

Scottish Housing Regulator: Discussion paper on Regulatory Framework review and regulatory priorities

Date: 10 August 2023

Sent to: regulatoryframeworkreview@shr.gov.scot

UK Finance is the collective voice for the banking and finance industry.

Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation. In addition to representing residential mortgage lenders for home purchase and buy-to-let, UK Finance members also lend to support the social housing/ RSL sectors across the UK including in Scotland.

We welcome the opportunity to respond to the [discussion paper](#) from the Scottish Housing Regulator on its regulatory framework review and regulatory priorities.

Overarching comments

The regulatory framework has worked well since implementation of the current iteration in 2019.

Lenders and investors can take confidence and assurance from the role of the Scottish Housing Regulator in relation to governance strength and financial health.

The independence of the Regulator should be maintained. The Regulator should be sufficiently resourced to continue to demonstrate robust regulation and have the powers necessary to intervene when required to protect tenants, stakeholders, and the reputation of the sector.

Responses to the discussion paper questions

1. We believe that our regulatory priorities 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

We are keen to hear your feedback on these priorities. Are they the right ones?

In addition to the priorities listed, the regulatory focus on RSL governance and financial health should be made explicit as a high priority and should include reference to ensuring RSLs retain long-term financial viability, robustness and ability to respond to challenges.

Beyond this, the priorities highlighted are relevant and appropriate to today's market and in keeping with the core objectives of the current regulatory framework. We support the move to view tenants as consumers, with greater emphasis on good

outcomes for tenants. We agree there should be a sharp focus on the quality of the homes as well as the service provided to tenants, keeping health and safety (including issues such as fire safety, damp and mould) as top priorities, informed by accurate stock condition data.

Further, given the Scottish Government's focus on energy efficiency, decarbonisation and achieving net-zero targets, the SHR should consider including specific reference to energy efficiency and future-proofing homes for climate change as part of "providing good quality and safe homes". In this regard, consideration should be given to a specific objective for the Regulator to track RSL sustainability/ decarbonisation plans on the routemap to net-zero.

2. What are your views on amending the Statutory Guidance on Annual Assurance Statements to include provisions on specific assurance?

Provisions on specific assurance would be helpful provided there is consistency from all RSLs on core critical governance and financial viability aspects. Where additional specific assurances are required, this should be stated transparently along with the rationale for why any additional assurances are required.

The economic backdrop to the current operating environment for RSLs is highly challenging.

The Regulator should ensure that sufficient assurance is provided by each housing association's Board in the annual Assurance Statements around effective governance to understand, make informed decisions and plan for the current economic environment as well as ensuring the continued viability of the organisation.

Specific assurances should be more bespoke and tailored to critical issues of the day.

3. Do you think that we need to change any of the indicators in the ARC or add to these?

It would be useful and timely to update ARC indicators particularly in relation to sustainability/ decarbonisation – for instance amount of stock at each EPC rating or average EPC ratings, how much is built into the business plan cover NZC and how it has been derived (forecast/ actual decarbonisation expenditure) as well as information on any sustainability reporting standards being adopted.

Specifically, these changes could be considered:

- Expand indicator C9 to have a specific indicator related to energy efficiency of the property
- Consider an indicator relating to whether the tenant feels their voice/ views have been considered by their RSL
- An indicator on arrears by tenant payment mechanism (i.e. self-pay, benefits, etc) to understand provenance of certain RSLs' arrears and wider trends for certain groups of tenants

4. Are the proposed areas of focus for tenant and resident safety indicators the right ones, and what should those indicators be?

We agree it is right that there should be a sharp focus on damp/ mould issues as well as on fire, asbestos, electrical, water, and lift safety. We suggest relevant technical experts should guide on specific indicators.

It would be helpful for there to be transparency on the volume and materiality of any health & safety cases (particularly around fire safety or damp & mould) to ensure that individual RSLs have a good grasp of any early warning indicators around these issues.

It would be useful to clarify whether the focus on water safety includes flood risk. If not, we suggest this be included perhaps as part of a wider indicator on climate change risk which could overarch sustainability/ decarbonisation. We also suggest consideration of potential risk arising from overheating of homes in the context of climate change. This could also include issues relating to sufficient ventilation/ cooling (passive or active).

