



Regulator of  
Social Housing

# Consumer Regulation Review 2018-19

July 2019



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# 1. Executive summary

- 1.1 This Consumer Regulation Review sets out a summary of our consumer regulation work for the year 2018/19<sup>1</sup>. Most registered providers are well-run and meet the expectations set out in the regulatory standards<sup>2</sup>, but on occasions, issues do arise that represent a risk to tenants, and where intervention by the Regulator is required.
- 1.2 In this report we set out key messages as well as themes and learning points from recent consumer regulation cases. We also set out how we deliver our consumer regulation role based on our mandate and current legislation.

## Key messages from recent cases

- 1.3 All registered providers have an obligation to act to ensure the homes where their tenants live are safe. Providers must meet the full range of statutory health and safety obligations.
- 1.4 This requires registered providers to have robust reporting and assurance arrangements in place for effective oversight of compliance by boards and councillors.
- 1.5 Effective assurance relies on good quality data, and maintaining compliance requires effective systems.
- 1.6 Registered providers should understand, and be able to demonstrate compliance, across all aspects of the consumer standards, including how they engage with their tenants, how they deal with neighbourhood issues, and how they allocate their properties.
- 1.7 Delivering compliance with the consumer standards depends on good governance, and on an organisation's culture.
- 1.8 The quality of relationship with tenants underpins registered providers' ability to meet their objectives. The effectiveness of registered providers' complaints handling affects the level of trust and confidence tenants have in their landlord.
- 1.9 Transparency with the Regulator is essential. Co-regulation requires registered providers to be transparent with the regulator, and a failure to do so can indicate broader governance concerns.

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<sup>1</sup> The Regulator was established on 1 October 2018 by the Legislative Reform (Regulator of Social Housing) (England) Order 2018, which amended the Housing and Regeneration Act 2008. Prior to this, the regulation of social housing in England was the responsibility of the Regulation Committee of the Homes and Communities Agency (which uses the trading name Homes England in relation to its non-regulation functions).

<sup>2</sup> <https://www.gov.uk/guidance/regulatory-standards>

## 2. Introduction

- 2.1 This report provides a summary of the Regulator's consumer regulation work for the year 2018/19. It explains our current role and mandate, our approach to consumer regulation, how we apply the serious detriment test as well as key themes and lessons arising from our casework.
- 2.2 As Regulator, we have a duty to be transparent in our work and we are keen to share lessons from our work with the sector. In 2018/19, we published six regulatory notices where registered providers had failed to meet a consumer standard and had risked or caused serious detriment to tenants. This report reminds readers of the details of those six cases. It also includes a number of anonymised case studies where we did not find a breach of the consumer standards and serious detriment. These cases demonstrate how the Regulator considers a number of factors in reaching our decisions, and it is intended to provide valuable insight for registered providers and other stakeholders.

### Our role

- 2.3 As the Regulator of Social Housing, our aim is to promote a viable, efficient and well-governed social housing sector, able to deliver homes that meet a range of needs. The Regulator has both an economic objective and a consumer regulation objective, as set out in legislation.
- 2.4 The consumer regulation objective is intended to:
- support the provision of well-managed and appropriate quality housing,
  - ensure tenants are given an appropriate degree of choice and protection,
  - ensure tenants have the opportunity to be involved in the management of their homes and to hold their landlords to account,
  - encourage registered providers to contribute to the well-being of the areas in which their homes are situated.
- 2.5 To achieve this objective, the Regulator sets consumer standards. There are four consumer standards:
- Home
  - Neighbourhood and Community
  - Tenancy
  - Tenant Involvement and Empowerment

- 2.6 The standards are set out on our website<sup>3</sup>. We set these standards so that tenants, landlords and other audiences know the outcomes that are expected. Boards and councillors who govern registered providers' services are responsible for ensuring that their organisations meet the standards.
- 2.7 Consumer regulation for registered providers was fundamentally changed by the introduction of the Localism Act 2011 and subsequent directions. As a result, the Regulator does not currently have a mandate to proactively monitor providers' performance or routine compliance with the consumer standards.
- 2.8 The Regulator's ability to use its powers in relation to a provider failing to meet a consumer standard is subject to this legislation. This means that from April 2012, our role as Regulator is to investigate only where we have reasonable grounds to suspect there is actual or potential serious detriment to tenants as a result of a failure to meet one or more of our consumer standards. We are only able to use our powers where we judge both that there is evidence that a consumer standard has been breached and, as a result, there are reasonable grounds to suspect that:
- the failure has resulted in a serious detriment to the provider's tenants; or
  - there is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the provider's tenants
- 2.9 The legislation specifies that the Regulator must exercise its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. We therefore take a proportionate approach to each case and in deciding whether a failing constitutes a breach of standards, focus on whether there is evidence of a systemic failing by a registered provider. When applying the serious detriment test we will balance the factors of the case including the number of tenants, the duration of the harm (or risk of harm) and the seriousness of the issue, as well as taking into account the diverse needs of tenants, in accordance with our duties under the Equality Act 2010.
- 2.10 In each case, the Regulator will have regard to the consumer regulation objectives and will seek to balance the interests of the provider, its tenants, its key stakeholders and the impact on public funds when responding to the circumstances of each individual case.

