

By Email and Post

To All Members  
Chairs and Chief Executives

13 November 2009

Dear Colleague

## DIRECTIONS TO THE TENANT SERVICES AUTHORITY – RENT

The Government released its “Directions to the Tenant Services Authority” on Tuesday 10<sup>th</sup> November 2009.

In the direction on rents, the Government has withdrawn its proposal to set a rent floor at minus 2% in the event of a Retail Price Index (RPI) figure in September 2009 in excess of minus 2%. This is because the inflation figure was not as low as had been forecast. However, the Government has confirmed its view that the RPI figure of minus 1.4% drives the inflation linked part of the rent formula.

This letter outlines the Federation’s views on this direction on rents.

The Federation has argued that the current rent formula is only designed to limit rent increases and not deliver decreases. This is because the formula only refers to ‘increases’, not decreases in rent. There is legal advice supporting this view, though the Government continues to argue the formula also allows RPI linked decreases. Specifically, our view is based on the definition in the Glossary of The Rent Influencing Regime Guidance published by the Housing Corporation in October 2001:

**Rent influencing regime** - process by which we seek to bear down on rent increases through the issue of a guideline limit for rent increases, and influence the restructuring framework.

We have further argued that rent decreases will damage the sectors’ ability to invest in new homes and services and will deliver limited short-term benefits to a minority of tenants while damaging delivery of services for the long run.

For these reasons we argued that the rent floor should be set at 0% (essentially a rent freeze) and that this would deliver the correct balance between rent levels, Housing Benefit bills and supporting housing associations’ investment and service delivery. We argued that if properly interpreted the rent formula already sets a floor at 0% and that government has misinterpreted its own rules in directing the TSA to require rent cuts.

Deflation in September at minus 1.4% was better than forecast, with the result that the rent direction sets the inflation element of rent formula at minus 0.9% (minus 1.4% + 0.5%). In practice this means that many (although not all) associations will be able to use the flexibility afforded under the rent restructuring regime to achieve a position where rents will not in fact be cut.

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Our view remains that the direction issued by Government sets an unwelcome precedent, and if deflationary pressures continue to manifest themselves in the economy could mean that associations face a further requirement to cut rents in future years potentially placing them in a difficult financial position. The implications of the Government direction won't just affect associations' income for one year but will reduce capacity for thirty years and more, since this becomes the new baseline. We argue that this is the worst possible time in the economic cycle to take capacity out of the sector. While the viability of the housing association sector will not be affected, the lost capacity will mean that the ability of the sector to deliver the maximum number of new affordable homes or to invest in neighbourhoods, or in the greening of existing stock in the future will be compromised.

Boards of individual member associations will now need to reach a decision on how they respond to the Government's direction. When taking decisions, boards may wish to take the following observations into account.

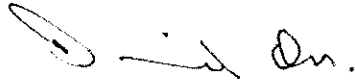
- The first duty of any board is their fiduciary one, and in any decision they take on rents the financial health of their organisation should be paramount rather than any direction from the regulator. We understand that the regulator will not move to require a board to make a decision on rents which threatens an association's viability. We are available at any time to discuss with members confidentially their circumstances. The Government and the TSA have both been clear that they accept that flexibility will be required in some circumstances.
- The rent restructuring framework in any case gives flexibility to associations whose rents are currently below 105% of target (110% in the case of supported and sheltered housing) to add up to £2 to individual rents after a reduction of 0.9% has been applied to target and actual rents. For the majority of associations a rent cut is therefore unlikely to be necessary.
- The Federation's view remains that the Government's consultation on the Rent Direction was based on a false premise and is legally and technically flawed. The Federation has seen legal opinion which confirms this view that the draft direction did not reflect the rent policy agreed since 2000 and outlined in Housing Corporation guidance. As set out above we believe a correct interpretation of rents policy would be a rent floor of 0%, since the agreement only refers to rent 'increases'. However, the Government rejects this interpretation of the agreement, and it is unclear what legal advice they and the TSA may have received. Again we are available at any time to discuss with members confidentially their circumstances and options.

We expect that boards of housing associations will want to weigh up the direction against the legal and technical interpretation of the rent regime, their fiduciary duty and their status as independent organisations.

Members who decide to reduce or freeze rents in 2010/11 should be aware that the mechanism for reducing or freezing rents is different from the procedure used to increase rents. The Federation has produced a briefing which provides guidance for members in this position and it is available at [www.housing.org.uk/rents](http://www.housing.org.uk/rents)

The Tenant Services Authority will be producing guidance on rents for 2010/11 shortly. If you have any queries about the points raised in this letter, please contact Stuart Ropke, the Federation's Head of Investment Policy and Strategy on [stuartr@housing.org.uk](mailto:stuartr@housing.org.uk) or telephone 020 7067 1103.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Orr', with a stylized flourish at the end.

David Orr  
**Chief Executive**