All change – recent developments in the social housing sector

For social landlords, 2016 brought in very significant changes. Many more are potentially in the pipeline for 2017.

It was a year of considerable change, which might be summed up as a story of three ‘Rights’:

1. the Right to Rent;
2. the Right to Buy; and
3. some rowing back on Human Rights legislation applied to Registered Social Landlords (‘RSLs’).

Right to Buy

The Right to Buy pilot started by involving five housing associations in specified areas, allowing some assured tenants to buy their homes for the first time. It was expected that other housing associations would follow (much to the annoyance of local authorities which are required to fund the scheme at a time when their budgets are already under enormous strain), but this has been pushed back, and in the recent Autumn 2016 statement a further ‘Pilot’ of the scheme was announced.

Whilst offering tenants an opportunity for home ownership, if fully rolled out the Right to Buy may be a source of anxiety for some smaller housing providers. For such providers any new property acquisitions or stock transfers might need to be structured in a way that will limit exposure to the policy.

Right to Rent

The Right to Rent has brought increased regulation requiring landlords to carry out immigration checks on tenants and to keep copies of passports or right to remain documentation on file for all tenants, unless they come within some specified exclusions. The exclusions include tenants nominated by local authorities under their homelessness duties, as such tenants would already have had to prove they are eligible for assistance.

A significant amount of new housing association tenants will be exempt from the checks under such exclusions. Housing associations therefore need to put in place robust systems to ensure those who are housed outside of the exceptions are still subject to the immigration checks and that evidence of their eligibility is taken and kept on file. The checks are likely to lead to a rise in discrimination, which may cause disgruntled would be tenants to make claims against landlords if they are refused tenancies. Any landlord found to have granted a tenancy to someone without the Right to Rent faces tough penalties, including hefty fines or even imprisonment for more serious breaches. There will need to be checks in place to ensure that the right precautions are taken at the start of all new tenancies.

Human Rights legislation

Meanwhile, there has been some pushback in the courts regarding the application of Human Rights legislation to RSLs. In one case (R, MacLeod v Peabody), the Court was asked to provide a judicial review of a housing association’s decision to refuse a mutual exchange of homes between two tenants. The Court found that the RSL was not a ‘public authority’ in this instance and so it had no jurisdiction to review the decision. The Court’s decision effectively reduces the instances where RSLs need to comply with Article 8 of the Human Rights Act – the right to respect for private and family life.
Practical considerations

On a practical level, the biggest challenge of 2016 was probably financial management. Government imposed constraints have created real problems. The forced 1% rent reduction imposed by the government; the growing uncertainty as to collecting those rents by the imposition of a lower benefit cap; and continued confusion over the Universal Credit benefit has been a triple whammy for housing associations. We have advised several Universal Credit claimants who have accrued substantial rent arrears having failed to apply for housing payments because they were confused by the question on the application form, believing housing benefit would continue to cover their rent separately.

These changes have caused a serious gap in finances that needs to be plugged to ensure there is sufficient sustainable social housing in the UK. Unless action is taken to ensure that RSLs can confidently plan for the future, tenancy management issues including how to deal with vulnerable tenants who fall into arrears (whilst complying with Equality Act obligations) will remain a challenge.

There are clearly more challenges, and opportunities ahead. There is more emphasis in London on ‘affordable’ housing and new ‘affordable’ rent models proposed by the Mayor. It will take some time before we can determine whether these changes will allow housing associations greater flexibility so that they can provide tenants with the affordable settled homes that they strive to provide. The proposal is for the housing model to be linked to local wages. If housing providers are tasked with collecting the information on local wages then it would add additional costs for providers and in times of stagnant or falling wages this model may also prove difficult to adopt. That being said, its appeal is obvious for charitable providers who are seeking to provide truly affordable accommodation for its tenants.

In the meantime, it is important that the housing sector keeps up to date on developments to ensure that providers are complying with their many duties.

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