CIH Response to:
DCLG's "High income Social Tenants: Pay to Stay" Consultation

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'Shaping Housing and Community Agendas'

1. Introduction

The Chartered Institute of Housing (CIH) is the professional body for everyone involved in housing and communities. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. Our work is driven by a passionate belief that our contribution as housing professionals is vital to making communities great places to live and work – and that everyone is entitled to a decent, affordable home in a thriving, safe community.

CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We are a membership organisation with a diverse and growing membership of over 22,000 people who work in both the public and private sectors, in 20 countries on five continents across the world.

CIH is keen to lead a mature debate about potential changes to rent setting policy, involving and building on the sectors' views and expertise. In that regard, CIH is pleased to respond to this consultation, however, we believe that the current consultation on high income tenants requires a more fundamental debate with the government and the sector as it highlights areas of social policy and social housing that would fundamentally change were this policy adopted.

A lot has changed since the introduction of Affordable Rents and there is uncertainty about the future of rent policy in particular at the end of the rent restructuring policy (2011/12 for housing associations and 2015/16 for local authorities).

The proposal to charge high earning tenants higher rents has the potential to further fragment rent policy. CIH sees this consultation as a great opportunity to start a conversation with the government and the sector around the future of rents. We also believe that any further changes in the way rents are set for social housing need to be considered as part of a wider conversation about the nature and role of social housing.

Whilst we recognise that there is a fundamental need to ensure scarce resources are used effectively and appropriately, we believe a system that provides incentives rather than being punitive is more efficient in achieving results. We have published a think piece on the future of rents which explores ideas on how to do this available at www.cih.org.

Although there is a popular media appeal about the notion of "high earners paying a higher rent", the numbers of tenants in this position around the country is very small. In our view, the cost of implementing the policy in terms of effort, investigating and monitoring income levels, changes to IT systems and so on, does not justify the limited benefits from charging a small number of tenants' higher rents. We further question the timing of implementing a new housing policy at a time of unprecedented welfare reform, recession and low economic/employment prospects.

Our response builds upon our members' views and wider work we have recently undertaken around the future of rent setting policy. We have not responded to every question but have included a commentary on particular questions as they affect our members.

2. Summary overall

Concerns around the consequences of the policy

Implementing a policy targeted at the few would inevitably lead to wider consequences for the many: there are some fundamental consequences of charging high earners increased rents, which would have devastating costs for social housing providers. Charging high-income tenants market rents is contrary to the charitable nature of social landlords which would leave landlords in a precarious position ethically and in relation to their charitable registration status. Secondly, CIH believes that rents should continue to broadly reflect the size and characteristics of the property: basing social rents on income carries the risk of leading to a situation where rents do not reflect the nature of the property but that of the household. Although the current consultation proposal is to link rents to income only for high-income social tenants, rents based on income would make landlords income streams uncertain and in an operating environment already difficult due to changes to welfare reform this would lead to tensions.

We would also urge government to ensure further consideration is given to what could or should happen when tenants' circumstances change: at what point and how quickly would or should social landlords react? Should tenants' living arrangements or employment circumstances change, we would need to be clear that their circumstances would not be unduly undermined by this policy so landlords would need to act swiftly and decisively to ensure tenants' were protected through their rent managing arrangements.

Another critical issue is that an income based system raises questions about the relationship between the state and landlords and whether landlords should/want to be acting as agents of the state to collect and monitor income data and apply the new rules. Taking on such a role would redefine landlords' relationship with tenants, something that many have spent a lot of time and effort to build up.

Lessons from international comparisons

Sometimes it can be helpful to look at what lessons can be learned from practical experience in other countries. A number of key lessons are evident when looking at the experience of charging different rents to different tenants or supplementary rents in addition to a core rent in countries such as Ireland, Austria, the Netherlands, France and Germany. These include issues concerning the implementation of systems that are needed to assess income for the purpose of setting rents.

These issues can be summarised as: the administrative costs of collecting, recording and updating income data; monitoring changes in personal circumstances and enforcing the new rules. Indeed evidence suggests two particular outcomes: charging higher rents when income increases can be a disincentive for people to improve their incomes; and it also encourages behaviour of non-compliance, people not telling about their change in income or avoiding paying the higher rent.

