



EDINBURGH TENANTS
FEDERATION

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Edinburgh's Federation of Tenants' and Residents' Associations

Regulation of Social Housing:

ETF Response

1.0 Background

Edinburgh Tenants Federation (ETF) is the umbrella organisation for tenants and residents' groups in Edinburgh and a Registered Tenant Organisation (RTO). ETF held a focus group for Members to find out their views on the Scottish Housing Regulator's Consultation *Regulation of Social Housing in Scotland: A Discussion Paper*. This response represents the ETF Members' views on the questions most relevant to attendees at the event.

ETF welcomes the opportunity to contribute to this discussion paper. The Scottish Human Rights Commission (the Commission) has supported ETF to take a human rights based approach to this submission grounded in international human rights law obligations. Please note that this consultation process was undertaken independently of the Commission.

The Commission and ETF, supported by Participation in the Practice of Rights, have undertaken a significant, long-term project seeking to embed rights-based approaches in tenant participation and housing maintenance in City of Edinburgh. We are pleased to inform the Regulator's strategic thinking with some shared insights.

2.0 Introduction to Right to Housing and Human Rights Based Approaches

Before answering individual questions in more detail, we hope to set out some key points articulating the right to housing in international law, human rights based approaches and the role of the Scottish Housing Regulator in relation to these.

The right to housing appears across a number of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 (1) states:

'The State Parties to the present Convention recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.'

The right to housing has been further developed by the Committee of international experts which monitors the Convention (the Committee) in one of its General Comments. This sets out the essential elements of the rights to housing as:

'a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and

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households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location which allows access to employment options, health care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of

cultural identity and diversity of housing. Activities geared towards development or modernisation in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.'

The General Comment also stresses the importance of the participation of tenants within the development, delivery and monitoring of policy, which would include the activities of both the Scottish Housing Regulator and also of RSLs themselves.

Beyond these specific elements, States Parties to the Convention (including the U.K. and by extension Scotland) are also bound by more general obligations in relation to economic and social rights, such as the right to housing as set out in Article 2 of ICESCR:

'To take steps, individually....and to the maximum of its available resources, with a view to progressively achieving the full realization of the rights recognized in the present Convention by all appropriate means, including particularly the adoption of legislative measures.'

Broadly speaking, this means that with respect to the right to housing, States Parties and public authorities within States must:

- Take immediate action to draft a strategy to realise the right to housing;
- Take immediate action to ensure non-discrimination in the realisation of the right to housing;
- Ensure there is adequate investment in realising the right to housing to the maximum of available resources; and
- Ensure that people's enjoyment of the right continues to improve and does not go backwards

The Commission stresses that rights in international law are legal obligations and that public authorities in Scotland have duties to respect, protect and fulfil these rights, alongside their obligations to act in conformity with the Human Rights Act 1998. Given this context, it is critical that standards of regulation for Registered Social Landlords in Scotland are informed by international human rights law and that the Regulator is empowered to monitor performance on this basis. All of these elements provide a useful framework for the regulation of Registered Social Landlords in Scotland and should also inform the Scottish Social Housing Charter, to which consultation both ETF and the Commission also made individual submissions.

Human rights based approaches have as their aim the realisation of international human rights laws, the right to housing being of relevance within this context. However, such approaches are also concerned with process and a number of rights based principles inform what this should be. The Commission uses the PANEL principles outlined below:

Participation – People should be involved in decisions that affect their rights. In this context, this could mean that tenants are able to inform the regulatory process, raise issues of concern, set indicators against which RSLs can be held accountable

Accountability - There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong. This element of a human rights based approach is core to the activity of the regulator. It is critical that regulatory activity is informed by human rights norms and standards and that there are robust procedures to hold RSLs to account and provide appropriate remedies to tenants when things go wrong.

Non-discrimination - All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised. Regulatory activity should include monitoring of the particular experience of specific groups of people to ensure that they are not experiencing direct or indirect discrimination in the realisation of their right to housing.

