Dear Mr Eadie,

SCOTTISH HOUSING REGULATOR (SHR) ANNUAL REPORT AND ACCOUNTS 2013/14

Thank you for your letter of 5 February to Michael Cameron, our Chief Executive. I am pleased to reply.

We welcome the Committee’s scrutiny of our work and progress over the past year and more, and we appreciate the opportunity to have an open and transparent dialogue with you and the Committee. This is an important part of our accountability. The attached appendix provides responses to each of the points you raised in your letter.

There are also some key aspects of our approach and work that I would like to highlight.

Our sole objective is to safeguard and promote the interest of tenants and others who use the services of social landlords. This objective, given to us by the Scottish Parliament, is what drives all our actions and decisions. In concentrating on this sole objective, we take a risk-based and proportionate regulatory approach which means we concentrate on areas where we see the greatest risk, complexity, and/or weaknesses. Currently, RSLs face considerable challenges around issues such as welfare reform, rent affordability, pension deficits, the interest rate environment, and the need to manage increasingly diversified income streams.

Whenever and wherever possible, I do emphasise that we are a listening organisation, keen to hear the views of our various stakeholders and intent, wherever possible, to reflect those views in how we regulate. One example of us doing this is the change we are proposing to guidance on notifiable events and senior officer resignations that reflects feedback we got from landlords. We are keen to work with our various stakeholders in the sector wherever appropriate and to take on board suggestions and constructive criticism. To this end, we:

- are consulting on streamlining a broad range of our regulatory guidance;
- are working with the Scottish Federation of Housing Associations (SFHA) and the Glasgow and West of Scotland Forum (GWSF) looking at issues as diverse as
whistleblowing and the publication of additional information on how we work in serious cases;

- have regular liaison at both executive and board level with SFHA and GWSF, where a range of issues are/will be discussed, including the topics covered in this response;
- involved tenants in deciding the content and design of the Charter Landlord Reports and online comparison tool to ensure that tenants find the comparative information on their respective landlords useful; and we involved landlords in the development of the system for the submission of Charter information to ensure it was easy to use;
- work with over 400 people who have volunteered to participate on our National Panel of Tenants and Service Users to ensure we are hearing the views of a more diverse range of social housing customers;
- are currently considering how we can establish an independent appeal process, and will consult stakeholders in due course; and
- are always open to considering specific concerns with our approach to help us review and respond appropriately.

Through such initiatives we aim to maintain and strengthen our relationships with stakeholders. We may not always agree with some stakeholders on certain issues, but it is important that we build relationships of mutual respect and understanding of our different perspectives.

With just over 50 staff and a budget of £4 million, we are the independent regulator of a diverse range of 161 Registered Social Landlords and 32 Local Authorities.

During 2013/14 we delivered all of our planned, risk-based and proportionate engagement with 61 RSLs and 15 councils, all with the single objective of protecting the interests of tenants and others who use the services of social landlords. The nature and scope of our engagement with these organisations is dependent on many factors and particularly the risk to good tenant outcomes.

We understand that regulation has a cost and that SHR needs to be as effective and efficient as possible. We welcome the Committee’s view that effective and robust regulation is essential in assisting social landlords achieve good outcomes for tenants and other service users. Billions of pounds of public and private money is invested in social housing and it is vital that this is protected. Our key priorities focus on the need to have well-managed, financially sound social landlords who deliver good outcomes for their tenants and other service users. It is for landlords to continually improve their performance, and our effective regulation will help achieve this aim.

We adopt the most appropriate regulatory approach for each landlord. Following our last annual assessment of risk we engaged with around one third of landlords to obtain further assurance or tackle identified issues; some of these engagements can be relatively short-lived and others may take longer to conclude. The remaining two thirds of landlords had no engagement with us other than to provide routine
regulatory information returns. This is evidence of us being proportionate and risk-based.

Last year we used our statutory intervention powers for the first time in two landlords. This is evidence we are fulfilling the role given to us by Parliament to intervene to protect the interests of tenants when issues become more serious.

