

REGULATING THE STANDARDS

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Regulating the standards

1 Introduction

The Regulatory Framework for Social Housing from April 2012 sets out the revised regulatory standards and expectations of registered social housing providers following changes to the Housing and Regeneration Act 2008, brought about by the Localism Act 2011. The framework was issued in March 2012 following a statutory consultation process carried out by the social housing regulator (SHR)¹. Providers are responsible for meeting the regulatory standards and for gaining assurance that they are doing so.

This document provides more information about how the SHR will regulate in practice and gain its assurance to enable it to form judgements on providers. It builds on the operational principles for regulating the economic and consumer standards that are set out in the framework. It describes in further detail the sector-level and provider-specific engagement with the regulator that providers can expect. The document is intended to explain in a transparent way what interaction a provider can expect from its regulator and what information the SHR needs to regulate effectively and proportionately.

For completeness this document also provides information on other key aspects of the SHR's role in relation to its maintenance of the statutory register of providers and its granting of consents. Where relevant, reference to further guidance on these activities is provided.

1.1 Objectives of regulatory engagement

The operational system for regulation is designed to allow the SHR to deliver its statutory objectives. The system flows from the objectives through the regulatory framework and into the work of regulatory staff. The regulatory framework reflects eight key objectives that underpin the operational approach. These are to:

- protect public investment in social housing
- maintain confidence of private investors to invest in the sector
- ensure that social housing continues to be available to current and future tenants
- enable landlords to be able to provide new social housing, assuming other conditions are in place
- ensure providers are open and transparent, to allow tenants and other stakeholders to form views on and influence the services delivered
- enable providers to meet the regulatory standards and statutory requirements
- deliver value for money improvements to support providers to deliver their social housing objectives
- protect the reputation of the sector as a whole

¹ The social housing regulator prior to April 2012 was known as the Tenant Services Authority (TSA). Under the Localism Act 2011, the SHR's powers were transferred in April 2012 to a statutory committee in the Homes and Communities Agency (HCA).

The regulatory framework describes at a high level how these are delivered through the SHR taking a **proactive role in the regulation of the economic standards** (covering governance, financial viability, value for money (VFM) and rent; and applying only to private registered providers). This is combined with a **'backstop' role in regulating the consumer standards** for all providers, where regulatory intervention is limited to where there is reason to suspect serious detriment or a risk of serious detriment occurring to tenants or potential tenants. The details are set out in chapters four and five of the regulatory framework which should be read alongside this document.

1.2 The approach to regulation – overview

The SHR's primary regulatory principle is co-regulation. This approach recognises that boards are responsible for their organisation's performance, compliance with regulatory standards and adherence to their own selected code of governance.

Underpinning this, the operational approach is founded on three principles:

- assurance based regulation
- risk based and proportionate regulation
- joined up regulation

This document describes these principles in more detail but in brief they mean:

Assurance based regulation: For the economic standards, the SHR's approach is to obtain sufficient assurance that these standards are being met and that the provider is delivering its objectives effectively. The approach takes into account the regulator's statutory duty to minimise interference. In particular the SHR needs assurance on the Governance and Financial Viability (G&V) standard because it is the bedrock of performance. Unless providers are meeting the G&V standard they are unlikely to be able to meet the other standards, including VFM. Given their importance, for large providers the regulator maintains a periodically updated public judgement on performance against governance and financial viability. This is to help maintain the confidence of key stakeholders and in particular lenders, central government and the taxpayer.

Risk based and proportionate regulation: The risk to the SHR is that a provider fails a standard (particularly for governance or viability) in a way that the regulator cannot remedy. Such a failure can have a detrimental impact on the reputation of the social housing sector and put at risk delivery of the regulator's statutory objectives. The SHR therefore needs to be able to identify those providers at risk of failure and to intervene proportionately to remedy the position and protect social housing assets. In order to do this effectively the regulator needs to understand both providers' business models and the external environment within which they operate. This requires a level of contact with providers that is proportionate to both the complexity of their business and the level of risk of their failing a standard. It also requires close contact with lenders, government, GLA and other key stakeholders to ensure

the SHR has a thorough understanding of the pressures on the social housing market.

Joined up regulation: To gain assurance that providers are meeting the economic standards and to identify those most at risk of potential failure, the regulator needs to understand their business models in the round. A focus on separate standards – Governance & Viability, VFM and Rent – could lead to the regulator considering compliance of each in isolation of the other, where understanding performance against each of these standards provides evidence relating to the others. The regulatory model therefore ensures that the SHR considers providers in a joined up way and that when coming to separate judgements (as it will for governance and viability) it can do so in a way that draws on insight from the assessment of the full range of economic standards.

By regulating according to these principles, the SHR expects to have a current understanding of those large providers at risk of failing its economic standards. It should also be able to identify those systemic issues that may be putting greater pressure on compliance for the sector as a whole or for particular sub-sectors and individual providers. This information base can then be used to engage with providers as necessary to anticipate and prevent a problem from arising, or to remedy the situation. It also forms the basis on which the regulator can periodically update public judgements and is able to provide credible analysis to inform the wider sector.

1.3 The Social Housing Regulator's resources

The regulation function within the HCA initially comprises staff transferred from the TSA, bringing a body of experience, knowledge and continuity to the regulation of providers. The SHR is organised through a single regulation directorate. It currently has national teams responsible for interaction with individual providers. These teams comprise regulatory engagement managers (RE) and financial analysts (FA), and are responsible for seeking the assurance necessary to conclude on providers' performance against the economic standards.

RE and FA staff have portfolios of providers for whom they are responsible, so that providers have named contacts, and an RE staff member assigned as the primary contact. FA and RE staff work collaboratively to ensure that the assurance they gain from their regulatory activity is combined effectively in the overall judgement on a provider's compliance.

