole**

Director

Centre for Regional Economic and Social Research

Sheffield Hallam University

## Annex A

**The new framework is built around a new set of relationships between local authorities and their partner agencies, Government Offices in the regions and government departments. The key elements are set out below.**

### Agreeing local priorities through sustainable community strategies

The starting point for delivering better outcomes is for local partners to create a shared vision and shared sense of priorities for a place. The vision will be set out in a Sustainable Community Strategy. The success of the strategy will depend on three key enablers: effective engagement; strong local leadership; and sound evidence.

- Understanding the needs and wants of local citizens and businesses and designing and improving services based on these priorities offers the best chance of better outcomes for local people; meeting rising expectations and delivering value for money. The strategy needs to reflect the priorities of local communities and the perspectives of local government and its partners in the local public, business and third sectors. There will be a duty on named public sector agencies<sup>3</sup> to cooperate with the local authority to agree LAA targets and then to have regard to the targets they have agreed. Primary care trusts and local authorities will be under a duty to carry out a joint strategic needs assessment, the results of which can inform each LAA.
- Local authorities and their leaders have an essential role to play, in particular they are uniquely placed to galvanise effective collaboration between partners and engagement with their communities.
- Strategies must be based on sound evidence, the better the evidence base, the easier it is likely to be to agree priorities and to explain the rationale for them.

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<sup>3</sup> List of 'named partners' for duty to cooperate in regard to LAAs: Unitary and county authorities; district authorities; The Environment Agency; Natural England; fire and rescue authorities; JobCentre Plus; The Health and Safety Executive; The Broads Authority; National Park Authorities; youth offending teams; Police authorities; probation trusts and other providers of probation services; Transport for London Chief Officer of Police; joint waste authorities; primary care trusts; NHS trusts; NHS foundation trusts; joint waste authorities; regional development agencies; The Learning and Skills Council; Sport England; English Heritage; Arts Council; Museums and Libraries Archives Council; Highways Agency; metropolitan passenger transport authorities and any other organisations added by an order under Section 104(7) of the Act.

## Agreeing national priorities through the National Indicator Set

National priorities, focused on cross-cutting outcomes, have been identified as part of the Comprehensive Spending Review (CSR). The formulation of these priorities have benefited from a dialogue with local government in recent years. The new Public Service Agreement (PSA) set reflects Government's priorities and a clear commitment from central and local government to deliver on them.

These PSA outcomes and other strategic objectives will be tracked by a single national set of 198 indicators<sup>4</sup>, covering those functions which local authorities are responsible for securing – either on their own or in partnership with others. These indicators will be used to measure performance in all areas over the next three years.

From June 2008, the new LAAs are the principal means by which the PSAs are delivered. The indicators significantly reduce burdens on reporting (the 198 will replace around 1,200 measures that were previously used). The cross-cutting priorities will support joined-up delivery at the local level. These changes will help give local authorities and their partners increased flexibility to address local needs and to develop and share innovations in the way they deliver outcomes. The set also contains a strong element of citizen perspective and satisfaction indicators, gathered through a new survey. A review of the remaining data collections outside the indicator set is now underway to reduce these by 30 per cent by May 2010, retaining only those which are necessary for financial management and supporting national policy development.

The indicators were announced alongside CSR07, with detailed definitions implemented from 1 April 2008 after extensive consultation. Existing indicator sets stopped being collected at this point and a reporting mechanism has been established to ensure that data only need to be reported once.

The National Indicator Set will, over time, build a common data set from which government at all levels can better develop strategy, allocate resources, manage performance and deliver outcomes. We will, without doubt, need to refine new indicators and the way they are measured and communicated, as they are used in practice. But we are confident that the new indicator set provides a basis for consistent, informed, outcome-based dialogue across the country; for a reduced reporting burden; and for increased visibility on how delivery partners are collaborating to deliver outcomes.