It is in the interests of tenants and other service users that lenders and investors are prepared to provide funding to social landlords to invest in existing and new homes, and that they do so at competitive rates. We have an important role in helping to maintain the confidence of lenders and investors in social housing. Over £4 billion is invested in social housing by private lenders and investors. Recently one major lender indicated that our regulation has a value of around 1.15% on lending to landlords. Given current levels of RSL debt this would equate to a saving of around £40 million every year on the interest charges RSLs pay. That would represent a tenfold return on the cost of regulation.

I do hope the above points clarify our role as an independent regulator intent on safeguarding the interests of tenants and other service users and working with our various stakeholders to help deliver good outcomes in social housing.

In the interests of transparency and public accountability, we will publicise this response to our stakeholders when it is published by the Committee.

Please let me know if you or the Committee would like any further information, and I would be happy to provide you with a progress update on our work at a future date to suit the Committee.

Kind regards

Kay Blair
Chair
Appendix

**Proportionality**
You asked for our further comments on how we intend to address the view held by some in the sector that there is a tendency for the SHR to be involved in micromanagement and that the SHR is not proportionate.

We realise it is important that we address this perception and that we provide assurance that we are proportionate and are fulfilling our statutory duties. We do not micro-manage and are concerned that some stakeholders think we do. To dispel this perception we plan to publish more information on how we conduct our risk assessments and on the outcomes of these assessments.

Our regulatory engagements follow a well-established risk assessment. This is the cornerstone of how we comply with our statutory duty to be a proportionate regulator. Through this process we bring together all the data and intelligence we have on each landlord, analyse this in relation to the key risks to the interests of tenants and other service users, and determine what further assurance we might need or what action we need to take. We then publish a regulation plan for every RSL that we have decided to engage with, in which we set out the reason for the engagement and what it will mean for the landlord.

In March 2014 we published Regulation Plans for 67 RSLs, around one third of all RSLs. The main focus of each engagement was as follows:
- 45 needed to give us further assurance on financial health;
- 13 needed to give us further assurance on governance; and
- 9 needed to give us further assurance on the quality of their houses or the quality of the service they provide to tenants and others.

It is important to state that a Regulation plan is not an indicator of poor performance; it is the main way in which we publicly communicate how we will engage with individual RSLs. We engage only where it is necessary to get an appropriate level of assurance from a landlord on a range of issues - including the quality of its services to tenants and others, its governance and its financial health - or when it becomes clear that there is an issue or problem. In such cases we do need to drill down for more information and assurance.

Where we have a regulatory concern we will work with the organisation to support it to tackle the issue and deliver improvement. We normally give the landlord the opportunity to address any issues itself in the first instance. As a proportionate Regulator we will intervene using our statutory powers only when we are of the view that the matter is serious and the landlord does not have the willingness and / or the capacity to deal with the issue and improve the situation.

This is consistent with the legislative duty that we use statutory intervention only when this is appropriate.
More than 100 regulated bodies took part in our recent stakeholder research survey (http://www.scottishhousingregulator.gov.uk/publications ), and 98% said they were fully aware of our statutory objective and all said they were aware of our regulatory role. We have also found that when we engage with landlords most understand the role of the risk assessment and its relationship with regulatory engagement. Notwithstanding that, we are considering ways to enhance the transparency of this process to help all stakeholders better understand the assessment process and its outcomes.

To this end, and to further demonstrate how we are proportionate, we plan to publish:
- more detail on how we deliver the annual risk assessment;
- in the autumn of each year the main risks and issues that the annual risk assessment will focus on; and
- in the Spring of each year a summary of all regulation plans highlighting which RSLs we are engaging with and why.

We will keep the Committee updated.

**Communication and engagement**

You asked how we will have greater transparency around correspondence and decision making where informal processes were being followed, and you requested an update on how the draft guidelines, currently being drafted, will address this.