Empowerment - Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives. The Regulator has a key role in ensuring that tenants know and understand their rights, and what they can do in the event that these rights are breached.

Law - Approaches should be grounded in the legal rights that are set out in domestic and international laws.

The Commission would welcome the opportunity to have further dialogue with the Scottish Housing Regulator on any of these points and also to share good practice examples of embedding a rights-based approach into regulatory standards.

3.0 Comment on key questions in the consultation

3.1 We believe that our regulatory priorities should be:

- **Tenant & resident safety**
- **Homelessness**
- **Governance & financial management in RSLs**

We are keen to hear your feedback on these. Are these the right priorities?

ETF believes these are the right priorities, particularly the safety of tenants. However, we would like to see the SHR considering how the regulation of housing in Scotland links to international human rights law, and how a rights-based approach to housing could be taken in Scotland. Tenants have a right to an adequate housing as part of the International Covenant on Economic, Social and Cultural Rights (ICESR). Framing housing in human rights terms shifts the perspective that the State (Government and Public Authorities) have responsibilities for adequate housing in Scotland and tenants (rights holders) have rights. This is emerging as a key trend in Scotland right now but is missing from the Regulator's dialogue in this paper.

3.1 What aspects of tenant safety are the most important for us to focus on?

ETF believes the following aspects of tenant safety are the most important to focus on:

- The health of the tenant is critical, in that homes need to be warm, wind and watertight, meeting the Habitability element of the Right to Adequate Housing;
- Gas and electrical appliances must be safe;
- Stairwells must be safe for tenants including:
 - Adequate lighting;
 - No equipment in stairwells that could be deemed as a fire hazard.
- All homes must have an adequate standard of fire safety, particularly in high rise flats. Landlords must present proof that all buildings are fire safe.
- Tenants should feel safe in their own home and not feel threatened by acts of antisocial behaviour.

3.2 On which parts of the homelessness system should we focus our work to have the greatest impact?

The SHR should ensure that it uses the PANEL principles of a rights based approach to empower and enable those who are homeless to hold Public Authorities to account for their rights infringements.

Comments from tenants who attended to formulate ETF's response included:

- "Why do we have homelessness?"
- "What can be done about it?"
- "How can landlords help those who are homeless?"

The SHR should focus on the causes of homelessness and regulate where a right to adequate housing is not being met.

The SHR should enforce landlords to ensure that rents are affordable. Many tenants are suffering from the effects of Welfare Reform, some will not be able to afford the annual rent increases that landlords enforce. Again, this is a rights-based issue as the ICESR Right to Adequate Housing includes ensuring housing is affordable. More Council and homes for the social rented sector should be built. Tenants are concerned that many tenants are unable to afford to live in mid-market rent properties.

The priority for budgeting should be providing permanent accommodation. Landlords should use bed and breakfast accommodation to house people suffering homelessness only where necessary. Furthermore, the standards for such accommodation should be strictly regulated and enforced.

3.3 We believe we should develop our work with four broad themes in mind:

- **Empowering tenants and others by gathering and publishing data in useful, accessible ways**
- **Getting assurance**
- **Responding where things go wrong**
- **Thematic work**

We welcome your feedback on these broad themes. Are these the right things for us to do?

ETF welcomes these broad themes and believes that empowering tenants will be particularly important as many tenants feel landlords are not being held accountable when things go wrong.

ETF is concerned about whether Tenant Satisfaction Surveys used by landlords actually give an idea of the key issues for tenants and their needs. The City of Edinburgh Council recently conducted a Tenant Satisfaction Survey and members at the ETF focus group found the results of the survey to be quite unclear. They thought a number of general statements were made in the surveys and this should be addressed.

ETF would support the SHR using its regulatory powers more, where required. The SHR needs to be seen using its powers with landlords. Tenants questioned at our focus group, "Does the SHR have the teeth to make decisions?" "Actions speak louder than words". The SHR should ensure that tenants are involved with landlords in setting questions for Tenant Satisfaction Surveys, so that surveys measure what tenants want to hold their landlord accountable for.

