

## **Annex**

### **Ministry of Housing, Communities and Local Government**

#### **Module 3 Opening Statement**

### **The Regulatory Framework for Social Housing**

#### **Background**

1. In 2017, the function of regulating social housing was the responsibility of the Homes and Communities Agency (“HCA”), acting through its Regulation Committee. This arrangement took effect from 1 April 2012 and lasted until 1 October 2018, when the regulation of social housing was transferred from the HCA to a new standalone public body, the Regulator of Social Housing (“the regulator”). This move did not change its responsibilities or powers.
2. The HCA was an executive non-departmental public body, sponsored by the Ministry of Housing, Communities and Local Government.

#### **Role and remit of the regulator**

3. The regulator regulates registered providers of social housing, and maintains a statutory register which lists private (non-profit and profit-making) providers (“PRPs”) and local authority providers (“LAs”). Most non-profit providers are housing associations.
4. Where a local authority contracts out the management of some or all of their homes to an Arms Length Management Organisation or Tenant Management Organisation, it remains the landlord that is responsible for ensuring those homes meet the regulator’s requirements.

#### **The regulator’s objectives**

5. The objectives of the Regulator of Social Housing (“the regulator”) are set out in the Housing and Regeneration Act 2008<sup>1</sup> and have been in place in their current form

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2008/17/contents>

since 15<sup>th</sup> January 2012. The regulator has two statutory fundamental objectives: an economic regulation objective and a consumer regulation objective.

6. The economic regulation objective is:

- a) to ensure that registered providers of social housing are financially viable and properly managed and perform their functions efficiently and economically;
- b) to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing);
- c) to ensure that value for money is obtained from public investment in social housing;
- d) to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds;
- e) to guard against the misuse of public funds.

7. The consumer regulation objective is:

- a) to support the provision of social housing that is well-managed and of appropriate quality;
- b) to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection;
- c) to ensure that tenants of social housing have the opportunity to be involved in its management and to hold their landlords to account;
- d) to encourage registered providers of social housing to contribute to the environmental, social and economic well-being of the areas in which the housing is situated.

8. As well as setting the regulator's objectives, the 2008 Act requires the regulator to exercise its functions in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable<sup>2</sup>. These requirements

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<sup>2</sup> Section 92(k)(5) of the 2008 Act

underpin how the regulator carries out all of its functions. The regulator also operates within the provisions of the [Government's Regulators' Code](#).

### **Regulatory framework**

9. The regulatory standards for social housing in England are at the core of the regulator's regulatory framework requirements. Each standard sets out required outcomes and specific expectations of registered providers.

### **Economic standards**

10. The regulator proactively regulates the economic standards which are:

- [Governance and Financial Viability Standard](#) (applicable to PRPs but not LAs) sets out the regulator's required outcomes for registered providers to ensure effective governance arrangements and manage their resources effectively.
- [Value for Money Standard \(applicable to PRPs but not LAs\)](#) sets out the regulator's required outcomes for registered providers to articulate their strategic objectives and to have an approach to achieving value for money in meeting these objectives and demonstrate their delivery of value for money to stakeholders
- [Rent Standard \(in 2017 this was applicable to PRPs but not LAs<sup>3</sup>\)](#) sets out the regulator's required outcome for registered providers to charge rents in accordance with the government's direction to the regulator of May 2014 and the Rent Standard Guidance. For the four year rent reduction period introduced by the Welfare Reform and Work Act 2016, the Rent Standard was in abeyance for most purposes.

11. The regulator has also issued 2 Codes of Practice: the [Governance and Financial Viability Standard Code of Practice](#) (published in April 2015) and the [Value for Money Code of Practice](#) (published in April 2018).

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<sup>3</sup> The government published a Direction to the regulator in February 2019, which directed the regulator to introduce a new Rent Standard applicable from 1 April 2020. All registered providers of social housing have to comply with the 2020 Rent Standard, including local authority registered providers.

12. These standards and Codes of Practice did not apply to LAs in 2017 (the Rent Standard has since been extended to cover LAs, to reflect the rollout of Universal Credit). This is because LAs are subject to separate oversight arrangements under the [Local Government Act 1999](#). The Government has also published [Guidance on Statutory Intervention and Inspection](#). LAs are also subject to different financial arrangements, any LA that owns 200 or more social dwellings must hold a Housing Revenue Account, initially set up under the Housing Act 1985. The Government has published [guidance about the Housing Revenue Account](#) and its [operation](#).

