Learning from the wider world of social housing regulation

SEPTEMBER 2017

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Introduction

The Grenfell Tower tragedy reverberated around the world, not just Britain. Even in distant Australia, the Prime Minister soon established a task force. Perhaps this was an echo from a 2014 apartment fire in Melbourne which spread fast due to polyethylene-filled panels. Fortunately, no one in the private apartment block rented to lower income key-workers was killed, but the fire raced up 13 floors of the building in ten minutes.

Polly Toynbee, writing in The Guardian in June 2017, partly blamed the Grenfell fire on the failure of English social housing regulation. Similarly, Roger Jarman’s July HQN briefing questioned the recent English social housing deregulation and suggested of a re-boot of consumer-based regulation.

Readers will already appreciate, of course, that there are significant differences in models of social housing regulation within the UK. But what of the rest of the world? Are British-type approaches par for the course, or out of line? Can we learn from best – or worst – practice? This briefing poses seven questions in the search for a safer housing future:

- In what ways can social housing providers be regulated?
- Which housing providers are regulated?
- Is regulation characterised by continuity or change?
- Is deregulation on the rise?
- How important are regional variations in social housing regulation approaches?
- Who is regulation protecting?
- How much of a role do tenants have?

Summary

- While there is great diversity in social housing and its regulation across countries, common themes emerge
- There is a smorgasbord of regulatory approaches, with most countries adopting several. Even apparently ‘unregulated’ systems have controls in place
- Aspects of British regulation have spread to several English-speaking countries, not always with great outcomes. Policy ‘copy and paste’ has limitations
- Many countries only regulate part of the social housing system, and only two regulate private and social rentals on a consistent basis
- English social housing regulatory debates are more politicised than in other counties, and the rate of change has generally been faster
There is no international move to deregulation. Trends are heading in the opposite direction if anything.

Differences in regional regulation are common, but often unhelpful.

The primary driver of regulation seems to be protecting assets and bank loans, with tenant ‘voice’ and ‘choice’ a secondary but important feature.

Changes to social housing regulation could help reduce the risk of further Grenfell Tower tragedies, but are only one part of the solution. A more integrated approach to English social housing regulation and more funding would be good steps.

Scope and background

Rather than a blow-by-blow account of approaches across an eclectic selection of countries, this briefing will focus on common themes and issues. The spotlight will shine on social housing organisations in selected continental Europe countries, North America and Australasia.

The OECD’s 2016 data for social housing as a percentage of total dwellings puts the Netherlands first, the UK fifth, then cascading down to some countries that don’t have any social housing at all – Chile, Greece and Turkey to name but three. Of the countries in the chart, Malta has most social housing run by national public agencies (c.95%), France most by not-for-profits (100%), Japan most by regional and council authorities (100%) and the US most by the private sector (c.70%). Quite a variety!

Despite the significant differences between housing – and social housing – systems around the world, there are similarities between social housing providers when viewed at organisational level. They tend to carry out similar activities, and can be capable of the same foibles – including the unwise choice of cladding materials.

Q1: in what ways can social housing providers be regulated?

There’s a much greater variety of ways regulation takes place than just the group of people sitting in a government office called (this week) the Homes and Communities Agency with a job title of ‘regulator’ – what we’ll term ‘organisational regulation’:
Not-for-profit housing providers can be controlled through funding contracts from government.

The whole housing business might be licensed for a fixed-term contract, such as with ALMOs and some Australian ‘transfers’ without a full stock transfer.

Banks that lend to housing providers keep tabs on the organisation’s performance – has the gearing cover covenant been breached, for example?

Charities and companies’ legislation tries to stop staff running off with the money.

Building rules and regulations should prevent flammable cladding.

Accreditation of social housing providers is an option, an approach used in Belgium, for example.

Trade bodies can enforce organisational standards and guidelines under a ‘self-regulation’ model.

The US is an example of a country with no organisational regulation of social housing providers. However, many of the above regulatory approaches apply. The Low-Income Housing Tax Credit (LIHTC) which has produced around three million affordable homes, relies on oversight by private investors to ensure schemes are compliant so tax breaks are received. In this sense, the focus of regulation is at the ‘project’ level rather than the corporate level.

England, which has a (recently diminished) organisational regulatory system for social housing, still has most of the additional controls listed above in place.

In Australasia, the shift to statutory organisational regulation could be said to have migrated down-under. The Australian state of Victoria’s first housing association regulator, Anthony Hardy, worked until 2006 for the Housing Corporation in London, where he helped introduce risk-based regulation. The state-level system he established from his Melbourne base was largely modelled on the Corporation’s approach of that era, and strongly influenced subsequent developments across Australia.

