

# **Consultation on Consumer Standards and Code of Practice**

# **Response of the Association of Retained Council Housing (ARCH)**

## About ARCH

The Association of Retained Council Housing (ARCH) represents councils of all parties that have chosen to retain housing and manage it themselves. Our 68 members manage over 575,000 homes.

We are grateful for the opportunity to respond to this consultation.

General Comments

We welcome the general approach taken in the development of the draft Standards, including the principle that the Standards should focus on required outcomes, leaving RPs free to determine the best ways to achieve them, subject to the advice provided in the Code of Priactice. We see this as consistent with the spirit of co-regulation which we are pleased to see remains a guiding principle for the Regulator.

We welcome the efforts by the Regulator to clarify and make more specific the expectations related to each of the Standards, which as a result mark an improvement on their predecessors. Where we have not commented in detail below on a draft Standard it can be assumed that we welcome and support it.

Where we have commented on a particular Standard we have also usually commented on the related parts of the Code of Practice since it is important that the two hang together.

We note that the Standards and Code of Practice may be subject to further amendment before they come into force on 1 April 2024 as a result of further Government directions and/or amendments to the Decent Homes Standard. We hope that the necessary consultation of these changes will also allow for consideration of other amendments which suggest themselves as RPs continue to prepare to operate the new Standards. ARCH is involved with the NFA and others in the Knowing Our Homes Project which may yield some suggestions later in the year, particularly for the Code of Practice.

We have major concerns about the costs of complying with some of the Standards, but rather than mentioning these as comments on the Standards, we have brought them together as comments on the Regulatory Impact Assessment.

Responses to specific questions

**1.** **Overall, do you agree that the proposed Safety and Quality Standard sets the right expectations of landlords, as set out in Chapter 6 of the consultation document?**

In most respects, yes. We have concerns about one of the specific expectations relating to Stock Quality: SE1 requires Registered Providers to have an accurate record of the stock condition of each of its properties, based on a physical assessment (presumably internal as well as external) and to “keep this up to date”. This last phrase is capable of being interpreted as setting a more demanding expectation than is implied by the corresponding part of the Code of Practice, which suggests that compliance with this part of the Standard could in some cases be achieved by a 5-year rolling programme of stock condition surveys. This implies that, in the absence of a tenant’s report of disrepair since the last stock condition survey, the data held on an individual property might be up to nearly 5 years old. While more up-to-date information is likely to be needed and available for most properties, this will not be true of all. SE1 should be amended to make it clear that the required outcome is consistent with the approach suggested in the Code of Practice.

**2.** **Overall, do you agree that the proposed Transparency, Influence and Accountability Standard sets the right expectations of landlords, as set out in Chapter 7 of the consultation document?**

Yes, subject to the following concerns.

Under Diverse Needs, the specific expectations include that landlords must use “relevant information and data” to understand the diverse needs of tenants and assess whether they have fair access to and equitable outcomes from services. Paragraph 26 of the Code of Practice states that, to this end, landlords are expected to hold “robust information” about their tenants and “keep this up to date”. We believe either the Standard or this part of the Code needs to include a clear statement that to ensure that tenants’ rights to privacy are respected, a landlord should only hold such information as is relevant to the accommodation or service access needs of the tenant or a member of their household and restrict the purposes for which it can be accessed to the assessment and delivery of the relevant services. Where, for example, a tenant requires adapted accommodation because of an ongoing medical condition, the information held by the landlord should normally be confined to the adaptations required and whether they might change in future; it does not need to and should not include unnecessary detail about the medical history or other personal information about the tenant.

We have similar concerns as in relation to stock quality about the imprecision of the requirement to keep information on tenants “up to date”. The draft Code states that RPs should “work with tenants to decide the most effective approach to gathering this information and keeping it up to date”; we would prefer to see an expectation that such information is “regularly checked and updated”, which has clearer operational implications.

Self-Referral: the expectation is that RPs should communicate with the Regulator on all “material issues” relating to non-compliance or potential non-compliance with any of the Standards. The Code of Practice clarifies that “if a RP is unsure whether an issue is material, they should contact the regulator to discuss the matter further”. The implications of neither course of action are particularly clear without an explanation of how the Regulator plans in future to respond to self-referrals and, given the Code’s recommendation, informal discussions which may possibly develop into self-referrals. It is therefore difficult to comment further on this part of the consultation document ahead of publication of the Regulator’s forthcoming consultation paper on the exercise of its intervention and enforcement powers. It would be helpful, however, if the Code were to contain some examples of material, and non-material, issues.

**3. Do you agree that the proposed Transparency, Influence and Accountability Standard accurately reflects the government’s ‘tenant involvement’ direction to the Regulator?**

Yes.

**4. Overall, do you agree that the proposed Neighbourhood and Community Standard sets the right expectations of landlords, as set out in Chapter 8 of the consultation document?**

In general, yes, but because the issues included under this standard are not within the direct control of the landlord, and can only be addressed in cooperation with others, many of the specific requirements relate to the policies and practices which RPs are expected to have, rather than to specific outcomes for tenants. This is a departure from the general principle that the Standards should relate to such outcomes, with the Code providing examples of how RPs might achieve them. It leaves open the possibility that regulation focuses too heavily on a RP’s processes (does it have a well-defined and communicated policy on anti-social behaviour?) rather than whether, in the local context, and given the presence and performance of other agencies, an RP is doing the right things to minimise ASB. We believe avoiding this trap will be a major challenge for the Regulator and would welcome further consultation on this point as the regulatory regime is implemented.