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<sup>3</sup> <https://www.gov.uk/government/publications/regulatory-standards>

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- 2.11 Our approach to consumer regulation is reactive reflecting the role set out in legislation for the Regulator and our current mandate. We therefore respond upon receipt of information of possible consumer standard breaches, considering carefully all referrals made to us. Our reactive approach does not lessen the obligation on registered providers to comply and communicate with us in a timely manner in relation to a potential breach.
- 2.12 Providers have principal responsibility for dealing with, and being accountable for, complaints about their services. 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 matter remain unresolved, consider contacting first a Designated Person (someone identified under the Act to deal locally with the resolution of complaints such as their MP, a local housing authority councillor or a designated tenants' panel) and subsequently the Housing Ombudsman.
- 2.13 Further detail on our approach is set out in Annex A and B of this report and in Annex B of our publication *Regulating the Standards*<sup>4</sup> which is available on our website.

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<sup>4</sup> <https://www.gov.uk/government/publications/regulating-the-standards>

### 3. Key themes arising from our casework

- 3.1 Across all our consumer regulation casework there are common themes and learning points that are useful to all registered providers. In our casework we sometimes observe that, although there has not been a breach of the consumer standards with potential or actual serious detriment, the way in which registered providers listen to and engage with their tenants can fall short of what could be expected.
- 3.2 Through our engagement we will seek to feedback to registered providers, highlighting the need to understand why services have fallen short and what needs to change as a result. In this section we have summarised these themes and feedback messages, in order to share those lessons more widely with the sector.
- 3.3 A significant part of our consumer regulation work comes from referrals where there are concerns about the arrangements providers have in place to keep tenants safe in their homes. This is ultimately the responsibility of the governing bodies of registered providers – boards and local authority councillors<sup>5</sup>. It is paramount that registered providers, including local authorities, ensure that they comply with the expectations of the consumer standards, including that they meet the full range of statutory health and safety obligations so that tenants are safe.
- 3.4 Good governance is critical in managing risks effectively. A registered provider's governing body must ensure that it has effective oversight via timely and accurate reporting, and that it understands what assurance it has that risks are being identified, managed and monitored, with escalation mechanisms where appropriate.
- 3.5 Increasingly there is recognition that ensuring tenants' homes are safe goes beyond complying with specific pieces of legislation. It is vital that registered providers understand their tenants and their tenants' needs, as well as the stock that they are responsible for, and have clear and informed policies about what it takes to ensure that tenants are not exposed to risk for which the landlord has a responsibility. This has been particularly important where, for specific risks, the law does not specify a timescale for completing a safety check or an action arising from those checks. It is for registered providers to set out clearly and implement what they have concluded is needed to keep tenants safe in their homes and to make sure that they have the expertise and skills to do this, taking external advice where necessary.

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<sup>5</sup> Throughout this report where we have referenced governing bodies, this refers to local authority councillors and boards of registered providers who hold the same responsibility for ensuring compliance with regulatory standards.