We do recognise the need to be transparent. As you point out, there are also occasions when discretion is necessary. We are looking at ways we can further improve transparency to help stakeholders better understand our role and how we work.

We welcome the general acknowledgment of the need for us to be able to operate, at times, discreetly and in confidence. We also welcome the recognition of the benefits of this approach. We need to be able to use our judgement, make decisions, act swiftly and assertively where necessary and operate in the most effective way to protect the interests of tenants and other service users. We recognise that this will be most effective if we are as open as possible about how we regulate, and that all stakeholders – tenants, service users, landlords and lenders – understand how we work and what they can expect.

The majority of our engagements with RSLs follow on from our annual assessment of risk and is set out in published Regulation Plans. The exception to this is where we need to engage with a RSL’s governing body about allegations or whistleblowing we have received. In these circumstances we will engage with the RSL in confidence, at least during the initial fact-finding phase. The Committee referred to comments made in a previous evidence session that we do not give RSLs a summary of allegations. This is not the case as we have to tell the governing body about the allegations to enable it to investigate. Of course we will do so without revealing any details which could identify the whistleblower or complainant. We will
discuss with the governing body the best approach to establishing the facts around the allegations; this could be an independent investigation commissioned by the RSL or us conducting an inquiry.

We are careful in how we communicate with a landlord when we are engaging on a concern that has come to our attention. We recognise that in such cases we and the landlord need to establish the facts in relation to the veracity and nature of the concern. That is why we conduct most of these engagements confidentially; it is important that the reputation of landlords and their staff is protected during those initial inquiries. Landlords are free to keep whatever record they choose of all discussion with us and we always provide a formal written outcome of our engagements.

We are working with the Scottish Federation of Housing Associations (SFHA) and the Glasgow and West of Scotland Forum (GWSF) on a publication about how we apply in practice the policies set out in our Regulatory Framework around cases where serious concerns are raised. This publication will provide landlords with detail of how we work in these situations and what a landlord can expect. We will update the Committee on the outcome of this work which we will conclude in April.

We are a prescribed body under the Public Interest Disclosure Act 1998, meaning we are designated a proper authority to receive disclosures from whistleblowers and we are required to report annually on the number of whistleblowing cases we handle. This also means that any person whistleblowing to us is entitled to the protections set out in the Act.

We expect social landlords to welcome whistleblowing as an important part of their governance and have appropriate whistleblowing policies and procedures. A strong culture of openness and effective internal whistleblowing procedures should also minimise the number of cases that come to us.

In April we will issue updated information leaflets about whistleblowing for both employers and staff explaining what we will do if a whistleblower reports concerns to us. We are currently discussing these with the SFHA and GWSF. We will update the Committee on the outcome of this work.

We consider each whistleblowing concern or allegation on its merits and look at the evidence provided. We are aware that some whistleblowing can be vexatious or frivolous. We always make it clear to whistleblowers that we have no role to support employees in a personal grievance about their employment situation. During 2013/14 we had 14 cases about RSLs reported to us by whistleblowers: we took no further action in 10 after we assessed that they lacked sufficient information or credibility; in the remaining 4 we asked each of the RSLs to carry out an independent investigation. So in approximately two thirds of the cases where whistleblowing concerns were brought to us we took no further action. This means we did not contact the landlords concerned and they had no awareness of the whistleblowing. Where we did take action the concerns were substantiated in two of the landlords
and in the remaining two we concluded that there was no basis in fact for any of the allegations.

To further enhance transparency in this area of our work, from our next annual report we will publish information on the numbers of whistleblowing cases we handle. We will consider the value of publishing more information than the minimum required under legislation – for example, a statement of the general themes of whistleblowing concerns – with particularly regard to what is in the public interest. We will discuss our proposed approach with relevant stakeholders. We will update the Committee on the outcome of this work.

