

Building a new regulatory framework

Response by the Council of Mortgage Lenders

to the Tenant Services Authority Discussion Paper

8 September 2009

Introduction

1. The Council of Mortgage Lenders (CML) welcomes the opportunity to respond to the [discussion paper](#) from the Tenant Services Authority (TSA) setting out its proposals for the areas to be covered by regulatory standards.

2. The CML is the representative trade body for the residential mortgage lending industry. Its 135 members currently hold over 98% of the assets of the UK mortgage market. In addition to lending for owner occupation and private renting, CML members have lent almost £60 billion to housing associations (HAs) across the UK for new build, repair and improvement to social housing.

3. This response has been prepared following consultation with the CML Social Housing Panel of members.

General remarks – regulatory approach

4. As we set out in our response to the Cave review in 2007 the CML accepts the principles set out in the report of the Hampton Review *Reducing administrative burdens: effective inspection and enforcement (HM Treasury March 2005)*. In particular, the CML supports the principle of risk assessment as fundamental to regulatory systems. In addition, the CML and its members support the need to eliminate regulatory overlap and remove unnecessary regulatory burdens and costs where this is consistent with sound risk assessment and management.

5. The TSA paper is based on moving to a ‘co-regulation’ model with landlords and tenants involved in the development and ownership of the regulatory framework. We understand co-regulation as sitting between self- and prescriptive statutory regulation. Co-regulation would involve elements of self- and statutory regulation with the sector and regulator collectively administering solutions to identified issues. This does have to mean, however, that the regulator, the TSA in this instance, having and enforcing legal backstop powers to secure desired objectives.

6. We support this move to co-regulation and believe that excessive regulation can stifle innovation and efficiency. However, a co-regulatory regime that resulted in too strong an emphasis on self regulation, beyond some areas of service delivery into the areas of financial viability and governance, would be damaging to the confidence of lender credit committees and capital market investors and would significantly undermine future lending to the sector in already tight conditions.

7. Within the overall approach of co-regulation the areas of financial viability and governance should have objectives, standards and rules of engagement defined tightly by the regulator including in some areas processes and specific requirements with enforcement set out in legislation and defined in guidance.

8. In terms of domain regulation a move towards common regulation of service delivery is welcome as it will contribute to a much greater degree of coherence across the affordable housing sector as a whole.

9. However, this needs to be reviewed for each area of business and decisions should not be made across the affordable housing sector that do not ensure the financial viability of housing associations and encourage the availability of private finance.

10. As set out in the paper a specific regulatory role in relation to HA finances and governance recognises the need to allow for the distinct features of the HA sector in these key respects. It is important that sufficient resources are available within the TSA to continue to focus on and deliver effective financial regulation and where possible increased focus on governance.

Specific discussion questions

Q1. Do the main findings from our National Conversation research have resonance with your experience and are we drawing the correct messages for the development of the new regulatory framework?

11. The findings from the National Conversation focus on service delivery experience and the role of tenants and landlords in future. We do not have any specific comments to add.

Q2. Does our approach to regulation seem a reasonable basis on which to proceed and one best designed to ensure we achieve improvements for tenants, whilst generating a sense of ownership from landlords?

12. As set out above in our introductory comments we support the proposed approach to regulation and agreed that a move to co-regulation can have the benefit of a greater sense of ownership from the sector. However, this should be implemented in a way that does not weaken the regulator's ability to deliver its statutory objectives to ensure the financial viability of the sector and to support access to private finance.

Q3: Do our key propositions for shaping the new standards framework seem reasonable basis on which to proceed?

Q4: Does the initial list of areas for national standards and our approach to diversity and tenants with care and support needs seem appropriate?

Q5: Do our initial thoughts on the areas where local standards might supplement national standards seem appropriate?

Q6: How do you think the tensions should be managed with regard to whether local standards are within or outside of the regulator's intervention and enforcement powers?

