Ian Brennan – Social Housing Scottish Annual Conference –

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Today I want to look at some of the changes that have been introduced in our new regulatory framework.

But despite the changes there are some fundamentals that haven't changed.

Our objective hasn't changed.

This is set out in statute.

And so we will continue to safeguard the interests of tenants, people who are or may become homeless and the recipients of housing services provided by landlords.

And similarly our functions haven't changed.

These too are set out in statute.

So we will continue to monitor the performance of housing activities of all landlords and also the financial health and governance of Registered Social landlords.

You could perhaps sum things up by saying that **what** we do will not change.

But there will be changes in **how** we do it.

In the new framework we talk about the need for insight, self-awareness, openness and honesty and how landlords should seek to drive improvement.

If we were forced to reduce all of the guidance that we issue to the sector to a single sentence then that would probably be the sentence.

If a landlord is genuinely self-aware and analytical and open and honest about its performance and if it is looking to identify and drive improvement then it will be well managed and it will be well governed.

And well managed and well governed landlords will have no issues in meeting our standards.

I don't underestimate the difficulty in doing this.

These words are easy to say.

But not quite so easy to live up to.

You need to be constantly challenging yourself.

Where you think you are doing well you need to ask

"How could we do better?"

And where you are not doing quite so well you need ask

"How do we make sure that we comply with standards?"

Within the new Framework we have tried to build in some tools to help organisations to be self-aware and analytical.

And through that to drive improvement

The change that has prompted most discussion is the introduction of the Annual Assurance Statement.

It is now less than two months until Social Landlords have to submit their first statement.

The introduction of this requirement has been the catalyst for a lot of discussion amongst landlords, within landlords and also between landlords and ourselves.

This in itself is encouraging: it indicates that the new framework has highlighted the need for good governance, assurance and internal control within landlords.

We have effectively flipped a requirement that existed in the previous framework.

Previously landlords only had to tell us when they weren't compliant.

Instead governing bodies now need to assure themselves and then tell us that they are satisfied that they comply with standards and requirements.

So we are looking for positive assurance rather than an assumption of compliance unless a landlord tells us otherwise.

We believe that this will help landlords drive improvements where needed.

In our experience, we have found instances where landlords were not compliant and hadn't told us that this was the case.

These landlords did not have processes in place to self-assure.

And the governing bodies were not in many instances aware of the serious weaknesses within their organisations.

So in considering these matters explicitly we anticipate landlords will have a much improved chance of detecting any non-compliance themselves and thus avoid the need for regulatory action or even intervention.

And 31 October 2019.

How is that for a submission date?

When we set the date we obviously had no idea of the significance that this date would assume in relation to Brexit.

This is a fluid and fast moving situation.

But clearly in the context of Brexit, governing bodies will be keen to explore the resilience of their organisations and be assured that everything possible is being done to protect the interests of tenants and service users.

Within our Corporate Plan 2019-2022 which we published in April this year we stated that one of our priority areas for regulatory engagement would be tenant and resident safety.

We know that safety has always been a priority for well-run landlords.

But our recent engagements have highlighted a number of instances where landlords were not compliant with health and safety legislation and regulations.

So landlords must assure themselves thoroughly in this area and be able to evidence compliance.

We will consider each assurance statement within our overall 2020 risk assessment.

And following that risk assessment we will publish an Engagement Plan for each landlord and a regulatory status for every Registered Social Landlord.

A judgment based regulatory status is a major change in how we regulate

During the consultation someone told me that the regulation plans that we used to publish were like a story without an ending.

We told you about our activity as a regulator but we didn't tell you about our judgment as a regulator.

That will change from April 2020 when each RSL will have a regulatory status of

compliant, or

working towards compliance or

statutory action.

We are aware that an increasing number of RSLs are going directly to capital markets to raise funds.

And we had feedback along the lines that the lack of a clear judgment-based regulatory status was putting them at a competitive disadvantage.

An RSL that we had no concerns about would be classed as "low engagement"

Whereas an English Registered Provider where the Regulator had no concerns would be graded as V1 for viability and G1 for governance.

A number of lenders have said to us that this could potentially place the Scottish landlord at a competitive disadvantage as more distant investors might find it more difficult to understand the regulatory view

So we anticipate that the change to a judgment based regulatory status will help RSLs to raise the private finance that they need to meet the needs of tenants and service users both now and in the future.

