



Ariane Burgess
Convenor, LGHP Committee
Scottish Parliament

13 November 2025

Dear Ariane

Scottish Housing Regulator

Thank you for your letter of 9 October on the Committee's behalf. We have focused below on three specific aspects of the issues covered in the original evidence giving process and as outlined in your letter.

1 General relationships between SHR and our member associations

GWSF did not raise specific concerns about relationship issues when we gave evidence, and we have not had feedback from members in the past year which gives us any real cause for concern on this. The great majority of our members tell us that they maintain a good relationship with their Regulation Manager.

As part of our ongoing monitoring of members' experiences of working with SHR, we are always keen to collect feedback about both routine engagement with SHR and in relation to situations where there is engagement on specific issues and improvement plans etc.

In relation to the latter, one issue which historically has tended to arise now and again, and which we will shortly be discussing with SHR, is how, when an association is engaging closely with SHR, the list of improvement areas/actions can sometimes include issues on which the association is doing things no differently from the majority of other associations, but because SHR is engaging with the association on a specific issue or issues, the association finds that this additional factor must be addressed before the engagement can be 'closed'. A recent example relates to associations' approach to the collection of equalities data, when the impression we have is that the associations in question are not veering from what appears to be general practice across the sector.

We are not raising this as a major concern, more as an example of the sort of issue we can discuss constructively with SHR in our regular liaison meetings.

We would add that as a membership body, our own relationship with SHR is such that we feel we have an 'open line' and can discuss any issue which our members may have raised with us. We value this ability to communicate freely with SHR, not least as this is something that is often much easier for a membership body to do collectively than it is for an individual association.

2 SHR's approach to community based housing associations

As we would have expected, the Committee is particularly looking to GWSF to comment on SHR's approach to community based housing associations (CBHAs).

The Committee will know that the context in which this issue is most likely to be raised is around the process by which a CBHA is starting to consider a potential Transfer of Engagements (ToE) to another housing association – or indeed is at the stage of progressing specific plans to effect the transfer.

Specifically we have discussed with SHR how 'community interests' can best be addressed and, wherever possible protected, during a ToE process. The reference to community interests originates from the requirement – in the statutory code of practice for all Scottish regulators – to take account of 'relevant community interests' in the exercising of their functions.

One reality of current SHR engagements with associations facing difficulties is that none involve statutory measures such as SHR making appointments to the association's governing body or senior staff. This means that the ToE process is being managed by the association itself, not by SHR, although we have suggested to SHR that it still retains some considerable influence over the association's actions, on which it always expects to be closely updated.

In that respect we retain the hope that SHR will play an important secondary role in using its influence to remind associations of the importance of being open and transparent about the extent to which, in a ToE process, community factors – including local decision making, and retention of assets in and for that community – will or won't be protected in a takeover by another association, particularly where that association is not local.

But we recognise that unless there are statutory intervention measures in place, the primary role in considering and, as far as possible, protecting community interests lies directly with the disposing association, both before it has made a decision to seek a ToE and during the process of seeking and then working with a 'preferred bidder' association. Hence the guidance we are producing on this is aimed mainly at our own members, lest they may one day be in the position of either seeking a transfer partner or *being* that transfer partner.

The Forum is confident that SHR does understand our desire (a) to see ToEs happen only where they are unavoidable and (b) that neighbouring community based housing associations are encouraged to submit bids. In commenting this month on our current draft guidance on ToEs, SHR made the following comment, which we very much welcome:

'We agree that disposing RSLs should encourage expressions of interest and bids from as many potential bidders as possible, including encouraging neighbouring RSLs to engage in the process. We also agree that neighbouring community based RSLs should not be excluded from bidding on the basis of their size and constitutional form, and indeed, would suggest that such practice would be inappropriate.'