- 3.6 The importance of good quality data cannot be overstated. In a number of cases, the Regulator has seen that a breach of the consumer standards, including a failure to comply with statutory requirements and policies on health and safety, has arisen because organisations do not hold good quality data about the homes their tenants live in. Registered providers can also find themselves unable to evidence whether required work has been carried out to time and quality, or even at all. This may be due to the existence of different data systems, but often stems from inadequate arrangements for data reconciliation, weak controls and inconsistent record keeping. The expectation is that all registered providers will have assurance on the quality and integrity of their data. This is the foundation on which all other assurance of compliance is based.
- 3.7 There can also be issues that arise from a lack of clarity on contractual and management arrangements for the homes in which some of a registered provider's tenants live. This can cause gaps in a registered provider's assurance that it is complying with the consumer standards in relation to all tenants, including providing an effective repairs services and identifying and managing health and safety risks. While these arrangements may add complexity they do not remove a registered provider's responsibility as the landlord for compliance with regulatory standards and for the safety of all of its tenants in their homes.
- 3.8 Where things do go wrong, it is often the case that systems have been poorly designed or poorly implemented or both. Some failures are relatively isolated in nature, perhaps arising as a result of an individual's actions or lack thereof, but some are more widespread across the organisation. Registered providers must ensure they understand the causes of the problems that arise and seek to resolve both the presenting issue and the underlying causes, to reduce the chance of a similar issue arising again. Registered providers focusing on the lessons that can be learned, and the systems that can be improved, are signs of a well-governed organisation. Where possible it is helpful for registered providers to share learning more widely, beyond their own organisation.
- 3.9 Where the Regulator finds a breach of the consumer standard and serious detriment, it is most often in relation to the Home Standard. However, our expectations are the same across all of the consumer standards. Registered providers should understand, and be able to demonstrate compliance, across all aspects of the consumer standards, including how they engage with their tenants, how they deal with neighbourhood issues, and how they allocate their properties.



- 3.10 Complying with the consumer standards should not solely be driven by the requirement to do so from the Regulator, but because the expectations set out in the standards are the outcomes any registered provider should seek to achieve in the course of a well-run business. Focusing on and delivering the right outcomes is also an integral part of establishing and maintaining effective relationships with tenants and other stakeholders, as well as managing any potential reputational risk.
- 3.11 How registered providers engage with their tenants, how they listen to tenants and give tenants the opportunity to make their views known is a key indicator of organisational culture and it goes to the heart of why registered providers exist and their purpose. Through our casework we gain an insight into how registered providers engage with their tenants and this is often indicative of the organisational culture and the quality of governance. In some cases this may cause us to change our published view of the provider's governance. Even where this does not happen we will, where necessary, give feedback on what we see to senior leaders in the organisation.
- 3.12 It is the responsibility of registered providers as landlords to respond to complaints and to do so promptly and effectively. Failing to deal effectively with complaints impacts on the level of trust and confidence tenants have in their landlord and can have a significant reputational impact for registered providers. It may also affect our view of a registered provider's governance. Governing bodies must ensure that they have sufficient oversight of the effectiveness of arrangements for complaints handling.
- 3.13 Analysis of complaints data and trends can inform a registered provider's understanding of the messages tenants are giving them and importantly whether the issues being raised indicate a potential significant and/or systemic failure. Where this is the case there should be a route for escalation and where necessary, a different approach to ensure effective resolution in a timely way. Through our casework we have seen occasions where registered providers acknowledge that they have not handled complaints in the way they would have wished to and have commissioned reviews which have learning points for the wider sector.
- 3.14 Finally, where issues do arise, transparency with the Regulator is essential. The Governance and Financial Viability Standard sets out this requirement explicitly. However for all registered providers, including local authorities, the co-regulatory settlement is fundamentally based on transparency and co-operation between the Regulator and registered providers. Where we find a breach of a consumer standard and serious detriment, and the registered provider has failed to be transparent with the Regulator, we will take that into account as we consider what regulatory action is needed.

## 4. How we carry out our consumer regulation

- 4.1 Social housing tenants of registered providers can expect their homes and their landlords to meet certain standards. This includes: living in homes that are safe and of appropriate quality; having choice and protection; the ability to be involved in its management and to hold their landlords to account.<sup>6</sup> These are part of our consumer standards, which the Regulator sets as part of the framework for regulation.
- 4.2 The Regulator receives referrals and information about potential breaches of the consumer standards from a range of different sources. These include complaints from tenants, statutory referrals (including those from Members of Parliament, the Housing Ombudsman and the Health and Safety Executive) or information obtained during the course of our economic regulation work. We also receive referrals direct from providers about failings they have identified. In line with our co-regulatory settlement, registered providers should notify the Regulator of any potential breaches of the consumer standards. This applies to all registered providers including local authorities and regardless of any management contracting arrangements in place.
- 4.3 When considering information we receive about potential non-compliance with our standards, our role is to determine if this evidence indicates a wider failing within the registered provider's systems or processes. Such a systemic failing may lead us to determine there has been a breach of our standards; however, in line with our role set out in legislation, we must also see that this caused or has the potential to cause serious harm. We call this the serious detriment test. Harm, or potential harm, can relate to health and safety, loss of home, unlawful discrimination, loss of legal rights and/or financial loss. Where the Regulator judges there is evidence of the serious detriment test having been met, we will publish a regulatory notice. Where we judge the test has not been met but shortcomings have been found, we are likely to still follow up with registered providers to address any issues informally.
- 4.4 It is important to highlight the considerations made before reaching a decision of breach and serious detriment. Keeping in mind the Regulator's legislative requirement to be proportionate and consistent, each case is considered based on its particular circumstances as well as taking account of responses from the registered provider and its willingness and ability to address any failings.

