

GLASGOW AND WEST OF SCOTLAND FORUM OF HOUSING ASSOCIATIONS

WRITTEN SUBMISSION

Key Message

GWSF believes that strong regulation is critical for the housing sector. There are a number of praiseworthy aspects of the current regime, but over the last two years we have had a number of concerns about how the SHR is carrying out its functions, including a lack of transparency, lack of a review/appeals mechanism, and, in its communications, a general tone of distrust towards associations. Recently we have had some indication that SHR is beginning to take a different approach although we have yet to see firm evidence of this.

The importance of effective regulation

Robust regulation of the housing sector has always been crucial. It reassures tenants and others who use our services, and provides important guarantees for lenders and others who provide funding to social landlords. Effective regulation must be fair and proportionate and focus on the areas presenting the greatest risk, and there should always be transparency about how functions are carried out.

Concerns GWSF expresses from time to time about the regulatory system usually centre around issues of proportionality and transparency but never suggest that social landlords should not be strongly regulated.

The SHR's strengths

As examples of effective ways of working we would highlight the highly consultative way in which the SHR undertook development of the indicators used to measure social landlords' Scottish Social Housing Charter performance. The inclusive, participative approach is evident again this month, with housing bodies now invited to consider what changes are needed to the Charter guidance.

The SHR's publication of every landlord's Charter report, at the end of September 2014, also saw the launch of an interactive web tool which enables tenants, landlords and others to compare one landlord's performance with that of up to four others and with the national average. This has proved a helpful and easy-to-use tool.

More generally we would note that the SHR's website contains a substantial amount of readily accessible information, which has not always been the case with previous housing regulators in Scotland.

We have been pleased to note that the SHR has gone much further than previous housing regulators to acknowledge and 'talk up' the critical role that community

based housing associations play in contributing to the wider regeneration of their local communities. In the past, associations have felt that this 'wider role' activity has, at best, been grudgingly tolerated by housing regulators. The change of approach from the SHR on this is welcomed by GWSF.

Lack of transparency over how the SHR engages with housing associations

Engagement can range from making any kind of initial 'inquiry' – for example where the SHR may be following up a complaint about an association – through to 'regulatory intervention' made where a problem has been identified and needs to be tackled.

The main factor behind the lack of transparency is the focus (in the Regulatory Framework document) on statutory powers. Often for good reason, the SHR may seek to deal with a problem or potential problem without resorting to formal, statutory powers: avoiding such mechanisms can, for example, help avoid triggering action from lenders to renegotiate the terms and pricing of existing loans.

But this then means that some of the ways in which the SHR engages with associations are more 'under the radar' than was originally envisaged, and so there is not much in the way of ground rules about what associations can expect when the SHR needs to investigate an issue or take action to resolve a problem.

By way of example, the SHR may sometimes have legitimate reason to engage with an association's chair and other committee members at the exclusion of any staff, e.g. most obviously if there has been an allegation relating to the senior officer. But we have come across cases where, because no staff can be present, a meeting between the SHR and members of the association's committee is not noted or recorded in any way, which can leave the association and its committee members in a vulnerable and uncertain position.

We also know of instances where the chair or a small group of office bearers is asked not to share details of the SHR engagement with other members of the committee. This is, quite simply, bad governance: it is precisely the poor practice which the SHR is charged with safeguarding against.

There is clearly scope for more to be produced in the way of guidance on engagement with associations. In our recent meetings the SHR has recognised this and signalled its intention to work with the sector to address the issue. We would argue that this guidance should take the form of an update to the relevant parts of the Regulatory Framework document.

New guidance will also give the SHR the opportunity to clarify the status of its 2012 Regulatory Framework document. The SHR maintains that chapters 6 and 7 of the document represent the statutory Codes of Practice (on both 'Inquiries' and 'Regulatory Intervention') required by Sections 51 and 54 of the Housing (Scotland)

Act 2010 Act, but there are no statements in the document making this clear. This was, at best, an unfortunate oversight which needs to be resolved.

Requirement to carry out 'Options Appraisal'

The SHR's guidance on 'Notifiable Events' indicates that SHR "expects the governing body to consider the future of the RSL" where a senior officer is leaving or retiring, through the association carrying out an options appraisal. The guidance specifically highlights the options of the RSL being part of a group structure or transferring engagements to another RSL. This stance by SHR, and the way in which the guidance has been presented by SHR as a requirement, is in our view inappropriate and has been seen as especially threatening to smaller, community based housing associations keen to retain their independence.

The SHR's position on options appraisal has brought with it further, worrying practices. The SHR will argue that it is generally the committee which appoints a consultant to facilitate the options appraisal or to fill the post of interim director where the director has already left.

But we know of a number of cases where immense pressure has been put on committees to appoint consultants preferred by the SHR: many such consultants are based in England, meaning that the already high fees have to be supplemented by substantial travel and accommodation costs – all borne by the tenants. If the SHR believes in the importance of committees making their own decision, committees should be left to select consultants they believe are appropriate for the task in question.

It is ironic that the SHR's very insistence on carrying out an options appraisal exercise can in itself have a dangerously destabilising effect on an association. It can give lenders the impression that there are serious problems when there is no reason to suspect that any might exist, triggering a renegotiation and repricing of existing loans which could cost the association – and its tenants – hundreds of thousands of pounds. It is an unnecessary, intrusive, patronising and debilitating procedure.

We have argued strongly that where there is evidence of robust business planning at an association, there is no sound reason for the departure or retirement of the senior officer to trigger an options appraisal exercise. We would welcome revision of the guidance to reflect this, and, following recent discussions with SHR, have some grounds for optimism that the guidance will be revised to meet our concerns.

Review/appeals mechanism for social landlords

The 2010 Act made no provision for social landlords to request a review by the SHR Board of regulatory decisions or actions, nor for a statutory appeals process. Currently the only right of redress available to social landlords is to seek judicial review. This is out of kilter with other regulatory bodies. The Scottish Government's

consultation (earlier this year) on a Code of Practice for all Scottish Regulators proposed a statutory appeals mechanism as standard practice for all regulators. We recognise that this will have resource implications but it is difficult to fathom why this was not a fundamental part of the original regime, and this must now be put right.

Scope for adjusting the tone of SHR communications

We fully recognise that regulators are under no obligation to be liked. But it is important for them to be respected and trusted. The Policy Memorandum to the 2010 Bill which set up the SHR referred to a Regulator which ‘encourages and supports social landlords to improve their performance’. In seeking to promote good governance and appropriate relationships between the management committee and senior staff, the SHR, in GWSF’s view, has not achieved the right balance and has not been proportionate in its approach.

Too often, the tone of the ‘guidance’ issued in the form of ‘Governance Matters’ bulletins is one which could be perceived as suggesting that senior officers should not be trusted and that they may not be sharing sufficient information with the committee. There will always be the odd case where governance relationships are not right, and the SHR will want to take action in these circumstances.

But it is not proportionate to imply, through written guidance or any other means, that that the problem is more widespread than it is. And in the same vein we did not feel it was appropriate for the SHR Chair to suggest (as she did to the ICI Committee in December 2013) that there was a fundamental governance problem throughout the housing association sector.

A greater focus on tenants?

Poor governance is not in the interests of tenants, but the SHR’s preoccupation with governance issues is disproportionate in the context of its overriding aim of placing tenants and other service users at the heart of the new regime. It would be reassuring to see some evidence that the recent publication of Charter outcomes will now lead to a more direct focus from the Regulator on what tenants get for their money.

**Glasgow and West of Scotland Forum for Housing Associations
20 November 2014**