



NOW WE KNOW THE FUTURE OF REGULATION, WHAT DOES IT MEAN IN PRACTICE?

Kelsey Walker has some key takeaways on the future of social housing regulation: what's staying the same, what's changing, and what we should all start to think about now.

First, a bit of comfort. In the wake of the Social Housing White Paper, regulatory expectations in the social housing sector are unchanged. As social landlords, if you are doing what you should be doing to maintain homes, are delivering good services, listening to your tenants, being open and transparent about your strategy and performance, and putting things right when they go wrong, you don't need to worry too much.

From the early conversations I've had, housing providers say the new Charter for Social Housing Residents links in closely with their existing strategy. It is also consistent with the wider picture and a direction of travel around stock investment challenges and priorities, and more meaningful engagement with tenants that has been emerging for the last few years.

These clear themes are also reflected in board conversations around service delivery – following COVID-19 response lessons – and the welcoming of two key National Housing Federation publications: Together with Tenants and the new Code of Governance. The approaches outlined in these documents will be widely adopted across the sector. So already there is plenty of synergy.

Stronger consumer regulation

The Charter outlines the long-expected steps to significantly beef up consumer regulation. But it is worth remembering that the Regulator of Social Housing has had consumer regulation responsibilities for 10 years. Even with this reactive role, there was much work going on in that space – albeit within its limitations and resources. The RSH does understand consumer regulation, but will need to develop a new model to implement the expanded and proactive approach now required.

However, co-regulation with housing provider boards is well understood and developed in the sector (I'll come back to local authorities in a minute) and this is not about going back to inspections in the way the sector has understood in the past (such as the Audit Commission 'key lines of enquiry' or KLOEs).

I imagine there might have been a bit of disagreement about the use of the word 'inspection'. There are plenty of words to describe regulation or inspection, assessment, review. What matters is the purpose being achieved, not the terminology. This is not about winding the clock back – it is clear to me in reading the Charter that this is proactive, intelligence-led, risk-based regulation. And the feedback on economic regulation in the consultation concluded this approach was valued by stakeholders and felt to be working.

Clearly there will be challenges for the regulator in balancing its economic and consumer regulation roles. Also, in introducing a huge programme of work of up to 100 consumer inspections per year, for which there is currently no resource.

So, in summary, landlord responsibilities and regulatory expectations are largely the same. The sector is well versed in co-regulation and can anticipate what to expect and will be consulted.

Regulatory and reputational risks

That said, there are important new considerations. For a start, the risks to providers of getting it wrong are higher. There is:

- A more powerful and transparent Housing Ombudsman

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- Proactive inspection for a much wider range of providers (local authorities, housing associations, smaller specialist housing providers where consumer risk is high) with publication of findings
- Stronger powers to intervene and indeed fine transgressors – to be used when absolutely necessary. The rise of Economic, Social and Governance (ESG) reporting and understanding of reputational risk, suggests failing against consumer standards is not the place anyone wants to be
- A focus on accountability – this is something clearly understood in local authorities through the role of elected members. But, as there has been so little local authority regulatory engagement, and having had a fairly input-based inspection regime in recent history, understanding of co-regulation and the associated regulatory approach could be more of a challenge
- The annual consumer regulation review, which sets out the ways in which providers have been getting consumer standards compliance wrong. Common themes being:
 - Failing to understand responsibilities when contracting out delivery of compliance programmes (the Charter seeks to address this in a more client / contractor relationship between local authorities and arm's-length management organisations (ALMOs) / tenant management organisations (TMOs)
 - Data quality and integrity failings (the most common issues highlighted)
 - Weaknesses in governance oversight of safety policy and performance, and tenant involvement and engagement on issues that significantly affect services or tenancies

To summarise, failure is more likely to be identified and when it is, those failures will be more transparent and therefore have bigger reputational risks with a wider range of stakeholders.

Finally, what do you need to think about now?

- a. Building trust now with residents will help make and implement those tough decisions further down the line that will be required. For instance on investing in existing stock, enhanced safety, zero carbon and the trade-off with building new homes.

Involving tenants in the thinking on decision-making around how resources are split across those objectives will become even more important

- b. Board/cabinet accountability is central to co-regulation and a housing provider's relationship with its tenants. The regulator cannot get in the way of the relationship between landlord and tenant. You need to show the regulator that that relationship works well. I'm pleased there is flexibility about how housing providers involve their residents as a proscriptive or 'one-size' approach rarely gets the necessary 'buy-in' to deliver successful outcomes.

For local authorities this is more complex and the governance structure is there for all services provided – not just housing. So how do you make sure it is sufficiently visible, with an understanding of the role of oversight? In providers with an ALMO model, how does the governance structure work in a way that the registered provider – the local authority – is sufficiently sighted on risk and performance so as to have assurance on regulatory compliance?

- c. Ask 'how do you know' your consumer processes – particularly safety processes – are actually robust? Have they been tested? Do you have assurance on your data? Does assurance cover not just the completeness of the data but the quality of what is captured?
- d. Many housing providers have been reviewing their KPIs – these will need testing with tenants. There will be questions for boards on data quality and validity, comparative benchmarking and reporting for transparency and to enable accountability.
- e. In developing your strategy, consider how it links to consumer standards, Together with Tenants, the Code of Governance and start to build a body of evidence for compliance for your boards and the regulator. This is not a tick box approach, but requires a deep understanding of how accountability runs through the culture and governance of the organisation.

The majority of housing providers can take comfort from the fact there has already been a stronger focus on consumer issues in the past couple of years since the Grenfell Tower tragedy. However, there remains much to do as the regulator, customers and other stakeholders expect to see progress continue.

To discuss this article and the regulatory changes it outlines, please contact:



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