briefing

Final Regulatory Framework – What has changed since the consultation?

March 2019

1. **Background**

On 28 February 2019, the Scottish Housing Regulator published the finalised Regulatory Framework and statutory guidance, which will come into effect from 1 April 2019.   The SHR has also published its response to consultation feedback.   Both are available via the links below:

[SHR Regulatory Framework and Guidance](https://www.scottishhousingregulator.gov.uk/what-we-do/how-we-regulate/our-regulatory-framework-1-april-2019)

[SHR Response to Consultation Feedback Feb 2018](https://www.scottishhousingregulator.gov.uk/publications/our-regulation-social-housing-our-response-consultation-feedback)

The final framework comes after a comprehensive period of consultation that began in 2017. SFHA used a number of methods to gather member views during this time, including putting together a Regulatory Sounding Board that met throughout the process; feeding into and helping to develop an ongoing SHR Working Group to look at the specifics of some of the proposals; holding consultation events in conjunction with the SHR; and gathering views through our practitioner forums. Using all of the feedback received, SFHA submitted a response both to the informal Discussion Paper in April 2018[[1]](#footnote-1), and to the formal consultation in December 2018. The SFHA response, and an accompanying appendix outlining comments on Regulatory Standards, are available below:

[SFHA Response to SHR Consultation December 2018](https://www.sfha.co.uk/download.php?file=881)

[Accompanying Appendix to SFHA Response - Comments on Regulatory Standards](https://www.sfha.co.uk/download.php?file=882)

The SHR has made a number of amendments to the framework as it was initially proposed during the consultation, many of which reflect comments made by SFHA in our response. This paper outlines what changes have been made, elements that remain unchanged and next steps.

1. **Advisory Tool Kit**

The SHR has committed to working with the SFHA and the sector in the production of an advisory tool kit, with the first key aspect of this looking at the production of assurance statements – and how the governing body can gain the level of assurance necessary to sign off the assurance statement. SFHA is in discussions with the SHR about how this tool kit will be developed, and is keen to take a leading role. SFHA will announce more details regarding this in April.

1. **Equalities and Human Rights**

Within its response to the consultation, the SHR stated it will delay the assessment of compliance against new requirements on equalities and human rights until April 2021, providing further time to develop sector specific guidance. The SHR are not expecting landlords to begin data collection immediately from 1st April in recognition that this guidance needs to be developed first.

SFHA will seek to clarify, as part of its input into the Advisory Tool Kit, what this means in terms of the first Assurance Statements and what organisations should state in regards to this requirement in the meantime.

1. **Regulatory Standards**

From the consultation period, a number of amendments have been made to the standards as proposed during the consultation period. These are outlined below:

* **Standard 1.1**

*The governing body sets the RSL’s strategic direction. It agrees and oversees the organisation’s business plan to achieve its purpose and intended outcomes for its tenants and other service users, having had regard to our advisory guidance on business planning.*

This removes the reference to the SHR’s advisory guidance on business planning, which SFHA asked for in its consultation response. This inclusion would have given the business planning guidance statutory status.

* **Standard 1.5**

*All governing body members and senior officers understand their respective roles, and working relationships are constructive, appropriate professional and effective*

This takes on board a suggestion in the SFHA response to the consultation, as the word “appropriate” was rather subjective.

* **Standard 3.4**

*The governing body ensures financial forecasts are based on appropriate and reasonable assumptions and information, including information about what tenants can afford to pay and feedback from consultation with tenants on rent increases.*

* **Standard 3.6**

*The governing body ensures that sets employee salaries, benefits and its pension offerings are at a level that is to be sufficient to ensure the appropriate quality of staff to run the organisation successfully, but which is affordable and not more than is necessary for this purpose.*

SFHA made comment that in large organisations who have considerable numbers of staff, it might not be practical for the GB to directly set employee remuneration for every single employee. This slight tweak acknowledges this comment.

* **Standard 5.7**

*Severance payments are only made in accordance with a clear policy which is approved by the governing body, is consistently applied and is in accordance with contractual obligations. Such payments are monitored approved by the governing body to ensure after it has satisfied itself that the payment represents value for money. Alternatives to severance must be considered including redeployment.*

* **Standard 6.1**

*The RSL has a formal, rigorous and transparent process for the election, appointment and recruitment of governing body members. The RSL formally and actively plans to ensure orderly succession to governing body places to maintain an appropriate and effective composition of governing body members and to ensure progressive refreshing and sustainability of the governing body.*

This change is in line with SFHA’s response to the consultation. “*Progressive refreshing*” did not acknowledge the contribution of long serving governing body members and we had requested this phrase be removed.