13. The discussion paper poses a number of questions on the proposed scope of the new standards framework. Some of the specific issues on the relationship around local and national standards are not of direct concern to lenders however there are a number of key points to be made:

- National standards are needed for both areas of financial viability and governance and should reflect clearly how the regulator will meet its statutory objectives;
- There should also be codes of practice set for viability and governance as these are significant and complex areas where good performance and compliance is crucial;
- Improving choice and transparency of performance to enable comparison should be underpinned by the assurance that the financial viability of organisations is subject to robust regulation at all times;
- A form of grading system is seen as useful and is typically used as part of the overall assessment undertaken by lenders to the sector. It would be very difficult for lenders to gain a picture of areas such as governance without a clear indication of the regulator's view of the organisation;
- Although lenders undertake their own assessment of financial viability, strengths and weaknesses it also gives assurance to see the regulator's assessment of this; and
- There should not be local standards on viability and governance and, therefore, these areas are clearly within the regulator's intervention and enforcement powers.

14. The initial list of areas for national standards seems comprehensive; however, there is an area of activity which appears to sit outside the present regulatory regime which we would like to raise as this may be an opportunity to review this. The service given to housing association shared ownership residents specifically in relation to those in default has been raised on several occasions by lenders who have in the past and/or currently lend on mortgages for housing association shared ownership properties. Case studies and anecdotal evidence suggest that the recovery and debt management practices of housing association both vary considerably between associations but also in relation to different tenures and residents within one association.

15. Income management and recovery of shared ownership rent falls outside existing protocols and standards yet there are potentially improved outcomes for all involved in tightening up the practices in this area supported by the regulator. Low-cost home-ownership is included in the definition of social housing as set out in sections 68 to 77 of the Housing & Regeneration Act 2008.

Q7: What objectives should we have in mind in shaping the national standards that relate to the service offer to tenants?

Q8: What objectives should we have in mind in shaping the national standards that relate to tenant empowerment and involvement?

Q9: What objectives should we have in mind in shaping the national standards that relate to the tenancy agreement?

16. Our key concern in relation to standards for service delivery, tenant empowerment and tenancy rights is that proposals do not undermine the organisations ability to ensure it remains financially viable and has proper leadership and management of the business. It is understandable that tenant empowerment will be linked to governance but experience has shown that poor governance is almost always evident where there are threats to the viability of housing associations.

17. Therefore there must be strong links between the standards on governance and viability and this should be made clear in the formal consultation on the new regulatory framework. All stakeholders should have a realistic expectation of how much can be achieved by registered providers within the context of the need to ensure financial viability and proper management. This is essential if registered providers are to seek private finance in future.

18. The new regulatory framework together with the government's directions on quality of accommodation and rents is an opportunity to be clear about the future of the decent homes standard, demand for private finance and ability of social housing providers to raise finance. At present there is a lack of co-ordination between the various consultations and policy discussions on council housing finance, funding for future transfers, rent policy and the building of a new regulatory framework.

Q10: What objectives should we have in mind in shaping the national standard that relates to governance? What are your views on the options presented?

19. In our response to the separate discussion paper on governance we have set out specific comments on the key areas that should be covered by a new national standard on governance. As stated elsewhere in this response we strongly feel that governance and viability are linked and this should be made clear in the new regulatory framework. Also that within the overall context of co-regulation there is a need to continue to rely on formal regulation with a standard and codes set down by the regulator for the important area of governance.

Q11: What objectives should we have in mind in shaping the national standard that relates to viability?

20. The CML and its members have been encouraged by the strengthening of financial regulation since the TSA was set up. In continuing difficult market conditions and housing policy changes it has

helped to maintain confidence in the affordable housing sector for a range of investors and lenders. It is probable that the funding available both for retail and commercial lending will continue to be restricted for the foreseeable future. It is, therefore, essential that the new standard for viability builds on this enhanced level of financial regulation and provides certainty going forward.

21. More detailed comments on the proposals relating to viability are made in our response to the discussion paper on financial viability and the CML and its members who lend to the social housing sector continue to engage closely with the TSA in its work in this area.

Q12: What objectives should we have in mind in shaping the national standard that relates to value for money?

