

Memorandum of understanding

For co-operation between The Scottish Housing Regulator and the Tenant Services Authority



1. Introduction

- 1.1 The purpose of this memorandum of understanding (MOU) is to set out the powers and responsibilities of the Scottish Housing Regulator (SHR) and The Regulator of Social Housing known as the Tenant Services Authority (TSA), and the arrangements for exercising these powers with registered providers in Scotland and England.

2. Context

- 2.1 The SHR was established on 1 April 2008 to regulate registered social landlords (RSLs) and the landlord, homelessness and factoring functions of local authorities. This followed the abolition of Communities Scotland. The purpose of the SHR is to regulate to protect the interests of current and future tenants; to ensure the continued provision of good quality houses and services; and to maintain the confidence of funders. The Scottish Government plans to modernise the SHR's legislative framework to provide clarity about its independent status, give it a new suite of intervention and enforcement powers, a broader registration remit, and to enable the government to establish objectives and standards for the sector.
- 2.2 The TSA was established on 1 December 2008, as a result of the Housing and Regeneration Act 2008. The TSA is currently operating under the regulatory powers of the Housing Corporation until new legislative arrangements come into place in 2009. The purpose of the TSA is to raise the standards of services for tenants. The modernised legislative powers are more extensive than those inherited from the Housing Corporation and increases TSA's powers over the regulation of social housing. From Spring 2010 the TSA is likely to regulate all affordable housing providers (including local authorities and private landlords). The purpose of the TSA is to raise the standards of services for tenants.
- 2.3 This agreement applies to the regulation of parent and subsidiary organisations; where a parent RSL or housing association (HA) is registered with one regulatory authority and a subsidiary RSL/HA is registered with the other regulatory authority. These cross-border parent and subsidiary organisations will be referred to as "linked organisations".
- 2.4 This Memorandum of Understanding aims to support joint working arrangements between the SHR and the TSA which satisfy the statutory responsibilities of each body. Nothing in this agreement restricts the exercise of these responsibilities by either organisation. It is not a contract and is not subject to any payment for services delivered. The agreement simply sets out the framework that the partner organisations have agreed for co-operation and collaboration.

3. Objectives of this Memorandum

- 3.1 The primary objectives of the Memorandum are to:
 - a) provide a seamless and co-ordinated approach to the regulation of registered providers that work across Scotland and England, to avoid over-regulation and duplication of effort
 - b) ensure that the SHR and the TSA can fulfil their statutory duties in the most effective way possible

- c) develop joint working arrangements that ensure service users and public funds are protected, and the confidence of private lenders maintained, and any concerns are dealt with appropriately
- d) enable best use to be made of regulation resources in ensuring standards are achieved and the quality of services is improved

The Memorandum covers areas where the SHR and the TSA consider collaborative working would achieve these objectives.

4. The framework for joint working

- 4.1 The SHR and the TSA have agreed the following areas for collaboration and co-operation. We will:
- register and regulate linked organisations in a way that supports our respective regulatory responsibilities
 - exchange relevant information to support ongoing performance monitoring and inspections of linked organisations or to benchmark performance across the UK
 - co-operate and share information regarding mutual concerns and complaints from service users and other stakeholders about linked organisations
 - ensure our respective intervention policies take account of our different powers and duties, and liaise when statutory intervention is proposed for a linked organisation
 - maintain effective consultation and liaison between the SHR and the TSA
 - review this Memorandum to ensure its continuing relevance two years from it being agreed

5. Joint working

Linked organisations

- 5.1 Either regulatory authority may register subsidiaries of RSLs/HAs registered with the other regulatory authority provided that the subsidiary meets the relevant registration criteria. In this situation, one regulatory body will have the powers and responsibility for the regulation of the parent association and the other for the subsidiary.
- 5.2 Parent organisations will be expected by their own regulator to use their powers over their subsidiaries to ensure that the subsidiaries meet the standards set by, and comply with any guidance issued by, the regulator of the subsidiary.
- 5.3 Organisations proposing to be part of a cross-border group will be advised of the arrangements set out in this Memorandum. Any such linked organisations will be subject to any requirements arising out of this agreement and will be provided with a copy of the Memorandum and required to confirm co-operation with each regulator. A list of linked organisations is at Annex 1.

Exchange of information

- 5.4 The SHR and the TSA will provide information to each other about the performance of linked organisations if requested by the other regulator. This may

include performance reports of any kind, regulatory returns, financial viability reviews and assessments, inspection and intervention reports, or whatever other information is agreed between the relevant regulators. Each regulator may request information of the other, about a linked organisation, as part of pre-inspection briefing.

- 5.5 If one regulator finds it necessary for the proper exercise of its regulatory powers to examine documentation relating to a linked organisation, the other will use its powers, if it determines they are justified, to obtain the necessary documentation and will supply it to the first regulator.
- 5.6 Underpinning any exchange of information, the TSA and the SHR will fully adhere to the Data Protection Principles, as set out in the Data Protection Act 1998. Both parties agree to share information only where this is in line with the Data Protection Principles.

Mutual concerns and complaints

- 5.7 The TSA and the SHR will inform each other of any material issues emerging from complaint investigations, inspections, or specific concerns about a linked organisation.
- 5.8 Each organisation will notify the other on a “for information” basis of information they receive about concerns relevant to their responsibilities where the organisation with the information considers it should notify the other organisation.
- 5.9 The regulators will share details of their procedures for dealing with complaints about RSLs/HAs and guiding principles for initiating an investigation or for enforcement action. We will also, where appropriate, share information about the outcome of complaints.

