

## **SCOTTISH HOUSING REGULATOR DISCUSSION PAPER: REGULATION OF SOCIAL HOUSING**

### **SUBMISSION FROM THE SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS (SFHA)**

**AUGUST 2023**

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#### **1. Introduction**

- 1.1 SFHA is the membership body for, and collective voice of, housing associations and co-operatives in Scotland. We exist to represent, support and connect our members. Our purpose has never been as important as it will be over the coming years, as we work together following the coronavirus pandemic and ongoing cost of living crisis.
- 1.2 The SFHA has 137 members across Scotland and our members vary greatly in terms of size, geography and services delivered.
- 1.3 In these unprecedented times, our vision is that our members are central to Scotland's social and economic recovery and renewal. It is everyone's right to live in a safe, warm and affordable home, in a thriving community. Our members are uniquely positioned as community anchors across Scotland, supporting people and their communities.
- 1.4 Our mission is to sustain and strengthen the impact our members have on people and communities across Scotland.
- 1.5 SFHA welcomes the opportunity to comment on the SHR's discussion paper on the Regulatory Framework. SFHA recognises the crucial role that regulation plays within the sector, providing vital assurances to tenants, service users and lenders.
- 1.6 SFHA has discussed the paper with its membership, including valuable feedback from our Governance Forum and Building Safety and Maintenance Forum. Our response reflects the views expressed by our members.
- 1.7 At the beginning of 2023, SFHA commissioned Altair to conduct a research project looking at the Regulatory Framework in practice<sup>1</sup>. The project concluded in June 2023, with the findings presented to the SHR and SFHA

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<sup>1</sup> Altair (June 2023) [The Regulatory Framework in practice](#)

members. Our response will also refer to recommendations within the Altair research, which are included in full at Appendix A.

## Executive summary

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### 2. Key asks

- 2.1 SFHA members have highlighted the need for a period of calm and stability, so the minimal changes suggested thus far within the discussion paper are welcomed.
- 2.2 SFHA's main ask is that – as part of the ongoing review of the Regulatory Framework - the SHR consider and respond to the 20 recommendations within the Altair research report *the Regulatory Framework in Practice* commissioned by SFHA. These predominantly refer to consistency of approach, approachability and communication and are included in full at Appendix A.
- 2.3 Table 1 provides an overview of SFHA's key asks for each of the ten questions within the discussion paper.

Question	Subject	SFHA Key Asks
1	SHR priorities	<p>The SHR:</p> <ul style="list-style-type: none"> <li>• acknowledge within the framework the cost inherent in achieving the priorities listed, and to reassure the sector that it recognises the impact that this has on RSL rent</li> <li>• acknowledges the need for a period of calm and stability within the priorities/framework</li> <li>• provide more clarity on the status of equality and human rights and governance and financial management (which are mentioned but not listed as priorities)</li> <li>• provide more clarity in the wording of the homelessness outcome, particularly acknowledging the difference in RSL and local authority roles</li> <li>• add a further priority (for the SHR) regarding its commitment to listening to the sector</li> </ul>
2	Annual Assurance Statement	<p>SFHA asks that:</p> <ul style="list-style-type: none"> <li>• any amendments to the AAS requirement each year be minimal to ensure consistency and that the statement does not become less meaningful by being too detailed</li> </ul>

Question	Subject	SFHA Key Asks
		<ul style="list-style-type: none"> <li>any additional points for inclusion in the AAS be communicated to RSLs earlier in the year</li> </ul>
3	Annual Return on the Charter	<p>SFHA asks for:</p> <ul style="list-style-type: none"> <li>clarity on what each of the ARC indicators are being collected for and how they will be used by the SHR</li> <li>technical improvements within the landlord portal to make submitting ARC more user friendly</li> <li>consideration of how the “right first time” indicator might be made more effective</li> <li>potential further flexibility in how tenant satisfaction is measured</li> </ul>
4	Annual Return on the Charter	<p>SFHA asks that:</p> <ul style="list-style-type: none"> <li>any amendments to the ARC requirements have a significant lead in time and clear, consistent accompanying guidance</li> </ul>
5	Damp and Mould	<p>SFHA asks that:</p> <ul style="list-style-type: none"> <li>the SHR consider if the existing mechanisms and requirements already provide it with the assurance necessary in terms of landlords’ approach</li> <li>any additional requirement acknowledges the difference between the various different types of damp and the necessary response to each</li> <li>any additional requirement be subject to sector consultation with a significant lead in time for implementation</li> <li>the SHR provide a steer on what additional information it may need from landlords in this area and how this might work in practice</li> </ul>
6	Listening and responding to tenants & service users	<p>SFHA asks that:</p> <ul style="list-style-type: none"> <li>there is more detail on the drivers behind this suggested amendment</li> <li>the current section and requirements be retained</li> </ul>
7	Notifiable events	<p>SFHA asks that the review of the SHR notifiable events guidance include:</p> <ul style="list-style-type: none"> <li>ensuring consistency of approach when the SHR receives a notifiable event</li> </ul>