22. The proposal for a national standard on value for money seems sensible as does the expectation that landlords will aim to manage a business that is run efficiently and effectively. However there may be tensions here with meeting the needs of tenants and managing their financial resources to deliver quality services. Meeting this standard should also include links to how well the organisation manages the business and consults and informs in a way that promotes realistic expectations.

Q13: Does our approach to monitoring information appear a reasonable basis on which to proceed?

23. We are happy with the proposals in respect of information requests directly to landlords on their financial performance and the recognition of the need for this to be analysed within a published framework. Any move to reduce data required on performance should not extend to the provision and requirement of financial data which may, when appropriate, increase in order that the regulator can act quickly and provide confidence to all stakeholders including lenders.

Q14: What are your views on the potential options for a grading system for assessing relative performance of landlords?

24. Lenders do value the regulator's judgement on governance and viability and, therefore, would need to see this continue. As to the type of grading system used this should be as simple and clear as possible and allow for comparison across the sector. We would welcome the opportunity to be involved in further discussions as final decisions are made on this.

Q15: What are the best ways we might incentivise good landlord performance and encourage best practice?

25. Any move to link performance with the ability to access social housing assistance or to dispose of homes should ensure that there can be exceptions made in cases where viability is threatened or would be threatened by withholding consent. The housing association sector has continued to develop homes, access public and private funding throughout difficult market conditions and recession. This is due to a level of flexibility and the ability to act quickly both by individual associations and by the new agencies, the TSA and the HCA.

Q16: What are your views on our high level approach to dealing with landlord failure (or risk of failure)?

26. We welcome the new powers set out in the Housing & Regeneration Act 2008 to enable the regulator to take proportionate and swift action where there is a threat to the viability of a registered provider and where its affairs have been mismanaged. There is a need for continuing discussion on how these new powers should be implemented including what would happen in the event of a landlord failure. There remain several areas of uncertainty for lenders and a need to have guidance based on an agreed understanding of enforcement and insolvency issues will be dealt with.

Q17: What approach should we adopt to reviewing the criteria for registration under the new regulatory framework?

27. Lenders must be able to rely on the regulator operating a robust registration process for new organisations who would seek to access public and private funding. We understand that the TSA wishes to see a greater range of registered providers able to provide social housing but this should not be at the expense of ensuring that all those in receipt of funding are capable of being regulated effectively.

28. An approach to registration that resulted in a variety of providers meeting different levels of criteria and at different stages in terms of the regulator's depth of knowledge about them would increase the complexity for lenders of providing finance for affordable housing. This is especially true for capital market investors. Whilst we support the growth of the affordable housing sector and opportunities for continuing the success of public/private funding there is a need for further discussion on the issue of registration of profit making organisations and other new models of provider.

Q18: Do you have any views on how we ought to review the system for landlord permissions under the new regulatory framework?

29. The CML in consultation with its social housing panel have responded separately to the discussion paper on the implementation of new powers on consent.

In conclusion

30. There are a number of key areas in this discussion paper for lenders and investors. The TSA has engaged closely with a range of stakeholders including the CML and its members to reach this point in its development of a new regulatory framework. It will be crucial for this to continue over the next few points as uncertainty continues for the funding and housing markets and the economy feels the impact of the recession. The key features on which funding to the affordable housing sector is predicated remain to be:

- A focus on governance and issues of financial viability; and
- The powers resting with an independent regulator to monitor the HA sector, intervene when problems of governance or finance arise and to broker solutions in the event of default or insolvency.

31. Some of the proposals on standards other than viability and governance and on regulatory approach have the potential to have significant impact on the affordable housing sector over the next few years. During this period there will also be the impact of the recession affecting individuals and business as well as a substantial reduction in public funding. The TSA should ensure that it has in place an agreed review process as well as sufficient flexibility to move quickly where the viability of the sector is affected by its regulatory approach and requirements.

Contact

32. This response has been prepared by the CML in consultation with its members. Comments and queries should be addressed in the first instance to:

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