In your letter you comment on the risk that “formal measures” may bring about a reaction from lenders which might be to the detriment of a RSL. Whilst this is an important consideration, we would not refrain from using our statutory intervention powers where this is appropriate and proportionate. In each case we act as necessary and appropriate to fulfilling the role given to us by Parliament to protect the interests of tenants. Our use of statutory intervention powers in two current cases is evidence of appropriate and proportionate use of powers of statutory intervention. There is always a risk that regulatory intervention will result in a lender seeking to re-price, but the confidence that lenders have in the Regulator is a crucial factor in avoiding lender reaction. In these two cases, we engaged closely with all of the lenders to address any issues they had and to build confidence in our regulatory strategy at each RSL. This helped minimise any adverse effect on the RSLs. Lenders engaged constructively with us and have been part of the solution in these troubled cases. More broadly, lenders have told us that they have taken comfort from the demonstration that we are prepared to use our powers of intervention when appropriate. This further strengthens their confidence in our regulation and so their confidence to invest in social housing.

**Building trust within the sector and promoting best practice**

You asked for further information on the steps we will take to build trust within the sector and improve relationships.

We agree with your view that it is imperative that the sector has trust in the regulatory process and confidence in its dealings with the sector. We acknowledge that this is a diverse sector with different views of the Regulator, and that we need to be aware of different perspectives. We have good, constructive relationships with most in the sector and we are keen to ensure that more widespread mutual respect develops. Much of our focus in the coming year is to enhance key relationships and improve understanding of our work.

By the nature of our role there will always be tensions with some landlords and with representative bodies on some issues. We, like all regulators, do need to guard against the risk of regulatory capture that can come from focusing too much on the satisfaction of regulated bodies with the regulator, particularly if that in any way impedes the delivery of good outcomes for tenants. In this regard we are very mindful of the lessons from regulatory failures in other sectors, including banking and financial services, which with hindsight, demonstrated that the regulators were
reluctant to intervene as they were overly concerned with critical reaction from those they regulated and from others.

Having said that, we do value effective, constructive and professional relationships with all our stakeholders. We also recognise the value of broad support from the social housing sector to the effective delivery of regulation. For example, we receive an essential contribution to our work from those in the sector who volunteer as co-optees or appointees to governing bodies of RSLs in need of support; 35 individuals – all senior staff or governing body members of other RSLs – have offered their time, expertise and skills over the last three years.

Again, it is important that we are open about how we regulate, and that all stakeholders understand how we work and what they can expect. That is why we are working closely with landlord representative bodies to produce a publication that will provide more information about how we apply in practice the policies set out in our Regulatory Framework. We are also considering what further information we can put in the public domain on how we work.

**Governance Matters**

You asked for an update on how we will address RSLs’ concerns regarding the tone and content of the “Governance Matters” publications and whether there is a role for these documents to also be used as a vehicle for promoting and sharing best practice within the sector.

We note the comments on the Governance Matters publications. We explored stakeholders’ views of these publications through our communications research ([http://www.scottishhousingregulator.gov.uk/publications](http://www.scottishhousingregulator.gov.uk/publications)). The vast majority of landlords said that our Governance Matters publications have influenced how they operate: they value them highly and use the reports to test the strength of their own governance arrangements. Alongside this, some stakeholders had concerns about the choice of examples and a perceived negativity. We do make clear in Governance Matters reports that most landlords are well-managed and well-governed and that the reported case is exceptional; they are not a commentary on the general state of governance in the sector.

Our most recent Governance Matters publication focused on a positive governance story where the landlord handled a difficult situation well, and is an example of good practice in that regard. Last year we launched our Performance Matters series of publications which focus on landlords’ performance in service to tenants and other customers and share positive practice and learning points.

For all our publications, we will look to get the right messages over in the most effective way. We note the feedback from some stakeholders about the tone of certain publications and we will work to ensure that our tone helps us communicate our messages clearly and constructively. We will look to publish more positive examples of practice in future editions of Governance Matters and Performance Matters.
Appeals Process
You asked for an update on our discussions with the Scottish Government for implementing a strategic code and your plans for developing an appeals process.