Question	Subject	SFHA Key Asks
		<ul style="list-style-type: none"> <li>• consideration of proportionality in what is required to be reported</li> <li>• clarity on what must be notified and how this will be dealt with once reported</li> </ul>
8	Regulatory status	SFHA asks that: <ul style="list-style-type: none"> <li>• in order to avoid confusing stakeholders, no additional regulatory status be added</li> </ul>
9	Significant performance failures	SFHA suggests that: <ul style="list-style-type: none"> <li>• the SHR explore methods to more clearly integrate the SPF process with the SPSO complaints process to prevent confusion amongst tenants and service users</li> <li>• the SHR consider if groups of tenants should be able to submit an SPF</li> </ul>
10	Anything else	SFHA asks that the SHR respond to each of the 20 recommendations in the Altair research report <i>“the Regulatory Framework in practice.”</i>

## Response

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### 3. SHR priorities (question 1)

- 2.1 The paper lists four SHR priorities and asks for views on each. The suggested priorities state that landlords should be:
- listening and responding effectively to tenants and service users
  - providing good quality and safe homes
  - keeping homes as affordable as possible
  - doing all they can to reduce the number of people who are experiencing homelessness
- 2.2 The paper also highlights that the SHR will continue its focus on equality and human rights in all landlords, alongside governance and financial management in RSLs – although these are not listed as priorities. If these are to be priorities, SFHA requests more clarity on the status of these areas – i.e. should they also be listed as priorities?
- 2.3 The four priorities are not listed in any order, as they are highlighted as of equal importance. However, it is important to note that many of them compete with each other – e.g. keeping homes affordable whilst also providing good quality safe homes. It would be helpful to acknowledge within the framework the cost inherent in achieving the priorities listed, and for the

SHR to reassure the sector that it recognises the impact that this has on RSL rent.

- 2.4 It would be helpful if the homelessness priority stated that there is a split between the role of the local authority and the role of the RSL. The language in this priority could also be made clearer - particularly “doing all they can,” as it is not clear what this means in practice.
- 2.5 The paper helpfully acknowledges the need for a period of calm and stability within the sector. It would be helpful if this was also reflected in some way within the Regulatory Framework and priorities.
- 2.6 In recent years, the SHR has made efforts to enhance communication with the sector and offer means for further dialogue – e.g. its landlord forums. SFHA would suggest a further priority be added to reflect this, to highlight the SHR’s commitment to listening to the sector.

### **3. Annual Assurance Statements (AAS) (question 2)**

- 3.1 The paper suggests amendment of the statutory guidance on the annual assurance statements to allow the SHR to identify specific areas or issues on which assurance should be explicitly set out in a landlord AAS. In recent years the SHR has asked for explicit statements in the AAS re equalities and EICRs, but this would formalise the SHR's ability to ask for specific inclusions in the AAS.
- 3.2 The timing of when the SHR might issue further guidance on what additional factors the annual assurance statement might need to contain is a potential issue. Organisations often developed their AAS well in advance of when the SHR has issued such further guidance on its expectations in recent years (circa June). SFHA asks that any additional requirements be made clear earlier in the year.
- 3.3 This is consistent with the Altair research commissioned by SFHA to look at the Regulatory Framework in practice. Recommendation 19 states: “*Ensure the timing of amendments to guidance provides enough time for RSLs to take these on board ahead of regulatory submissions.*”
- 3.4 It could be problematic to have no certainty each year as to what the AAS would need to contain, making the process of gathering evidence and developing the statement more challenging. This further emphasises the need for any additional requirements to be made clear as early as possible.
- 3.5 One of the main concerns expressed by SFHA members was that if too much was added to the assurance statement it could become a massive document and less meaningful. SFHA asks that the SHR does not add large amounts to the statement each year and is clear that they will remain concise.
- 3.6 It is also crucial that any additional requirements within the statement are meaningful. Additional information should not be sought every year unless

there is a significant reason for doing so. It would be helpful if this was reflected in the framework/guidance.

