

SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

WRITTEN EVIDENCE

Who We Are

- 1.1. SFHA welcomes the invitation from the Infrastructure and Capital Investment (ICI) Committee to submit its views on how the Scottish Housing Regulator (SHR) has been operating in practice, since it became independent of Scottish Government in April 2012.
- 1.2. SFHA exists to lead, represent and support housing associations & co-operatives throughout Scotland in all their diversity. There were 160 Registered Social Landlords (RSLs) in Scotland at the start of 2014, providing 280,000 homes to those in housing need, and 5000 places in supported accommodation.
- 1.3. Housing associations and co-operatives operate and have strong roots in some of the most deprived communities in our country, providing housing that is safe, warm, energy efficient and affordable.
- 1.4. Housing associations and co-operatives in Scotland are subject to regulation from the Scottish Housing Regulator (SHR), the Office of the Scottish Charity Regulator (when Charities), and the Care Inspectorate (when providing support/care services).
- 1.5. Regulation is a crucial aspect our sector, providing assurances to tenants, service users, lenders and other stakeholders that the highest standards of probity will be maintained. As acknowledged by the SHR, the sector has an excellent reputation, and SFHA recognises the role that regulation plays in maintaining this.
- 1.6. SFHA has gained some positive feedback from its members about the role the SHR is playing, and the whole sector recognises the importance of regulation. However we have also received some constructive criticism of its approach, with the intention of improving the effectiveness of the regulatory regime.

2. Survey of SFHA Members

- 2.1. SFHA conducted a survey of our members to gauge their view as to how they felt that the SHR has been operating since it became independent in April 2012. We received 30 responses (approximately a quarter of our membership) from a broad range of organisations both in terms of size and location. This means the survey is broadly representative both of our membership and Registered Social Landlords (RSLs) in Scotland.
- 2.2. It is important to note, that all respondents acknowledged the need for effective regulation of our sector.
- 2.3. The survey asked the following questions:

- *Do you think that the SHR is fulfilling its statutory objective to safeguard and promote the interests of persons who are or who may become homeless, tenants of social landlords or recipients of services provided by social landlords?*
- *Do you feel that the SHR is performing these functions (as per the Housing (Scotland) Act 2010) in a way in which:*
 - *Is proportionate, accountable and transparent;*
 - *Is targeted only where action is needed;*
 - *Encourages Equal Opportunities;*
 - *Is consistent with any other principle which appears to represent best regulatory practice?*
- *What do you think are the main risks to delivering an effective regulatory regime in Scotland?*
- *Do you think an independent appeal mechanism would be useful for RSLs, in order to challenge certain regulatory decisions?*

2.4. A number of the organisations responding had been subject to regulatory engagement, and commented based on their direct experience.

2.5. As per the Housing (Scotland) Act, Part 1, Section 2 (1)¹, the SHR has the statutory objective “*to safeguard and promote the interests of persons who are or may become homeless, tenants of social landlords or recipients of services provided by social landlords*”. Our survey results revealed that the majority of respondents (67%) believe the SHR is fulfilling this objective, with only 33% stating that they are not.

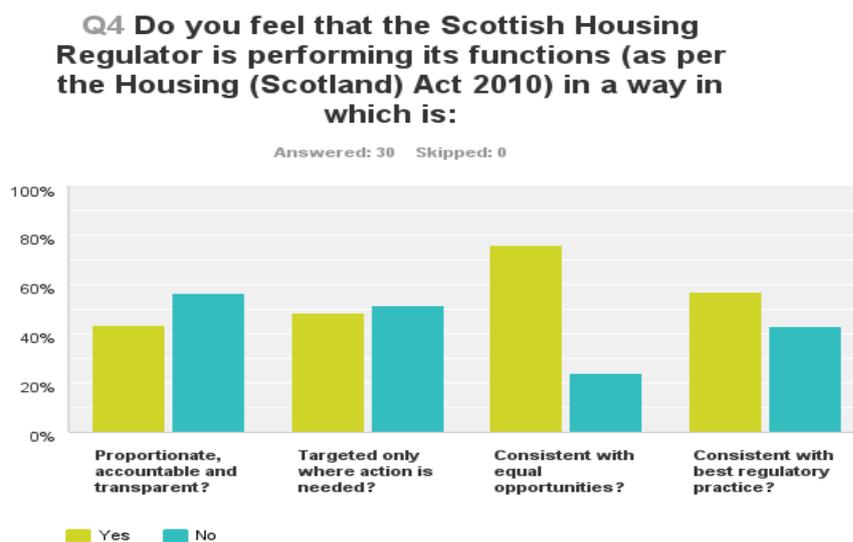
2.6. Even with this encouraging feedback, some respondents commented that despite meeting the objective, the SHR were going about it in a “heavy handed” way and often “focussing on trivial matters”. Those that answered “no” cited similar reasons, highlighting a lack of proportionality in the SHR’s approach.

2.7. There was also a sense of the SHR tarring all in the sector with the same brush, focussing on negative examples in its publications and when speaking about the sector, rather than highlighting good practice. This view is consistent with the findings of the SHR’s Stakeholder Communications Research, published in October 2014.²

¹ Legislation.gov.uk (2010) Housing (Scotland) Act 2010, available: [here](#)

² Scottish Housing Regulator (October 2012) Stakeholder Communications Research Summary Findings (October 2014)

2.8. We asked if the SHR was performing its functions in a way consistent with the Housing (Scotland) Act 2010 at Part 1 Section 3 (2)³. Figure 1 below outlines the results:



2.9. It is encouraging that nearly 80% believe that the SHR is performing in a manner consistent with the equal opportunities legislation, and 57% believe it is performing in a manner considered consistent with best regulatory practice.

