

Consultation on Statutory Guidance under section 215 of the Housing and Regeneration Act 2008

National Housing Federation submission in response to the Regulator of Social Housing

January 2024

Summary

The National Housing Federation (NHF) is the voice of housing associations in England, representing 570 housing association members that provide homes for around six million people.

Housing associations are committed to providing safe, quality homes for all residents. We welcome this consultation proposing updates to the Regulator's statutory guidance to reflect amendments introduced by the Social Housing Regulation Act 2023.

Our views on the consultation's proposals are:

- We support stronger consumer regulation, and our members are already taking action to ensure that residents always receive the high-quality service they deserve.
- We welcome this consultation and the opportunity to respond to the proposals. We agree that the proposed approach set out in the Statutory Guidance is a reasonable basis on which to use the powers outlined.
- We welcome the Regulator's intention to apply a proportionate approach to regulation that minimises interference.
- However, we would welcome further consideration by the Regulator regarding the factors we have presented in this response, such as the determination of penalties and clarity concerning what circumstances trigger the use of regulatory and enforcement powers.
- We also believe that further clarity on how the Regulator's powers will be applied will aid transparency for registered providers and ensure an effective regulatory environment.

If you have any questions about this submission, please email Laura Magezi, Policy Leader, National Housing Federation (socialhousingreg@housing.org.uk).

Introduction

The National Housing Federation (NHF) is the voice of housing associations in England, representing 570 housing association members that provide homes for around six million people.

Housing associations are committed to providing safe, quality homes for all residents and we welcome the opportunity to feed into this consultation concerning the Regulator's proposals to update its statutory guidance under section 215 of the Housing and Regeneration Act 2008.

As a sector, we are committed to being more transparent and accountable to our residents. We support the introduction of more robust and proactive regulation and the aims of the Social Housing Regulation Act to empower residents and improve access to swift and fair redress when things go wrong. Housing associations are committed to ensuring that their residents always receive the high-quality service they deserve.

Therefore, we welcome reforms that introduce a proactive and risk-based approach to consumer regulation to ensure an appropriate level of focus and protections for residents. We acknowledge the Social Housing Regulation Act 2023 broadens the consumer regulatory role of the Regulator and introduces legislative changes, empowering the Regulator with new powers while also amending existing powers.

In this response, we present our perspective on the proposed changes to the powers concerned in this consultation and outline key factors for the Regulator to consider.

Proposed changes to the Regulator's Statutory Guidance

Draft Statutory Guidance

We support the introduction of a stronger and more proactive consumer regime to ensure registered providers effectively resolve issues and protect the interests and safety of tenants. Overall, we agree that the proposed approach set out in the Statutory Guidance is a reasonable basis on which to use the powers granted to the Regulator for Social Housing.

Housing associations have taken the lead in the sector by demonstrating their commitment to resident engagement, accountability, and transparency. Through the [Better Social Housing Review action plan](#), the sector is taking action to ensure that residents always receive the high quality service they deserve. This reflects our sector's genuine commitment to responding to calls from residents and taking responsibility for self-improvement.

We agree with the Regulator's aims to use its powers to ensure problems are resolved effectively, while balancing the interests of key stakeholders, particularly tenants. We welcome the Regulator's approach to exercising its functions in a way that minimises interference and is proportionate. We also acknowledge that the Regulator will work with registered providers to achieve corrective action and will use its powers in circumstances where self-improvement has not been achieved, following a period of intensive engagement or where urgent action is necessary.

The consultation outlines that the Regulator's general approach to exercising its powers 'is to apply the most appropriate power, or combination of powers available'. We acknowledge the Regulator's approach in considering the seriousness of the issue when applying its powers, however, we have some concern about the overlap regarding the circumstances that trigger various powers.

For example, the guidance notes specify that if a registered provider fails to meet a standard under section 193, 194 or 194C of the Act, the Regulator is empowered to take actions including: issuing an enforcement notice, mandating the submission of a performance improvement plan, conducting an inquiry and imposing penalties. Likewise, if a registered provider mismanages its affairs, it provides grounds for the Regulator to invoke a range of powers.

While we acknowledge that the actions of the Regulator will depend on the specific circumstances of each case, we would welcome increased transparency on the criteria that leads to specific regulatory responses. Providing greater clarity when defining the specific breaches that trigger corresponding actions will help ensure registered providers have a clear understanding of the Regulator's expectations, and can promptly address any necessary corrections. Furthermore, increasing clarity on how the Regulator exercises its powers will help mitigate against a surge of appeals and lengthy court processes.