Housing policy coherence

The inconsistency in the manner in which social housing as subsidy is treated across government policy is highlighted uniquely within both this consultation and the recent 'reinvigoration of the right to buy (RTB)' policy consultation. The latter policy encourages social tenants to buy heavily discounted social houses built with public subsidy while the former does not allow them to benefit from a subsidised rent. This state of affairs appears incoherent and bewildering to tenants' and social housing providers.

Indeed, our analysis highlights a further inconsistency: the government expects the 'pay to stay' proposals to bring in £21.6m per year from those that would be required to pay higher rents. However, the real loss to the public sector will come from high income tenants exercising their right to buy and benefiting from high discounts, rather than from the levels of 'subsidy' they currently receive in the difference between social and market rents.

Taking the midpoint between the consultation papers' low and high estimates of the number of high income tenants, as being 23,000: if those 23,000 were all to buy their social homes at a maximum discount of £75,000 the government would be giving away a total 'subsidy' of around £1.7 billion to those that choose to buy. Compared to this, the amount of economic subsidy these 23,000 tenants would receive while paying social rents during 15 years at £662 million is about a third lower. This illustration shows that if high income tenants stayed as social tenants they would receive less public subsidy than they would do if they bought their social houses under the right to buy. Even if not everyone exercised their RTB or didn't get the maximum discount and the RTB take up would result in discounts of half this level, the cost of the RTB would be higher than continuing to subsidise social rents. Should the 'pay to stay' policy be made compulsory for all landlords, it would certainly have the knock on effect of encouraging RTB take up which would not deal with the issue of who is benefiting the most from public subsidy.

In the longer term, government needs to properly assess the overall treatment of the whole housing system in benefits, tax and public policy as the current framework is not properly joined up. There have been continued attempts to closely target government investment and "subsidy" for social and affordable housing, but little or no attempt to deal with huge "subsidy" into home ownership, which distorts investment activity across the economy.

3. Responses to consultation questions

The case for reform

Question 1: Do you agree with the principle that very high earners living in social housing should pay higher than social rents?

No, CIH does not agree with this blanket proposal as described in this consultation paper. We believe this policy risks penalising people wanting to improve their incomes and sends the wrong message that social housing should be reserved to people with no or low income only.

CIH believes that the positive aspects of encouraging mixed income communities far outweigh the potential distortions provided by the relatively few wealthy tenants living in certain parts of the country benefitting from sub-market housing.

As a scarce resource, we recognise the argument that social housing should be prioritised to those who need it most; however, we are wary of initiatives that could drive high income tenants away from social housing because if only those in greatest need are in social housing, social housing would further residualise and turn into marginalised communities of people predominantly on benefits.

We note this policy appears to be heavily London and South East centric: it is likely to impact more in these areas than elsewhere in the country purely by virtue of the income thresholds set. We would therefore be against any form of attempting to roll out this policy with the same income threshold across the country: given income differentials across the country, such attempts would be pointless. There may be a case therefore, for regional variations – an issue explored more fully in our response to question 5 below

Delivering reform

Question 4: Do you think that landlords should be required to charge high income households a higher rent?

No, we do not think it should be compulsory for landlords to charge high income households a higher rent. Local flexibility in housing matters is a key plank of the Coalitions' current policies: to set a compulsory charge now would appear at odds with that ethos. Therefore, should the government move to initiate a 'pay to stay' policy', we feel it would be better served if it were not obligatory but should allow landlords to decide whether it is appropriate for them to implement it and whether high earners are an issue in their area.

Some landlords may wish to retain higher income households as this leads to better mix of tenancies across the stock. They may also take the view that charging a higher rent could lead to a RTB application, which would remove that property from the stock of available for social housing altogether and a further note on take-up would be that administrative pressures may also limit the degree to which such a policy is applied or promoted.

The income threshold

Question 5: Do you consider that £60,000, £80,000 or £100,000 would be an appropriate threshold?

If this policy were enacted, the rate/threshold at which someone’s income is described, as high earning would need to be transparent, objectively assessed, with clear guidelines setting out for tenants and providers, what is considered high earning in their area. If the policy is introduced setting a threshold has the advantage of being straightforward and transparent.

We would not support a threshold of £60,000. There are obvious issues around single people or couples: we would require further detail in how any threshold would be applied to a single person or couple so that two people working hard to provide for their family were not penalised if earning £50,000 each, when a single person could earn £100,000 without being affected.