Under Local Co-operation, the proposed specific expectation is that:

“Registered providers, having taken account of their strategic objectives, the views of tenants and their presence within the areas where they provide social housing, must:

1. a)  identify and communicate to tenants the roles registered providers play in promoting social, environmental and economic wellbeing and how they will achieve them; and
2. b)  co-operate with local partnership arrangements and the strategic housing function of local authorities where they are able to assist them in achieving their objectives.”

We would argue that the roles RPs can play in promoting well-being vary among RPs and, more importantly, from locality to locality, dependent on the local social, environmental and economic environment, and, as the draft Standard mentions, the scale and nature of the RP’s local presence. The local authority in its strategic housing capacity, and local partnerships likewise focus on locally-specific action to improve well-being. We would therefore like to see this expectation turned around to begin with a requirement for RPs to participate in and co-operate with local partnerships in order to determine and decide what roles they can play in each locality in which they operate to promote local well-being, and then to communicate what they have agreed to local tenants.

**5.**  **Overall, do you agree that the proposed Tenancy Standard sets the right expectations of landlords, as set out in Chapter 9 of the consultation document?**

Yes, and we particularly welcome the specific expectation that RPs should assist local authorities in the discharge of their homelessness duties.

**6. Do you agree that the proposed Tenancy Standard accurately reflects the government’s ‘mutual exchange’ direction to the Regulator?**

Yes.

**7. The proposed Code of Practice is designed to help landlords understand how they can meet the requirements of the standards. Do you that the proposed Code of Practice meets this aim?**

We have made comments in specific parts of the Code in our comments on the Standards above. Other than that, we believe the draft Code of Practice is a good first attempt to provide the information landlords need to understand how they can meet the requirements of the standards, but it will be capable of amplification and improvement as experience accumulates from the operation of the new regulatory regime. We would therefore expect the Regulator to commit to review and update the Code after a period of perhaps 2 years.

**8. A draft Regulatory Impact Assessment has been produced to help in understanding the costs, benefits and risks of introducing a revised set of consumer standards and code of practice. Do you agree with our conclusions in the draft Regulatory Impact Assessment?**

No. We regard the Regulatory Impact Assessment as a largely pointless exercise in attempting to distinguish the specific impact of amending of the consumer standards from that of other elements of the new regulatory regime, such as the Regulator’s new inspection and intervention powers and related Government policies whether or not yet reflected in directions to the Regulator. Not surprisingly, many of the potential costs are described as impossible or disproportionately difficult to assess, so that only a fraction are reflected in the Impact Assessment. As this unsatisfactory outcome could easily have been foreseen at the outset, we would have hoped that the Regulator would adopt a different approach.

It should by now be obvious that, taken as a whole, the new regulatory regime is likely to have a very significant impact and impose very substantial costs on RPs in general and local authorities in particular. A relatively small proportion of these costs are likely to relate to the costs of the regulatory system, that is, the Regulator’s fees and the cost to RPs of engaging with the Regulator. The greater part is likely to arise from the cost of complying with the Standards. Over the last year it has become abundantly clear that many local authorities have underestimated the proportion of their stock which is non-decent or failed to keep up-to-date with health and safety checks on their stock. As regulation becomes more pro-active and is no longer constrained by the serious detriment test it seems inevitable that more examples of non-compliance will come to light. But if the new regime is to benefit tenants – who will be paying for it - and that is surely its purpose, then exposing non-compliance is not enough, success depends on delivering improved outcomes. And that means making a realistic assessment of the costs of delivering them.

Local authorities have been expected to meet the Decent Homes Standard for a number of years, along with the predecessors of the Consumer Standards now under consideration, but have been denied the funding assessed a decade ago as necessary to make this possible. The self-financing settlement for local authority housing in 2012 was based on a carefully costed estimate, evidenced from robust stock condition data, of what it would cost to make every council home decent, and ensure that it remained decent until 2050. The settlement was based on the expectation that rents would be allowed to increase by more than inflation throughout that period. In 5 of the subsequent 11 years, this expectation has been frustrated, including 4 years from 2016 when rents were reduced by 1% a year. The Treasury-led decision to cut rents from 2016 was not preceded or supported by any evidence-based assessment of the impact on maintenance spending or the number of non-decent homes. Instead, it came with the glib and evidence-free assertion that councils could accommodate the loss of income through economies.

While we make no excuses for local authorities that have failed to make the best use of the resources available to them, and it is clear that some have been more successful than others in preserving the quality of services to tenants despite restricted budgets, there is no avoiding the conclusion that substantial additional resources will be needed to deliver the service outcomes demanded by the new Standards. We expect the Regulator to play an important part in assessing and making the case for the amounts needed.

**9. The draft Equality Impact Assessment looks at what effects introducing the consumer standards might have on members of groups that are protected by equality laws. Do you agree with our conclusions in the draft Equality Impact Assessment?**

We agree. We welcome the fact that an Equality Impact Assessment has been attempted although it is clearly limited by the data available.