

Consultation response

The regulation of social housing: a consultation

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Shelter
Scotland

Summary

- Shelter Scotland welcomes the opportunity to respond to this Scottish Housing Regulator (SHR) consultation and believes that proportionate, robust and effective regulation is vital to the continuous improvement of all social landlords across Scotland and more importantly, to ensure that the best possible service is delivered to customers.
- Shelter Scotland's main priority for the new SHR is that it can (and does) diagnose problems quickly and then take action to remedy those problems. As such we will judge the SHR against the following simple questions:
 - 1. Can the SHR quickly identify failings in housing management and homelessness practice?**
 - 2. Can the SHR take swift and meaningful action where these failings are identified?**
 - 3. Can the SHR support and guide organisations into improved practice?**
- Shelter Scotland agrees with the broad regulatory approach laid out in the consultation and thinks that scrutiny of social landlords should be independent, thorough, and robust whilst also being proportionate to risk and scale and most importantly responsive to poor practice. What is most important however, is how policy translates into practice and what improvements are seen on the ground.
- This consultation and the Regulators future work priorities are tied closely to the ongoing development of the first Scottish Social Housing Charter (SHC). Although we have not seen the final Charter document, Shelter Scotland has concerns that some of the outcomes are unmeasurable and do not capture some of the central statutory duties on social landlords, especially in relation to homeless applicants. As such, we welcome the opportunity to work with the Regulator in the coming months to develop their regulatory approach in relation to homelessness services and engagement with service users.
- With the abolition of cyclical inspections it is vital that risk-based inspections do not translate into a more relaxed approach to regulation. The framework that has been in place in the past has been thorough and robust and the shift to risk-based interventions should not change the depth or scope of investigations.

- The new Regulator must work with a range of audit bodies, representative organisations and other external partners to maximise the intelligence they have and to ensure statutory duties, Charter outcomes and best practice is being achieved for service users.
- While we support the priority given in the consultation to the involvement and consultation with tenants, service user involvement must be as inclusive as possible and a meaningful process rather than merely a tick box exercise. It is also important that social landlords engage with all of their customers not simply those in registered tenant groups (RTOs). This includes those on waiting lists, gypsy travellers and homeless households.
- From this consultation, it is unclear how the new regulatory approach and the Charter will address the statutory obligations that landlords have, particularly towards homeless households. It would be helpful in further consultations if these duties were addressed in a clear and explicit way.
- What really matters is what happens with regulation in practice and we will not know this until the new regime commences. Therefore, Shelter Scotland believes that after 3 years, an evaluation should take place by an independent source to appraise how the approach is working in practice and make recommendations for improvements.

Introduction

Shelter Scotland welcomes the opportunity to respond to this consultation by the Scottish Housing Regulator (SHR) on the new model for the regulation of social housing when the new independent Regulator comes into effect from the 1 April 2012.

What really matters is how policy translates into practice and how the new regulatory framework is used to diagnose and then remedy problems. There are three basic criteria that we feel the new Regulator should be judged on and as such, all of the specific comments in this response relate to these central priorities:

- Can the SHR quickly identify failings in housing management and homelessness practice?
- Can the SHR take swift and meaningful action where these failings are identified?
- Can the SHR support and guide organisations into improved practice?

Shelter Scotland believes that effective, proportionate regulation is a fundamental part of ensuring social landlords deliver the best possible service for their customers. It is important that the move away from cyclical inspections does not translate into relaxed scrutiny of services and statutory duties and that where there are potential failings, action is taken promptly. What we need to see from the new Regulator is a system where failings in homelessness services (and other aspects of social housing management) can be identified quickly and action taken to intervene when necessary.

The new framework for regulation is closely tied to the outcomes that will be included in the Scottish Social Housing Charter which will come into effect in April 2012. The consultation for the Charter outcomes has only recently closed and because we won't know how the final Charter will look for some time, there remain a lot of unanswered questions about regulation of the outcomes. This means it is difficult for us to respond to some parts of this consultation, but we would hope that there will be future opportunities to comment on the regulation of the Charter by the new Regulator.

The consultation document lays out the intention to achieve 'effective and intelligent regulation'. However with reduced resources and the risk-based inspection model, this will rely heavily on working in partnership with organisations across the sector. The new Regulator must continue to build a close relationship with landlords, tenants groups, service users and a range of representative bodies to ensure it has the widest possible intelligence base. While Shelter Scotland can see the merits of risk-based rather than cyclical inspections, there must be clear mechanisms for a range of stakeholders to highlight bad practice or systemic failings and the sector need to see that when

necessary, the SHR will act on this evidence. Shelter Scotland has always enjoyed a good relationship with the SHR and will continue to work with the new body to ensure the requirements of homeless and other vulnerable households, are protected.