A further development we again very much welcome is SHR's greater clarity around requiring associations which have received stock through a ToE to report specifically to it, in the years following the takeover, on the delivery of undertakings made to tenants during the ToE process. Until relatively recently this was not a requirement: whilst it is still not a *published* requirement our understanding, both from SHR and relevant member associations, is that this does now happen.

We welcome too that a particular approach adopted by SHR in recent years has now become firmly embedded in practice. In its engagement with associations facing serious difficulties, other than in highly exceptional circumstances SHR will encourage the association to contact its membership bodies to see what support may be available to help address its issues. GWSF has been able to offer support in a number of such cases, including in the last few weeks when we have been able to quickly identify a number of experienced people to help an association with a pressing need to bolster its governing body.

3 Role of the 'preferred bidder' before the transfer takes place

The Committee's letter refers to references made, in the evidence provided to it, to the need for sector guidance on the role of the preferred bidder organisation from the point at which it is selected to the conclusion of the second (shareholding membership) ballot.

Our sense is that SHR feels that any such guidance should come from the sector itself rather than from the Regulator, partly because its consent powers in transfer cases were reduced by legislation some years ago. GWSF feels that realistically, such guidance may be difficult to agree across the entire sector: in many previous cases of transfer or proposed transfer, the bidding association has been a larger, national association which is not Forum member, and so we cannot expect to necessarily reach out to such bodies.

At this stage, therefore, we intend to provide advice on this directly to GWSF members: if any become involved in future transfers as the disposing association it is they who can heavily influence the role of the preferred bidder. And some may

become involved as the preferred bidder itself, most likely in cases where one community based association has an interest in taking over a neighbouring one - a scenario which GWSF is likely to welcome where transfer cannot be avoided.

Our draft guidance on ToEs, currently under preparation, includes the following text on the role of the preferred bidder:

'It would be challenging for GWSF or any other body to try to set down a prescriptive position on what the role of a preferred bidder should entail and – perhaps more pertinently – what it should not, as each scenario will have unique circumstances, so we would want to tread carefully here.

A particularly challenging set of issues arises where the disposing association is looking for urgent assistance (for example with day to day repairs and/or housing management services) and feels it cannot wait for the transfer to be completed to receive that assistance.

There is a legitimate question mark over whether it is appropriate at all for the preferred bidder to have any role in assisting with day to day service provision during this period: any proactive role in assisting with service provision ahead of the ballots could be perceived as a conflict of interest and an effort to make the ballot process more of a 'fait accompli'. But GWSF recognises that a range of scenarios need to be allowed for, and that a disposing association will only ask for such support if this is needed to ensure that tenants' interests in the immediate future are satisfactorily met.

What is not in question is the need for transparency in such situations, especially for the tenants. We believe that, normally, any supply of services ahead of the actual transfer should be through a service level agreement with the disposing association, which is then clearly communicated to tenants (and owners as appropriate).

There may also be a serious conflict of interest where the preferred bidder, in supplying housing management or maintenance services ahead of the ballots, uses that contact with tenants to promote the transfer. Disposing associations should ensure that any contact information or other information on tenants which is shared with the preferred bidder is done so in accordance with data protection laws.

There is also a question mark over whether it is appropriate for the preferred bidder to be entering into any other financial arrangements with the disposing association or with, for example, other local organisations ahead of the ballots. This happened in a recent case, when the preferred bidder appointed a local voluntary body to provide a specific community service. The financial commitment was not fulfilled after the transfer did not progress, but the 'deal' with the local organisation could not be undone and

subsequently has been the subject of huge challenges for the incumbent housing association.'

We are currently discussing the draft with SHR, and have also shared a copy with our colleagues at the Scottish Federation of Housing Associations.

I hope this update is helpful to you and the Committee, but please don't hesitate to ask for further information on any aspect of this issue.

With thanks and best wishes,

A handwritten signature in black ink that reads "David Bookbinder". The signature is written in a cursive, slightly slanted style.

David Bookbinder
Director, GWSF