

Ms Beatrix Balbin

Chief

Special Procedures Branch

Officer of the High Commissioner on Human Rights

Sent by email to ohchr-registry@un.org

Dear Ms Balbin

Your reference: AL OTH 14/2023

I am writing in response to the letter dated 7 March 2023 and received on 9 March 2023 sent, as I understand it, on your behalf by Claudia Mahler, Independent Expert on the enjoyment of all human rights by older persons, and four other Chair-Rapporteurs or Special Rapporteurs – Pichamon Yeophantong, Tlaleng Mofokeng, Balakrishnan Rajagopal and Morcos A Orellana.

Although you do not say so in the letter, I have assumed that it has been sent pursuant to the HRC's complaints procedure under HRC Resolution 5/1. (I note that you have requested a response within 60 days although para.101 of Resolution 5/1 appears to allow 3 months as a minimum). I note also that contrary to your stated practice on your complaints procedure webpage (that it would be exceptional to withhold such details), you have not informed me whether there has been a complaint or, if so, of the identity of the complainant(s). I reserve the right to take these matters up with you should there be a need to do so.

Be that as it may, I hope that this response will provide useful information for you about Co-op Homes (South) Limited ("CHS") and the correct facts relating to the issues you have raised.

CHS

CHS is a charitable, not-for-profit housing provider operating in the greater London area and in some neighbouring counties. We are registered with and regulated by the Financial Conduct Authority (“FCA”) as a Community Benefit Society (“CBS”) (formerly known as an Industrial and Provident Society) (Registration No. 25197R), under the Cooperative and Community Benefit Societies Act 2014 (the “2014 Act”).

We are also registered with and regulated by the Regulator of Social Housing (“RoSH”) as a Private Registered Provider of Social Housing (“PRP”) (Registration Number C3675). For your information, RoSH is a statutory regulatory body set up under the Housing and Regeneration Act 2008 (the “2008 Act”). We have made our regulators aware of your correspondence.

The objects of CHS are set out in our Rules which are filed with the FCA. Rule A2 states:

“Objects

“A2 The association is formed for the benefit of the community. Its objects shall be to carry on for the benefit of the community:

A2.1 the business of providing and managing housing and social housing and providing assistance to help house people and associated facilities and amenities or services for poor people or for the relief of aged, disabled, (whether physically or mentally) or chronically sick people;

A2.2 any other charitable object that can be carried out from time to time by an Industrial and Provident Society.

“Non-profit

A3 The association shall not trade for profit.

A4 Nothing shall be paid or transferred by way of profit to shareholders of the association.”

As permitted by our rules, CHS provides social housing for rent and also manages social housing for other registered providers.

In so doing, CHS is required to comply with all the applicable provisions of housing, human rights and equality law applicable in England and Wales. This includes such matters as:

- (i) the security of tenure provisions contained in the Housing Act 1988 which prevent evictions other than by an order of a court executed in accordance with the law;
- (ii) the prohibitions on unlawful eviction and harassment contained in the Protection From Eviction Act 1977 and the Criminal Law Act 1977;
- (iii) the provisions of the European Convention on Human Rights as implemented in domestic UK law by the Human Rights Act 1998;
- (iv) the Equality Act 2010; and
- (v) the regulatory requirements on CBSs and PRPs relating to rents, governance and matters of housing management imposed by the FCA and RoSH.

The effect of these statutes and regulatory requirements is similar in a number of respects to the matters you have raised in the Annexe to your letter. In addition to providing for security of tenure etc, they require public bodies to act compatibly with protected European Convention Rights and not to discriminate (directly or indirectly) against people with certain “protected characteristics” which include age and disability and to consider in advance the potential impact of proposed actions on people with protected characteristics. They are enforceable by the UK courts and by the applicable regulators.

The law of England and Wales does not, however, incorporate the United Nations General Declaration of Human Rights or its protocols or associated Guiding Principles and other texts so that, while the UK government, as a signatory, must comply with its UN treaty obligations as a matter of international law, those treaty provisions are not enforceable in the UK courts. Nor do the institutions of the United Nations have any role in their enforcement or in regulating the activities of individuals or organisations such as CHS. In carrying on its activities, CHS is not bound by the UN General Declaration of Human Rights or the UN Guiding Principles on Business and Human Rights or any related documents.

It is also necessary to point out that, while similar in many respects, the obligations of housing providers under UK law (including the European Convention) are not identical with those you cite in the Annexe to your letter. In particular, there is no general right to adequate housing as referred to in Art.25 of the UN General Declaration of Human Rights. Organisations like CHS, however, are in the forefront of providing suitable, affordable, well-managed accommodation to people who otherwise would not be able to access such accommodation.