3.4 What should we focus on when reviewing our Charter indicators?

ETF is satisfied with the current sets of Indicators, however housing options is not clear and needs to be expanded upon.

Rent affordability should be included in getting good value from rents and service charges.

A human rights based approach to housing should be included as a basis for setting indicators.

There is very little in terms of the following in the Charter:

- Housing for disabled people;
- Tenants living in sheltered housing accommodation.

3.5 Are there new ways that we can present landlord performance information to help give tenants a strong voice and drive improved performance?

Tenants at the focus group did not think there were any significant new ways of presenting landlord information. Presenting information using social media should be encouraged where it is possible, however it is important to keep in mind some tenants that do not have access to computers or the internet.

Landlords need to be held accountable to tenants and be able to demonstrate they are listening and being proactive to tenants.

There needs to be evidence of landlords being proactive, in empowering tenants i.e how many face to face contacts have taken place between the landlord and tenants. Have landlords held events such as drop in sessions in community centres to interact with tenants? How do tenants participate and what impact does their involvement have?

3.6 How can we make our information accessible to a wider group?

The SHR need to define what they mean by a wider group as this is a very vague term.

In terms of making information widely accessible, ETF would welcome the following:

- Advertising in libraries;
- Advertising in community centres;
- Advertising in housing offices;
- The information can be included in landlords newsletters as well;
- Send information to local Registered Tenant Organisations, tenants' groups and interested individuals.

Paper copies should be available as not everyone has access to a computer or the internet.

The SHR needs to take into account tenants that are not members of RTOs. These are tenants that might not want to be involved in attending meetings or completing surveys but would still like to have a voice and be heard. Landlords need to find ways of communicating with these tenants, as does the SHR.

Accessible information is a right under the Convention on the Rights of Persons with Disabilities and is critical to supporting the realisation of other rights. Information should be available in a range of formats and the Regulator should ensure that it conforms to the highest standard of accessibility for example, on its website. Given the complexity of some of the information which the Regulator needs to report, it will be useful to consider if the use of infographics, animations and films could help to make this more accessible.

3.7 Are we right to propose Annual Assurance Statements for all landlords and what should they look like?

ETF welcomes the proposal of Annual Assurance Statements. The Assurance Statements must demonstrate that landlords have consulted with tenants and actioned tenants' suggestions. The Statements need to have a timeframe for completing various pieces of work and confirmation it has been completed.

With regards to self-assurance of landlords, the SHR should build into the process tenant participation, so that tenants have a greater role in determining how their landlord is complying with regulatory requirements.

3.8 Should we use thematic work as a tool in this way to focus on and raise awareness of important issues and risks?

This should be encouraged. Tenants need proof that landlords have used tenants' information and participation to make improvements. Landlords need to listen to tenants more and present evidence they are doing this.

Thematic work, rooted in the lived experience and participation of tenants, alongside more quantitative data and evidence, and aiming at increasing accountability, is a helpful tool for the Regulator to deliver its mandate.

3.9 Are there other things we should consider?

As mentioned on question 1, there is no discussion about how regulation of housing in Scotland links to international human rights law, or how a rights based approach to housing in Scotland could be taken. This is emerging as a key trend in Scotland right now but is missing from the Regulator's key themes.

Landlords need to be able to demonstrate how they are meeting the Equality Act 2010, so there is no discrimination against different groups of people (protected characteristics). Access to housing should be made available to all people.

There needs to be more emphasis on rent affordability. This is a rights based issue as the ICESR Right to Adequate Housing includes a right to affordable housing.

Tenants in Edinburgh are very concerned about the current debt and level of rent that the City of Edinburgh Council currently has. We would encourage a national debate about affordability of housing and how this is defined.

The Scottish Housing Regulator should consider what to do when the relationship between landlords and tenants has completely broken down. What arbitration options are open for tenants as this is unclear.