### **Consumer standards**

13. The regulator's remit on consumer standards is reactive in response to referrals or other information received. This follows the 2010 DCLG Review of social housing regulation which led to the adoption of a reactive approach to consumer regulation for LAs and PRPs.<sup>4</sup> This means that currently the regulator does not proactively scrutinise landlord compliance or routinely monitor performance – it only acts when issues are brought to its attention.

14. The consumer standards apply to all registered providers including LAs:

- [Home Standard](#) requires registered providers to meet all applicable statutory requirements for the health and safety of the occupants in their homes (including, but not limited to gas safety, fire safety, electrical safety, asbestos, Legionella and lift safety).
- [Tenancy Standard](#) sets out how registered providers should engage and interact with their tenants such as to provide services to support tenants to maintain their tenancies and to prevent unnecessary evictions.

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<sup>4</sup> <https://www.gov.uk/government/publications/review-of-social-housing-regulation--2>

- [Neighbourhood and Community Standard](#) requires registered providers to work in partnership with other relevant agencies to address issues such as the cleanliness of the area and anti-social behaviour.
- [Tenant Involvement and Empowerment Standard](#) intended to ensure that tenants are able to hold their landlord to account. It sets out how registered providers should engage and interact with their tenants, how they should handle complaints, and the importance of taking tenants' needs into account.

### **The regulator's approach to regulation**

15. The regulator takes a co-regulatory approach. This means boards of private registered providers and local authority councillors who govern providers' service delivery are responsible for ensuring their organisation meets the regulator's standards, and for being open and accountable in how their organisation meets its objectives. We have confirmed in the Social Housing White Paper<sup>5</sup> that the regulator will maintain this co-regulatory approach.
16. The regulator's approach to regulating providers is risk-based. This means that, in delivering its proactive approach to regulating the economic standards, it carries out sector risk analysis and assessments of private registered providers with 1,000 or more social housing units to identify those it judges to be more complex and who consequently have an increased level of risk exposures. Providers with fewer than 1,000 social housing units are subject to a lower level of regulatory engagement, although the regulator may increase its engagement if they identify risks which means a landlord may not be in compliance with its standards.
17. The regulator is required to publish guidance setting out how it intends to assess compliance by registered providers with its standards<sup>6</sup>. It has four main ways of carrying out its planned regulatory engagement with private registered providers

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<sup>5</sup>

<https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

<sup>6</sup> <https://www.gov.uk/government/publications/regulating-the-standards>

which own 1,000 or more social housing units:

- a) **Review of Quarterly Surveys** - private registered providers which own 1,000 or more social housing units are required to complete Quarterly Surveys.
- b) **Stability Checks** – the regulator carries out an annual Stability Check of all private registered providers which own 1,000 or more social housing units. This is a financially focused assessment of a provider’s most recent business plan and annual accounts.
- c) **In Depth Assessments (IDAs)** - Private registered providers which own 1,000 or more social housing units are also subject to periodic IDAs. For most providers, the regulator anticipates conducting an IDA every three or four years. As a general principle, the frequency with which the regulator carries out an IDA is linked to its assessment of the relative risk profile of providers.
- d) **Annual planned engagement meetings** (for a subset of larger and/or more complex providers) – the regulator anticipates carrying out IDAs of some providers on a biennial basis because of their size and/or complexity. In the year when the regulator is not conducting an IDA, it will arrange to meet face-to-face with the executive teams of this group of providers.

18. As well as its planned work, the regulator also responds to new issues as they emerge (what it calls reactive engagement). We set out in the Social Housing White Paper<sup>7</sup> that we will be maintaining this robust approach to economic regulation, but will legislate to ensure that the regulators powers remain adequate in response to changes in sector risk and diversity.

### **Dealing with breach of standards**

19. The regulator may receive information and allegations about providers from various sources, including complaints received directly from tenants.

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<https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

20. The regulator considers all referrals it receives to ascertain whether any information received suggests a breach of one of the economic or consumer standards that might warrant regulatory action.

21. The regulator takes a different approach depending on whether it is an economic or a consumer standard which may be impacted. As indicated above, the economic standards apply only to Private Registered Providers, apart from the Rent Standard which applied to local authorities from 1 April 2020.

### **Possible breach of economic standards**

22. The regulator investigates matters pertaining to the economic standards in the following circumstances:

- where the issues relate to the viability of an organisation, or
- where the issue, if proven, may affect its regulatory judgement of the organisation, or
- where the issues, if proven and unaddressed, could have a significant reputational risk for the sector.

23. In addition to the factors listed above being in evidence, in the case of providers which own fewer than 1,000 social housing units, the regulator will generally only investigate where the issue, if proven, might ultimately lead to the use of its statutory powers by reason of either a failure to comply with the standards, or mismanagement.