These teams are supported in their regulation by central teams delivering sector risk and market analysis, data, guidance, technical advice and systems and training.

In addition the SHR has specialist teams that cover:

- coordination of engagement when there are major issues of non-compliance
- the regulation of small providers
- registration of new applicants
- maintenance of the register and managing consents

Regulating the standards

- statutory and other referrals relating to serious detriment and general enquiries about regulation

Part A: Regulating the economic standards

2. The Social Housing Regulator's risk based approach

2.1 The risk framework

The SHR operates a risk based and proportionate approach to regulation. The SHR is seeking to understand the risks to compliance with the economic standards and where these risks are assessed as material, to obtain assurance that they are being managed effectively. The approach is intended to minimise the burdens on providers while providing the necessary level of assurance to the regulator. It takes into account both an understanding of providers' business models and the market environment in which a provider operates. To do this effectively, the SHR needs to understand the operating environment and risk profile of the sector. To this end it carries out sector risk analysis.

The risk framework is the means by which the SHR ensures that its resources are deployed appropriately and proportionately to registered providers. The elements of the risk framework include:

- **sector risk analysis** – sector level profiling and data analyses to enable a better understanding of providers' operating environment and to identify and assess major risks and issues affecting providers as a whole or affecting a significant sub set of providers
- **segmentation of providers** to identify those which are more complex in structure and range of activities
- **engagement with individual providers**, both through review of key documents and face-to-face contact. The nature of the engagement will be tailored to reflect the potential impact on them of sector-wide risks and other risks specific to them

2.2 Sector risk analysis

To understand the operating environment for providers the SHR monitors the key risks that may cause them to fail the economic standards. This includes the identification of those providers which may be most exposed to those risks. This information is used to help direct regulatory resources and to seek assurance that providers are taking suitable mitigating action. The SHR intends to publish on a regular basis a public statement of the key risks it sees impacting on providers' ability to meet the economic standards. It intends that this openness about its concerns will help promote debate and understanding of those issues within the sector and make clear why regulators are engaging on certain issues. This should facilitate greater dialogue with the sector and its stakeholders and therefore enable the regulator to spot emerging issues in a timely manner.

2.3 Segmentation of providers

Initially segmentation of the sector is largely based on the size of an organisation. Not-for-profit providers owning fewer than 1,000 homes are usually subject to a reduced regulatory approach and will have limited engagement with the SHR. These

small providers represent the majority of registered organisations but in total they account for less than 5% of the sector's total assets, turnover and debt. In the absence of information which raises specific issues or significant risk, the regulatory approach involves the review of a provider's financial statements and if relevant the audit management letter to have confidence in its on-going viability. Where small providers are developing, the regulator will usually seek and assess financial forecast information. The regulatory approach to for-profit providers and other innovative not-for-profit models is subject to an individual risk assessment that does not take the 1,000 home threshold as its starting point.

The remaining (approximately) 400 not-for-profit providers own and manage the vast majority (around 95%) of the sector's stock. Across this group there is significant stratification, with a small number of very large and complex organisations and a range of smaller, less complex providers. Regulatory engagement is managed on the basis of the complexity and size of the provider. In this context, size and complexity of provider is taken as a proxy for the relative impact and likelihood of risk materialising. The larger more complex organisations are regulated by more senior and experienced strategic regulation managers and senior financial analysts.

2.4 Provider specific risk engagement

Regulatory engagement with individual providers will be influenced by the changing risk profile of both the sector and of the individual provider (relative to change in its own business model and complexity). Where the routine level of regulatory engagement identifies a specific local event or risk affecting providers, the regulator will engage proportionately with those affected. Also where the regulator's analysis indicates exposure to particular material risks then it will seek assurance about how the provider is managing those risks.

3. Regulatory assurance approach

3.1 Assurance based approach

Within its risk framework, the SHR adopts an assurance based approach to gaining sufficient evidence that providers are meeting the economic standards. A key focus for the SHR's assessment is the quality of the provider's governance. Experience has shown that when a provider gets into difficulties, weaknesses in governance are generally the root cause of the problems. These can take a variety of forms.

In general, the regulator will focus on the assurance which organisations gain themselves on their own compliance, delivery of their plans and the effectiveness of their control and risk management frameworks. This approach recognises the SHR's co-regulatory principles and boards' fundamental responsibilities. It also reflects the regulator's duty to minimise interference while obtaining the necessary level of assurance to meet its objectives and to issue public judgements that maintain the confidence of stakeholders in the sector.

To secure this assurance, the SHR has developed eight key questions for regulators to consider and answer during the course of their engagement with providers. They provide a consistent basis for evidence gathering and assessment. The questions

indicate the areas on which regulators seek assurance in relation to governance, viability and value for money. Providers will want to understand this context should regulators request specific additional information. The key questions are:

1. Does the organisation have an appropriate strategic business plan?
2. Does the organisation's strategy suggest that it understands its external operating environment and the markets in which it operates?
3. Do the financial plan and the financial position of the organisation support the delivery of its strategic objectives?
4. Does the organisation understand the risks to the delivery of its strategic objectives and get sufficient assurance on them and its systems of internal controls?
5. Does the organisation demonstrate how it achieves value for money in meeting its strategic objectives?
6. Does the organisation's business plan have clear and measurable objectives and does the organisation have a track record of delivering its plans and objectives?
7. Is there evidence that the organisation is transparent and accountable?
8. Is the organisation effectively led and controlled?

The level of work required to answer the questions will vary according to provider, based on the assessment of risk and complexity described above. The evidence base necessary to provide assurance for each question will be greater where a provider is identified as being more exposed to specific and material risk, or its business model and structure is more complex. This recognises that failure in a larger provider would be more difficult to resolve and would have a more damaging impact on the sector's reputation.