We believe it is important that regulators are open to appropriate challenge on the outcomes they deliver and the efficacy of their regulatory framework: the achievement of any statutory objective, delivery of statutory functions and use of statutory powers. Accordingly, we support the introduction of an appropriate appeals process.

Currently, we give landlords the right to request a review of the outcome of an inquiry that will result in a published report. We do, of course, have a complaints procedure that enables anyone to complain about dissatisfaction with the standard of our work or our actions other than decisions arising from regulatory activity.

We are also of the view that it is essential that we are able to use our judgement, make decisions and operate in a way that will safeguard and promote the interests of tenants and others who use the services of social landlords. It is important that any appeals mechanism is proportionate and appropriately constructed to ensure that we continue to be able to act assertively and swiftly where necessary to protect those interests. The scope, complexity and cost of an appeals process are important considerations.

The strategic code of practice for Scottish regulators includes the requirement to establish independent appeal processes for regulatory decisions; we are currently considering what this means, particularly the requirement for the process to be independent. We will have a formal and public consultation on our proposals for appeals before implementing any changes to our current approach.

As soon as we are able to, we will update the Committee on the timescales for consultation and implementation.

Notifiable events and Appointing Consultants
You asked us to clarify the guidance and the practical processes surrounding notifiable events where a senior officer leaves an RSL.

In early February we launched a public consultation on changes to a range of our regulatory guidance, including that on notifiable events. In that, we propose to change and clarify the requirements in the event that an RSL’s senior officer leaves. These changes reflect feedback from landlords that an option appraisal is not always necessary where a landlord has an up-to-date business plan and good succession planning. We believe the proposed changes set out a proportionate and effective response to these situations. We sent the consultation information to all landlords and published it on our website (http://www.scottishhousingregulator.gov.uk).

To put this in context, in the last three years eighteen of twenty five RSLs that notified us of a Chief Executive resignation appointed a new Chief Executive after considering their options. The remaining seven decided to join a RSL group, with
four doing so having recognised that they could not remain financially viable as independent organisations.

You also asked us to clarify the process on the appointment of consultants.

The routine appointment of contractors, advisors and consultants is a matter entirely for RSLs. We have a role only where there is a regulatory concern and the matter of concern is to be addressed by the appointment of an independent investigator, consultant or special manager. We need to be assured that the proposed individual or company has the required experience, skill and knowledge, but it is for the RSL to make the appointment. We can assist with providing names of experienced consultants / consultancy firms with an appropriate track record, including experience of troubleshooting and dealing with organisations in crisis.

Where we are using our statutory powers to appoint a special manager we will identify and appoint an appropriately qualified individual.

The key criterion we use in determining the suitability of a prospective appointment is a proven track record, including successfully managing an organisation out of crisis. There is a very limited pool of such specialised professionals. The recent independent review of the near failure of the English housing association Cosmopolitan Group stressed the importance of the right of the regulator to use its knowledge of specialist professionals to resolve situations that get difficult.

As things stand, we will have to continue to identify skilled and expert consultants who can provide the necessary support to troubled RSLs as special managers, professional investigators and interim Chief Executives. To that end, we are exploring the potential to develop a procurement framework agreement that both the Regulator and RSLs can use to appoint such professionals.

We will keep the Committee updated.

In addition, we are keen to work with landlord representatives to encourage them to develop mechanisms to enable landlords to better support each other, especially where a landlord is experiencing difficulties.

Engagement with tenants and homeless people
You asked for an update on how we are trying to engage with harder to reach stakeholders and how we are trying to increase awareness of the work and services of SHR amongst tenants, and particularly how they can engage with the regulatory process when required.

We set up the National Panel of Tenants and Service Users precisely because we were intent on getting more diverse input and views and felt a Panel would reach out to those people who preferred different channels of communications. The Panel is not made up of the same groups of tenants who already engage with us, and therefore complements our work with organised tenant groups (or Registered Tenant Organisations) rather than duplicates it. Indeed, we currently have over 400 Panel
members. Panel membership is open to all social housing tenants and service users in Scotland, and three quarters of the Panel’s members are in fact not members of RTOs. We still have a challenge in recruiting more, and we are continuing to pursue opportunities to enhance diversity. The National Panel helps us understand tenants’ and other service users’ views and priorities, and helps shape our work.