Australian organisational regulation of housing associations spread to populous New South Wales in 2009 and to the rest of the country in a piecemeal ‘national’ system by 2014. New Zealand followed with the Community Housing Regulatory Authority in 2014. Another country with a past-Imperial link to Britain – the Irish Republic – introduced a...
voluntary organisational regulatory system in 2014, now with a commitment to move to statutory regulation.

**Q2: Which housing providers are regulated?**

The Australian, New Zealand and Irish organisational regulatory systems only cover housing associations and housing co-ops. To use the language of the Cave review, they are not ‘cross-domain’. Australia’s public housing is managed by state governments with no independent regulation; New Zealand has two types of non-regulated public agencies – national and councils.

It is typical not only in Australasia, but also in North America and much of continental Europe, for national, state and council social housing providers to sit outside regulatory systems that apply to non-government providers. In theory disaffected residents can vote-out poorly performing politicians, pushing for a better approach to social housing. In practice this seems far-fetched.

While some in Britain look back to the golden age of detailed and consistently applied Audit Commission social landlord inspections, few similar examples can be found around the world. In Australia regulatory scrutiny is largely confined to desk-top assessment of documents and statistical returns. More intrusive investigation takes place only when signs of serious problems appear.

Short of a housing association being deregistered, all Australian regulatory judgements remain hidden from public view – not even a set of traffic lights. The first indication an organisation is in trouble is normally when the lights are about to be turned out.

In the Netherlands and Sweden, all rental housing is regulated by the national government. Rents are centrally regulated in the social and private markets, such that it is hard to differentiate between the two. This is a more radical position than seen in English-speaking countries, but would be welcomed by many given the rapid growth of the private rental sector – a prominent recent feature in both Britain and Australia.

Organisational regulation spanning both social and private landlords, who are major providers of lower cost rental accommodation and boarding houses, is rare. What controls would have existed if Grenfell Tower was owned by a private landlord? Arguably even less than with Kensington and Chelsea TMO.

**Q3: Is regulation characterised by continuity or change?**

English social housing landlords have faced regulatory upheaval and change since 2010, and a further transformation is in progress. Each change is complex, costly and confusing, for both people in the housing organisation, and their external supporters – banks and consultants, for example.

Some countries are comparative oases of calm. Little has changed in the US since the 1986 Tax Reform Act – a ground-breaking tax credit scheme for LIHTC affordable housing delivery introduced by none other than Ronald Reagan. Many continental European countries have seen a stable last decade after an earlier period of privatisation, especially
in Eastern Europe. France’s HLMs (Habitations à Loyer Modéré, social housing) have operated in a stable regulatory environment for many years.

A more problematic instance of ‘stability’ has been seen in Australia where the country’s half-built social housing regulatory framework has been *shunted into a siding* in recent years.

Britain’s approach to housing policy and funding has been highly politicised since the Thatcher government’s Right to Buy legislation and financed-regulation initiatives. Elsewhere, for example in the US, Australia and New Zealand, social housing regulation is rarely a party political issue – though the level of funding is a different story.

**Q4: Is deregulation on the rise?**

From April 2017 a series of deregulation moves were introduced for private and not-for-profit English social housing landlords – with similar changes afoot in the other UK jurisdictions. This represents a further weakening of the consistent ‘cross-domain’ consumer-focused regulation of all social housing landlord types.

Despite the (apparent) ongoing strengths of market approaches, deregulation is not a marked trend in other countries. Australian, New Zealand and Irish housing association regulation has been *introduced* over the last decade, and there are *calls in Australia for the regime to be strengthened*.

Since 2011 in the Netherlands – the country with the world’s largest share of social housing – the national government has re-taken control of the sector. According to some politicians and media outlets, Dutch housing associations had become too lazy, too profitable and paid their CEOs too much. A 2015 *new housing law* (Woningwet) established a new supervisory housing authority to hold housing associations to account. Britain, therefore, is currently one of the few countries promoting the (partial) deregulation of social housing landlords.

**Q5: How important are regional variations in social housing regulation approaches?**

The UK’s four kingdoms all have their own housing regulation, a good example of regional divergence. Yet England (population 53 million) is a paragon of consistency compared to Australia (population 24 million) and — especially — Canada (population 36 million):

- The ‘national’ Australian regulation inconveniently misses two of the eight states. Elsewhere, the ‘national’ system is distorted by state government using policy and funding to do their own thing

- Canada’s regulation is not only fragmented across 13 provinces and territories, but largely delegated to local councils of highly variable size and capacity. Even within Ontario – the most populous province – there is no consistent approach.
To the credit of the US’s LIHTC affordable housing system it is nationally consistent, and funding allocations are carefully spread between states depending on population and housing need.

While there is much of merit in the move to decentralised decision-making in English city regions led by Greater Manchester, further Balkanisation of social housing regulation does not look like a good move.

**Q6: Who is regulation protecting?**

Professor Martin Cave’s influential [social housing regulatory review in 2007](#) established two basic groups who benefit from regulation:

- Those with the assets and money: regulation protects the properties built through years of public investment, and in an era of private finances makes housing organisations safe for bankers and bond-holders to invest in.