In light of the evidence gained, the regulator will conclude on its assessment of the provider's compliance with the economic standards. The conclusion takes the form of a banded assessment of governance and viability separately. The regulator will consider a provider's performance against the value for money and rents standard in coming to its conclusion on governance. The regulator maintains its assessment and will refresh it at least annually. Periodically, the regulator will make public its assessment of a provider's governance and viability through published regulatory judgements, which draw together these two assessments.

The SHR undertakes its assessment for all providers with 1,000 or more homes. However, where a provider is in a group and where the parent is registered, the regulator will assess compliance with the economic standards at group level. This means the regulator will gain its regulatory assurance for all registered group entities from engagement with the group parent. Where appropriate, the regulator might identify and follow up issues relevant to only one particular provider within the group but seek to address that through assurance gained from the parent.

Further detail of the form the published judgement takes is set out in section 6.

3.2 Routine regulatory engagement

In order to gain assurance sufficient for the regulator to address the questions set out above, it has developed as a baseline an annual suite of routine activities that are normally carried out for each provider. The activities below are not intended to form a prescribed listing of standard documents and where specific material risks are evident, further evidence may be sought. For all areas covered by the eight questions above, regulators will first seek the highest level of assurance, which will usually be that on which board relies for its assurance.

The approach aims to ensure that the SHR gathers sufficient evidence to establish that relevant standards are met. It does not aim to reach a view on whether they have been exceeded. Where regulators do require further assurance, the reasons and areas for follow up will be clearly set out to providers. The activities that regulators use to gather assurance and inform an assessment in respect of the eight key questions are set out below:

- 1. Review of the corporate strategic and financial plan (business plan).** This document or suite of documents is fundamental for the evidence base on which the SHR gains its assurance on: the organisation's strategy in the context of its operating environment; whether plans are funded; key risks to delivery of the plans are identified; efficiencies and VFM to be achieved; and track record in delivery of its plans and targets. Information such as the sophistication of financial sensitivity testing in the financial plan is important in contributing to the SHR's assurance on viability.
- 2. Review of the financial statements.** This document includes important evidence on delivery of targets, transparency and accountability, financial performance and management of risk and the control environment. The evidence may be provided through the Operating and Financial Review (also to include the provider's value for money assessment from 2013), the statement on governance (and compliance with the provider's chosen code of governance), the statement on internal control and risk management, the auditor's report and the detailed financial information set out in the accounts and notes.
- 3. Review and analysis of the standard regulatory data returns, including the annual Statistical Data Return, quarterly survey, Forecast Financial Return and the annual report on fraud losses.** In the majority of cases the analysis of the standard data returns provides the evidence base on which the SHR gains its assurance on the viability of the organisation through viability reviews, for which more detail is set out below. It will also contribute to the assurance on the organisation's approach to VFM. The statistical data return further provides key information that enables sector risk profiling. The annual fraud report should set out the losses due to fraud before any recovery. Whilst material losses should be identified separately, non material items may be aggregated by their type.
- 4. Review of the audit management letter.** This provides independent evidence which contributes to the SHR's assurance on the effectiveness of the internal control environment and financial governance.

5. Meet with the executive (or representatives of EMT) at least annually. The purpose of the meeting is for the regulator to test its understanding of the organisation's compliance and to confirm the regulator's understanding of the significance of issues arising from the document review and the provider's operating context. For example, where key financial risks have been identified or plans indicate a significant change in strategy, the regulator may want to enhance its understanding of the potential impacts and management response to those. The meetings will also provide an opportunity for the regulator to gain assurance on the organisation's response to those emerging sector wide risks which do not feature in the documentation review.

6. Meet with the board (or board representatives) at least annually. This contact may coincide with or include attendance at a scheduled board or audit committee meeting. This contact is valuable in providing the regulator with evidence to contribute to its assessment of the effectiveness of governance arrangements - consistent with the primary co-regulatory principle that boards are responsible for the performance of their organisations.

7. Review of the assurance provided to board on the strategy for and achievement of value for money in the organisation. Reports to board may be important to supplement other areas of evidence from meeting with the key representatives, financial and business plan information and any public assessment the organisation has made.

8. Review of risk management, internal controls and board assurance evidence. Providers have different approaches to their management of risk, internal controls and assurance frameworks. However, many organisations provide assurance to their boards by way of annual reports on these key areas. Such reports, where available, provide the regulator with a strong evidence base on which it can rely for its assessment. To ensure the regulator has sufficient assurance on these key areas, any document review will be tailored to the available evidence and relative risk and complexity of provider.

9. Review of performance reports on delivery against business plan targets. These reports provide assurance to boards on the delivery of key targets and therefore contribute to the evidence base for the track record of delivery for the organisation.

10. Review the appropriateness of the chosen code of governance and degree of compliance. Meetings with board and the review of financial statements may provide the SHR with sufficient assurance on this. However, the board's annual review of compliance with a chosen code may be necessary where more assurance is required.

The overall level of engagement across these activities will reflect provider complexity and relative risk or evidence of failure. Therefore, it will be appropriate to meet with either the EMT/CEO or board/chair on a more regular basis than once a year for more complex higher risk providers. This is to ensure a fuller understanding of the management of key risks or the development of the business model.

Whilst both regulatory engagement managers and financial analysts contribute to the evidence gathering and assessment across all eight questions set out in 3.1, they concentrate on different elements of the activities. This reflects their responsibilities in relation to the assessment of viability and governance. They will collaborate closely on the assessment of VFM. The regulatory work is brought together in a combined conclusion on the responses to the eight questions, for which RE and FA staff are jointly responsible. The teams will co-ordinate engagement with a provider to ensure it is delivered effectively and assurance is gained from evidence sourced across all activity.

