



INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

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5 February 2014

Dear Joan

Scottish Housing Regulator

Thank you for your letter of 26 January, raising further concerns in relation to aspects of the regulatory activities of the Scottish Housing Regulator (SHR) and, more specifically, issues relating to the Dumfries and Galloway Housing Partnership (DGHP) and the Loreburn Housing Association.

As you know, the Infrastructure and Capital Investment Committee has just concluded scrutiny of the operations of the SHR, based primarily around its Annual Report and Accounts 2013/14, but also looking at how the regulatory regime is working in practice. In this regard, it took formal evidence from the Scottish Federation of Housing Associations, the Glasgow and West of Scotland Forum of Housing Associations and the Association of Local Authority Housing Officers. It also met informally with representatives of individual housing associations and tenants' groups from across Scotland, including Loreburn Housing Association.

A wide range of issues were raised with the Committee in both oral and written evidence as well as in informal discussions. These included several concerns about the SHR's approach to regulation as well as suggestions for where improvements might be made. The Committee took the opportunity to discuss many of these with the SHR at its meeting on 14 January, which you attended. Following this work, the Committee has today written to the Regulator seeking further information on how it intends to take action on certain of these matters and seeking clarity on its role in relation to others. A copy of this letter is attached at **Annex A**.

The issues on which the SHR has been asked to provide further information include:

- the proportionality and transparency of its approach to regulation;

- its approach to improving communication and engagement;
- how it builds trust within the sector and promotes best practice;
- the introduction of an appeals process;
- notifiable events and the appointment of consultants by RSLs;
- SHR engagement with tenants and homeless people;
- Social Housing Charter annual returns;
- rate of compliance with Scottish Housing Quality Standards (SHQS);
- the role of the SHR in overseeing the financial governance of RSLs

The focus of your letter is, of course, on events involving DGHP and the Loreburn Housing Association. I would once again emphasise that it is not the Committee's role to get involved in or seek to influence individual cases in which the SHR is or has been engaged with an RSL in the exercise of its regulatory functions. Neither is it appropriate for it to become involved in those matters that are the responsibility of the management and boards of RSLs.

However, it is entirely appropriate for any concerns or perceived failings arising from individual cases in which the SHR has had regulatory or related engagement with an RSL to be taken into account by the Committee in scrutinising its role. By way of example, and with particular relevance to the issues raised by you in relation to DGHP, my letter to the SHR seeks further clarity on the extent of its role in the financial governance of RSLs, specifically seeking further information on whether it would seek any oversight or direct involvement in the contractual arrangements of individual housing associations.

In addition, given the concerns expressed in your letter that there are currently no means by which to challenge the decisions of the SHR, you will note that the Committee has strongly recommended that an appeals process should be developed and introduced at the earliest available opportunity.

Your letter also calls for the Committee to "instruct a full inquiry" into events at DGHP and Loreburn. You suggest in the final paragraph that your constituents consider that this should take the form of an "independent judicial inquiry". Given that the Committee does not become involved in individual cases, it would not be appropriate for it to call for such an inquiry.

As you may be aware, should tenants or tenants' representatives wish to make a complaint about an RSL, they can do so through the organisation's own complaints procedures. If they fail to get satisfaction from that process, it is open to them to take the matter to the Scottish Public Sector Ombudsman. Given the existence of these established complaints mechanisms, I would suggest that your constituents may wish to consider exploring these options should they wish to continue to pursue their concerns.

You may also wish to note that the SHR has no role in dealing with individual complaints about RSLs, although it does monitor and assess the performance of RSLs in handling complaints. The SHR has made clear in its letter of 19 January to the Committee that the extent of its role in the events involving DGHP was to ensure that the interests of its tenants were protected. It also states that it is satisfied that was the case and that it had no further regulatory role in this matter.

I note that you would envisage that any such inquiry would also examine the SHR's "approach and ability" to carry out its statutory functions. I would suggest that the recent work carried out by the Committee in taking evidence from the sector, raising issues of

concern with the SHR and requesting action and further information as a consequence of this work, goes some way towards fulfilling this objective. My letter to the SHR seeks responses to many of the issues which have emerged in evidence and in correspondence with the Committee. The Committee will await the response from the SHR and consider at that point whether any further action is required.