5. What do you think would be the most effective and appropriate way to monitor the effectiveness of landlords' approach to managing reports and instances of mould and dampness?

Effective management of damp and mould requires a combination of prevention and mitigation actions together with awareness raising and education for residents on causes and steps to prevent mould and damp developing (where these could be influenced by or are within residents' control). This could be addressed within a value-for-money context as, over the long term, the cost of dealing with damp and mould would likely be reduced through fewer incidences. RSLs could be measured on the level of tenant engagement and education provided.

We suggest there should be monitoring of time taken between reporting of damp and mould and when remediation works take place, to monitor proactiveness as well as tenant satisfaction.

We also suggest there should be a fully transparent risk register on volume of damp and mould cases, seriousness of the material cases, aged profile and timing/ cost to remedy. All of this, informed by good quality stock condition data updated and analysed on a regular cycle, would better support monitoring of landlord approaches in this area. Essentially, the process should be transparent from end-to-end from initial report to resolution.

Alternatively, self-regulation could be appropriate providing there is sufficient oversight by the governing body perhaps with specific inclusion in the Annual Assurance Statement.

6. What are your views on strengthening the Framework further on landlords listening to tenants and service users?

We support strengthening the framework in this area so that landlords can show and evidence what they are doing. Funders report that, from their experiences, most RSLs engage with their customers but have varying approaches to capturing what they do.

Strengthening the framework in this area would also support alignment with the focus on consumer regulation south of the border.

7. How do you think we could streamline the requirements for landlords in the Notifiable Events statutory guidance?

We suggest assigning an importance level to different events and only focusing on the most relevant events. This should enable RSLs to focus resources on key events that should be disclosed rather than those that are less material.

A factor of materiality should be introduced to ensure that external stakeholders can better understand relatively minor notifiable events that will have no long-lasting or material impact on the governance and financial viability of an organisation, as opposed to more serious notifiable events that are likely to have significant and enduring consequences.

We suggest that, currently, the bar is set too low and notifiable events should be narrowed to critical aspects around risk, governance and financial health.

8. Do you think there is value in using more direct language in the working towards compliance status, or in introducing an intermediary regulatory status between compliant and working towards compliance?

Yes, this would be helpful, so funders/ investors can differentiate RSL performance/ strength more clearly. It would be helpful to have more clearly defined parameters around what is compliant and what is not compliant. This would help provide more transparency and consistency.

The regulatory status indicators enable funders to triangulate their own views and due diligence on an RSL.

To that extent, it is essential that gradings are clear, unambiguous and easily understood/ interpreted by funders including new funders/ investors who might be less familiar with the sector in Scotland.

Our view is that the regulatory statuses/ gradings provided in Scotland should broadly align with those provided under the RSH regime which are well understood by funders in this more sizeable market.

In our view, the current “working towards compliance” status is ambiguous as it is not readily clear without also reading/ understanding the Engagement Plan as to the extent to which the RSL is non-compliant and how much progress is needed to achieve compliance.

Our strong suggestion, therefore, is that there should be a matrix of 4 gradings, with 2 compliant and 2 non-compliant with the third grading describing an RSL which is broadly compliant but with some improvements needed to achieve compliance, effectively non-compliant but working towards compliance; and the fourth grading being unequivocally non-compliant with intervention/ exercise of statutory powers required.

It might also be helpful to consider the potential for read across to sustainability/ decarbonisation assessment, to better track this against known Scottish Government legislative targets.

9. Are there any changes we should make to the Significant Performance Failures approach, including how we define these?

It would be helpful to quantify/ provide clearer examples of severity of failures and clarify if failure was systemic, isolated, inadvertent or careless.

10. Are there any other changes to the Regulatory Framework and associated guidance that you would suggest?

No other changes at this time beyond those highlighted in our response above.

Contact

If you have any questions relating to this response, please contact

John Marr

Principal, Devolved Government and Social Housing

John.Marr@ukfinance.org.uk