Gender, disability and age bases are broadly represented across the Panel profile. Tenants from a wide range of backgrounds are well accounted for in our published work with the Panel to date and harder to reach groups are explicitly included in our current cycle of work with the Panel. This includes work with factored owners, Gypsies/Travellers, and a focus on disabilities and accessibility issues. Wherever possible, the researchers who manage the Panel for us have specifically targeted low response and hard to reach groups to boost panel membership from these smaller groups so that their views are adequately captured.

You asked how SHR will support and monitor the performance of landlords’ in applying the proposed guidance on housing options.

We published our first national thematic inquiry in May last year on housing options and homelessness prevention. We have made recommendations for both the Scottish Government and local authorities. These are aimed at improving the quality and consistency of the advice and information provided through housing options services across the country. An important recommendation was for the need for national guidance on the use of housing options. National guidance is not within our remit but is for others to deliver, as detailed below.

Scottish Government, local authority bodies and Shelter have welcomed the report and have committed to work together to produce national guidance to help local authorities deliver good Housing Options. We understand that the development of the guidance by the Scottish Government, CoSLA and local authorities is progressing well.

We will consider conducting a further thematic inquiry at a suitable future date to assess the impact of new guidance on the delivery of housing options and its effectiveness in preventing homelessness.

Social Housing Charter Annual returns
You asked for further information on how we work to ensure that all tenants are aware of the charter returns and how these might be made available to those without access to computers.

We have had very positive feedback on how accessible and easy to use the Charter comparison tool is; we saw a five-fold increase in the number of visitors to our website following the launch of the tool. It is web-based, and we know that not everyone has access to the internet or will be comfortable in using on-line information. That is why we require every landlord to provide every one of their tenants with the Landlord Report that we publish on our website. This is the landlord’s responsibility.
We expect landlords to discuss with their tenants how best to report their performance to tenants, and then to provide their tenants with a full report on their performance on the Charter.

We will publish on 10 March our national analysis of the Charter data, and we will provide the Committee with this report. In this year’s report we focus our analysis on tenant satisfaction and service areas that most impact on that. We would be happy to provide the Committee with a briefing on this important report.

As part of our communications research last year we asked Registered Tenant Organisations (RTOs) about their preferences on getting information from us. Overall, groups expressed a preference for receiving relevant publications in paper form, with accessible summaries, as well as a strong interest in receiving our electronic SHR Update newsletter. We are working to strike a balance that takes account both of preferred formats and of our environmental commitments. For example, in the last three months we have provided all Registered Tenant Organisations with a hard copy summary of our current regulatory guidance consultation and the summary findings of our tenant priorities and communications research projects. Later this month we will send a hardcopy summary of our first National Report on the Charter to all RTOs. We have also offered all tenant organisations the opportunity to sign up to our electronic newsletter.

We will keep this under review to see what more we can do to further improve the availability of information to tenants.

You also asked for more information on how the SHR is using the information derived from the returns to help drive its regulatory work and promote and encourage best practice.

Over the next three years the information that we will collect will allow us to focus on service quality and the Charter and this will mean an increasing emphasis on value for money and rent affordability. We will feed the information we get on the Charter into our risk assessments of all landlords to help us set the type of regulatory engagement we need to have in order to protect the interests of tenants and other service users.

We are also planning a programme of service focused thematic inquiries. This includes one on Gypsies/Travellers. This uses our analysis of the data which we collected for the first time through the 2013/14 Annual Return on the Charter from the 20 social landlords who manage Gypsy/Traveller sites. Our inquiry will look at the reasons behind significant variances in pitch rents and customer satisfaction levels, and will highlight good practice we find and make recommendations on improvement. We will publish later this year.