When you attended the Committee meeting on 14 January, you took the opportunity to raise specific concerns about events involving DGHP, Loreburn and the Fife Housing Association (FHA). As you know, the Regulator subsequently wrote to the Committee addressing the issues you raised in relation to DGHP. Following the meeting, the Committee agreed to write to both Loreburn and FHA, offering them the opportunity to provide any comments on the issues raised regarding their engagement with the SHR.

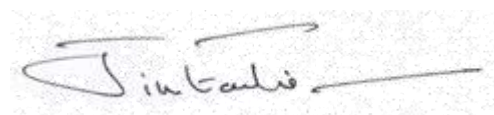
FHA subsequently indicated that it did not wish to submit any comments. However, you will wish to note that the Interim Chief Executive of Loreburn, Wendy McCracken, has responded to the Committee, stating that it had worked with the SHR to address sensitive governance issues, resulting in a satisfactory outcome for its tenants. Ms McCracken also advises the Committee that whilst there were costs associated with the regulatory intervention, these were lower than the figure quoted at the Committee meeting on 14 January. She also states that “the cost to tenants would have been much more had the Association been left without the assistance of the Regulator”. A copy of this letter is attached to the Committee’s letter to the SHR.

As I have explained in previous email correspondence, the Committee takes its role in holding the SHR to account in respect of its regulatory role very seriously. We look forward to its response to the letter I have issued today. The Committee will continue to monitor the process of regulation and the performance of the SHR, taking soundings and seeking input from the social housing sector in doing so. It will also seek improvements to the regulatory process wherever a requirement has been identified.

In holding the SHR to account, it is only right that the Committee challenges it on its performance where this is justified, but we must also ensure that it is allowed to carry out a genuinely independent and robust process of regulation in line with its statutory obligations to ensure that the interests of tenants are fully protected.

I hope this is helpful.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Jim Eadie', with a stylized flourish extending to the right.

**JIM EADIE MSP
CONVENER**



INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

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5 February 2015

Dear Mr Cameron

SCOTTISH HOUSING REGULATOR (SHR) ANNUAL REPORT AND ACCOUNTS 2013/14

Thank you for providing oral evidence to the Committee on 14 January regarding your annual report and accounts for 2013/14 and subsequent correspondence on 19 January. As you will be aware, your session followed oral evidence with organisations representing Registered Social Landlords (RSLs) and local authorities and engagement with tenant groups in the lead up to your evidence session.

The Committee agrees with the RSLs that effective and robust regulation is essential in assisting social landlords achieve good outcomes for tenants. There appears to be wide agreement that you should be able to carry out your duties independently whilst maintaining the trust of the sector.

The Committee noted that there had been some positive feedback on the work of the SHR, but given that some further issues had been raised by its stakeholders, it agreed it would welcome a response from you on how some of these issues could be addressed.

Proportionality

The Housing (Scotland) Act states that the SHR must carry out its functions in a way that is “proportionate, accountable and transparent.” The Committee heard from RSLs who felt that the SHR’s approach was not always proportionate or transparent and many did not believe that SHR was targeting action only where needed. For example, the Committee heard concerns that in some cases there was a tendency for the SHR to focus on small detail and therefore bigger issues with further consequences had been missed. You informed the Committee that the focus of your regulatory work is on key issues and major risks highlighted through your annual risk assessment. In order to demonstrate that the SHR was not involved in micromanagement, you also informed the Committee that the RSL is given the opportunity to address any issues identified itself.

The Committee would welcome your further comments on how the SHR intends to address the view held by some in the sector that there is a tendency for the SHR to be involved in micromanagement. It would also welcome an update on how you intend to address the perception that the SHR is not proportionate in its approach and therefore assure the sector that it is fulfilling its statutory requirements in its approach.

Communication and engagement

Another view raised was that the SHR's approach to communicating with RSLs, where an investigation was underway, was disproportionate to that of the quality of information provided in its newsletters and the website. Some RSLs stated that this approach often creates the sense that the assumption was that the RSL had done something wrong. For example, RSLs agreed that whistleblowing was a necessary function and for those who do, their anonymity should be protected. They did suggest, however, that it would be useful if there was some way they could be given a summary of allegations in a way that does not identify the complainer and this that would improve transparency.