Given the income differentials across the country, we believe should this policy come to fruition, a regional threshold be available subject to local earnings. In our view, having a regional upper earnings limit [regional average + 50% for example] or having different thresholds for different areas of the country would work better than a national threshold which would not take substantial regional income differences into account. As a result, the threshold would be higher in London and the South West/East than in the North East/West for example.

Another potential view is that the income threshold should be based upon a households’ ability to solve their own housing problems in the locality: this would take account of their potential capacity to obtain a mortgage; would be based on local house prices; local rental prices and local labour market conditions. This would make the policy truly localised although would be increasingly difficult to administer in terms of collating the above evidence to set the rent levels.

Regardless of the threshold level, there is also a fundamental question about timeliness of changes: when tenant’s circumstances change at what point would they expect to pay a higher rent as of the following calendar year/financial year? Depending on when that change were to come in, some tenants would have 12 months protection effectively before a higher rental charge was levied, compared to others.

Question 6: Could levels below £60,000 be considered without disadvantaging other households on low incomes or the vulnerable? Where should the line be drawn?

No, we do not believe it is feasible or ethical to do this. The consultation paper itself notes "it is most likely that £80,000 or £100,000 would be the level which would best avoid perverse incentives".

How high should rents for high income social tenants be set?

Question 11: Do you agree that landlords should be able to charge 80% of market rates to high income households which meet the proposed criteria, that is an individual or two individuals with a high joint income?

We are extremely concerned at the mention within the policy consultation document, of the "strong case to be made to allow rents to be increased to full market rents for high income households". As stated in the document itself and earlier in our response, charging market rents for social housing would be at odds with the charitable status and objectives of many social housing providers in the housing association sector.

We are concerned that proposals to allow the sector to charge 80% market rents on an interim basis so as to allow for the introduction of full market rents as soon as possible thereafter, is a slow move in favour of the gradual decline of social landlords as a social providers and a shift towards a more market driven approach.

There is already government support for a policy of up to 80% market rents through the Affordable Housing programme: it is feasible to expect a similar level of rent to be called for within this policy. However, we would not support any move towards full market rent for properties which are explicitly described as social housing.

Disclosure of income

Question 15: Your views are invited on how we could best enable landlords to set higher rents to high income households in advance of any legislation.

We recommend that no changes are introduced in advance of any legislation and appropriate consultation would be needed before any legislation is introduced.

Question 16: We would also welcome your views on the practicalities of requiring income disclosure; and specifically, what kind of mechanism would be needed and how this would best work.

Currently landlords do not require or record information on tenants' incomes so new systems or processes will be needed to do this. Gaining access to tenant incomes is likely to be problematic. Collecting and managing confidential information about tenants' incomes and setting rules about who can access it is a highly sensitive issue for landlords and has a high cost.

CIH believes that the amount of legislation that needs to be amended to facilitate the pay to stay policy, including bringing in primary legislation for the purpose of making income disclosure a requirement, seems to be out of all proportion to the benefits of such a policy. Members have also noted a belief that the process of informing tenants about the policy needs to be robust and would therefore be labour intensive.

As our members have highlighted, letters followed up by phone calls might help with half of tenants. However, rent review information is not routinely dealt with in this manner and this may cause suspicion and refusal to cooperate. A further third of tenants may require additional support before giving their details, whereas at least twenty percent would refuse to give such details unless the provider takes legal action to compel them at great cost.

Indeed, if landlords have no access to tax returns and cannot compel people to show their pay slips tenants could simply say they have no income or do not file a tax return leaving the landlord with limited options.

In addition to the introduction of primary legislation to require income disclosure there would need to be changes in tenancy forms, internal processes and procedures for landlords and IT systems. Consultation with residents would be part of the process bringing an element of resistance from tenants to such tenancy changes.

Should any scheme be introduced, it is crucial that landlords have access to income data prior to any scheme being introduced by giving landlords access to basic HMRC income records. Another way is to alter an individual's tax code if they happened to be a high earner living in social housing. In addition the government - having access to individual property data through NROSH - could match that to HMRC tax data on individuals. This would also reduce the cost of data collection and might also reduce the cost of storing data with appropriate confidentiality.

Even if Inland Revenue provided income data, there would be a significant time-lag in the case of self-employed tenants. Another issue would be the very expensive cost of storage of the confidential income data and the related documentary proof of income.