**Scottish Housing Quality Standard (SHQS)**
You asked for an update of figures on RSL performance against the SHQS and information on the number of cases where statutory powers or enforcement notices have been required.

Our analysis has found that 20 landlords (19 RSLs and one local authority) reported in their ARC returns for 2013/14 that 2961 houses in total would not meet SHQS at 31 March 2015. This equates to 0.5% of all social houses which fall within the scope of SHQS.

At this stage we have the assurances we need from 11 of the 20 landlords for the reasons for this and that they have plans to address this shortfall. Six of the other nine landlords each have fewer than 80 properties anticipated to fail (ranging from six to 78) and we will have a proportionate response to this.

We anticipate that two of the remaining three landlords will be able to provide the assurances we need. We are engaging with the remaining landlord on this matter and a range of other governance and financial issues.

To date we have not needed to use our statutory powers in relation to landlord performance on the delivery of the SHQS. We will consider the use of our statutory powers, including issuing an enforcement notice, with any landlord where we do not receive assurance that there is a deliverable plan in place to progress towards full compliance with SHQS.

You also asked that we would provide details on the number of properties which have exemptions and abeyances from meeting the SHQS.

At 31 March 2014, social landlords reported that they will claim exemptions and abeyances at 31 March 2015 for 32,228 houses in total (19,116 in local authorities and 13,112 in RSLs); this equates to 5.4% of all social housing that is in scope of SHQS (6.0% for local authorities and 4.8% for RSLs). The most common exemptions and abeyances relate to energy efficiency, secure common external door entry systems, adequate kitchen storage, roof coverings and rainwater goods. We have engaged with landlords that anticipate exemptions and abeyances of 5% or more of total stock and we are generally assured about the appropriateness of the approach taken by those landlords.

Financial Governance
You asked for clarification of the SHR’s role with respect to financial governance in general and in particular in situations where RSLs are facing difficulties.

RSLs are independent businesses. It is for landlords themselves to manage their affairs. It is first and foremost the responsibility of a landlord’s governing body – its board or committee – to ensure that it is financially healthy and delivering good outcomes for its tenants and other service users.

Currently, RSLs face considerable financial challenges around issues such as welfare reform, rent affordability, pension deficits, the interest rate environment, and
the need to manage increasingly diversified income streams. We are satisfied most RSLs are continuing to manage their resources to ensure financial wellbeing. We are engaging with individual RSLs where we need further assurance and, to be transparent, we publish the details of that engagement in a regulation plan on our website.

The Housing (Scotland) Act 2010 requires us to set standards of governance and financial management for RSLs. The Scottish Parliament has given us the role to monitor, assess and report on social landlords’ achievement of these standards and to intervene where appropriate. As part of our annual risk assessment we carry out a comprehensive assessment of the financial health of all RSLs using their audited accounts, loan portfolio and financial forecasts. Last year we engaged with 45 landlords to get further assurance on their financial health and business plans.

Where we become concerned about a landlord’s financial viability we will firstly work with the landlord to ensure it fully understands its position and can remedy it. Most of these engagements give us the assurances we need that the landlord has good insight into the nature of the risks to its solvency and has appropriate risk mitigation. However if we are not assured that a solution is in place that protects the interests of tenants, we will consider the use of our statutory powers. This could involve us appointing a manager and/or governing body members, and ultimately this could lead to us directing a transfer of engagement, or using the powers available to us in the event of an insolvency. This could including calling a moratorium of 56 days during which no assets of the RSLs can be disposed of without our consent; during this period we would attempt to secure a suitable RSL to purchase the housing assets of the insolvent RSL.

Landlords are required to get our consent where they are using social housing assets as standard security or disposing of those assets in other ways. Our principal consideration in scrutinising any consent application is the risk to the interests of tenants, and we will look at the impact of the proposed disposal in detail and at the impact on the landlord’s wider business plan.