* **Standard 6.3**

*The RSL ensures that all governing body members are subject to annual performance reviews to assess their contribution and effectiveness. The governing body takes account of these annual performance reviews and its skills needs in its succession planning and learning and development plans. The governing body ensures is able to assure that any non-executive member seeking re-election after nine years’ continuous service can demonstrates their continued effectiveness*

* ***Standard 7.4***

*The governing body is satisfied ensures that the new (or changed) organisation will be is financially viable, efficient and will provides good outcomes for tenants*

* **Standard 7.5**

*The RSL establishes robust monitoring systems to ensure that delivery of the objective of the change and of commitments made to tenants after the proposal takes effect are is achieved (for example in relation to service standards, operating costs and investment levels).*

1. **Constitutional Standards**

SFHA, and our fully mutual co-operative members in particular, raised concerns about the pre-existing constitutional requirement to make the RSL’s members’ names publicly available. We suggested in our consultation response that this requirement be changed to reflect the wording of the Co-operative and Community Benefits Societies Act.

This change has been made in the new Framework, and SFHA will reflect this in our forthcoming review of the Model Rules. This means requirements in the Rules around the register of members names can be greatly simplified and made more user friendly.

1. **Regulatory Status**

No additions have been made to the framework or guidance regarding the middle category of regulatory status “working towards compliance”, although this was an area that many – including SFHA – highlighted required more guidance. Helpfully, the SHR did provide more Clarification that the “Under Review” status will only be used when there is a potentially significant or serious issue that requires to be investigated.

There is still uncertainty in the sector about who would fall under the “working towards compliance” category and what issues would lead to this.   The implications of these status’ in terms of how lenders would view them is important to clarify. SFHA will seek to clarify this with the SHR.

1. **Statutory Guidance vs Advisory Guidance**

In its response to consultation feedback, the SHR specifies the difference between “statutory” and “advisory” guidance, highlighting that

* Statutory Guidance sets out the requirements and standards with which social landlords will comply
* Advisory guidance provides information intended to help landlords achieve the standards and outcomes in the Charter, and to comply with regulatory requirements and with the Standards of Governance and Financial Management.

This is an important distinction, and the SHR has committed to stating which category all current and future SHR guidance comes under.

1. **Assurance Statements**

The SHR has issued its guidance on [Assurance Statements](https://www.scottishhousingregulator.gov.uk/publications/annual-assurance-statement-statutory-guidance-february-2019)

The guidance does not provide any further clarity on what is and is not material for the purposes of the assurance statement.    The SHR states that it is difficult to provide examples because it will depend on the individual circumstances of the organisation in each case.    This is perhaps something the tool kit can cover moving forward.   In terms of wording of the statement, whilst SHR has not provided a template, there is an appetite in the sector for ensuring the wording contains caveats such as “to the best of our knowledge…..”   SFHA is keen to test this with the SHR in the coming months.

We are also seeking to confirm what an RSL who was in intervention/working towards compliance at the time of the submission of the assurance statement should state.

1. **Charter Indicators**

The SHR has published new technical Guidance - [**Scottish Social Housing Charter Technical Guidance**](https://www.scottishhousingregulator.gov.uk/publications/scottish-social-housing-charter-technical-guidance-advisory-guidance-february-2019)and [**FAQs**](https://www.scottishhousingregulator.gov.uk/scottish-social-housing-charter-techncial-guidance-advisory-guidance-faqs). These also go live from 1 April 2019 and will apply to Charter returns due in May 2020. For returns due in May 2019 the existing [**guidance**](https://www.scottishhousingregulator.gov.uk/what-we-do/how-we-regulate/scottish-social-housing-charter) and indicators apply.

A number of changes have been made to the Charter Indicators proposed in the consultation, highlighted below:

* **Indicator 13** *Percentage of tenants satisfied with the landlord’s contribution to the management of the neighbourhood they live in*

This is a helpful addition, in line with the SFHA response to the consultation. Satisfaction with the neighbourhood is not entirely within the landlord’s control, and they should only be assessed on their contribution to estate management.

* **Indicator 20** *Total cost of adaptations completed in the year by source of funding (£).*

SFHA commented on this indicator that the cost would vary dependent on the type of adaptation – i.e. if it was major or minor works. This change, whilst not addressing the issue we highlighted fully, could be helpful in distinguishing between adaptations the RSL is funding and that are being funded through grants.

* **Indicator 23** *the percentage of referrals under Section 5, and other referrals for homeless households made by the local authority, that result in an offer, and the percentage of those offers that result in a let.*

SFHA commented on this indicator that some local authorities, such as Edinburgh, do not offer section 5 referrals. This change seeks to address that point.