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<sup>4</sup> A list of the 198 indicators is available at [www.communities.gov.uk/publications/gov.uk/publications/localgovernment/nationalindicator](http://www.communities.gov.uk/publications/gov.uk/publications/localgovernment/nationalindicator)

## Negotiating Local Area Agreements (LAAs)

New LAAs, form the heart of the new local performance framework. They help deliver the ambitions for the place and its people, set out in the Sustainable Community Strategy; they represent a planned and shared commitment between central government and local authorities and their partners to improve services and the quality of life in a place. LAAs (and at sub-regional level Multi-Area Agreements, MAAs) are the only vehicles for setting targets shared between local government and their delivery partners and central government. The new LAAs were launched nationally on 30 June 2008, to run for a three-year term. They can be reviewed at intervals to ensure they continue to reflect local priorities.

Each LAA has at its heart a set of local improvement targets. Up to 35 of these, complemented by 16 statutory targets on educational attainment and early years, have been selected from the 198 indicators. Some of these LAA targets have been set to help deliver improvements in services. Some were set to promote the ambition and future success of a place. Some were based on strategic needs assessments carried out by members of the LSP or their thematic partnerships.<sup>5</sup> The scale of the improvement challenge, the level of ambition and the potential to deliver the targets through working in partnership influences the appropriate number and scale of targets for an LAA. Local partners are free to include other targets in an LAA, beyond the up to 35 priorities agreed with central government. Different priorities are relevant in different areas. The aim is to focus energy and resources on the places where improving an outcome is most important to the achievement of national, regional and local priorities.

Targets are set at the most appropriate level from neighbourhood level to county-wide. They can also be set at sub-regional level, through MAAs. These may be particularly appropriate to deliver sustainable economic development and other outcomes best delivered at sub-regional level. In LAAs and MAAs alike, the agreements will focus energies and resources for local authorities and their partners on working towards delivery of their shared priorities.

Each LAA has been negotiated between local partners (via the local strategic partnership) and central government (via the GO) and finally, submitted to ministers.

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<sup>5</sup> Including Children's Trusts, Health and Well-Being Partnerships and Crime and Disorder Reduction Partnerships.

- Central and local government have taken a strategic view across each LAA in order to strike a balance between competing priorities. Stakeholders at all levels of government have accepted that their priorities may, in a specific LAA, need to give way to higher priorities for inclusion among the up to 35 targets agreed with central government.
- Targets are ambitious, stretching and realistic. Negotiations about targets have been grounded in detailed assessment of evidence from the area and elsewhere on performance to date and levers to improve it.
- Meeting the challenges ahead will not be easy. It will require significant allocation of time and effort from expert colleagues across government and beyond. It will require an improvement in the quality, sharing and use of data. It will need collective commitment to focused, collective action to deliver priority outcomes, backed up with realistic delivery plans, including how resources would be marshalled to achieve shared priorities.

## Delivering LAAs

Delivering better outcomes through LAAs will require strong performance management. Local authorities and their partners have the prime responsibility for this. Progress should be assessed by the partnership through regular self-assessment – as well as external challenge, for example through the Comprehensive Area Assessment (CAA). Performance will be measured in an area against all 198 indicators. Government will take steps to assure itself that, overall, progress towards the delivery of PSA targets is on track. Where performance declines significantly on an important indicator, but one not in the original up to 35 priorities, government and local partners will want to consider whether a target is necessary for the LAA.

To do this effectively, local authorities and partnerships will need information management systems, including regular, timely, and reliable reporting to citizens and communities, empowering them to influence services. There will need to be effective performance dialogues within and between local delivery partners to assess performance and develop solutions where needed. LSPs will want to review the way services are provided, particularly where data and community engagement suggest that interventions are proving ineffective. The best LSPs will carry out robust self-assessments and comparisons with their peers. Use of overview and scrutiny panels can also be used to consider questions on priorities, progress and action being taken to tackle under-performance. Public accessibility to the conclusions of scrutiny reviews of the LAA will be an effective means of supporting the empowerment and engagement of local communities. Making information about the LAA publicly available and communicated actively, including progress in delivering the targets will also be important in its own right (as well as demonstrating action to discharge the new duty to involve).

As explained above, performance will be measured against the national set of 198 indicators. Within the LAA, only the targets drawn from the National Indicator Set will be subject to performance monitoring by central government. Local partners will be expected to cooperate in agreeing any additional local targets and work towards their delivery. Government departments should respect local priorities and provide local areas with the space they need to innovate.