Whilst many of the Housing Associations agreed that using an informal (i.e. not through statutory mechanisms) approach to engagement where an investigation had been instigated was beneficial, given that formal measures may trigger action by lenders. However, there had been some concerns raised in relation to the rules of engagement around informal communication, with suggestions that there could be a reluctance on the SHR's part to allow minutes of meetings and little or no feedback provided by the SHR on any changes made following an investigation. It was indicated that allowing some written records of meetings and providing feedback post-investigation could provide clarity on the transparency of SHR decision making.

You informed the Committee that when those organisations which have required assistance in the past reflect on the process post inquiry, they usually reassess your approach as being proportionate. You also raised that when undertaking an inquiry it is sometimes difficult to be as transparent as you would like, given there is a need to maintain confidentiality, in order to protect the interests of tenants and Housing Associations. You confirmed, however, that you are currently working with SFHA and GWSF to improve transparency and are producing guidelines which set out how you apply the policies set out in your regulatory framework in practice.

The Committee recognises the requirement for discretion in certain circumstances, due to confidentiality requirements, however there was a suggestion that greater transparency around correspondence and decision making where informal processes were being followed could go some way to allay RSLs' concerns regarding transparency and proportionality. Given that the SHR is expected under statutory requirements to carry out its functions in a transparent manner, the Committee would welcome your views on concerns raised by the sector and requests an update on how the draft guidelines, currently being drafted, will address such concerns and when these will be available.

Building trust within the sector and promoting best practice

Some housing associations indicated that there was an unwillingness to seek advice from the SHR on issues publicly or to air their discontent with SHR procedures without anonymity, indicating that there was a culture of mistrust between some RSLs and the SHR. You informed the Committee that you were working with the sector to

demonstrate your openness and approachability. However, you also agreed that there was some way to go and that due to your role as regulator, there may always be degree of tension in your relationship.

The Committee notes your comments regarding the natural tensions which may exist between a regulator and the regulated bodies, but it is concerned that a culture of mistrust could be developing within the sector. The Committee feels that it is imperative that the sector has trust in the regulatory process and confidence in its dealings with the SHR. It would therefore welcome further information on the steps the SHR will take to address this important issue and work to build trust within the sector and improve relationships.

Some RSLs raised concerns regarding the “Governance Matters” publications, which they felt had a negative tone that only focussed on negative examples and on the SHR itself, where they could be focussing on sharing examples of best practice. You informed the Committee that this was something you were working on as part of your engagement with the sector.

The Committee would also welcome an update on how you will address RSLs’ concerns regarding the tone and content of the “Governance Matters” publications and whether there is a role for these documents to also be used as a vehicle for promoting and sharing best practice within the sector.

Appeals Process

The Committee noted that there is currently no appeals process in place for SHR decisions. RSLs raised the view that a suitable appeals process could assist in improving the transparency and accountability of the regulatory framework. It was noted that the Regulatory Reform (Scotland) Act 2014 legislation might provide an opportunity to create an appeals process.

You informed the Committee that the SHR would welcome the introduction of an appeals process and that this was a matter you were looking into as part of your dialogue with the Scottish Government about the timeframe for implementing the strategic code of practice for regulators. The Scottish Government subsequently provided a letter outlining the process for implementing the code of practice and this is [available on the Committee’s website here](#). You confirmed that you would come back to the Committee once you had a plan for implementing an appropriate appeals process.

The Committee strongly supports the development of an appropriate appeals mechanism and considers that this should be developed and introduced at the earliest possible date. It would welcome an update on the progress of your discussions with the Scottish Government for implementing a strategic code and your plans for developing an appeals process.

Notifiable events and Appointing Consultants

Some RSLs raised issue with the SHR guidance on notifiable events, which currently encourages RSLs to undertake an options appraisal of its future, including whether it should merge with another RSL when a senior officer leaves the organisation. Some RSLs did not think this was necessary and that it could threaten the position of smaller RSLs, given that it would be expected that a well-run organisation would have sufficient plans in place to manage any issues arising from the staff member leaving. Furthermore, some RSLs stated that where formal investigation was required, RSLs felt pressured to appoint a Consultant identified by the SHR.