* **Indicator 26** *Rent collected as a percentage of total rent due in the reporting year.Total amount of rent collected over the whole of the reporting year as a proportion of the total amount of rent due that financial year (current tenants only).*
* **Indicator 27** *Gross rent arrears (all tenants) as at 31 March each year as a percentage of rent due for the reporting year*.*Total value of gross arrears as at 31 March each year as a % of rent due that financial year (current tenants only).*
* **Indicator C3** *Number of lets during the reporting year, split between ‘general needs’ and ‘supported housing’*

1. **Notifiable Events Guidance**

The SHR [Notifiable Events guidance](https://www.scottishhousingregulator.gov.uk/publications/notifiable-events-statutory-guidance-february-2019) has been changed since the consultation period, with some of the key changes noted below:

* References to the SHR Recommended Practice on Business Planning have been removed to reflect SFHA comments in our response that it could not be implied that this was statutory guidance.
* SFHA had raised concerns about a proposed requirement to notify the SHR if there were *“concerns raised by a local authority in relation to the RSL’s contribution to providing accommodation for people who are homeless whether or not committed to writing.”* We welcome that this has been removed from the Notifiable Events guidance.
* “Change of auditors” is now highlighted as a Notifiable Event for all RSLs, not just those who are systemically important.

1. **Tenant Consultation and Approval**

Changes have been made to SHR guidance on [Tenant Consultation and Approval](https://www.scottishhousingregulator.gov.uk/publications/tenant-consultation-and-approval-statutory-guidance-february-2019)

These are largely to reflect the removal of the SHR consent regime, and the Housing (Amendment) (Scotland) Act 2019.

1. **Financial Requirements**

The following Statutory Guidance is included within the framework in relation to financial requirements:

* [Determination of Accounting Requirements](https://www.scottishhousingregulator.gov.uk/publications/determination-accounting-requirements-statutory-guidance-february-2019)
* [Preparation of Financial Statements](https://www.scottishhousingregulator.gov.uk/publications/preparation-financial-statements-statutory-guidance-february-2019)
* [Financial Viability of RSLs](https://www.scottishhousingregulator.gov.uk/publications/financial-viability-registered-social-landlords-statutory-guidance-february-2019)
* [Section 72: Reporting Information of Material Significance](https://www.scottishhousingregulator.gov.uk/publications/section-72-reporting-information-material-significance-statutory-guidance-february-2019)

The following changes are noted:

* All organisations now must submit five year financial projections. Previously organisations with fewer than 250 units who are not developing or Abbeyfield Societies did not need to submit these.
* SHR will also not make proposed changes to the submission date for Five Year Financial Projections until 2020. At that point the submission date for the Five Year Financial Projections (FYFP) submission will move to the end of May as opposed to the end of June. We had highlighted in our response that this would put pressure on audit and finance resources at a busy time. SHR stated that the FYFPs should be based on outturn figures, and do not require to be based on audited figures; and that this might make a May submission more straightforward. Whilst SFHA welcomes the delay in the change taking effect, we will continue to liaise with our Finance Forums about the impact that this will have in practice and feed this back to the SHR.

1. **Other Unchanged Statutory Guidance**

The following documents all remain largely unchanged:

* [Consultation Where Regulator is Directing a Transfer of Assets](https://www.scottishhousingregulator.gov.uk/publications/consultation-where-regulator-directing-transfer-assets-statutory-guidance-february-2019)
* [Determination of what is meant by a step to enforce a security over an RSL's Land](https://www.scottishhousingregulator.gov.uk/publications/determination-what-meant-step-enforce-security-over-registered-social-landlords-land)
* [Group Structures and Constitutional Partnerships](https://www.scottishhousingregulator.gov.uk/publications/group-structures-and-constitutional-partnerships-statutory-guidance-february-2019)
* [How to Request a Review of a Regulatory Decision](https://www.scottishhousingregulator.gov.uk/publications/how-request-review-regulatory-decision-statutory-guidance-february-2019)
* [How to Request an appeal of a Regulatory Decision](https://www.scottishhousingregulator.gov.uk/publications/how-request-appeal-regulatory-decision-statutory-guidance-february-2019)

1. **Approach to Intervention and Relationship with the Sector.**

SHR commits to further developing its “How We Work” documents to address points raised during the consultation about transparency in the process and cost of intervention; consistency of regulatory judgement; and how they select statutory appointees/managers.    These were probably the aspects that most time was spent on during the consultation, as well as trying to find ways of developing the relationship between the SHR and the sector.   It is important that there is meaningful input from the sector in the development of this work.

SFHA is also seeking to establish ongoing mechanisms for the SHR to regularly meet with the sector and is in discussions with the SHR and GWSF about methods to take this forward.

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**March 2019**

1. SFHA (April 2018) Response to SHR Discussion Paper, available [here](https://www.sfha.co.uk/mediaLibrary/other/english/22726.pdf) [↑](#footnote-ref-1)