

BRIEFING NOTE

Death of Schedule 1, Long Live Schedule 1?

May 2010

From 1 April 2010 Schedule 1 of the Housing Act 1996 (Schedule 1) has ceased to apply. However rather than introduce an alternative mandatory regime, the Tenants Services Authority (TSA) has instead established a regulatory framework of 6 outcome-based standards, expecting the sector to regulate itself. In circumstances where the TSA has retained and strengthened its enforcement powers but expects RPs to be able to predict the boundaries of appropriate actions, what should RPs do now?

Schedule 1 (and its predecessor provisions) has regulated the probity of the social housing sector for many years. In particular, Schedule 1 restricted the award of payments and benefits to officers and employees (and their families and connected companies).

With Schedule 1 now repealed, the question for RPs is what they should be doing in the post Schedule 1 era? The starting point in answering this question is looking at the TSA's new standards:

- Tenant Involvement and Empowerment
- Home
- Tenancy
- Neighbourhood and Community
- Value for Money
- Governance and Viability.

Each standard has been divided into "required outcomes" and "specific expectations". The TSA has not produced Codes of Practice to support each standard although it has the power to do so.

What was previously covered by Schedule 1 now falls under the TSA's standard of Governance and Viability. Under this standard, it is a "specific expectation" that RPs will adopt and comply with an *appropriate* code of governance.

The National Housing Federation (**NHF**) has produced its own Code "Excellence in Governance" which incorporates a code of conduct – "Excellence in Standards of conduct". The NHF code requires RPs to adopt their own code of conduct.

Adoption of the NHF Codes will likely become the norm for RPs, subject perhaps to some individual 'tweaking' (which must be reported in annual accounts). However other RPs, depending on their background or ambition, will choose to adopt a more 'commercial' Code, such as the Financial Reporting Council's Combined Code on Corporate Governance, or a charity-based Code such as the Charity Commission's guidance. The choice of code must be explained, as must any deviations from it.

Whilst Schedule 1 has been repealed, RPs need to consider how to address the probity and conduct issues arising from the non-contractual payments and benefits that Schedule 1 covered. Adoption of a code of conduct will guide RPs in the handling of such matters which could give rise to allegations of impropriety or favouritism.

The NHF's Code of Conduct addresses conflicts of interest, contractual remuneration and non-contractual payments to officers and employees, the granting of benefits, and standards of behaviour but is less prescriptive than Schedule 1 was, for example in relation to non-contractual redundancy payments.

RPs should take the opportunity to look at their declaration of interest provisions, allocations and housing management policies, remuneration and bonus policies, severance policies, and hospitality policies/registers. The Code of Conduct, or its supporting systems, should ensure that any payment/benefit outside of existing policies is approved by someone in an appropriate level of authority.

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Ultimately responsibility for probity issues rests with the Board but Schedule 1 recognised that not every decision needed to be made by the Board if appropriate delegations were in place. Another TSA specific expectation is that there should be clear responsibilities and accountabilities for the Board, Chair, Chief Executive (and Directors); given this, it would be prudent to have formal documented powers of delegation with clear limits as to who can authorise what in respect of whom.

improvement before intervention where possible, the ambit of sanctions which the TSA has available to it means that RPs must treat this issue seriously and be able to show the TSA the rules and systems that have been adopted to minimise the risks of inappropriate awards of payments/benefits. Self-regulation inevitably means a period of uncertainty; whilst acting internally as if Schedule 1 still applies and only making payments/benefits permitted by the General Determination should give

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Where an RP fails to meet the TSA's Standards, the TSA has a wide range of statutory powers that it can call upon.

These statutory powers include: arranging an inspection or directing an inquiry or audit, issuing an enforcement notice, ordering the payment of fines and compensation, appointing a manager or officers, and, ultimately, directing the transfer of land or the amalgamation of an RP.

Whilst the TSA's stated approach is to use its powers proportionately and to allow for self-

the TSA no cause for criticism, it is unclear how far away from the General Determination exemptions an RP will be able to step without attracting the attention of the TSA. Where an RP seeks to do something which would previously have been prohibited by Schedule 1, legal advice should be sought.

The important message is that whilst Schedule 1 as a piece of legislation has been repealed, its ethos will continue to have an influencing effect on probity in the sector.

If you have any queries or would like advice on how this will affect your business, please contact Amanda Harvey or Nicola Philp or another member of the Employment Team with whom you usually deal.



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