- 3.7 There may be merit in more closely aligning the AAS with RSL engagement plans. This would allow for any necessary improvements noted in the engagement plan to then be referred to within that landlord's next AAS.

#### **4. Annual Return on the Charter (questions 3 & 4)**

- 4.1 Questions 3 and 4 within the paper both relate to the Annual Return on the Charter. Firstly, the paper asks if there is anything that should be amended within the existing ARC.
- 4.2 SFHA received few comments regarding amending the existing indicators. Some members highlighted that the "right first time" indicator for repairs is problematic to record and that this is an indicator that could perhaps be revisited to find a more meaningful and consistent way of measuring.
- 4.3 Some members also highlighted that further flexibility around how tenant satisfaction is measured would be helpful, in particular being able to use ongoing methods of data collection instead of a large survey every three years.
- 4.4 More generally, members expressed a view that with some ARC indicators it is not always clear why the information is collected and what is being done with the information once collected. This is consistent with recommendation 14 within the Altair research that states: "*Provide further clarity on how the data collected by RSLs as part of statutory submissions is used by the SHR.*"
- 4.5 Members highlighted some technical issues they were encountering with the SHR portal, such as how it deals with stock data. Some members have found problems with how this does not validate with the ARC data on the portal. This is consistent with recommendation 17 in the Altair report which states: "*Improve the technology that enables RSLs to submit information.*"
- 4.6 Question 4 in the paper asks if adding electrical, water, fire, asbestos and lift safety would be suitable additions to the ARC.
- 4.7 In general, members were supportive of these additions, however it is crucial that it is clear exactly what information is being requested and an adequate lead in time is given to ensure members are in a position to provide the information in the format required. The technical guidance accompanying any new requirements will be very important.
- 4.8 Recent issues around how EICR failures are recorded were highlighted by many members as an example of when the requirements were changed close to submission time, causing much confusion in the sector. This further demonstrates that any amendments to the ARC requirements need a significant lead in time and clear, consistent accompanying guidance.

4.9 The paper highlights at point 25 the need to bring forward revised indicators for EESSH in the coming months to reflect the outcomes of the Scottish Government's EESSH2 review group once concluded. As with any new indicators, it is important that these are developed in consultation with the sector with significant implementation time provided once finalised.

## 5. Damp and mould (question 5)

- 5.1 The paper asks for suggestions on the most appropriate way for the SHR to monitor the effectiveness of landlords' approach to managing reports and instances of damp and mould. It is important to note that there are already a number of requirements (either directly or related) to this area that landlords must meet, so firstly it needs to be determined if the existing mechanisms already provide the SHR the assurance necessary in terms of landlords' approach.
- 5.2 SFHA, in partnership with CIH and ALACHO and input from the SHR, recently published two pieces of guidance related to damp and mould, as part of its Putting Safety First series. The first piece of guidance was a briefing note on damp and mould for social housing practitioners<sup>2</sup>; with the second focusing on governing body member assurance.<sup>3</sup>
- 5.3 Within the Scottish Housing Quality Standards (SHQS) set by Scottish Government, all RSL properties must meet the tolerable standard detailed in the Housing (Scotland) Act 1987. Rising damp and penetrating damp are already included as part of the tolerable standard, as it states that properties must be "*substantially free from rising damp and penetrating damp*" in order to meet the standard.
- 5.4 Within the Annual Return on the Charter, RSLs already have to report their average time to complete emergency/non-emergency repairs and will also set their own targets for different types of repair. Generally, emergency repairs include anything dangerous and immediately a threat to health. These are typically responded to in around 4 hours.
- 5.5 The Right to Repair also already sets timescales for landlords to meet certain types of small/urgent repairs, e.g. leaking pipes and broken fans which could potentially be contributors to damp and mould.
- 5.6 It is challenging to monitor every reported case of damp (and the landlords' action to address) because there are different types that require different responses. As noted at 5.3, rising and penetrating damp are part of the tolerable standard and must be addressed by landlords as a matter of urgency. Condensation damp however is not always something that the landlord is in a position to directly repair or resolve, and its response may instead involve providing advice and support to the tenant. It is crucial that

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<sup>2</sup> SFHA, CIH, ALACHO and SHR (Feb 2023) [Putting safety first: a briefing note on damp and mould for social housing practitioners](#)

<sup>3</sup> SFHA, CIH and ALACHO (May 2023) [Putting safety first: governing body member assurance](#)

any additional mechanism used to monitor landlords' response to reports of damp and mould recognises this difference.