- The tenants: regulation restricts landlords who might abuse their power due to limited social housing supply compared to demand, which places tenants in a weak position.

It can be hard to disentangle these two motives. Policy-makers may say they have tenant interests at heart (which sounds positive) when their main motivation is to protect assets (which sounds mercenary). In Australia and New Zealand over the past decade, just as in the UK in the 1980s and ‘90s, regulation has been strengthened to entice private finance to the social housing sector.

**Q7: How much of a role do tenants have?**

Most organisational regulation includes pointers on tenant participation, tenant engagement and community development. This reached its apotheosis under the short-lived [Tenant Services Authority in England](#). Elsewhere in English-speaking countries tenant rights through statutory provider regulation are only mentioned in passing (Australia, Ireland, and New Zealand) or not at all (US, Canada).

In some countries, particularly in continental Europe, social housing providers are structured as co-operatives, or have tenant-majority governing bodies. On average, 10% of European Union residents live in housing co-operatives. By contrast housing co-ops with ‘hard-wired democracy’ are less common in North America, Australasia and Britain.

In Denmark, formal tenant control of social housing means there is no need for tenant involvement to be required by legislation. This contrasts with the Netherlands from 1993, Flanders (Belgium) from 2005 and England for a few years from 2006 where tenant involvement was a specific policy objective.

While in co-ops tenants control the social housing landlord, in other organisations they have a ‘voice’ in decision-making through tenant board members and forming tenant panels – a promoted feature under New Labour. Other approaches to tenant involvement
focus on ‘choice’ – treating tenants as customers with schemes such as choice-based lettings, or voting on stock transfers.

Britain has seen tenants involved through both ‘voice’ and ‘choice’, though the current government seems less interested. In Australia tenants are given little role in public sector managed housing, and their involvement in housing association governance depends on initiatives by enthusiastic CEOs rather than regulation. This might be one area where England is following Australian practice, and not for the best.

Could greater tenant involvement in landlord management help prevent fires like those in London and Melbourne? Perhaps, but there is no clear link. The Melbourne blaze was in a tower run by private landlords and owner-occupiers with little organisational governance beyond a management committee – the problem was said to be inappropriate building materials and dodgy private building work certification. Tenants may be less keen for cost-cutting on safety issues, but will need to rely on accurate independent reports and an efficient checking system.

Conclusions

Is the regulatory grass greener on the other side? Arguably, even after the Audit Commission was abolished in 2010 and social housing was (partially) deregulated in 2017, England still has a more consistent, methodical and professional approach to regulation than the US, Australia, Canada, Ireland and New Zealand. Perhaps, however, the Brits need to aim higher than simply being better than English-speaking countries with extremely laissez faire social housing regulation.

What would good regulation look like?

- Equally protect the rights of tenants and investors (public or private) in social housing
- Be uniform across the country
- If possible cover all tenants, public and private. At a minimum enforce the same standards across all types of social landlords
- Be open and transparent, allowing tenants and the media to see the real story
- Have a strong regulator, fully at arm’s length from government, prepared to take action
- Encompass meaningful inspections of social housing providers.

Grenfell Tower in Britain is a charged political issue. In reaction to Brexit and Trump, Corbyn populism is on the rise, and the tenets of privatisation are increasingly challenged. As noted in the New York Times article After Grenfell Tower Fire, U.K. Asks: Has Deregulation Gone Too Far?, key factors in the fire were social housing budget savings over several years and ineffective building regulation and inspections.

Reforming and reinforcing English social housing regulation seems a good idea, and in line with moves in some other countries. Tenant safety clearly needs to feature strongly, with social housing providers required to state publicly their approaches and risk management approach.

Yet it is not clear to the author, admittedly living in a foreign country, that even restored Audit Commission-style regulation will – in isolation – prevent another Grenfell Tower. Perhaps the main answer is more investment in social housing and re-nationalisation of building regulation. Also, resident safety needs to be a focus for all properties – rented or owned, social or private.
While a greater voice for tenants would not of itself transform social housing governance and lead to better decision-making on health and safety issues, it could help. More independent eyes scrutinising proposals is no bad thing. And there are many benefits for tenants having more ‘voice’ and ‘choice’ in social housing: for the residents themselves, their landlords and the community.
Dr Tony Gilmour is an Australian-based housing consultant, founder in 2012 of Housing Action Network, which is loosely based on HQN. His doctoral thesis looked at how to best build the capacity of housing associations in Australia, the US and Britain. Tony’s earlier career was in Britain, before escaping to the sun in 2002. He is a co-author along with David Mullins and Hal Pawson of After Council Housing, Britain’s New Social Landlords (2010), and has written research reports supporting the development of Australia’s national housing association regulation.