Consultation question 17: Do you already hold or have access to information about tenants' income levels that could be used to support a "pay to stay" approach?

Experience suggests the only detailed income data available to landlords is that submitted in support of Housing Benefit claims but even that is not made available to housing staff within local authorities due to data protection issues.

Consultation question 19: should the income year be the tax year, the calendar year or a rolling year? Do you see difficulties with adjusting a tenant's rent based on a previous year?

Not all employees have a stable income. Some earn variable amounts (e.g. the self employed) and the decision on which income year to use for the purpose of setting rent would need to take account of such issues.

Applying the policy to existing and new tenants

Question 20: What practical issues do you see in charging existing high income tenants a higher rent?

Landlords have no power to insist existing tenants abide by tenancy conditions imposed after they signed their agreement, so the new policy could only compel new tenants to provide income information.

This policy could work with fixed term tenancies only, when the tenancy is to be reviewed. At 'tenancy review' landlords can require information on income which could be built into the new tenancy agreement/allocation procedures. For high earners the higher rent would be applied for the period of the tenancy until the next review. Rent levels should not change within the course of a tenancy other than by the usual formula. Another option could be to withdraw extension of the tenancy at the time of a fixed term tenancy review where household circumstances have changed. This could be practically difficult and could have negative consequences for the wider area in terms of residualisation

However it is not clear how changes in income before the next review would be taken into account. Added to this, not all landlords are adopting fixed term tenancies and they do not apply to existing tenants. This means that there would be a multitude of tenancy and rent types, which would have an impact on the way landlords manage their business.

Moves and income changes

Question 21: How quickly could local authority and housing association rent processes respond to changed tenant circumstances? What issues might arise? For instance would there be a need to seek regular updates from tenants on their circumstances? Would this just be in relation to known high income social tenants, or all tenants?

We believe it will be very difficult to monitor tenants' income fluctuations and update rents – increase or decrease them - quickly enough to reflect changes in income and personal circumstances. Dealing with changes in 'real time' would be an additional drain on landlords stretched resources given the particularly frequent change in personal circumstances for low income households and the fact that they're often in and out of low paid jobs.

Review of income more often than two years would require more resources from landlords and would have little benefits. Whilst this might deal with an increase in income; we are particularly concerned for the consequences for tenants' when their income drops quickly. Those tenants will expect a reduction in rent immediately and any mechanisms to do so, would need to be thoroughly worked through before this policy were rolled out.

Administrative implications and costs

Question 24: What is your view of the administrative costs that might be incurred in implementing these proposals? What opportunities do you see for minimising additional costs?

The cost of implementing the pay to stay policy and more generally, income based rent systems is very significant. A value for money evaluation of the policy would need to be undertaken to justify it.

In order to keep track of the annual income from the conversion to charging higher rents this will require some IT development similar to that required for Affordable Rents.

Experience from other countries gives pause for reflection on a number of difficulties: the use of work incentives in a scheme which penalises those who earn more; the administrative costs of checking incomes as self-reported levels of income can be unreliable; the policies impact on the social mix of tenure types and households within a locality; and the cost of monitoring both incomes and compliance. In Germany, where a similar system - supplementary rents in addition to a core rent - was in place for a number of years have been discontinued due to the problems outlined previously. In contrast, in Hong Kong where such a system has worked, there is a greater cultural tolerance of the state knowing about personal circumstances, which leads to higher compliance with the policy.

Question 26: How should additional income generated by this policy be used?

Landlords already use the additional income from Affordable Rents to finance new developments so the extra income could be used in the same way. However, there are other ways this extra revenue could be used to support affordability for other tenants. It is unclear what the implications would be for stock transferred through LSVT from the local authority.

The extra income generated through the pay to stay proposal would not be very significant and it would take a very long time for the increased rents to generate sufficient resources to fund new housing developments.

Question 27: What are the practical implications of requiring grant reinvestment / recovery when a property moves to a higher rent (or reverts back to social rent)?

Adding to the time consuming Recycled Capital Grant Fund (RCGF) and Disposal Proceeds Fund (DPF) procedures will increase the burden for landlords.

4. Further information

For further information on this consultation response or on our work on rent setting contact Laura Shimili.

CIH contact:
Laura Shimili
Policy and Practice Officer,
Chartered Institute of Housing
Tel: 020 7520 3384
Email: Laura.shimili@cih.org