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South of Scotland Region

Jim Eadie MSP
Convener
Infrastructure & Capital Investment Committee
M4.07, the Scottish Parliament
EDINBURGH
EH99 1SP

26 January 2015

Dear Jim,

I have now fully considered the responses from the Scottish Housing Regulator (SHR) representatives to the questions asked recently at the Committee. The responses provided did little to address the evidence provided to the meeting of the Committee held on 26 November 2014 by Mr Bookbinder of Glasgow and West of Scotland Forum of Housing Associations (GWSF) and Mr Stokes of the Scottish Federation of Housing Associations (SFHA).

It is my view that there are sufficient grounds for the Committee to instruct a full inquiry into events at DGHP and Loreburn Housing Association in the south of Scotland region I represent. Such an inquiry should also examine the SHR's general approach and ability to undertake the duties set out for it in the Housing Scotland Act 2010.

I am particularly concerned by Mr Cameron's reply to the question about whether the SHR has ever threatened RSLs with statutory intervention in order to get them to co-operate. Mr Cameron said:

"We rightly set out as clearly as possible for organisations the implications for them if they cannot give us the level of assurance that we need that they are tackling problems. We might have to tell them that if we cannot get that level of assurance, we will have to use statutory interventions."

As there are very few cases of statutory intervention it appears that the threat of it is the SHR's default approach to regulation. This was the SHR's approach when dealing with Loreburn Housing Association. This Committee needs to consider if the use of threats is consistent with proportionate and transparent regulation.

The SHR has been given extensive statutory powers by Parliament to regulate in the interests of tenants. I would not have thought that it is right for its senior officer to extend or interpret these powers to coerce or threaten those that it is tasked to regulate. The SHR either has grounds to use its legislative powers or it does not.

The/...

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The evidence from Mr Stokes and Mr Bookbinder, together with the complaints made to me, also suggests that the SHR's approach to regulation is currently far from transparent. Mr Bookbinder commented that:

"We have had a lot of worrying feedback from members during the past couple of years on issues such as regulators holding meetings with associations that have no agenda and are not minuted."

That is also a complaint made to me in relation to the SHR's dealings with Loreburn Housing Association.

I also noted Ms Jarvie's assertion that the SHR is *"very seldom given evidence to back up the things that we are told about perception or whatever"* and Mr Cameron's assurances that he is *"not aware that there is a climate of fear"* in relation to the SHR.

However, I have been given a copy (enclosed) of a letter that the SFHA sent to Michael Cameron in August 2012. I am assuming that this letter was shared with the SHR's Board. The SFHA is a very credible and moderate representative body. In a long list of complaints set out in this letter it is claimed:

"...others act more cautiously or keep quiet about concerns they might usefully air with the regulator, for fear of ending up under investigation". The letter also refers to the SHR staff acting in a "threatening manner", with many in RSLs reporting "ill health arising from the aggressive tone of the attention from the regulator."

The letter talks about people being:

"Intimidated, for example requiring to be obedient in accepting inaccurate statements about their organisation, or else. Examples have included requirements to accept publication of reports, appointments of particular investigators acceptable to the regulator, or co-options to the Boards (rather than appointees accountable to the regulator.)"

These are extremely serious allegations that appear to have been dismissed out of hand by Mr Cameron, and not mentioned in his response to this Committee. Again they are consistent with the complaints that have been made to me about the behaviour of SHR staff in their dealings with Loreburn.

Mr Stokes also said in his evidence to this Committee that:

"There is a challenge in providing examples, because people are understandably reluctant to be critical or to make out that there is a problem with the regulator in case their card is marked or whatever."

I would suggest that such reluctance is entirely due to the SHR's unfettered powers, and the impact that non-compliance can have on organisations, and the health and careers of individuals. The SHR appears to be able to freely interpret legislation and guidance, and there are no grounds for challenge, other than judicial review, which is an expensive and time-consuming process. Mr Cameron asked the Committee to speak to Fife Housing Association, or Loreburn, to obtain views of its interventions there. Given that many committee members and staff affected by regulation in these organisations have moved on, and given what I have said above, the current staff or committee of these organisations may not feel able to speak candidly for fear that regulatory engagement continues.

In/...