Local authorities understand the Government's need for assurance that robust performance management processes are in place and benefit from external challenge in driving improvement. From 2009, the CAA will review the risks to LAA outcomes being delivered. Government Offices, local authorities and their partners will draw on this information to inform discussions about possible revisions to LAAs over the three-year period for which they are agreed.

## Comprehensive Area Assessments

Central and local government have a shared objective of ensuring that public money is spent effectively and efficiently and that outcomes for local people are improving. There needs to be an independent assessment of progress.

The Audit Commission and six other inspectorates<sup>6</sup> are jointly developing an outcome-focused, proportionate and risk-based CAA. This will be introduced from April 2009. Each area's CAA will include an area assessment that looks at how well local public services are delivering better results for local people in local priorities (including LAA targets), and how likely they are to improve in the future; and organisational assessments for local public bodies, including each local authority in the partnership. Reporting of CAA will also include publication of performance data for each area against the set of national indicators.

The CAA will also reduce inspection burdens on local authorities and their partners, providing more flexibility to authorities whose performance is strong. As far as possible it will draw on local performance management arrangements, including self-assessment.

Most importantly, it will act as a catalyst for better outcomes delivered by local authorities working alone or in partnership. Citizens will be able to access information and independent assessments about the places where they live and work, as well as the major local service organisations working for them. These

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<sup>6</sup> Ofsted; Commission for Social Care Inspection; Healthcare Commission; HM Inspectorate of Constabulary; HM Inspectorate of Probation and HM Inspectorate of Prisons.

assessments will be forward looking, identifying the prospects for improvement and any barriers needing to be overcome. Where the assessment gives rise to concerns, local partnerships will be encouraged to address them using support from their peers and other means. Most inspection activity will be triggered by inspectorates as the result of issues identified in the CAA, with more joint working by inspectorates and management of the burden of inspection on individual organisations.

Other performance assessment systems will continue – eg the new Assessments of Policing and Community Safety will provide data for police assessment. Assessments of other partners will feed into the CAA; and where actions depend on partnership working, the indicators and reporting requirements will be identical to those in the local performance framework.

## Building system-wide capacity and capabilities

Sustained activity is underway to improve capacity and capabilities across the system. Whitehall is implementing the findings of capability reviews of all government departments. These are being complemented by Departmental Implementation Plans that set out the action that each government department is taking to deliver the new performance framework.

Implementing the findings of the Government Office Review is a critical enabler of effective LAAs. The changes introduced following the review will ensure that GOs have the capabilities and capacity they need. The negotiation of 150 LAAs over the next few months will also put significant pressures on GOs. Although we have no doubt that the capacity is there in GOs to deliver LAAs, we are identifying expert colleagues from within government and beyond to support LAA negotiations over the coming months.

Over the past months, there has been investment in the capacity of local strategic partnerships. They have set their strategic direction and reflected this in their LAA, and will now need to manage performance against the priorities set out in the LAA and ensure that the partnership and organisations supporting it have the right resources, skills and commitment to succeed. Investment in building LSP capacity and local government's leadership role in making this happen will continue through the CSR period.

Councils and partners have a strong vision for the places they want to shape; expectations are rising and innovation to respond to new challenges is ever more necessary. Councils and their partners will therefore need to step up to a new level of ambition in delivering efficiency and improving services.

Sometimes, however, things may go wrong. There can be no tolerance for poor performance. There are various existing mechanisms for providing support for addressing under-performance. This has led to different offers of support being made to individual authorities in an uncoordinated way. Where there is multiple performance failure, such uncoordinated offers of support have not helped accelerate improvements. The aim must be to tackle under-performance in a more effective, efficient and coordinated manner. The Local Government White Paper set out a range of measures for support for improvement, beginning with action from within the local government sector itself.

The Local Government Association (LGA) is committed to establishing a co-ordinated framework for support and intervention, based on the principle that the support that ultimately prevents the need for intervention is most effectively directed by the sector itself. This will ensure authorities in difficulty receive support from organisations such as the IDeA and from Regional Improvement and Efficiency Partnerships and challenge from the LGA political leadership where political difficulties are the blockage to improvement.