We have published recommended practice on business planning and on asset management to help landlords in the strategic management of their financial health and social housing assets. We publish regulatory advice on risks such as pensions and welfare reform, on important issues such as the duties of external auditors and on matters such as internal financial controls. Each year we publish a review of RSLs’ finances.

You asked whether there are any circumstances in which the SHR would apply any oversight or direct involvement in the contractual arrangements of individual housing associations

It is entirely the responsibility of each landlord to ensure that it meets all relevant legislation, regulatory standards and good practice in relation to all of its business decisions, including procurement decisions on the award of contracts to build new houses or to maintain existing homes. The Regulator has no role in the individual
business decisions or due diligence undertaken by social landlords, nor is it our role
to be directly involved in determining the contractual arrangements of individual
RSLs.

We may review a landlord's business or procurement decisions where we have
evidence that there has been detriment to the interests of tenants and other service
users, although our primary focus will always be on the landlord resolving the
detriment to those interests. It is the role given to us by Parliament to intervene to
protect the interests of tenants when things go badly wrong.

Appointment of contractors
You asked for an update on the outcome of the work with the Scottish Federation of
Housing Associations on its proposals on a model policy on payments and benefits
to RSL governing body members and staff.

The hard-earned good reputation of social landlords is built on decades of regard to
the highest of ethical standards, including the effective identification and
management of conflicts of interest. This is about tenant, public and political
perceptions and the reputational damage that a poor perception can cause. Board
members and staff in RSLs are in a position of influence within their organisations
and it is important for the good reputation of the sector that they do not benefit
personally and inappropriately from their positions. Perceived or actual conflicts of
interests should always be minimised and for some conflicts the optimal solution is to
avoid them.

Codes of conduct and policies on payments and benefits for governing body
members and staff need to be clear, unambiguous and set the highest of standards.

In general, it is not appropriate for governing body members and staff to make
personal use of the same contractors and suppliers which are used by their RSL.
However, there may be some circumstances, particularly in some rural and island
situations, where a rigid adherence to this standard may be unreasonable in all
cases. In exceptional circumstances it may be acceptable for a RSL to use a
procedure to process the exceptions for the purchase by governing body members
and staff of goods or services from the RSL's suppliers or contractors. So, in
particular circumstances where there is a very limited pool of potential contractors
the RSL should have a process to manage transparently the purchase of goods or
services.

Landlords can use the “comply or explain” principle to deal with individual, unique or
anomalous situations. This avoids introducing overly relaxed provisions or the use of
minimal standards to try to accommodate unusual or individual circumstances.
It is important to stress that “explain” is not an opt-out; any body that does not
comply with the code should explain why it does not and demonstrate that its
alternative approach is both consistent with the principles of the code and
contributes to good governance.
We continue to work with the SFHA on its proposed model Payments and Benefits Policy. We will update the Committee on the outcome of this work.

Other issues
We note the public and positive validation of our regulatory approach in the letter from Loreburn Housing Association. We thank the Committee for its support for us to carry out a genuinely independent and robust regulation to achieve the objective to protect the interests of tenants and others who use the services of social landlords.

Confidence of lenders and investors
The confidence that lenders and investors currently have in social housing and how we regulate is demonstrated by:

- a potential saving through preferential rates of around £40 million every year on the interest charges RSLs pay;
- loans advanced to RSL of almost £320m in the year to 31 March 2014;
- the first ever private placement within a Scottish RSL to the value of £45 million and the RSL’s acknowledgement of our role - "The Regulator was very helpful and supportive in assuring investors that Scotland has a robust and effective regulatory system. This made our job much easier."
- the first ever own name bond issue by a Scottish RSL to the value of £250 million, and that the ratings agency Standard and Poors positively endorsed our regulatory approach;
- the comments of the Chief Executive of The Housing Finance Corporation, one of the most important sources of new finance to Scottish RSLs over the past five years - "Effective regulation is an important source of assurance to investors in social housing. We value the constructive working relationship that we have with the Scottish Housing Regulator."