- 5.7 As highlighted elsewhere in this response, any new indicator would require significant lead in time for implementation. Some RSLs are already monitoring their responses to reports of damp and mould, but each will have a different method of doing so. Depending on the nature of the data collection required, existing RSL computer systems may have to be significantly updated in order to do so effectively and consistently.
- 5.8 This is consistent with the Altair research commissioned by SFHA to look at the Regulatory Framework in practice. Recommendation 19 states: *“Ensure the timing of amendments to guidance provides enough time for RSLs to take these on board ahead of regulatory submissions.”*
- 5.9 In order to fully comment, it would be helpful for the SHR to provide a steer on what additional information it may need from landlords in this area and how this might work in practice.

## **6. Listening and responding to tenants and service users (question 6)**

- 6.1 The paper asks for views on whether the SHR should amend the section in the Regulatory Framework currently entitled "Tenant and Service User Redress" to include a focus on providing tenants, residents and service users with easy and safe ways to provide feedback and raise concerns.
- 6.2 RSLs provide tenants with numerous methods to provide feedback, and there are a number of existing requirements including:
- Regulatory Standard 2, which states: *“The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.”*
  - Complaints policies and procedures (as per the SPSO's requirements)
  - Whistleblowing procedures/policies
  - Websites provide opportunities for feedback, with many RSLs adopting a “you said, we did” approach to demonstrate how tenants influence their services
- 6.3 SFHA would be concerned that any amendment to this section in the framework would potentially contradict or compromise the existing SPSO requirements, or require further amendment to regulatory standard 2 to include additional requirements.
- 6.4 The most recent National Report on the Scottish Social Housing Charter (21/22) shows that RSL tenant satisfaction in this area is high – with 92% satisfied with how their landlord keeps them informed and 88% satisfied with opportunities to participate offered by their landlord.

- 6.4 As tenant satisfaction is high in this area, and as RSLs are already subject to a number of requirements and actively demonstrating a commitment to tenant feedback through several different mechanisms, SFHA asks for more detail on the drivers behind this suggested amendment. We would suggest that the current section and requirements be retained.

## **7. Notifiable events (question 7)**

- 7.1 The paper proposes reviewing the existing SHR Notifiable Events statutory guidance – asking about ways to streamline the approach to ensure only the most critical issues are highlighted to the SHR.
- 7.2 This is consistent with Recommendation 10 within the Altair research report commissioned by SFHA. It states:
- “Consider reviewing notifiable events guidance to provide further clarity on what constitutes a notifiable event, and how this will be dealt with by the SHR once reported (to ensure consistency).”*
- 7.3 Members noted to SFHA some inconsistency of approach in how notifiable events are dealt with once reported. It is important that the guidance makes it clear how a notifiable event will be dealt with once it is reported to the SHR.
- 7.4 Proportionality of approach is also crucial. For example, the way the guidance is currently phrased implies that any scam e-mail received should be reported; or all press coverage (good or bad) should be reported to the SHR – when this is not the case.
- 7.5 A useful definition as to what should be reported to the SHR could be: “what is day to day business vs what is a risk?”

## **8. Regulatory status (question 8)**

- 8.1 The SHR currently articulates the regulatory status of RSLs as one of four categories: compliant, compliant (under review), working towards compliance or statutory intervention. The paper seeks views on creating a further regulatory status between compliant and working towards compliance. The wording "compliant with improvements needed" is suggested by the paper.
- 8.2 On balance, SFHA would suggest that the addition of a further regulatory status would have the opposite effect intended. This would be likely to confuse tenants, service users and lenders, as it would be challenging to explain the difference in the new categories – especially between “working towards compliance” and “complaint with improvements needed”, which appear very similar.
- 8.3 SFHA asks that the current terminology around regulatory status be retained.