Throughout the consultation document the terms ‘tenants’, ‘tenants, homeless people and other service users’ and ‘tenants and others’ are used seemingly interchangeably. This makes the different responsibilities and duties difficult to disentangle and in future documents and consultations it would be more helpful if the target group was referenced more explicitly. When the new Regulator comes into effect, it would be useful in publications and on the website, if information for different customers was clearly marked out. There remain some questions about how the outcomes of the Charter will embed alongside the pre-existing statutory requirements (in particular towards homeless households) and this consultation does little to clarify this.

Response

The following comments related to the parts of the consultation document where we have specific comments to make and as such we have not responded to all the consultation questions.

Part 1

This part of the consultation lays out the purpose of the SHR and the regulatory principles. Shelter Scotland can see no problem with these principles but we require more detail on how the process will work in practice and to ensure they are consistently applied, especially in relation to risk-based scrutiny activity and self-assessment.

Section 1

Question 1: Do you agree with our proposed principles and approach to building a strategy for consulting and involving tenants?

How can we make sure tenants and others can contribute to our work?

Tenant and other customer involvement in the regulation of social housing is important to ensure the service user perspectives and expectations are reflected. Tenant involvement in regulatory activity is well established and through RTOs, residents’ groups and tenant assessors, tenants’ perspectives and views are an integrated part of continuous feedback. There are however, less well established mechanisms for involving ‘other’ customers in the regulatory process, particularly homeless households and those on waiting lists. While engagement with these service users is a lot more difficult than with established groups, the SHR should consider how this can be done more effectively, particularly through partnerships with organisations with a framework for engagement. Any

engagement with service users should be done in a meaningful way and seek to gather feedback the widest possible demographic of tenants and potential tenants.

Through organisations such as Shelter Scotland and the Glasgow Homeless Network (and others) there are opportunities to consult and gather feedback from harder to reach groups and this should be considered as part of the strategy for consulting tenants and others published in April 2012. The varied experiences and views of 'other' customers, particularly homeless households, should be considered as important to the regulatory process as the views of tenants and efforts should be made to create opportunities for people to engage. Possible ways to do this include:

- Regular meetings with organisations representing service user groups
- Service user interviews or discussion groups as part of scrutiny work and/or thematic studies
- Service user questionnaires

Question 2: Do you agree with our proposed approach to co-operating with other regulators and scrutiny bodies?

Question 3: Do you agree with our proposed approach to involving landlords and other sector interests?

Shelter Scotland agrees that the new Regulator should work closely with existing scrutiny bodies to avoid duplication of reporting but also to ensure that there are no regulatory gaps and that under the risk-based model, poor performance is not allowed to go unnoticed. This will be reinforced by good relationships with social landlords themselves and the other organisations and bodies across the sector.

Section 2

Question 4: Do you agree with our proposals on how we will identify risk in RSLs?

Question 5: Do you agree with our proposals on how we will identify risk in councils?

Shelter Scotland supports the move away from cyclical inspections as a better use of resources and a more proportionate form of regulation. Risk based inspections, however, must not become shorthand for a less meaningful regulatory process and crucially, when the Regulator has intelligence of bad practice or failings against statutory duties, Code of Guidance best practice, Charter outcomes or any other performance measures, they must take swift and appropriate action to investigate.

Working with existing scrutiny bodies will be increasingly important for identifying risk. As mentioned above, without having seen the final Charter document or the Regulator's performance indicators to sit under each outcome, it is difficult to comment on how effective local authority returns will be and how clearly they will identify performance failings and risk. It is clear however, that social landlords will be required to report a significant amount of standard information on an annual basis but when the Charter outcomes and performance measures are finalised these should not require any duplication of reporting.

In section 2.4 there are a series of risk categories listed: poor outcomes for tenants and others; poor stock quality and investment failures; poor financial performance and management and poor governance. Added to this list should be a failure to meet statutory obligations and poor performance against national targets e.g. the 2012 homelessness commitment.

Question 6: Do you agree with our proposed approach on regulatory engagement?

Shelter Scotland agrees with the proposed approach to regulatory engagement and agrees that a different level of scrutiny is needed for different social landlords irrespective of performance. It is good to see that the new Regulator has powers to request information in addition to standard returns and to set targets. For this approach to be effective the process must be responsive to changing circumstances. There must be fluidity around a landlord's categorisation so when necessary proposed engagement plans can change if risk is increased.

Question 7: Do you agree with our proposed approach on how we will enable tenants to raise significant performance failures with us?

Question 8: Do you agree with our proposed approach on whistleblowing, notifiable events and the disclosure of information to us by Auditors?