In the SFHA's written evidence to the Committee, it was reported that 57% of respondents to its survey do not believe the SHR is performing its functions in a proportionate, accountable and transparent manner. Ms Jarvie also referred in her evidence to independent research into how the SHR communicates. That research found that a:

"Significant minority of regulated bodies were more negative about the way in which SHR communicates. Some held very strong views.some of these regulated bodies were generally critical of SHR's overall approach to engagement...."

As for some of the more specific questions, I am still not satisfied that the SHR provided adequate justification for instructing Loreburn to spend somewhere in the region of £400K of tenants' money on various consultants, to deal with unspecified "governance" issues. In the interests of transparency these issues should surely have been set out in the various "Regulation Plans" that were published for Loreburn. We would then all be clear when the "governance issues" had been addressed. I noted in these regulation plans Loreburn was only ever considered as "medium engagement", and remains in that category some four years after the SHR's first interventions with the organisation. Mr Cameron suggested in his evidence that the organisation was in crisis. In that case Parliament would surely have expected the SHR to exercise its statutory powers, and be very clear on the reasons for doing so.

Mr Cameron also said in his evidence, *"I point out that Loreburn Housing Association approached us about the difficult governance issues that it was experiencing."* That is correct only in so far as Loreburn, as required, notified the SHR that it was dealing with governance issues. The SHR chose to step in uninvited to instruct it to appoint various consultants and co-optees, rather than allow it to try to resolve matters itself.

According to the figures on the SHR's website, performance at Loreburn in the areas that matter to tenants appears to have been very good prior to the SHR's intervention. Mr Cameron told us that the tenants of Loreburn now have *"an association that is considerably better governed, stable, and which should be in a position to continue to deliver for its tenants."* Loreburn's Annual Performance Return for 2011-12 reported that from a survey of 20% of its tenants, 97% said they were satisfied with its service. The "Annual Return on the Charter" for 2013-14 now reports that only 83% of tenants are satisfied with the overall service. Even allowing for sampling error, this appears to be a significant drop in tenant satisfaction.

With regard to events at DGHP, it would appear that it selected for a £77M flagship contract a company that was allegedly generally known to carry a significantly higher degree of risk than other firms that tendered for the work. R&D's demise may well have been bad luck or a symptom of the decline in the building industry, but I find it absolutely extraordinary that when a contractor goes into administration when working on one of the largest regeneration contracts the Scottish Government has ever awarded, Mr Cameron sees no need for the SHR to satisfy itself that sound procurement procedures were followed. Mr Cameron told this Committee that the SHR only engaged with DGHP on this matter *"in response to the media coverage that ensued."*

Subsequent to the committee meeting it has come to my attention that senior staff at DGHP and at SHR previously worked at Communities Scotland before that agency was disbanded. Did they work closely together? Perhaps this is something an enquiry could examine. I know that the senior staff at Loreburn, towards whom the regulator took a heavy handed approach, did not have a background in Communities Scotland.

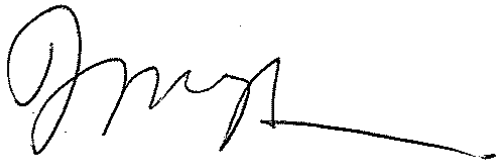
Mr Cameron/...

Mr Cameron also claims that the Scottish Government advised him that there has been no waste of public money on this project. I cannot see how this can be correct. I understand that there are inevitably additional costs when engaging another contractor to take on half finished building work. There also appear to have been changes to the tenure mix and phasing from the original project that R&D was to complete that must have had cost implications.

I have also been given examples of the SHR refusing to answer FOI requests, and statements that challenge Mr Cameron's assertions that regulation engagements follow a "transparent risk-assessment process" and that the SHR is not involved in "micromanagement". However, I feel that investigation of these claims would be better left to an inquiry.

If even some of the comments that have been made to me are accurate then the SHR will not be carrying out its functions in keeping with the five principles of better regulation set out by the Scottish Government – Proportionate, Consistent, Accountable, Transparent and Targeted. Given the conflicting evidence this Committee has now heard, only an inquiry can give parliament the confidence it requires in a very powerful regulator, which as we know, offers no formal appeal mechanism against its actions. It is the view of my constituents that an independent judicial inquiry is required. That is a matter for the Committee. However as the Committee is the only means by which the regulator can be regulated, I would appeal on behalf of my constituents for this matter to be considered with the utmost seriousness.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joan McAlpine', followed by a long horizontal line extending to the right.

Joan McAlpine
MSP for South of Scotland

Enc.

Cc:

All members of the Infrastructure & Capital Investment Committee