We support the expectation that registered providers will work with the Regulator to support meeting its objectives. However, we believe improved clarity will facilitate an efficient and effective regulatory environment.

Regulatory Powers

Survey

We agree with the scope and the circumstances under which the Regulator proposes to exercise the power to enter a registered provider's social housing to carry out a survey of the condition of premises through an authorised person. Although the draft guidance does not address this matter, our members would welcome a provision that permits a registered provider to accompany the authorised person during the survey.

We also acknowledge that the Regulator may require the registered provider to pay some, or all the costs of the survey and its associated report. We would appreciate additional guidance regarding the methodology the Regulator plans to implement when determining these costs.

Inspections

We recognise that the 2023 Act mandates the Regulator to produce an inspection plan which is currently under consideration. It would be helpful for the sector to receive an estimated timeline for the publication of the inspection plan, and we would welcome the opportunity to contribute to the proposals.

Enforcement Powers

Performance Improvement Plans

We agree with the grounds under which the Regulator can mandate a registered provider to submit a performance improvement plan. Although we recognise that the specifics of the performance improvement plan mandated for a registered provider will be decided on a case-by-case basis, we seek clarification or guidance on whether the Regulator intends to establish standardised timeframes for the implementation of such plans or if timings will be dependent on the unique circumstances of each case.

Emergency remedial action

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We agree with the Regulator's proposed approach to exercise its power to conduct emergency remedial action on a case-by-case basis, provided specific conditions are met. Similar to the procedure for conducting surveys, our members would appreciate a provision allowing a registered provider to accompany the authorised person during the implementation of emergency remedial actions.

Penalties

We recognise that the 2023 Social Housing Regulation Act empowers the regulator to impose penalties on registered providers as a means to address specific failures. While we acknowledge the unlimited nature of these penalties, we believe it would be beneficial for the Regulator to establish a criteria outlining the scale of potential penalties.

We appreciate the Regulator's proposal to consider various factors, including the financial situation of registered providers, when determining penalty amounts. In this regard, we ask the Regulator to also consider the potential impact of penalties on residents. While we support enhanced consumer regulation to safeguard tenants' interests, we urge the Regulator to be mindful of the possibility of high penalties being passed on to tenants, whom the regulations aim to protect. Efforts should be made to prevent the unjustified shifting of costs onto residents.

Compensation

We welcome the publication and recent update of the Memorandum of Understanding between the Housing Ombudsman and Regulator of Social Housing. While we acknowledge that the two bodies have the power to require a registered provider to compensate tenants, we seek clarification on the decision-making process for compensation by the Regulator and the Housing Ombudsman.

Further considerations

The social housing sector has welcomed the changes the new regulatory regime is introducing. We welcome the co-regulatory, risk-based approach to regulation, as well as the Regulator's regard to any voluntary undertakings from registered providers, provided the terms are satisfactory. Furthermore, we welcome the Regulator's commitment to minimising interference and implementing proportional measures when necessary.

During this transformative phase for the sector, we ask the Regulator to actively support housing providers in meeting the new requirements and expectations. This

support could involve real-time assistance, the exchange of best practice, and the facilitation of learning to foster an effective regulatory environment.

Additionally, as the emphasis on consumer regulation grows, we urge the Regulator not to lose sight of the focus on economic standards, viability, and governance.

Conclusion

We welcome this consultation seeking views on the proposed updates to the Regulator's Statutory Guidance, in line with recent legislative requirements.

In our response, we recognise the need for the Regulator to receive sufficient resources to effectively fulfil its role and implement proactive consumer regulation. We acknowledge the Social Housing Regulation Act 2023 broadens the consumer regulatory role of the Regulator and introduces legislative changes, giving the Regulator new powers while also amending existing powers. We also welcome the Regulator's commitment to minimising interference and implementing proportional measures.

Nevertheless, we propose additional factors we would like the Regulator to consider when setting their approach to regulation, and we outline suggestions aimed at enhancing clarity regarding the use its powers.

We look forward to working with the Regulator to deliver an effective regulatory framework that enhances the protection of tenants and enables the social housing sector to provide safe, affordable and quality homes for residents.