3.3 Detail on the assessment of viability

A fundamental factor in a provider's ability to achieve its objectives and comply with the economic standards is its financial position and outlook. Therefore, the regulator undertakes an annual viability review for each provider (or registered group), as part of its activity to address the eight questions. The assessment of financial viability focuses on a provider's ability to meet its future financial obligations and to perform within their covenants.

The SHR's financial analysts carry out a comprehensive annual programme of viability reviews for all organisations owning 1,000 or more social housing homes to assess financial viability. Prioritisation within the programme, and the depth of analysis for individual providers, is determined according to risk. For some providers, where financial risk is assessed as low – for example there is no or very little development and the provider has an inherently strong financial position – the review of viability takes the form of a financial health check. This concludes on the viability of an organisation, in the same way as a full viability review.

In all cases, the assessment of viability is based upon the data returns described above, together with inputs from the range of activity, including discussions with providers' senior staff. The result of the financial assessment informs and is informed by the evidence base for the eight questions set out in 3.1 and thereby contributes to the regulator's overall assessment of compliance against the economic standards.

In assessing the financial viability of a provider, financial analysts use analysis of key ratios to identify whether particular risk factors are evident and, informed by the appraisal of new and emerging sector risks described in 2.2, consider the following factors:

- the track record and governance of the organisation and in particular the strength of financial governance and risk management
- the environment in which the organisation operates, its strategic response to the factors operating within that environment and the impact of those strategies on the scale of its operation
- the covenant position and relative sensitivity of the headroom on key financial covenants to changes in financial planning assumptions
- the profitability of the provider, where appropriate focusing on individual business streams
- the cash flow dynamics of the organisation

- its capital structure and treasury management arrangements

The SHR will look for evidence that the provider has incorporated reasonable assumptions and has conducted adequate sensitivity and scenario testing as part of a strategy for managing the risks to achieving its objectives.

The financial assessment is summarised in a viability judgement grading as set out at 6.2. The assessment is shared with the organisation in a viability review report, or letter, for those organisations for which a financial health check is undertaken. That report will highlight if there are changes to the regulator's understanding of the level of the provider's financial risk exposures and the effectiveness of management actions to mitigate those. Where appropriate the report will set out what further regulatory work will be undertaken, and where more regular (than annual) assurance is required on a specific financial risk area.

3.4 Assessment of value for money

The provider's ability to drive value for money across its operations and asset base will be taken into account by the regulator as a key indicator of the quality of governance. In its consideration of a provider's approach to VFM, the regulator will review how the board assures itself that the organisation is delivering value for money in an appropriate manner for its business.

During the period prior to the publication of a providers' first self-assessment on how it is achieving value for money, the regulator will focus on providers' progress towards the key elements of the VFM standard, reflecting that providers will be at differing stages of development. Consistent with the co-regulatory principle, the regulator will focus on the board assurance that they are meeting, or are on the path to meeting, the required standard.

From the point at which providers publish their self-assessment, it will become a key area of focus for the regulator's assessment of VFM. Regulators will make an assessment of the published statement and triangulate it against the evidence received from the activities noted above. Conversations with providers will focus on whether or not compliance with the standard has been demonstrated.

The regulator will reflect the level of its assurance on a board's engagement with the VFM standard in its judgement and strapline on governance, where appropriate.

3.5 Reactive regulatory engagement

Where routine engagement does not provide sufficient assurance, or new adverse information comes to light, the regulator would have additional contact with the provider to enable it to assess and gain assurance on the resolution of the issues identified. This further contact could take many forms dependent on the potential scale or urgency of the identified issue. The contact could be by way of a conversation to establish quickly whether further follow up is necessary or could include the regular receipt of additional monitoring information (including financial information) to allow the regulator to assess how well the presenting issue has been addressed. This does not indicate the SHR has concluded that a provider is failing or

may potentially fail a standard. Rather the regulator is investigating, usually with the provider, whether the new information or evidence of concern does reflect a non-compliant situation or requires a reassessment of grading. Areas that may prompt increased regulatory engagement include:

- a financial weakness that requires more regular monitoring to maintain the viability assessment
- allegations or whistle blowing about a provider
- evidence of significant fraud or attempted fraud with potential questions about risk and control issues, warranting further assurance. The SHR will want to be satisfied that potential criminal activity has been appropriately investigated and that, where necessary, internal controls have been reviewed and strengthened
- notification from a provider that it has identified in its view a material issue of non-compliance or potential non-compliance with an economic standard (as required by the G&V standard)

Where such issues are investigated, the regulator will decide whether its assessment of compliance with the Governance and Viability standard is materially affected. At all times the regulator will set out clearly with the provider what the issues are and what assurance it is seeking. Where appropriate, the regulator will update its assessment and publish a revised regulatory judgement to indicate any change. Providers will be given the opportunity to see and comment on any regulatory judgement prior to its publication. Depending on the materiality of the issues identified, and any consequent risks to which the provider may be exposed, the SHR may increase the intensity of its engagement.

3.6 Use of regulatory powers

The regulator expects organisations to identify problems and take effective action to resolve them. If an organisation takes responsibility for self-improvement and the regulator concludes that it has the capacity and capability to respond to the problems, it will work with the organisation to help it deliver the necessary corrective actions. However, there may be circumstances where self-improvement has not succeeded, or where an organisation is unable or unwilling to respond positively. Under these circumstances the regulator may need to consider the use of its regulatory, enforcement and general powers. A full explanation of how the regulator will use its regulatory powers is set out in the annex to the Regulatory Framework document.