Government will also rightly want to intervene in the best interests of local people, and will retain powers to do so, where there is significant under-performance. Government Offices have an important coordinating role for government departments and agencies. The need for targeted inspection will be determined by the inspectorates, generally as part of the annual risk assessment. If problems are significant, the appropriate Secretary of State may decide to intervene.

The choice of where support for improvement comes from should reflect local context and performance, as well as where the most efficient and effective sources of support are located. In many cases, this will be at local or sector level. In other cases, regional bodies or central government departments have more capacity and resources to provide support. Ensuring that concerns about performance are shared by local partners, the Audit Commission and GOs will help build capacity and ensure support is appropriate and coordinated. Regional Improvement and Efficiency Partnerships and GOs should be involved in any discussions before decisions are made on improvement support.

Over the period of the CSR the direction of travel should be towards local and sector ownership and solutions, based on continuing evidence of improved performance and effectiveness.

## Next steps

For local government, sustained and scaled up effort will ensure that the opportunities of the agenda are taken through effective performance and delivery. And government departments will need to take decisions that reflect the commitment they have all made in signing up to the Local Government White Paper.

Our new framework for action will require effective leadership in central and local government and a commitment to involving citizens, ultimately delivering better outcomes for local people.

## Annex B

### The Delivering Cross-Domain Regulation Advisory Panel

Terms of Reference

#### Overall remit

To facilitate collaboration between key stakeholders and Communities and Local Government and to provide advice to officials and ministers on how to make cross-domain regulation of social housing work. The Panel will focus on the detail of the future regulation of local authority housing by the new independent regulator.

#### Terms of Reference

- To review the framework for the regulation of RSLs introduced through the Housing & Regeneration Bill (which builds on the Cave Review) to deliver transferability to the local authority and ALMO sectors, including the following themes:
  - Regulatory objectives and regulated functions
  - Information requirements
  - Inspection
  - Intervention
  - Tenant empowerment
  - Regulation of ALMOs
- To advise on the detail of how best to achieve regulation of local authority housing by the new regulator within the framework established by the Housing & Regeneration Bill and the new local performance framework.
- To identify issues of compatibility that cannot easily be resolved and development of solutions that seek to reach a workable compromise in putting the needs of tenants first and applying the principles of modern risk-based regulation.
- To advise on changes to the legal framework governing local government performance and the regulator's powers in the Housing and Regeneration Bill that would be needed for local authorities to be regulated by the regulator.
- To advise on areas where Communities and Local Government and partners may need to undertake further policy development in order to develop a workable model of regulation.
- To reach agreement (where possible) on a framework for future regulation of the local authority sector to go forward for wider consultation.

## Panel members

Local Government Association

London Councils

Audit Commission

Chartered Institute of Housing

National Housing Federation

National Federation of ALMOs

Housing Ombudsman

Local Government Ombudsman

Association of Retained Council Housing\*

The Councils with ALMOS Group\*

Housing Corporation

Tenant Participation Advisory Service

Tenants and Residents Organisations of England

*\*represented at meetings by different Local Authorities*

## Annex C

### The TSA's fundamental objectives

**Objective 1:** is to encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands.

**Objective 2:** is to ensure that actual or potential tenants of social housing have an appropriate degree of;

- a. choice, and
- b. protection.

**Objective 3:** is to ensure that tenants of social housing have the opportunity to be involved in its management.

**Objective 4:** is to ensure that registered providers of social housing perform their functions efficiently, effectively and economically.

**Objective 5:** is to ensure that registered providers of social housing are financially viable and properly managed

**Objective 6:** is to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated.

**Objective 7:** is to encourage investment in social housing (including by promoting the availability of financial services to registered providers of social housing).

**Objective 8:** is to avoid the imposition of an unreasonable burden (directly or indirectly) on public funds.

**Objective 9:** is to guard against the misuse of public funds.

**Objective 10:** is to regulate in a manner which;

- a. minimises interference, and
- b. is proportionate, consistent, transparent and accountable.

Pursuit of Objective 10 includes, but is not necessarily limited to, compliance with any duty of the regulator under section 22 of the Legislative and Regulatory Reform Act 2006 (c. 51) (code of practice).



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