Admissibility

Moreover, there are remedies in domestic law for any failure on the part of CHS to comply with its legal or regulatory obligations, whether by reference to the civil (or in some cases the criminal) courts, our regulators or the social housing ombudsman. At present, we are not aware of any such action having been taken or even threatened by any resident.

I note that by para.87(g) of Resolution 5/1, a complaint will not be considered admissible unless domestic remedies have been exhausted or it appears that they would be ineffective or unreasonably prolonged. The first limb is plainly not met as no domestic remedy has been attempted let alone exhausted. I should also be very surprised if you could conclude that the remedies available to the courts, regulators and ombudsmen would all be ineffective or unreasonably prolonged. I therefore do not understand how any complaint, if one has been made, could have been considered admissible.

Having said all this, and given the great respect that CHS has for the United Nations and its institutions including the HRC, the OHCHR and its Special Procedures (including the authors of the letter of 7 March), I shall respond to the issues you have raised with the intention of reassuring you as to CHS's intentions and actions. For your information, I have seen the response to your letter provided by *Rockwell* and agree with its contents.

I am not responding in detail to the numbered paragraphs at the end of the letter because, as you will see from what follows, I believe the information that you have been given to be seriously flawed and inaccurate. For that reason, and in light of CHS's legal position as set out above, it does not seem to me that these issues arise for response at this time.

Allegations in the letter of 7 March 2023

As set out above, the information set out in your letter, in the indented paragraphs on pages 2, 3 and 4, is incorrect in numerous important respects, including as to the following matters.

(i) There is no question of any resident being subjected to a forcible eviction without alternative accommodation being available for them. Each resident in the accommodation to which you have referred is an "assured tenant" of CHS so that they have security of tenure within Part 1, Housing Act 1988. This means that they can only be evicted if an order of the court is obtained on proof that a statutory ground for possession exists.

(ii) In the present case, prior to the demolition of any block of flats in which residents currently live, each resident in that block will be offered an assured tenancy of a new flat within the new development, on the same terms as their current tenancy.

(iii) Moreover, any resident who does not wish to remain in their current flat while the construction work is being undertaken (and before they are offered their new flat) has been told that they can ask for temporary accommodation on either a short or longer-term basis, as close as possible to where they currently live, and that such accommodation will be secured for them by the developer at no additional cost. Thus, while residents will continue to be liable for the rent for their current flats, they will not be asked to pay anything additional for the temporary accommodation. Moreover, the reasonable removal/storage costs will be met by CHS and they will be entitled to a statutory home loss payment when moving to their new flat.

(iv) Any tenant who is unhappy about the effect of construction work on their ability to continue in their current flat can ask for temporary accommodation so as to be relieved from any such effects. Plainly the demolition and construction works cannot be carried out without some noise, disruption and inconvenience to people living in the current flats, but this is the reason for the arrangements agreed with the developer for temporary accommodation to be provided

(v) It is quite wrong to suggest that there has been any emission of hazardous waste as part of the construction works or, for the reasons set out above, that any residents “have been forced to find temporary shelter outside their homes” or have “not been provided with alternative affordable housing”.

(vi) Whilst the proposals for the re-development of the site were being draw up there was extensive consultation with residents. Most recently meetings have been held on 26 May 2022, 27 July 2022 and 27 September 2022 where plans have been discussed in detail.

(vii) Throughout the process Co-op Homes (South) has continued to maintain the properties in compliance with its duties under statute and contractual law. For the avoidance of doubt there has been no removal of any structures supporting any walls, the roof or any insulation of the block.

(viii) I shall not repeat the responses that have already been given to your questions by Rockwell.

I hope that you will be reassured by this letter that your concerns are unfounded. In particular, this project will not result in any eviction or demolition without the prior provision of alternative affordable accommodation within the new development. CHS and the developers have taken all reasonable measure to minimize the disruption and inconvenience of the building works including the provision of temporary accommodation without charge, and the result of the project will be that the residents will all be offered brand new social housing from CHS on the same terms as they currently enjoy and in the same general location.

In addition, the completion of the project will provide for additional units of social housing in a part of London in which it is in extremely short supply.

CHS is a responsible and dedicated provider of social housing for those members of the community who are unable to afford housing within the general private sector rental market. Its tenants are those who have been nominated to it by the relevant local authority as people who need social housing. It has a long history assisting vulnerable, including elderly people to maintain high-quality and affordable homes. As a not-for-profit, charitable housing association, it would have no reason to operate without regard for its residents' rights and does not do so.

I trust that this response will be of assistance and resolves the issues that you have raised.

Yours sincerely



Managing Director

Co-op Homes (South)