Regulator of Social Housing

Regulator of Social Housing
Fry Building
Marsham Street
London SW1P 4DF

T: 0300 124 5225
E: enquiries@rsh.gov.uk
W: www.gov.uk/rsh

Florence Eshalomi MP
Chair, Housing Communities and Local Government Committee
House of Commons
London
SW1A 0AA

Monday 17 February 2025

Dear Ms Eshalomi

Follow up to Housing Associations: Development and Finance evidence session

Thank you for the opportunity to speak to the committee as part of its oral evidence session on Housing Associations: Development and Finance on 14 January 2025. Thank you also for your letter of 23 January 2025 setting out a number of matters on which I offered to write to you with further information.

Engagement with tenants following a regulatory judgement

You asked me to provide more information about our role in engaging with tenants, in particular how we ensure tenants are informed of their landlords' grades (Q51) and for the wording of any relevant consumer standards (Q52).

Regulatory judgements are our view of how well a landlord is delivering the outcomes of our standards and are published on our website following programmed inspections, stability checks or from responsive engagement.

The primary way in which we expect tenants to become aware of our judgements is via their landlord. This approach reflects the primacy of the landlord-tenant relationship. We set out requirements for landlords to do so in our standards. This includes our expectations around communicating any regulatory judgements they receive and any improvement activity they undertake following our judgements. I undertook in the committee meeting to check the exact wording of the requirement and to write to you. I can confirm that our Transparency Influence and Accountability Standard includes (2.4.4) the specific expectation that landlords *must* provide tenants with accessible information about "*how they are performing in delivering landlord services and what actions they will take to improve performance where required*". This is amplified in the code of practice: "*In providing tenants with accessible information about their performance, registered providers should consider all performance information, including the regulator's judgements.*"

Further details of the relevant requirements of this standard are set out in the attached annexe.

We expect landlords to respond to these requirements and publish information about our judgements to their tenants through their own communication channels. For example, Newham Council wrote to all tenants and issued a statement following their C4 regulatory judgement. However, we note the Committee's concern and will therefore ensure that we reiterate to landlords the importance of sharing this information with their tenants as part of their obligations.

We publish information about our regulatory judgements for all stakeholders on our website, and this is the most visited area of our website. Our regulatory judgements are also communicated via social media and through an email alert service for those who wish to sign up for this. In our engagement with a wide range of tenants and tenants' groups, we find a high level of awareness of our published judgements. We also engage with the press at both the local and national level and our monitoring of press cuttings indicates a high level of local press and broadcast reporting of our judgements.

Engagement with landlords following a regulatory judgement

You also asked how the regulator engages landlords regarding their feedback on our assessments and investigations (Q54). We engage with landlords on an on-going basis if we conclude that a landlord is not meeting the outcomes of our standards. If we have identified weaknesses, for example through a consumer regulatory judgement of C2 or below, then our landlord improvement process applies.

Our landlord improvement process is based on the principle of co-regulation to ensure boards and councillors remain responsible for ensuring their organisations deliver the outcomes of the standards. We take a risk-based and proportionate approach which means that our on-going engagement with a landlord is more intense and extensive when the failings are broader, more complex and/or more serious. We use that engagement to ensure that landlords are making progress in addressing weaknesses identified and that they are delivering against the actions agreed in the landlord improvement plan. If landlords are not willing and/or able to improve we have a range of further tools and powers that we can and do use.

We expect landlords to take account of the views of tenants when developing their improvement plans (2.4.4 of annexe). We know that many landlords have tenants represented on their improvement boards, for example. How landlords have engaged tenants in their improvement work will form part of our follow up engagement with them.

Response to predecessor committee report

We welcomed the predecessor committee's May 2024 report into 'The finances and sustainability of the social housing sector' which was a timely contribution on an important topic. Since then, although the sector remains resilient overall, finances continue to be stretched and this is unlikely to change in the near term. We set this out in our publications such as the Sector Risk Profile and the Global Accounts. We continue to use all the tools at our disposal to identify emerging risks and work with landlords to mitigate these risks as far as possible. Our engagement with landlords facing significant financial pressures has been extensive and intensive – we step up that engagement as required, based on an individual landlord's position.

You asked for further information and clarification on our response to the report and, in particular, to outline why we felt we had sufficient processes in place to ensure that we were addressing the concerns raised (Q55). I am happy to do so and have expanded on the various areas covered by the report below.