3.7 Requirements for smaller private not-for-profit providers (that own fewer than 1,000 homes)

All the standards apply to small providers. However, the regulatory approach to smaller not-for-profit providers means in general that they should expect to have little regulatory engagement. The regulatory arrangements for smaller providers include review by the regulator of:

- audited annual accounts (or reviewed by an independent accountant, where applicable)

- auditor's management letter (not required if accounts are independently reviewed)

The regulator will not publish its assessment of compliance with standards for smaller providers, nor will it issue reports to providers unless there are areas of financial concern. Direct regulatory engagement is by exception and usually only in response to specific problems. In these circumstances reactive engagement will be similar to that for larger providers, described above. Where smaller providers are developing or procuring new stock, however, the regulator may require and analyse additional information to assess whether plans are deliverable.

For those for-profit providers owning fewer than 1,000 homes, and other not-for-profit providers of this size and of novel form, the requirements will initially be established with each provider through a risk assessment related to the registration process and may be reviewed periodically thereafter.

4. Data and information

The purpose of the provision of routine data and information to the regulator is to ensure it can deliver the assurance-based regulatory approach for the economic standards with need for minimal engagement with providers. The data and information required draws on that which providers themselves use to manage their businesses and is not intended to introduce onerous reporting specifically for the regulator. Data will be used to inform regulation with individual providers. In addition however, the regulator uses the financial and statistical data to inform the sector risk analyses, and to inform sector and sub sector focused engagement relevant to particular market risk.

4.1 The specific requirements for standardised data

The specific requirements comprise:

- financial data to support the regulator's routine assessments of viability and enable it to prioritise and focus work on key areas of financial risk
- data and information to help the regulator understand the context and the environment in which providers operate, for example, the type of homes owned by providers, how these are managed and stock movement into and out of the sector

The form determined by the regulator in respect of its standard data requirements (as referred to in the Governance and Financial Viability standard) includes:

- financial forecast returns (FFR) for larger providers (those with 1,000 or more social homes)
- electronic annual account returns (FVA) for larger providers
- quarterly financial risk survey (QS) for larger providers, which focus on key areas of financial and economic risk
- annual report on fraud losses

- annual return about providers' social housing and its use (Statistical Data Return – SDR) for all providers but with a very limited data requirement for the smallest providers
- annual return setting out (limited) organisational and administrative detail (within the SDR)

Additionally, the following (non-standardised) information is required to enable the regulator to perform the minimum suite of activity described above:

- business plan (or similar strategic and financial plan)
- annual outturn reports on delivery against business plan targets
- financial statements and annual accounts
- audit management letter
- annual internal audit report
- annual review of the effectiveness of internal controls

4.2 Data collection

From 1 April 2012 the regulator has introduced the NROSH+ system. It has been set up as a one stop shop to enable providers to make all returns to the regulator at a single web portal (<http://nroshplus.homesandcommunities.co.uk>). The regulator will expect all providers to make their data returns through this system. This method both reduces the regulatory burden and offers advantages for providers compared with how data was previously collected, including:

- data for all standardised returns can be entered on-screen or uploaded using excel spreadsheet templates
- both methods of data entry will test data at the time of input (ensuring it meets validation rules to avoid further query)

A number of fields can be maintained on an on-going basis on NROSH+ and then used to pre-populate the returns/surveys themselves – governance data and contact details for officers, for example. In addition:

- providers will be able to print/download copies of their data throughout the process of data entry and submission
- later, they will be able to access a number of reports, some of which will include national data and other peer group comparisons
- the new data collection website offers further efficiencies for providers and the SHR by drawing into one place all of the data collection surveys, simplifying the sign-off processes, and retaining prior year data for pre-population where appropriate

In addition to the standardised forms (including FFR, FVA, SDR and QS) NROSH+ enables providers to upload non standardised information set out in 4.1 in a range of formats (Word, PDF etc). Providers are encouraged to use this facility to send to the SHR the range of documents referred to above.

Organisations are expected to provide timely and relevant information to the regulator. If providers fail to do this, the SHR will regard that failure as a relevant factor in its view of the governance of the organisation.

5. Non-regulated elements

The Governance and Financial Viability standard includes the regulator's statement of expectations (paragraph 1.4 of the standard) for arrangements where a registered provider is part of a corporate structure that is not regulated by the SHR. Such arrangements, more familiarly known in other sectors as ring fencing, involve – using the term in the standard – a non-regulated element. The SHR's requirements apply only to private providers and may occur in either profit-making or not-for-profit providers.

5.1 Not-for-profit registered providers

The specific expectation (1.4 of the Governance element of the Governance and Financial Viability standard) requires that, where a non-regulated element exists, the registered provider is required to put appropriate mechanisms in place to ensure it is not prejudiced from meeting regulatory requirements. The standard goes on to define the circumstances in which a non-regulated element might exist.

For not-for-profit providers the economic standards apply to the entire registered entity, and the SHR's assessment of performance against the economic standards extends across the entity. Therefore, for non-profit providers, there are specific circumstances where a non-regulated element is likely to attract regulatory interest. These include where the parent of a group of registered providers is not registered, or where a registered group parent has within the group a material subsidiary organisation or associate that is not registered.

In these cases, the regulator's principal interest is that a non-regulated element may impair the provider's ability to meet the standards. The regulator will seek evidence of how the registered provider is managing potential risks to its compliance with the standards. There will be a specific focus on the mechanisms put in place to ensure the security of the social housing assets and the cash flows associated with them. In general, the regulator will attempt to do this by tailoring its work with the registered provider to gain assurance on the eight questions set out in section 3.1. This means the regulator will need to understand the potential risk (and its scale) posed by the non-regulated element on the registered provider(s) and the social housing assets.