Shelter Scotland agrees with these proposed approaches and believes it is important to have access to information from a range of sources.

As mentioned above it is important that the SHR gathers input and feedback from a range of service users not solely RTOs and the phrasing of this question exemplifies the heavy emphasis on tenants throughout the consultation document. There should be avenues for tenants *and other service users* to raise significant performance failures with the SHR.

Section 3

Question 9: Do you agree with our proposals on self-assessment by landlords and tenants?

Question 10: Do you agree with our proposals on how landlords should involve tenants and others in self assessment?

Shelter Scotland agrees with the proposals on self assessment and believes that this should be a part of wider performance management on a continuous basis. Landlords should be getting feedback from customers on an ongoing basis to ensure that policy is translating to good practice and that service user expectations are being met.

Question 11: Do you agree with our proposals on landlords submitting Annual Charter Performance Reports?

Question 12: Do you agree with our proposed approach to assessing and reporting on landlords' progress against the Charter?

If measurement against the Charter outcomes is to become a central part of the Regulator's assessment of performance and therefore, risk, then the outcomes need to be correct as do any indicators or measures beneath the outcome. As mentioned above, Shelter Scotland has some reservations about the current draft Social Housing Charter and as such finds it difficult to comment on the Regulator's proposals for monitoring performance against the outcomes. The current Charter is too long and in many cases the draft outcomes are unmeasurable, we look forward to seeing the next draft following on from the Scottish Government's consultation.

In general, Shelter Scotland does agree that social landlords should report annually on their performance against the Charter and in a way that involves tenants, waiting list households, homeless people, gypsy travellers and any other customers in as meaningful way as possible. As the Regulator continues to consult on indicators to sit beneath each outcome, it should consider what information is currently recorded, what is most useful to landlords, service users and others and how the information would be used to measure performance and benchmark across the sector. These returns should include a combination of qualitative and quantitative measures and should incorporate the HL1 statistical return currently made by all local authorities to the Scottish Government in relation to homeless applicants.

Part 2

Section 6

Question 22: Do you agree with our proposals to conduct checks of a random selection of landlords to review information?

Question 23: Do you agree with our proposed approach to using our inquiry powers to gain additional information?

Question 24: Do you agree with our proposed approach to using our inquiry powers to get more assurance and investigate matters of concern?

Question 25: Do you agree with our proposed approach to using our inquiry powers to inspect to hold landlords to account?

Question 26: Do you agree with our proposals to do short notice or unannounced inspections?

In line with proportionate and effective regulation principals, the Regulator should have a range of inquiry powers to use as appropriate and to ensure their scrutiny work is as effective as possible. Shelter Scotland believes that short notice or unannounced inspections have a role when high levels of risk have been identified or poor practice has been reported. Short notice or unannounced inspections should not be commonplace however and the Regulator should communicate with landlords on an ongoing basis.

The new Regulator should also continue to carry out 'thematic' inspections which have in the past been useful in addition to individual inspections. In addition, an important role for the Regulator is disseminating good practice and innovative models throughout the sector. Traditionally the SHR has not been good at highlighting good practice despite the wealth of information at its disposal and this should be a priority under the new regime. A good practice 'bank' should be collated, capturing positive examples found through inspections and these should be highlighted by the Regulator at regular intervals.

Question 27: Do you agree with our proposed approach to grading outcomes?

Shelter Scotland does not see any value in the proposed changes to the Regulators grading scale for inspections and thinks that the scoring system should be abolished altogether. Instead the post-inspection focus should be on what is working and where there is room for improvement which removes the need to pigeon hole a landlord as either 'good' or 'bad'. Part of this should be about highlighting good practice (as mentioned above) and where there is poor practice, working with the landlord to put in place an improvement plan.

Section 7

Question 28: Do you agree with our criteria for statutory intervention? Are there other criteria we should consider?

Shelter Scotland supports the proposals for statutory intervention to compel a landlord to improve or address a specific problem but the criteria for that intervention should be amended to specifically include failure to meet statutory obligations.

Question 29: Do you agree with our proposed approach to how we will intervene? Are there alternative approaches we should consider?

Question 30: Do you agree with our proposals on what we expect regulated bodies to do following our statutory intervention? Are there additional factors we should consider?

Shelter Scotland feels there is a need for greater emphasis on the implementation of post-inspection improvement plans. Currently there is very little consistency with how landlords choose to implement and report back on their improvement plans and how these are shared with interested partners in their area. The purpose of a regulatory body is not simply to highlight service failings but to try and eliminate them and this can only be done if improvement plans and follow up communication with landlords is an integral part of the process.

Further information, detailed above and consultation is now required to understand more about how the devolved fund would work in practice.

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