24. When seeking further assurance on a particular issue, the regulator will always make a rounded judgement based upon all of their knowledge of a provider and seek to act in a proportionate and transparent way, and to take a graduated approach. The possible outcomes from any investigation it undertakes are:

- no regulatory action necessary
- further action incorporated into planned regulatory engagement

- a downgraded regulatory judgement or a regulatory notice (as applicable)
- enforcement action.

### **Possible breach of consumer standards**

25. In line with its current remit, the regulator's approach to consumer matters is reactive only and therefore it does not have a role in monitoring providers' performance on consumer standards. Its ability to use its enforcement powers is restricted by the serious detriment test introduced by the Localism Act 2011<sup>8</sup>. Following the publication of the Social Housing White Paper<sup>9</sup> a more proactive approach to consumer regulation will be adopted once the Government has legislated to implement the white paper's proposals. The regulator is taking forward some measures in advance of legislation, for example, on the preparation of Tenant Satisfaction Measures and has started the recruitment of new staff to help deliver this new proactive approach.

26. In line with its overall regulatory approach, in reaching judgements on compliance with the consumer standards and the serious detriment test, the regulator takes a proportionate approach to each case and focuses on whether there is evidence of a systemic failure by a provider. The regulator does not have a role in resolving individual disputes between landlords and tenants. In such cases, it will always advise a complainant to contact the Housing Ombudsman service, who does have such a role.

27. When the regulator judges that a provider has failed (or may fail if no action is taken) to meet one or more of the consumer standards, it will go on to consider whether the serious detriment test is met, i.e. whether there are reasonable grounds to suspect:

- that the failure has resulted in serious detriment to the provider's tenants (or potential tenants) or there is a significant risk that it will do so;

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<sup>8</sup> <https://www.legislation.gov.uk/ukpga/2011/20/schedule/17/paragraph/9/enacted>

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<https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>



- that if no action is taken by the Regulator and the failure occurs, the failure will result in serious detriment to the provider's tenants (or potential tenants) or there is a significant risk that it will do so.

28. Where the regulator becomes aware of an issue that is indicative of a possible consumer standards breach (or potential breach) and possible serious detriment, the matter is referred to its Consumer Regulation Panel (an internal panel of officers with in-depth knowledge of the Consumer Standards), which will consider whether and how the issue should be followed up.

29. Where the regulator judges that there are reasonable grounds to conclude that the breach or potential breach of standards has resulted in, or could result in, serious detriment to tenants (or potential tenants), the regulator publishes a regulatory notice setting out its findings. Serious detriment can relate to health and safety, loss of home, unlawful discrimination, loss of legal rights and/or financial loss<sup>10</sup>. Most commonly, the regulator has found serious detriment (or risk thereof) in relation to breaches of the Home Standard, which covers health and safety.

30. The threshold for regulatory intervention for the consumer standards is, therefore, significantly higher than for the economic standards<sup>11</sup> and a registered providers' failure to meet a standard, or standards, does not necessarily lead to a decision of serious detriment. Each case is considered under its circumstances as well as responses from the provider and its willingness and ability to address any failings.

31. A regulatory notice is published on the regulator's website, and providers are expected to address failings promptly and effectively to remedy issues of non-compliance. Registered providers must provide assurance that they have assessed and put in place any arrangements needed so that tenants are not at risk of harm while improvements are being delivered.

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<sup>10</sup> [Page 31 Regulating the Standards](#)

<sup>11</sup> Based on the 2010 review.

32. A finding of consumer standards breach and serious detriment usually raises questions about the effectiveness of a provider's governance arrangements. It may also be the case that issues are raised about the governance of a provider even where the serious detriment threshold has not been met. For private registered providers, the regulator will usually consider the provider's compliance with the governance element of the economic standards in such cases, and where it concludes that a provider's published grading<sup>12</sup> should change, it will publish a narrative judgement.

33. Local authority registered providers are not subject to the regulator's Governance and Financial Viability Standard as they are subject to separate oversight arrangements. However, if the regulator finds serious detriment as a result of a breach of the consumer standard, as well as taking any necessary action to deal with the presenting serious detriment problem, the regulator may also refer concerns about governance to the authority's monitoring officer and others where relevant, such as its auditors, chief executive and lead councillor, the Local Government Association and the Ministry for Housing, Communities and Local Government.

34. If further regulatory action is needed to ensure compliance with any of the standards, the regulator will consider the use of its powers, bearing in mind its obligation to be proportionate, and its graduated approach to intervention.

### **Intervention and enforcement**

35. The regulator expects providers to identify problems and take effective action to resolve them. If a provider takes responsibility and the regulator concludes that it is able to respond to the problems, it will work with the provider to monitor and ensure that it delivers the necessary corrective actions.