Another key change in the new framework is an explicit requirement to keep rents affordable.

This is now part of Standard 3.

We know that many tenants are finding it harder to afford their rent.

That's a very clear message from our National Panel of Tenants and Service Users.

Last month we reported that over a third of Panel members have experienced difficulties in affording their rent.

More than two thirds are concerned about the future affordability of their rent.

They're worried about rent increases by landlords and future changes to income, particularly through changes in benefits.

Every year we analyse landlords' data from their annual returns on the Social Housing Charter.

That analysis shows that the average rent increase in 2018/19 was 3.7%, up on the previous year's level of 2.4%, and the highest level since current monitoring began in 2013.

Eighty per cent of landlords increased rent in 2018/19 at a rate above the Consumer Price Index.

And more than eighty per cent of landlords plan rent rises above inflation in the coming year.

The average planned rent increase for 2019 is 3.0%.

Only four landlords plan to keep rents at the same level and none plan to cut rents.

So we will be looking closely at how Landlords plan to comply with the new Regulatory Standard 3 as part of our 2019 risk assessment

Some other changes to mention

We now publish an Engagement Plan for every landlord.

Previously we only published a regulation plan where we identified an issue in the course of the risk assessment.

We have also introduced mandatory internal audit.

RSLs will want to think carefully about how they use their internal audit functions to provide independent assurance that they are meeting standards.

There's a new regulatory standard: number 7.

Now that the consents regime has gone the new standard sets out explicitly that RSLs need to ensure that any organisational changes or disposals safeguard the interests of and benefit current and future tenants.

We require RSLs to challenge themselves around each of the standards.

So they should be asking questions like these:

Where is the evidence that the RSL is well led?

How do we demonstrate openness and accountability?

How do we get assurance that the business plan is financially sustainable?

Are we basing our decisions on good quality information and advice? Where is the evidence for that?

How do we demonstrate our honesty and integrity?

Do we regularly check that that the Management Team and the Governing Body has the necessary skills and knowledge?

How do we address any gaps that we find?

And, in looking at disposals and organisational changes, how do we satisfy ourselves that these are in the interests of current and future tenants?

Most RSLs take care to try to get things right

But inevitably there will be times when things do go wrong.

And those are the times when we may have to use our powers of statutory intervention to protect the interests of tenants and service users

Last year we published a report which looked at our experience of interventions to date.

Since 2014 we have used our intervention powers on 12 separate occasions.

We have appointed 12 statutory managers and made around 55 statutory appointments to governing bodies

Each intervention is unique but there are certain common characteristics that apply in most cases.

In most interventions we have found issues around:

- Governing body members not always understanding their role
- Failure to challenge senior officers
- Governing body members in post for more than 9 years and a failure to assess continuing effectiveness
- Disregard of feedback and whistle blowing
- No internal audit function or an ineffective internal audit function

We have never used our powers of intervention in an organisation and then later found that it had been unnecessary.

In a typical intervention we are concerned about A, B and C when we intervene

And then when we intervene we discover additional concerns about X, Y and Z

Occasionally when we raise concerns around compliance with RSLs we are told that it would be a disaster were we to use our powers of intervention.

This is usually because of the impact that this would have on the RSLs finances as statutory intervention would represent a breach of the loan agreement and that would add costs to tenants.

And because our statutory objective is to protect tenants then we cannot possibly intervene.

There are a number of reasons why we don't accept that line of reasoning.

Firstly the actions of the RSL that lead to the intervention may themselves represent a loan agreement breach.

And secondly, if we were to accept that onerous penalties for an RSL as a result of intervention are a reason for not intervening then we would be creating a perverse incentive.

Given the serious implications of regulatory intervention for individual RSLs, we require governing bodies to take all appropriate action to avoid such intervention.

If statutory intervention is one of the worst things that can happen to an RSL then the Governing Body should ensure that it is doing everything possible to ensure that it doesn't happen.

And the most appropriate mitigating action in relation to this risk is to demonstrate a commitment across the organisation to a positive and constructive relationship with the Regulator.

The consultation process that preceded the new framework was highly participative and we are very grateful for all of the help and support that we got from regulated bodies.

The new toolkit that has been published on the SFHA website is a tangible output from the joint working between the regulator and the regulated.

We are looking forward to putting the new framework into effect and continuing to work with landlords for the benefit of tenants and service users.