## **9. Significant performance failures (question 9)**

- 9.1 Tenants can report certain issues to the SHR directly as significant performance failures (SPFs). The SHR does not receive many reports of SPFs and when it investigates those that are reported, in most cases these have turned out not to fit within the SHR's definition of an SPF. The paper seeks views on whether there should be any changes to how an SPF is defined or the approach in general.
- 9.2 Whilst our members did not have any strong views about amending the definition of "significant performance failure", the confusing nature of having more than one path for tenants to escalate complaints and the cross over with the SPSO was highlighted as an issue. SFHA suggests that the SHR explore methods to more clearly integrate the SPF process with the SPSO complaints process to prevent confusion amongst tenants and service users.
- 9.3 The issues that would be classified as a "SPF" generally have to impact on a group of tenants, yet the SPF process offers no mechanism for groups of tenants to raise them (only individuals). This is perhaps an element that the SHR may wish to explore further – and this would create a clear distinction between the SPF process and SPSO complaints process.

## **10. Any other suggested changes (question 10)**

- 10.1 The paper concludes by asking if there are any other suggested changes to the regulatory framework that RSLs might wish to highlight.
- 10.2 A recurring comment was that members would like a period of stability with as little change to the framework as possible. Recommendations 1-4 in the Altair report are consistent with this, suggesting four areas that the SHR should continue, i.e.:
- Maintaining the current principles and structure of the regulatory framework
  - Publishing similar amounts of information already available to RSLs through the SHR website
  - Maintaining its approach to statutory interventions as outlined on the SHR website
  - Being transparent in publishing case studies on statutory interventions, lessons learned from interventions and information on how RSLs can ensure compliance with the regulatory framework.
- 10.3 SFHA asks that – as part of the review of the regulatory framework - the SHR consider and respond to each of the 20 recommendations included in the Altair research report commissioned by SFHA. These are included in full at Appendix A and explained in more depth within the Altair report shared with the SHR. They cover the following topics:
- Recommendations 5 and 6 concern approachability

- Recommendations 7 and 8 concern the SHR’s newly established landlord working groups
- Recommendations 9 and 15 concern communication
- Recommendation 10 concerns notifiable events (as highlighted in Section 7 above)
- Recommendations 11, 12 and 13 relate to regulation managers and the important relationship they have with RSLs as their main SHR contact
- Recommendations 14, 16 and 17 concern data collection and information
- Recommendations 18, 19 and 20 concern SHR guidance

## **Appendix A – Recommendations from Altair research report**

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No.	Recommendation
The SHR should continue to:	
1.	Maintain the current principles and structure of the regulatory framework.
2.	Publish similar amounts of information already available to RSLs through its website.
3.	Maintain its approach to statutory interventions that is outlined in current the regulatory framework.
4.	Be transparent in publishing case studies on statutory interventions, lessons learned from interventions and information on how RSLs can ensure compliance with the regulatory framework.
The SHR should start to:	
5.	Explore methods to address concerns over their approachability – including the potential of a more clearly defined co-regulatory approach.
6.	Offer more feedback opportunities for RSLs on the regulatory framework and its regulatory approach.
7.	Publish feedback from its landlord working groups in a timely and transparent manner.
8.	Make clear the process and regularity of how membership of its landlord working groups will be rotated to ensure all RSLs have the opportunity to be involved.
9.	Assess its approach to communicating with RSLs, ensuring communication is clear, concise and consistent.
10.	Consider reviewing notifiable events guidance to provide further clarity on what constitutes a notifiable event, and how this will be dealt with by the SHR once reported (to ensure consistency).

No.	Recommendation
11.	Provide regular opportunities for RSLs to give feedback on their regulation managers.
12.	Clearly define parameters of the role for regulation managers and look at methods of ensuring consistency of approach.
13.	Ensure that there are additional support routes available for RSLs from the SHR if they feel they are not receiving appropriate support.
14.	Provide further clarity on how the data collected by RSLs as part of statutory submissions is used by the SHR.
15.	Consider how information is shared with RSLs to ensure that they are utilising available SHR resources effectively.
16.	Consider reduced submission requirements for smaller RSLs, as is the case in other social housing regulators in the UK.
17.	Improve the technology that enables RSLs to submit information.
18.	<p>Provide further clarity on:</p> <ul style="list-style-type: none"> <li>• The implications of not following each guidance type within the framework</li> <li>• The purpose of each guidance type</li> <li>• The purpose of any amendments made to guidance sets</li> <li>• The changing terminology on each guidance type</li> </ul>
19.	Ensure the timing of amendments to guidance provides enough time for RSLs to take these on board ahead of regulatory submissions.
20.	Consider how the guidance issued by the SHR reflects the role and approach of regulation of social housing in Scotland.