You confirmed that the “notifiable event” process only placed a requirement on an RSL to notify the SHR that a senior officer was leaving the organisation. Where the RSL had good succession planning in place, no further SHR engagement would be required. There was acknowledgment that the SHR was reviewing its guidance around notifiable events. In terms of appointing consultants, you confirmed that where a regulatory concern exists, you would provide the names of some consultants you were aware had the skills to carry out the work required. You also confirmed, however, you would also accept that the RSL could appoint a consultant of its own choosing if they could demonstrate they have the skills required to carry out the work and a proven track record. However, there was some acknowledgement that there may be a smaller pool within the Scottish sector.

The Committee notes that there may be some confusion around the guidance and the practical processes surrounding notifiable events, particularly where a senior officer leaves. It would be grateful if the SHR could clarify the process in its response and ensure that this is distributed amongst RSLs. Similarly, it may wish to clarify the process on the appointment of consultants and ensure that in both cases, the relevant guidance is accurate and up to date.

Engagement with tenants and homeless people

The Committee welcomes the intentions behind the National Panel of Tenant and Service Users which provides a way to engage with tenants through surveys, focus groups, telephone interviews and interactive web discussions. However, there was a perception amongst some RSLs that it was generally the same groups of tenants who engaged and that more could be done to reach the type of tenants that are harder to reach.

The Committee welcomed your assurance that you were looking at ways to engage beyond the tenant panel and that this was not a closed group, however you confirmed that this was still work in progress.

Given that your main responsibility is to protect the interests of tenants, the Committee would welcome an update on how you are trying to engage with harder to reach stakeholders and how you are trying to increase awareness of the work and services of the SHR amongst tenants, and particularly how they can engage with the regulatory process when required.

You confirmed that you were conscious that there had not been as much emphasis on engagement with homeless people, of which you have a statutory requirement to promote their interests. You confirmed that a thematic study had been undertaken to examine the quality of services provided to homeless people and those in temporary accommodation. You informed the Committee that there had been some positive movement and that Scottish Government, the Association of Local Authority Chief Housing Officers and the Convention of Scottish Local Authorities are developing guidance on the delivery of housing options and that this is still in progress.

The Committee welcomes the fact that the SHR and other key stakeholders have been proactive with respect to their responsibilities for promoting the interests of homeless people. However, it notes that this is still work in progress. The Committee looks forward to the introduction of the housing options guidance and in due course, welcome an update from the SHR on how it will support and monitor the performance of those RSLs involved in applying the guidance.

Social Housing Charter Annual returns

The Committee notes that the SHR published the first reports about each landlord's performance against the Social Housing Charter on its website in August 2014. Tenants it heard from were generally positive about the charter returns in allowing them to compare the performance of their landlord against others. It was noted however, that due to digital exclusion, many tenants would not be able to access the charter return comparative data on the SHR website.

The Committee would welcome further information on how the SHR work to ensure that all tenants are aware of the charter returns and how these might be made available to those without access to computers. It would also be helpful to have more information on how the SHR will use the information derived from the returns to help drive its regulatory work and promote and encourage best practice.

Scottish Housing Quality Standards (SHQS)

You informed the Committee that 20 RSLs had indicated that they were at risk of failing to meet SHQS, but had assurances from 11 of those that they have appropriate and deliverable plans in place to enable them to meet the SHQS fairly soon after 31 March 2015. You highlighted that where an RSL continues to fail to meet the standard, after the 2015 deadline, you would consider the use of statutory powers and enforcement notices to address non-compliance.

The Committee would welcome an update of figures on RSL performance against the SHQS and information on the number of cases where statutory powers or enforcement notices have been required.

You also informed that Committee that you would also provide details on the number of properties which have exemptions and abeyances from meeting the SHQS and the Committee welcomes this update.

Financial Governance

The Committee welcomed your assurance that most RSLs were well governed and financially healthy and there was an opportunity to share best practice in financial governance through the Governance Matters publications.