Where there is a group of registered providers, but the group parent is not registered, there is no formal regulatory relationship or engagement with the parent. In these circumstances the regulator will engage with the registered elements of the group and assess individuals' compliance with the G&V standards at registered provider level. However, where services are shared across the group the SHR may gain assurance from the singular source.

5.2 For-profit registered providers

For those on the SHR's register as for-profit providers, the regulator's remit under the 2008 Act extends only in so far as the entity's social housing activities. Therefore any non social housing activity whatever its form (to the extent that they do any) is non-regulated. Introduction of a non-regulated element may introduce an increased exposure to particular risks for a registered provider.

The SHR is developing its approach to the regulation of for-profit providers. During 2012 it intends to review certain aspects of the regulatory framework. This is with a view to clarifying the expectations and approach to the regulation of for-profit landlords as well as considering the impact on not-for-profit landlords where this is relevant. This may lead, following consultation, to the regulator proposing changes to the framework, for example in relation to certain elements of the economic standards, including ring fencing. Further details will be available on the regulator's website in due course.

6. Regulatory assessments

The SHR is committed to being transparent in its approach by publishing assessments of providers' performance on the economic standards. It issues judgements to be transparent with providers and stakeholders about its views of compliance with the standards and to maintain the confidence of stakeholders in the regulatory system.

6.1 Judgements on governance and financial viability

The SHR issues two types of report in which it expresses its judgements on viability and governance:

- Regulatory Judgements (RJ) are public documents, which discuss the organisation's performance in the round and contain two judgements on its compliance with the governance and the viability parts of the G&V standard. The RJ will also comment on the assurance obtained with regard to the provider's approach to value for money. The SHR will continue to publish graded assessments in relation to both viability and governance as these are key areas where lenders, boards and others value assessments. It is expected that these will be refreshed at least every 2-3 years for all providers with more than 1,000 homes
- Viability Reviews (VRs) are confidential documents, seen only by the provider and (under the terms of loan covenants) their lenders. They should not be shared with third parties without the consent of the provider in question. This document summarises the regulator's assessment of a provider's viability (through the process set out at 3.3) and sets out key financial risk exposures, mitigations adopted by the provider and any monitoring activity the regulator will undertake to gain further assurance on the management of the exposures. Where a provider has been assessed as low financial risk, and the SHR has undertaken a financial health check, the review of viability will be summarised in a letter to the provider confirming the judgement

- Both types of report are issued to the provider in draft. This is to give each provider the opportunity to comment on the factual accuracy of content and if necessary to discuss changes in the reports with the regulator prior to their finalisation and (in the case of the RJ) publication

6.2 Regulatory assessment straplines

As part of the introduction of the new framework, the regulator has updated both the form of the RJ and the wording of the straplines that relate to the four point judgement scale. The SHR's assessment on compliance with the G&V standard will be expressed in terms of the following assessment gradings:

Governance grades

G1 – The provider meets the requirements on governance set out in the Governance and Financial Viability standard.

G2 – The provider meets the requirements on governance set out in the Governance and Financial Viability standard, but needs to improve some aspects of its governance arrangements to support continued compliance.

G3 – The provider does not meet all of the requirements on governance set out in the Governance and Financial Viability standard. There are issues of regulatory concern and in agreement with the regulator the provider is working to improve its position.

G4 – The provider does not meet the requirements on governance set out in the Governance and Financial Viability standard. There are issues of serious regulatory concern and the provider is subject to regulatory intervention or enforcement action.

Viability grades

V1 – The provider meets the requirements on viability set out in the Governance and Financial Viability standard and has the capacity to mitigate its exposures effectively.

V2 – The provider meets the requirements on viability set out in the Governance and Financial Viability standard but needs to manage material financial exposures to support continued compliance.

V3 – The provider's financial viability is of concern and in agreement with the regulator it is working to improve its position.

V4 – The provider's financial viability is of serious concern and it is subject to regulatory intervention or enforcement action.

For both viability and governance the first two grades indicate compliance with the standard. The second judgement on each suggests there are specific issues or general exposures that may cause them to fail the standard if they are not addressed appropriately. On the viability assessment, a V2 position might require a significant adjusting action to address the issue or it may reflect a material financial risk outside

the complete control of the organisation. On the assessment of governance a G2 may reflect identified deficiencies in governance in the provider where the regulator has concluded these are not sufficiently serious to affect the overall assessment as compliant. A G2 or V2 assessment would usually indicate the regulator will seek a focused update on the progress of the issue to ensure it does not deteriorate.

There are important differences between the second judgement on governance and viability. On viability it is quite possible that notwithstanding strong governance and an effective management team the provider will be at V2, because their underlying financial position is currently or structurally weak (an example of this may be a recent stock transfer where its financial profile is inherently weak and it lacks a track record in financial management). The viability judgements J1 and J2 from the previous grading system map directly across to the new grading system to V1 and V2.

On governance however all providers should aspire to be at G1. In general, a G2 judgement is a signal that something has not operated as intended at the provider (a specific instance of failure in risk management, for example) and the regulator is looking to see improvements. Providers that have been assessed as J1 or J2 under the previous governance grading system will be viewed as being at G1 under the new system, unless performance deteriorates or specific weaknesses are identified.

A G3 or V3 assessment indicates a level of concern with the organisation's performance which is likely to be reflected in intensive engagement with the organisation by the regulator.

In both cases a G4 or V4 judgement indicates a failure of governance or viability to the extent that the SHR is using its statutory powers to ensure the effective protection of public investment and tenants' homes.