Use of resources

The predecessor committee recommended that, should landlords have homes that require major improvements and significant reserves, we encourage them to deploy their reserves to address this (paragraph 57). It also recommended that we proactively assess how private registered providers use their reserves (paragraph 79).

Our Safety and Quality Standard, coupled with wider statutory health and safety requirements, places strong expectations that landlords invest in existing homes where required. 2.1.2 of that Standard requires that "*registered providers must use data from across their records on stock condition to inform their provision of good quality, well maintained and safe homes for tenants including:*

a) compliance with health and safety legal requirements

b) *compliance with the Decent Homes Standard*

c) *delivery of repairs, maintenance and planned improvements to homes*."

Through our inspections and other regulatory engagement we seek assurance as to the extent that landlords are providing homes which meet the Decent Homes Standard and relevant safety standards and are investing to remediate, maintain and improve them where necessary. We also examine whether their asset management plans are based on robust information about the condition of their homes and that their business plans make adequate provision to maintain homes to an appropriate standard in future.

We report on this assurance in our regulatory judgements and reflect it in our regulatory gradings. While private registered providers are independent businesses and it is the responsibility of their boards to determine how they will deliver the outcomes required by all of the standards, the condition of homes and management of investment in them can affect our governance, viability and consumer grades.

There is evidence that our approach is effective: investment in existing homes is at record levels, with landlords using their reserves (see below) by borrowing against their assets to raise cash to fund these works. Latest forecasts show projected spend on repairs and maintenance of £50bn over five years (as noted above, this is at record levels). Increasing numbers of landlords are working with us on improvement plans to address stock condition and repairs issues as a result of our inspections and responsive engagement. Over forty private registered providers have negotiated waivers from their banking covenants to allow them to make limited losses for a defined period while undertaking intensive repairs and remediation programmes. However, while landlords are, in general, making good progress, we recognise that completing the required changes will take time.

Sector reserves

We are aware that sector reserves are confusing as they are only an accounting disclosure and not a cash sum. They represent the value generated by the business over the years that has been deployed to support its new and existing homes. Private registered providers fund their businesses through rental income and borrowing, not through reserves. Reserves reported in private registered provider accounts are not cash in a bank account or sinking fund which can be spent (unlike in local authorities where Housing Revenue Account reserves are the accumulated surpluses of the Housing Revenue Account, in cash). Rather, the reserves figure is the value of the business. In a private registered provider, this consists mainly of the value of its property assets, plus a small amount of cash, less its outstanding debts.

While total reserves reported by the sector in the 2024 Global Accounts were £69.4bn at March 2024, the available cash (excluding amounts held in secured accounts) in the second quarter of 2024/25 was only £4.0bn – the second lowest amount in over ten years. The reserves figure increases when a private registered provider makes a surplus over the year, or its assets are revalued upwards. The figure decreases when it makes a loss or the value of its assets is impaired. Private registered providers rely on borrowing to maintain existing homes and develop new ones. Globally the debt reported on balance sheets was £99.7bn at 31 March 2024. Borrowing entails adherence to strict contractual covenants, breach of which can result in default. Covenants usually require them to generate surpluses after interest. Interest cover – surplus divided by interest payable – is a metric used to demonstrate they are investable businesses.

Capital investment – whether in new homes or certain types of improvements to existing homes – does not change the reserves figure, it changes the distribution of value between cash assets and property assets i.e. when the available cash has been used for capital investment, it is no longer available, but will be reflected in the increased value of the homes (the property assets). Similarly borrowing more does not increase the reserves figure, as the increase in cash is matched by an increase in debt and the total value of the business remains the same.

Impact of regeneration on tenants

The predecessor committee asked that, with respect to regeneration projects, we insist that landlords take full account of, and meet, existing tenants' needs wherever possible (paragraph 61). It also asked that we require developers to agree and take on board tenants' priorities (paragraph 62).

In our response to the predecessor committee we outlined how our standards require landlords to listen to and be accountable to tenants and to ensure that tenants' security of tenure is protected.

Landlords must deliver these outcomes for all aspects of a landlord's activity, including regeneration projects. We recognise that regeneration projects present particular risks around tenant engagement and experience and will consider including specific reference to this when we refresh the supporting Code of Practice in future. In the meantime, we will be clear in our communications and speaking and stakeholder engagement that our expectation covers all aspects of a landlord's activities, including regeneration.