You are aware that issues relating to the insolvency of a contractor appointed by Dumfries and Galloway Housing Partnership (DGHP) have been raised with the Committee. You wrote to the Committee on restating your position that the SHR had received no complaints from tenants of the houses affected by the contractor insolvency, although it had engaged with a DGHP tenant who was not resident in one of these homes. You also confirmed that SHR's role in engaging with DGHP on this issue was to ensure that the interests of affected tenants were being safeguarded. You confirmed that the SHR was satisfied that this was the case. It was not, however, clear whether you use your experience of such situations to provide guidance to RSLs to seek to prevent other similar situations occurring in the future.

The Committee would welcome clarification of the SHR's role with respect to financial governance in general and in particular in situations where RSLs are facing difficulties. In addition, and given the issues which have been raised in relation to events involving DGHP, it would be helpful if further clarity could be

provided as to whether there are any circumstances in which the SHR would apply any oversight or direct involvement in the contractual arrangements of individual housing associations.

Appointment of contractors

The Committee discussed the policy in place to restrict RSLs from using contractors which had connections with board members. You confirmed that the main purpose of this policy was to ensure that board members could not benefit from a privileged position. The Committee notes that there are justifiable reasons for putting such a policy in place. However, it was highlighted that it could cause difficulties for RSLs in the Highlands and Islands and other rural areas, where there are smaller populations, less of a pool of available contractors and the likelihood that such connections would be significantly higher.

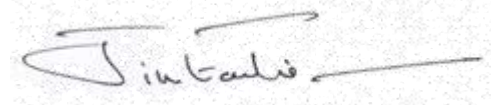
The Committee very much welcomed the indication you gave that, in such circumstances, a process for managing the situation was required, and that you were developing proposals for the “comply or explain principle” policy, in association with the Scottish Federation of Housing Associations, to address this issue. You offered to come back to the Committee with an update on the outcome of these proposals and it looks forward to receiving this in due course.

Other issues

Whilst it is not the Committee’s responsibility to get involved in individual circumstances, it noted concerns raised on the record about Loreburn and Fife Housing Association. The Committee therefore wrote to these housing associations to give them the right to reply. Fife Housing Association opted not to provide a response. A response from Loreburn Housing Association’s is attached at Annexe A for your information.

I would be grateful if you could respond to this letter by close on 5 March 2015, although it is acknowledged that some issues raised may require updates at a later stage due to ongoing work. Should you have any further questions, please contact the Clerks using the contact details provided above.

Kind Regards

A handwritten signature in blue ink, appearing to read 'Jim Eadie', with a horizontal line extending to the right.

Jim Eadie

Infrastructure and Capital Investment Committee Convener

25 January 2015

Dear Steve

SCOTTISH HOUSING REGULATOR ANNUAL REPORT AND ACCOUNTS 2013/14

I refer to your letter received via email on 15 January 2015 regarding the above.

Firstly can I say thank you for giving Loreburn the opportunity to respond to the comments made during the ICI Committee meeting on 14 January 2015. As Mr Cameron said in his response to Ms McAlpine, on several occasions, “talk to Loreburn directly” for an answer to her queries.

As alluded to by Ms McAlpine I can confirm that none of the comments raised by her at the meeting have originated from anyone currently associated with Loreburn.

The Board and Executive Management Team have worked closely and effectively with the Scottish Housing Regulator through what were particularly sensitive governance issues which, if had not been dealt with in this manner, could have ended up in a very negative future, if any, for Loreburn and its tenants.

As it stands now, Loreburn has worked through its governance issues to a point where there is minimal regulatory intervention and is now in a place to move forward with its strategic aims and objectives of delivering excellence to its tenants and other service users.

There has been a cost of intervention however the cost to tenants would have been much more had the Association been left without the assistance of the Regulator. The costs are not as Ms McAlpine put forward and, as a result of various linked pieces of work and investigations it is difficult to be precise on the actual costs attributable to the Regulator’s involvement. A substantial amount of the work carried out in conjunction with the governance action plan was work which would have been required to ensure that the governance reflected that of a well governed business, catching up on deficiencies that had been identified as lacking in the preceding years.

I would be happy to meet with representatives of the ICI Committee if requested to provide further information on the Regulator’s involvement with Loreburn if that would help them understand the positive relationship between the Association and the Regulator.

It may be of use for the ICI Committee to know that I attended the pre-meeting on 7 January where I expressed very much the same views as in this response.

Yours sincerely

Wendy McCracken
Interim Chief Executive