



SHR discussion paper on Regulation of Social Housing

GWSF response, August 2023

1 General comment

GWSF welcomes the opportunity to respond to this discussion paper. We recognise the signals from SHR that from their perspective this review does not propose significant changes of direction in how social landlords are regulated.

From GWSF's perspective we are not sensing any appetite from members for significant process changes in terms of how the existing framework is operated. We value the regular liaison meetings we have with SHR, at which we can raise and discuss particular aspects of the regulatory system and how SHR communicates both with individual associations and more generally.

However, more broadly there is a desire among members for us to explore how the regulatory approach could be more supportive to associations facing difficulties. We believe this can be explored both within the current framework as set out by the legislation, and potentially through a new approach as part of an altered legislative remit for SHR to bring regulation more closely in line with the Scottish Government's priorities on community empowerment and community wealth building (see section 4 at the end of this paper)..

2 SHR's regulatory priorities

English experience influencing SHR priorities

The discussion paper cites Grenfell and the death of Awaab Ishak in Rochdale to explain why SHR wishes to place increased focus on:

- 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

GWSF recognises that when serious shortcomings in housing quality and services are highlighted elsewhere in the UK, it's likely that the sector in Scotland will want to

reflect on the possibility of similar issues arising here. No social landlord wants to be complacent. But without evidence of similar, systemic problems in Scotland, SHR's approach can sometimes appear disproportionate, as noted in the sections below.

Listening and responding effectively to tenants

The paper proposes to amend the regulatory requirements currently under the heading of Tenant and Service User Redress to include a requirement that landlords provide tenants, residents and service users with easy and safe ways to provide feedback and raise concerns, and ensure that they consider such information and provide quick and effective responses.

GWSF believes that there is a very different culture in Scotland in terms of landlord-tenant relations and mutual respect, and that our member associations generally have a strong track record in listening and responding to tenants, whether this is in relation to complaints or to other types of feedback. SHR's reference to 'safe' ways of tenants providing feedback is, we understand, about the risk of reprisal. We are not aware of any evidence that this is even a perception among any tenants in Scotland, and so we don't believe use of the word 'safe' in this context is necessary.

In reality, most members tell us they would love to be able to identify more tenants to listen to. Members invariably seem to find that many tenants prefer not to become involved in feedback/scrutiny mechanisms, instead just wanting a good service and to be able to see problems dealt with well when they arise.

From our recent meetings with SHR, we don't have the impression that SHR has a significant body of evidence suggesting widespread, poor approaches to responding to tenants. Without such evidence, there is a risk that over-use of regular references to the importance of listening and responding to tenants becomes not only an irritant but also could be damaging to morale in the sector.

Providing good quality and safe homes

We recognise that this priority area is a reinforcement of SHR's recent, greater emphasis on health and safety, with a particularly strong emphasis on mould and dampness. Mould and dampness will always occur in some homes: this is not in itself the issue. What matters is how reports of it are dealt with. We are not aware of any indications (from SHR or any other quarter) of a systemic issue with ignoring reports of mould or dampness in Scottish social housing.

The paper invites suggestions on what would be the most appropriate way of monitoring the effectiveness of landlords' approach to managing reports of mould and dampness, including indicators for possible inclusion in the ARC. If new ARC

indicators are felt to be necessary, a simple measure could be the number of reports from tenants and how many such reports led to a home visit.

An alternative or complementary approach could be for SHR to carry out a thematic study on how reports of mould and dampness are dealt with, as the sharing of good practice is always welcomed by the sector.

From our comments below on how SHR deals with alleged Significant Performance Failures, we have some concerns that in its approach to mould and dampness SHR may be getting too involved in, and prescriptive about, a specific operational issue here, and we will want to monitor members' feedback on this in the coming months.

At this stage we do not have any specific proposals on potential new ARC indicators on electrical, water, fire, asbestos and lift safety, but note that the sector will be consulted. This will enable us to assess how proportionate the indicators appear to be, relative to the scale of any problems.

Keeping homes as affordable as possible

The sector understands that this remains a priority for SHR, particularly in the current climate. It is important for us all, though, to bear in mind that tenants struggling financially are not in that position because of the rent. In our recent meetings with SHR we have continued to convey our preference for seeing them use language not exclusively about keeping rents affordable but about the need to balance affordability with viability and the need for investment in homes and services. This would seem especially appropriate in light of the fact that two other key priorities for SHR are around good quality, safe homes and addressing homelessness, both of which have investment implications.

