Dear James Dornan MSP,

Convener, Local Government and Communities Committee
Scottish Parliament

My name is Brian Donnelly, and I am contacting you about the Committee’s scrutiny of how the Scottish Housing Regulator (SHR) exercises its statutory functions.

I would like to share with the Committee a recent freedom of information request to SHR regarding its use of the statutory intervention powers in Part 5 of the Housing (Scotland) Act 2010. I have attached a copy of the information request and subsequent correspondence. The main points as I see are then summarised in this note.

**FOI Request: what was asked for and why**

Part 5 of the 2010 Act permits SHR to take statutory action against social landlords in various ways. SHR can appoint members to the governing body of a registered social landlord (RSL), appoint a manager to perform an executive role, and it can direct an RSL to transfer its housing and other assets to another social landlord.

The information request asked SHR to provide the following information:

- How often statutory intervention powers have been used since 2014,
- The role the SHR Board had played in approving the use of the statutory powers, and
- How the SHR Board monitored statutory action after it had been approved.

The FOI request did not address wider issues about whether the interventions were necessary, appropriate etc. Instead, its purpose was to clarify SHR’s own governance practices in such cases. The powers are at the very top end of the legal sanctions SHR can take against an RSL and there is a corresponding need for the SHR Board to have a high level of assurance when use of the powers is being considered.

**SHR Response to FOI Request**

The key facts for the Committee to note are as follows:

- SHR has used its statutory intervention powers for 12 RSLs since 2014
- The SHR Board approved the use of statutory action in **only one of these cases** (a directed transfer of assets involving a very small RSL owning only 72 houses)
- **In 11 out of 12 cases**, SHR Assistant Directors approved the statutory action. SHR has 7 such third tier managers who sit below SHR’s Chief Executive and Directors.
The delegation of decision-making is permitted by SHR’S internal procedures. Whether it is good governance is a different matter. It is rather like a housing association board giving staff authority to decide the annual rent increase, or your own Committee authorising the Clerk to approve the Committee’s submission on the annual budget.

The FOI request also asked about what information the SHR Board receives while statutory action measures are in force. In particular, the request asked whether the Board receives written reports. SHR’s response states that:

“We provide updates to the Board on statutory actions in a variety of formats including verbal and written. We do not provide a written report on statutory action to each Board meeting”.

The first sentence is rather ambiguous, so I have reviewed published Board minutes since the start of 2018 (13 Board meetings). This confirmed that the SHR Board exercises limited formal oversight of statutory action cases while the action is underway:

- The minutes suggest that the very small RSL already described was the only one out of the 12 cases where SHR’s Board received written reports to keep it updated.
- Minutes of some meetings refer briefly to oral updates by officers, but it is not clear which RSLs these relate to or, in broad terms, what issues were being reported on.

Conclusions

The information received in response to the FOI request raises concerns about:

- **SHR’s governance** – whether it is appropriate for almost all decisions about the use of statutory intervention powers to be taken by staff without reference to the SHR Board
- **Assurance** - the level of assurance SHR’s Board can have about statutory interventions since almost all decision-making is delegated to staff, with apparently little in the way of formal, written reporting to the Board about how statutory intervention powers are being exercised for particular RSLs.

While it may be that decisions on some cases need to be taken relatively quickly, many other boards manage these circumstances without handing over all aspects of decision-making to their executive officers.

When SHR appeared before the Committee meeting on 13 November 2019, it stressed the need for RSLs to demonstrate **effective governance and ensure high levels of governing body assurance**. Clearly, SHR must do exactly the same.

SHR also advised the Committee when discussing statutory interventions that “…. in almost all the organisations (subject to intervention), the governing bodies—those responsible for overseeing the organisation—often did not know what they did not know”. As far as intervention is concerned, it would seem this statement could also apply to the SHR Board.

Brian Donnelly, 9 December 2019