2.10. Of more concern, is that 57% (consistent with comments on the previous question) do not believe the SHR is performing its functions in a proportionate, accountable and transparent manner. Just over half (52%) do not believe the SHR to be targeting action only where it is needed.

2.11. Comments received in response to this question centred on these issues, with respondents highlighting the SHR getting unduly involved, and acting in a disproportionate manner. It was felt that going into too much depth on trivial matters, could lead to missing important strategic matters.

2.12. Responses highlighted that the pressure placed on staff to deal with information requests from the SHR meant that they were unable to focus on service delivery, and the cost of this time was paid from tenants' rent money. It was stated that this runs counter to the SHR's statutory objective to protect the interests of tenants.

2.13. It was highlighted that the SHR focus too much on negative examples in their publications and do not highlight good practice. The focus on the most problematic examples it was also felt led to the SHR viewing the sector in a negative way, and being overly robust in its actions. It was stated that the SHR needed to have a more positive relationship with the sector, and that

³ Legislation.gov.uk (2010) Housing (Scotland Act 2010, available [here](#))

part of the problem was that it was understaffed/resourced. SFHA has always supported the case for ensuring that the SHR is adequately resourced.

2.14. Our survey also asked what the main risks were to an effective regulatory regime, which revealed the following concerns (again consistent with previous responses):

- Negative regulatory approach/heavy handed, disproportionate approach leading to getting bogged down in trivial matters and missing important strategic matters
- the capacity/practical housing experience of the SHR
- inconsistency in approach from SHR and lack of openness
- a poor relationship between the SHR and the sector, with the need for the SHR to gain the respect/confidence of the regulated
- lack of monitoring of the SHR
- Prescriptive regulation stifling innovation

3. Independent Appeal Mechanism

3.1. There is currently no independent appeal mechanism for RSLs for decisions made by the SHR. The only appeal mechanism available concerns the results of an inspection report⁴, with the SHR Chief Executive and one non-executive SHR Board member hearing the appeal. An RSL could in theory seek judicial review in regards to SHR's decisions, but this would be such an extreme and costly measure it is highly unlikely an RSL would ever pursue such an avenue. As such, there is no external/independent appeal mechanism available.

3.2. In our survey, 67% of respondents stated that they would like to see an independent appeal mechanism available for landlords to appeal certain decisions made by the SHR.

3.3. Respondents felt that this would represent good practice, make the SHR more transparent and be a valuable addition to the regulatory framework.

3.4. Our members urged caution about cost, arguing that it was crucial that any such appeal mechanism would be based on a clear rationale and swiftly administered. It must not lead to unnecessary extra bureaucracy or cost.

3.5. SFHA believes that the Regulatory Framework would greatly benefit from the SHR having in place a clearly defined, independent appeal mechanism,

⁴ Scottish Housing Regulator (April 2012) *Inquiries and Information* (6.28) available: [here](#)

possibly incorporating elements similar to those used in other regulatory bodies.

- 3.6. For instance, the Office of the Scottish Charity Regulator (OSCR) has in place The Scottish Charities Appeals Panel (SCAP)⁵ which deals with appeals against decisions made by OSCR. This panel is completely independent of OSCR.
- 3.7. In England, the Housing and Communities Agency (HCA) are responsible for the regulation of housing associations and co-operatives. They have in place an Appeals Panel⁶. It would only consider an appeal, if it concerned “*powers which, if implemented by the Regulator, impose a direct sanction or cost on a registered provider.*”

4. Examples From the Sector

- 4.1. We found reluctance for organisations to come forward to publically share their views regarding the SHR, with approximately one third choosing to remain anonymous.
- 4.2. However, it is worth noting that 50% of respondents to our members’ survey would be willing to attend a Chatham House meeting with members of the ICI Committee to discuss their experiences more openly, which SFHA would be happy to host if the ICI Committee wished .

5. Concluding Comments

- 5.1. Our survey has revealed some positive feedback for the SHR, with two thirds of respondents feeling that it is meeting its statutory objective. The sector recognises that the SHR is seeking to promote the interests of tenants and other service users in its actions.
- 5.2. However, there are clearly some constructive criticisms that if resolved would strengthen the Regulatory Framework. With 57% of respondents stating that they do not feel that the SHR performs its functions in a proportionate, accountable and transparent manner, this would appear to be the most prominent area for the SHR to address the sector’s perception. In getting side tracked on trivial matters, the SHR runs the risk of missing important strategic issues, particularly given its limited resources.
- 5.3. Currently, there is no independent appeal mechanism for RSLs to appeal regulatory decisions made by the SHR. In our survey, 67% would like to see such a mechanism in place. This would greatly enhance the transparency and accountability of the SHR, and there are existing mechanisms in other regulatory bodies that illustrate how this might work in practice.

⁵ Scottish Charity Appeals Panel SCAP Website available: [here](#)

⁶ Homes and Communities Agency (March 2012) *Appealing Against Our Decision* available [here](#)

5.4. Regulation is crucial for housing associations and co-operatives in Scotland, and as such there is a need for the SHR and the sector to have a constructive relationship. Whereas the SHR needs to be targeted where action is needed the most, it cannot base its view of the sector only on the most negative examples. The vast majority of RSLs are well managed organisations, and as the SHR has such an important role in maintaining the reputation of the sector, it also should play a prominent role in promoting this excellent performance.

5.5. The SFHA would be happy to host a Chatham House meeting between members of the ICI Committee and our membership if the Committee would like to gain further views and examples from the sector directly.

Scottish Federation of Housing Associations
20 November 2014