Reference to risk of insolvency

In setting out its existing and new priorities, SHR notes a range of risks it considers in deciding what areas it will focus on. We found it a little odd that the document refers to the risk of tenants losing their home or tenancy if their landlord becomes insolvent. Even in the current, tough financial climate, there is no indication that any housing association would allow itself to get anywhere near insolvency, so this seems a rather out of place suggestion from SHR.

3 Changes in how the regulatory system operates

SHR says it wants to add a provision to its Annual Assurance Statement guidance to enable it to require landlords to include explicit assurance on a specific, new issue that may have arisen. GWSF's view on this is that with or without such a change to the guidance, when SHR asks landlords to include something specific in the AAS, all

or most are highly likely to do it anyway as associations aren't in the habit of ignoring SHR requests.

That said, we would ask that SHR be as selective as possible in adding specific new requirements to the AAS over time, and not to 'jump on bandwagons' too readily or in a disproportionate manner.

Notifiable events

SHR's expressed wish to streamline the requirements around notifiable events is sure to be well received by the sector, and we look forward to discussing with SHR some potential requirements which could be removed.

Whilst our members have not suggested specific categories of notifiable events which could be 'dropped' from the current list, some have said they would welcome greater clarity over how the list is interpreted. Some potential notifiable events vary in terms of the degree of significance/seriousness, and whilst we appreciate that it would be difficult – and indeed undesirable – for SHR to be definitive about what constitutes a notifiable event, there may be scope to provide some examples which illustrate which side of the line certain types of event might usually be deemed to fall.

Regulatory status

The paper says some associations, and some lenders, have suggested an intermediate regulatory status along the lines of 'compliant with improvements needed', to lie between 'compliant' and 'working towards compliance'.

We have no objection to this, and it may find some support in the sector, the distinctions between the categories seem likely to be better understood by associations themselves than by tenants or external parties such as politicians etc.

Significant Performance Failures

SHR asks whether the definition of SPFs is satisfactory. GWSF's main concern on SPFs has been not so much how they are defined but how SHR responds to them. There have been some reports from members of cases where isolated, individual complaints to SHR from tenants have led SHR to follow these up with the landlord before the tenant has used the association's complaints procedure, which is not consistent with what SHR says in its publicity on SPFs.

SHR has suggested to us that it sometimes needs to do this in order to make a judgement as to whether or not it is indeed a SPF. But care needs to be exercised here, especially for individual (as opposed to group) complaints, as the default

should be that the tenant must exhaust the association's own complaints procedure before SHR can look into it, unless it appears to be a gravely serious matter.

Hopefully this will not be a significant issue going forward but it is something we will monitor in the coming months and raise again with SHR if the need arises.

4 Issues beyond the discussion paper

GWSF support for troubled member associations

GWSF is currently in the process of developing a list of experienced staff/committee members who have an in-principle willingness to offer support to any GWSF member organisations which approaches us about difficulties they are facing. This support could take many forms, including identifying potential volunteers to serve as co-optees where the association wishes to bolster its committee/board. We very much welcome the willingness SHR has indicated to us to make reference, where appropriate, to this support service when they are engaging with a member organisation facing significant issues.

Aligning SHR's remit with the Scottish Government's wider objectives

We are keen to explore with the Parliament the longer term scope for legislative change to SHR's remit to reflect the importance which the Scottish Government attaches to the promotion of community empowerment and, more recently, community wealth building. We believe Ministers have a significant interest in seeing community based organisations flourish and their assets retained in the community.

If this, in turn, were to be reflected in SHR's remit and in how SHR engaged with troubled associations, it should mean a greater likelihood of associations being encouraged and supported to address their issues and survive as an independent organisation (or in some cases enter into genuine, local mergers rather than takeovers by large, national Scottish or UK housing associations).

This would not and could not rule out eventual structural change if this is the course of action chosen by an association (or in extreme cases is directed by SHR), but it would introduce a 'starting point assumption' of survival at the outset – something we believe is worryingly not the case at the current time. In recent years we have had numerous examples from members which leave us in no doubt that whilst SHR ostensibly does not have any corporate agenda around mergers/takeovers, there is undoubtedly a culture of encouraging these wherever possible. Our evidence includes several instances of SHR expressing disappointment to member associations at decisions to retain independence rather than seek a transfer.

We will shortly be writing to SHR to suggest discussions on this issue.