6.3 Format of published judgements

The published RJs will provide the individual banding of its assessment of a provider's compliance with both the governance and viability elements of the G&V standard. It will also describe the assurance gained from regulatory activity completed across the eight questions. The published judgements will take a consistent form, describing the assurance gained within the headings covering:

- operating context and strategic response
- strategic planning
- risk management and assurance
- financial performance and planning
- treasury management
- value for money
- governance and performance management

The RJ is structured to cover the areas addressed by the eight questions. It will allow the regulator to demonstrate the evidence base from which it has gained its assurance. This reinforces the SHR's principle to ensuring a joined up approach to its assessment across the economic standards.

The two types of judgements have different frequency cycles. The VRs and financial health check letters are issued at least annually on conclusion of the viability review activity. Usually following receipt of the financial forecast information, priority will be given to those providers with a current V2 assessment or those where specific risks have been identified from regulatory activity since the previous annual review.

RJs are refreshed usually every two to three years, but more regularly in certain circumstances. These circumstances may include where the regulator's assessment of compliance with the G&V standard has changed (a change in assessment banding), material changes in the evidence base supporting the assessment, or where the organisation has undergone a significant structural change that indicates the previous published RJ is no longer relevant or meaningful to stakeholders. Although an updated RJ may not be published in any one year, the regulator maintains its assessment of compliance with the economic standards and is updated as routine regulatory activity is completed.

7. Regulatory decisions

7.1 Appealing against decisions made by the SHR

The regulator's appeals protocol explains that anyone affected by a decision to use certain regulatory or enforcement powers can appeal against that decision. Some of the powers include a statutory right of appeal to the High Court. The appeals protocol is not intended to replace this statutory right.

The protocol is available from the regulator's website.

7.2 Complaints about regulation

The approach to dealing with complaints about the service is set out on the regulator's website. The approach will take into account any implications arising from the statement on how providers can appeal against regulatory decisions in a more proportionate way before the statutory routes of redress in the 2008 Act are triggered.

7.3 Allegations and whistle blowing

Allegations tend to have an 'organisational' focus and may point to a problem at the organisation, which may include fraud or some other systemic failure. A 'whistleblower' tends to describe someone who works in, or for, an organisation who raises an allegation about his or her employer. These employees may have legal protection under the Public Interest Disclosures Act (PIDA). The regulator will respond to allegations about providers in accordance with its procedures for responding to allegations and whistle blowing².

² This is under review and will be published on the regulator's website shortly.

Part B

Regulating the consumer standards

The regulator's role in consumer matters is limited to:

- setting consumer standards, and
- intervening only where a breach of those standards has or could lead to serious detriment to tenants or potential tenants (called the 'serious detriment test' and described in detail in the regulatory framework)

Providers have principal responsibility for dealing with, and being accountable for, complaints about their service. The Tenant Involvement and Empowerment standard requires that they have clear and effective mechanisms for responding to tenant complaints. A tenant with a complaint against their landlord should raise it with their landlord in the first instance and, should the complaint remain unresolved, consider contacting the relevant Ombudsman via the route(s) available at that time.

In practical terms, any regulatory engagement with providers on the consumer standards must operate within the new tighter legislative framework of the serious detriment test. The consequence of this is that, in significant contrast to the approach on economic standards, the regulator has no role in routinely monitoring providers' performance on consumer matters. It may only use regulatory and enforcement powers where the serious detriment threshold has been crossed or will be crossed if the regulator doesn't act.

This means all regulatory engagement on consumer standards will be reactive in nature, in response to specific information received. It is anticipated that this will come in the main through referrals made to the regulator. However it will also consider other relevant information received from all sources such as through whistleblowing, complaints or in the course of routine economic regulatory activity.

Chapter 5 of the regulatory framework describes in greater detail what is meant by serious detriment, the process for referring information about this to the regulator, and how the regulator will assess information referred. Chapter 5 should be read alongside this document, as it explains the processes of regulatory engagement on serious detriment cases with those making referrals, and where necessary providers, and is not repeated here.

The remainder of this section describes in outline the regulator's internal processes for assessing serious detriment and reaching a corporate view on whether the threshold for serious detriment has been satisfied. The regulator will keep these arrangements under review, particularly in the light of early operational experience, in order to ensure it is dealing with cases (and using its resources) consistently, effectively and efficiently.

Handling serious detriment referrals

Stage 1: initial sift

The regulator's Regulatory Referrals and Enquiries (RRE) team will perform a central collation and routing function for all referrals and information relating to potential cases of serious detriment. The regulator has not prescribed a form or format for the submission of this information. Information received will be subjected to an initial sift to establish:

- whether the matter raised appears to be within the regulator's remit
- whether the information provided appears to indicate a breach or risk of a breach of a consumer standard

Where the information provided meets these criteria, the referral will then be passed into the next stage (see below).

Where the information submitted does not meet these criteria, the referrer will be informed directly by the RRE team that their submission will not be considered further by the regulator and reasons will be given. If there is any doubt about whether the information passes the initial sift, the RRE team will err on the side of caution and the referral will proceed to the next stage. The RRE team will not form or express an opinion about whether there is a breach or risk of breach of a consumer standard. However it will briefly explain to the person making the referral what the regulator will do next.

All statutory referrals will be passed directly to the regulator's serious detriment panel (see next stage). The bodies/officers named in statute, referrals from which the regulator must have regard to, are:

- The Commission for Local Administration in England
- Housing Ombudsman³
- Any body appearing to the regulator to represent the interests of tenants of social housing in England
- A local authority in England
- The Greater London Authority
- MPs
- Fire and rescue authorities
- The Health and Safety Executive
- The Secretary of State

Stage 2: Serious detriment panel

The information submitted will be considered by a panel comprised of regulatory staff. Panel members' expertise will include legal skills and specialist knowledge in regulatory engagement and use of the regulator's powers.