Intervention

- 5.10 Where either regulator considers it necessary, a case conference will be arranged of both bodies to discuss possible action or intervention in a linked organisation. These case conferences may be used to agree the exchange of information and to agree the roles and responsibilities for working with the linked organisations to support them in achieving improvements.
- 5.11 The SHR will lead on any follow-up action required as a result of its regulatory contact with or inspection of a linked organisation and will keep the TSA advised of any action or issues arising from this follow-up. Similarly, the TSA will lead on any appropriate follow-up action with the linked organisation, where it is the regulator and it is appropriate to do so. The TSA will keep the SHR advised of any action or issues arising from this follow-up.
- 5.12 Either regulator may assist the other by carrying out any investigations required into the linked organisation which it regulates, for the purposes of the other regulator’s statutory action.

- 5.13 In the case of unsatisfactory performance or issues of concern, we will keep each other informed where intervention potentially may be required to improve or remedy the performance of a linked organisation.
- 5.14 We will notify each other of any decision to take statutory action in a linked organisation.
- 5.15 We will inform each other if action has failed to secure the desired improvement or if, for any other reason, further intervention is considered to be necessary or appropriate, and if there is progress.
- 5.16 Specifically, where a subsidiary RSL is undergoing a statutory inquiry by its regulator, the other regulator will use its regulatory powers, if it determines that their use is justified, over the parent organisation (if necessary this may be to the extent of holding a statutory inquiry into the affairs of the parent). If this situation occurs both regulators will liaise closely on progress.
- 5.17 If serious and substantial problems (ie. sufficient to warrant consideration of instituting a statutory inquiry) are found in a linked parent, the regulator of the parent will inform the other regulator about the main areas at issue before the inquiry is set up and will keep the other informed throughout the progress of the inquiry, up to and including the outcome and any further action to be taken. The inquirer has a statutory right also to inquire into the affairs of any subsidiaries. If a directed transfer of land is decided following the inquiry, any implications for the subsidiary will be the subject of consultation between the regulators with a view to agreeing the best course of action in regard to the subsidiary.
- 5.18 We will notify each other if a linked organisation becomes a rescue partner for another regulated body, following intervention or brokering actions by either regulator. We will also notify each other if a linked organisation receives a transfer of engagements or merges with another registered provider.

Consultation and liaison

- 5.19 The TSA and the SHR will meet regularly to discuss issues of mutual interest, for example:
- the development of tenant networks and consumer empowerment
 - the nature of the UK lending market and institutions
 - divergent regulatory policies and approaches and their likely impact on linked organisations
 - the connections between capital investment in new stock and regulation in England and Scotland, and their impact on linked organisations
 - emerging trends in regulation theory and practice.
- 5.20 The TSA and the SHR will include each other as consultees as part of any formal consultation exercises.
- 5.21 The regulators will also collaborate on external communications or handling external media interest where there is a matter of mutual interest.

- 5.22 Each organisation will respect and, as appropriate, take steps to protect the confidential nature of documents and information that the other may provide.
- 5.23 Where there is a new linked organisation the appropriate lead officer will provide full details to the other lead officer.

6. Implementing and reviewing this memorandum

- 6.1 Each organisation will endeavour to ensure their staff are aware of the content of this Memorandum and the responsibilities it places on staff in each regulatory body. Each regulator will nominate a lead officer to take forward the implementation of the Memorandum. The lead officer will ensure that an organisational chart with staff details and areas of responsibility is exchanged and kept up-to-date. A list of lead regulator contacts for the linked organisations will be appended to the Memorandum and kept up-to-date by the lead officers.
- 6.2 There will be a review in two years' time of this Memorandum of Understanding to ensure that it is achieving its objectives. If necessary, there will be an interim review if there are significant policy changes or new legislation which require elements of this agreement to be updated.

Signed on behalf of The Scottish Housing Regulator

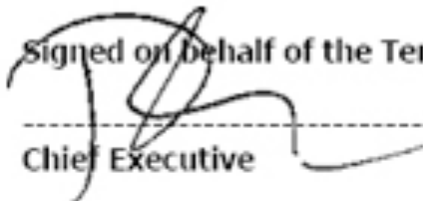


Chief Executive

04/04/09

Date

Signed on behalf of the Tenant Services Authority



Chief Executive

04/04/09

Date

Annex 1

Area of responsibility	Lead officers and key contacts	
	The TSA	The SHR
Lead Officer: Memorandum of Understanding	Louise Hyde Registrations Policy Manager TSA Maple House 149 Tottenham Court Road London W1T 7BN 020 7393 2068 Louise.Hyde@tsa.gsx.gov.uk	Iain Muirhead Head of Policy & Corporate Services The Scottish Housing Regulator Highlander House 58 Waterloo St Glasgow G2 7DA 0141 305 4179 iain.muirhead@scottishhousingregulator.gsi.gov.uk
Dispute Resolution	Peter Marsh Chief Executive TSA	Karen Watt Chief Executive The Scottish Housing Regulator
Linked Organisation & Lead Regulator	<p>Home Group: Assistant Director Risk & Assurance (North) Mick Warner TSA 1 Park Lane Leeds LS3 1EP 0113 233 7144 John.McHale@tsa.gsx.gov.uk</p> <p>Places for People: Senior Risk and Assurance Management Maxine Loftus TSA 1 Park Lane Leeds LS3 1EP 0113 233 7144 John.McHale@tsa.gsx.gov.uk</p> <p>Sanctuary HA: Head of Regulation Account Management Philip Ashmore 31 Waterloo Road Wolverhampton WV1 4DJ 01902 795022 Philip.Ashmore@tsa.gsx.gov.uk</p>	<p>All English Groups operating with Scottish subsidiaries: Home in Scotland Castle Rock Edinvar (PFP subsidiary) Sanctuary Scotland</p> <p>Lead Regulator: Linda Scott Senior Regulation Manager linda.scott@scottishhousingregulator.gsi.gov.uk</p>