Where we identify a landlord is undertaking regeneration activity we may include this in our inspections and other engagement, in line with our risk-based approach to regulation, so that we can gather assurance particularly around how the landlord is delivering the outcomes of the standards in this area. For example, we may look at the extent to which tenants are able to determine how to scrutinise their landlord, determine the subjects to review and to lead that scrutiny and the extent to which boards are assured about issues that tenants are raising as concerns.

Understanding for-profit investments

The predecessor committee asked that we regularly review our own understanding of and ability to scrutinise new financing models in the social housing sector and published the outcomes biannually (paragraph 100).

We regularly communicate our views on the risks and challenges associated with proposed new financing models through the Sector Risk Profile and other publications. We consider our capacity and capability through our business planning and robust, on-going risk management processes. Having appropriate skills is a key risk on our Strategic Risk Register to ensure that we implement, and keep under review, appropriate mitigations. We also use our audit function as one of many ways in which we keep our regulation under review. This all forms part of our on-going day to day operations and is covered by our regular corporate reporting. We consider that our approach to this risk ensures that it is fully embedded in our normal work and that a biannual published review would be of limited additional value.

The predecessor committee also asked that we examine if boards and executive teams have individuals with sufficient expertise in the financial models the provider is using (paragraph 101). We strongly agree that this is important and it is already an essential part of our inspections, to gain evidence and assurance against our governance expectations that require boards to manage their affairs with appropriate skill and foresight, including regular self-assessment.

Our role if a housing provider defaulted

The predecessor committee asked that we set out early measures we could take in the event of a notable problem arising with a private registered provider (paragraph 168).

We use the information that landlords send us on a regular basis, such as the quarterly survey, to help us identify potential issues and ensure that we have the maximum time possible to resolve any problem cases. We have published guidance on the use of our powers. The circumstances of each case would determine which measures would be the most timely and effective to use, and we would always tailor our response to the precise circumstances of an unfolding situation, so as best to protect tenants and the reputation of the sector. Our primary aim is to identify and resolve problems early, thereby protecting tenants and supporting the provision of social housing, including by encouraging and promoting private investment. Broadly we take a graduated approach according to the severity of the situation, as follows:

- Identify landlords with potential significant exposures through analysis of regular data returns and business plans
- Ensure understanding of, and assurance about, landlords' mitigation strategies and recovery plans
- Increase monitoring frequency to ensure that landlord issues are resolved internally through cashflow management and negotiation with lenders (which most are).

Where we consider that a provider's own actions may not resolve the position we:

- Develop, at an early stage, intervention / rescue plans depending on the specific situation. This could include approaching other landlords to provide financial support or expertise, liaising with lenders, identifying potential merger partners, considering break-up actions if necessary
- If necessary, consider direct provision of financial support, with approval from MHCLG and HMT
- Implement insolvency plans for moratorium and/or special administration.

I consider that the regulator has the approaches and powers in place to identify issues and to engage landlords at an early stage to resolve issues should they arise.

I hope this response is helpful. I would be happy to discuss any aspect further.

Yours sincerely

Fiona MacGregor
Chief Executive

Annexe – Expectations about communicating information to tenants set out in our standards

The required outcomes in the Transparency Influence and Accountability Standard that are particularly relevant here are that landlords:

- "*take tenants' views into account in their decision-making about how landlord services are delivered and communicate how tenants' views have been considered*" (1.3.1)

- "*must collect and provide information to support effective scrutiny by tenants of their landlord's performance in delivering landlord services*" (1.5.1)

- "*must use relevant information and data to:*

    - *understand the diverse needs of tenants, including those arising from protected characteristics, language barriers, and additional support needs; and*

    - *assess whether their housing and landlord services deliver fair and equitable outcomes for tenants*" (2.1.1)

The same Standard also sets out our specific expectations that landlords:

- "*give tenants a wide range of meaningful opportunities to influence and scrutinise their landlord's strategies, policies and services*" (2.2.1)

- "*working with tenants, must regularly consider ways to improve and tailor their approach to delivering landlord services including tenant engagement*" (2.2.5)

- "*must provide tenants with accessible information about:*

    - *how they are performing in delivering landlord services and what actions they will take to improve performance where required*

    - *how they have taken tenants' views into account to improve landlord services, information and communication*" (2.4.4)

Our consumer standards code of practice amplifies and expands on some of our requirements in the consumer standards. On the same Standard the code says that "*in providing tenants with accessible information about their performance, registered providers should consider all performance information, including the regulator's judgements. Registered providers should consider how they can support tenants to understand the information being presented, including relevant performance action plans, for example, by including contextual and benchmarking information.*"