³ Appointed in accordance with a scheme approved under s.51 of the Housing Act 1996

The panel's objective is to examine the information submitted and reach an early corporately owned decision on whether or not there may be a breach or potential breach of a consumer standard with serious detriment which warrants further investigation.

The panel will consider the initial assessment questions set out in the regulatory framework para [5.16]:

- does the issue raised relate to a matter within the regulator's remit?
- if the issue raised were true, is it likely that there has been, or could be, a breach of a consumer standard?
- if the issues raised were true would there be any impact on tenants which would cause actual harm or potential harm?
- if the issues raised are true is the actual harm or potential harm likely to be serious?

If the panel concludes there may be reasonable grounds to suspect that there has been or could be a breach of a consumer standard and that serious detriment has or may occur, the case will be passed to the next stage. If the panel concludes there are no reasonable grounds to suspect this, the case will be taken no further and closed. Reasons for this decision will be recorded clearly and communicated to the person or body making the referral.

Stage 3 – Regulatory engagement including further investigation where necessary

Once the serious detriment panel has concluded that there may be reasonable grounds to suspect breach or risk of breach of a standard and the serious detriment threshold has been (or may be) crossed, the case will pass to regulatory officers to determine whether this is, in fact, the case. The judgement will be based on examining the evidence and the nature and extent of the harm (or potential harm) to and impact on tenants and potential tenants.

In order to establish the material facts, the questions that regulators are likely to ask – but this is not an exhaustive list – include:

- what is the quality of the evidence?
- is there reason to suspect, or evidence to show, that a tenant or group of tenants is at risk of imminent harm?
- does the issue raise a risk or potential risk of serious detriment, what is the scale and impact of the risk?
- how recently did the incident complained of occur?
- could there be indications of systemic failure against the standards? For example, is the presenting issue the only problem or could other standards be breached; has the issue complained of happened before, and is the regulator aware of a pattern?
- what (if any) further evidence or information is needed?

In this stage, where reasonable grounds to suspect serious detriment have been established, regulatory and/or enforcement powers are available for use by the

regulator. To be able to conclude its judgement in the case, the regulator may need to gather more information through appropriate investigations, whether directly or by requiring the provider to commission these itself.

Consideration of the most appropriate use of powers will be operated in accordance with the approaches set out in chapter 6 of the regulatory framework, guidance notes in Annex B and the general approach to intervention in cases of serious detriment described in chapter 5 of the Regulatory Framework.

As set out in the regulatory framework, it is the regulator's intention to publish information relating to its findings of serious detriment. It will set out how it will do this as part of a wider approach to publicising its intervention and enforcement actions, in due course.

Illustrative examples

What follows is an illustration of how serious harm might be reflected under each of the consumer standards. They are included here in order to provide an orientation for the scale and nature of seriousness which the threshold requires.

This is not intended to be an exhaustive or definitive list of issues because, as is set out in the regulatory framework, each case will be considered against the specific impact and in the context of its particular circumstances. Ultimately, this will be a matter of judgement by the regulator, based on the evidence available and its published approach in chapter 5 of the regulatory framework.

Tenant Involvement and Empowerment Standard

- failure to consult tenants on a substantial variation to how services are provided, which has a material detrimental impact on, for example, the condition of their homes, or the terms and the security of their tenancies
- failure to operate an effective complaints or scrutiny system, which results in the risks of harm noted above not being addressed

Home Standard

- provision and maintenance of accommodation, or failure to meet statutory requirements, that endangers the health and safety of tenants. This would include such issues as fire safety; asbestos; gas servicing; electrical testing and legionella
- failure to provide an effective emergency repairs service which places the health and safety of tenants at risk

Tenancy Standard

- discrimination in the allocation of tenancies resulting in the unlawful denial of the rights of groups of tenants or potential tenants
- breach of tenancy terms resulting in actual or potential loss of home or an unlawful denial of rights

Neighbourhood and Community Standard

- failure to deal effectively with anti-social behaviour affecting a large proportion of tenants in a locality, or which could lead to the death of, or serious harm to the physical or mental health of an individual tenant
- failure to manage the clearance and regeneration of an estate to the extent that the security of remaining tenants is at risk, or the condition of their housing places their health and safety at risk

Part C

Other statutory activity

In addition to the on-going regulation of provider's compliance with the economic standards, the SHR has specific statutory responsibilities in relation to the registration of applicants, granting consents for disposal of social housing and constitutional changes and maintaining the register of social housing providers.

1. Registrations

The SHR assesses applications for registration against criteria set out in the Regulatory Framework. The regulator also provides guidance on how to register, and a suite of application forms set out in Registration Guidance and associated documents published on the regulation pages of the HCA website.

2. Consents to constitutional changes

The SHR is required to consent to certain changes to the organisational structure and governing instruments for not-for-profit providers.

Constitutional changes including amalgamations, group structure changes and mergers require approval by the regulator and guidance on what consent is required is set out in annexes to the Regulatory Framework. The regulator is also required to consent to certain changes to a provider's governing instruments relating only to the objects, the distribution of profits and the subsidiary status of not-for-profit providers. However, providers must notify the regulator where they have made other changes to their rules or Articles of Association.

3. Consents to disposal of social housing

The regulator, either through the issue of its General Consent or on an individual disposal basis is required to consent to the disposal of social housing by registered providers.

Guidance set out in *Disposing of Land* and associated forms for disposal consents is published on the regulation pages of the HCA website.

4. Maintaining the register of providers

The Registry team is responsible for:

- maintaining the register of social housing providers, ensuring details are up to date
- logging governing instruments either notified direct from registered providers or if consent is required from the constitutional consent officers
- issuing registration and de-registration documentation
- recording in systems the decisions of RAC
- receiving, logging and chasing provider financial statements

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The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.

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