36. The regulator may intervene further, possibly using one or more of its statutory enforcement powers, if a provider is unable or unwilling to respond positively and

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<sup>12</sup> Page 20 Regulating the Standards for explanation of our grading system

provide adequate assurance that effective corrective action is being taken. Key powers are set out in the table below.

| <b>Power</b>   | <b>Applicable to private registered providers<sup>a</sup></b> | <b>Applicable to local authority landlords</b> |
|--|---|--|
| <b>Survey</b> to assess the condition of stock   | X   | X  |
| <b>Inspection</b> to establish compliance with the regulatory requirements                         | X   | X  |
| Hold an <b>inquiry</b> where it suspects landlord mismanagement                                    | X   | X  |
| Carry out an <b>extraordinary audit</b>  | X   | X  |
| Issue an <b>Enforcement Notice</b>   | X   | X  |
| Issue <b>fin</b> es  | X   |  |
| Order payment of <b>compensation</b> to a resident   | X   |  |
| <b>Appointment of manager</b> to improve performance of the landlord                               | X   |  |
| <b>Amalgamation of registered societies</b> to improve performance (following an inquiry or audit) | X <sup>d</sup>  |  |
| <b>Transfer land</b> to another provider to improve management of land (following an inquiry)      | X <sup>b</sup>  |  |
| <b>Suspension and removal of officers</b> in cases of mismanagement (during or after inquiry)      | X <sup>c</sup>  |  |

|   |                |   |
|---|----------------|---|
| <b>Appoint a new officer</b> to address service failure and improve management of company | x <sup>c</sup> |   |
| <b>Appoint an adviser</b> to improve performance of landlord                              |                | x |
| <b>Ability to censure local authority employees</b> (during or following an Inquiry)      |                | x |
| <b>Requirement to tender</b> some or all of its management functions                      | x              | x |
| <b>Requirement to transfer management</b> of housing to a specified provider              | x              | x |

a) This includes registered charities, housing associations and “for profit” private sector landlords, b) Does not apply to registered charities, c) Applies to not-for-profit providers only d) Applies only to not-for-profit providers who are registered societies.

37. More information on intervention and enforcement is available in its [Guidance on the regulator’s approach to intervention, enforcement and use of powers](#). The regulator’s approach to the use of powers is underpinned by five key components: the economic regulation objective, the consumer regulation objective, the statutory duty to minimise interference, the standards and any specific requirements set out in the Housing and Regeneration Act 2008.

### Handling complaints

38. The first course of action if residents have a complaint is through the landlord’s in-house complaints process. Through the regulator’s Tenant Involvement and

Empowerment Standard, social housing landlords are required to have a clear, simple and accessible complaints handling service, to publish information on the nature and number of complaints received and to inform residents of how information on complaints is used to improve services.

39. If residents are unhappy at the end of this process, the resident can refer their complaint to a “designated person” (such as a local MP, councillor or tenant panel) but if they do not want to do this or the designated person does not resolve or refer it themselves, a resident must wait for eight weeks before the complaint can be referred to the Housing Ombudsman. This is known as the “democratic filter” and is enshrined in legislation<sup>13</sup>.

40. The Housing Ombudsman provides a free, independent and impartial complaints resolution service to residents. The Ombudsman aims to provide residents and landlords with sufficient advice and assistance to enable them to resolve their complaints locally and early wherever possible. This ensures the best outcomes and improves landlord and tenant relationships. Where an early resolution or mediation has failed or is not possible or appropriate, then the Housing Ombudsman will investigate and determine cases fairly and impartially.

41. Residents can also approach the regulator directly with their complaint at any time. However, as mentioned above, the regulator only acts in such circumstances where there is evidence of systemic, corporate failure of an organisation rather than individual issues. All of the information received about complaints is used to determine whether there is evidence that a landlord is, or may be, responsible for a breach of the regulator’s standards. Most complaints brought to the regulator’s attention in this way do not meet such criteria and so are signposted on to the Housing Ombudsman for consideration.

42. The Housing Ombudsman itself may make referrals to the regulator where it believes there is a possible breach of regulatory standards, based on complaints it

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<sup>13</sup> See sections &A to &C of Schedule 2 to the Housing Act 1996. The draft Building Safety Bill includes provisions to remove the democratic filter.

has received. All Housing Ombudsman referrals to the regulator are classed as statutory referrals and are taken to the regulator's Consumer Regulation Panel for consideration. A [Memorandum of Understanding](#) between the regulator and the Housing Ombudsman sets out the functions of each organisation and describes the arrangements for cooperation and communication between the two bodies in relation to their respective functions.

19 March 2021