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

- 4.5 A regulatory notice is made public and is likely to have significant consequences for the registered provider. However, securing sustainable and long term improvements is paramount and registered providers are expected to demonstrate they understand what went wrong and why, to address failings promptly and effectively to remedy issues of non-compliance. A registered provider must provide assurance that they have assessed and put in place any arrangements needed so that tenants are not at risk of harm while improvements are being delivered. In addition to publishing a regulatory notice the regulator has a range of enforcement powers which can be used to force a provider to take appropriate action. We will always seek to secure the changes and improvements required using the least amount of interference. In any case where regulatory action is taken, the most appropriate way for registered providers to evidence their commitment to remedying any failings is through timely and effective action.
- 4.6 There may be occasions when the Regulator is of the view that the serious detriment threshold has not been met and therefore we are unable to take regulatory action in relation to the consumer standards. In those cases, we may consider that the information obtained raises issues about the governance of a provider. We will consider the provider's compliance with the economic standards and where we conclude that a provider's governance grading should change, we will also publish a narrative judgement.
- 4.7 If a referral or information received is not within the Regulator's remit to consider we will, wherever possible, advise a referrer of the appropriate route to pursue the concerns raised. For example we do not have a role in resolving individual disputes between landlords and tenants. Where we receive such complaints, wherever applicable, we will signpost the referrer to the provider's own complaints procedure and the Housing Ombudsman. If appropriate we may make the referral on behalf of the referrer, with their consent.

### How we handle referrals

- 4.8 Under our reactive consumer role, we consider all referrals received to assess whether there is evidence of a systemic failure which may represent a breach of a consumer standard.
- 4.9 The consumer regulation process consists of three stages, although not all referrals will pass through each of these.

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- At Stage 1 any information or referral received is initially reviewed to determine if it is a matter that we can, under our remit, consider. During this stage we also consider if the issue is covered by our consumer standards and could potentially represent a breach.
- If these tests are satisfied, the referral moves to Stage 2. This is where our Consumer Regulation Panel (CRP) carries out a detailed review of the information we have received to determine whether any potential breach of the standard has caused or could cause serious harm to tenants.
- If a view on these points cannot be reached by CRP without further information, we will make the necessary enquiries of either the provider, the referrer or a third party. This is called a Stage 3 Investigation.

4.10 The length of time an investigation takes will depend on the circumstances of the case and the level of assurance we obtain from the registered provider; it can take some time to investigate some cases thoroughly, though other cases are relatively straightforward and we are able to reach a conclusion quickly.

4.11 We consider all information we receive from a regulatory perspective and we recognise that individual disputes between tenants and landlords can potentially be evidence of a systemic failure that represents a breach of the standards. However, as a Regulator, we do not have a role in resolving individual complaints about registered providers and we are unable to mediate in disputes between tenants and their landlords. We receive contact from tenants with complaints about their landlord and we will wherever possible, provide information about the well-established routes for tenants seeking to resolve an individual dispute with their landlord.

4.12 In the first instance, tenants should raise their concerns with their landlord. The Housing Ombudsman can assist residents and registered providers to resolve disputes locally. If a complaint is not resolved via the registered provider's complaints procedure, the resident may contact a Designated Person such as an MP, a local authority councillor or a designated tenants' panel to help with the resolution of the complaint. The Designated Person may help resolve the complaint or may refer the case to the Housing Ombudsman for investigation.

4.13 A resident can also escalate their complaint to the Housing Ombudsman directly. The Housing Ombudsman's role is to resolve disputes and to encourage the resolution of disputes by others. Information about the Housing Ombudsman is available on their website<sup>7</sup>.

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<sup>7</sup> <https://www.housing-ombudsman.org.uk>

## 5. Consumer regulation and governance

- 5.1 In order to comply with the consumer standards, registered providers should have effective governance and risk management arrangements in place. That means registered providers should assess their own compliance with all the consumer standards including those where the expectation is that they will identify and understand the risks to their tenants and take appropriate action to mitigate those risks. This also means having arrangements in place so registered providers can identify themselves at an early stage when something is going wrong, as well as having an effective escalation and response where those issues are identified.
- 5.2 Where the Regulator finds that a registered provider has failed to meet a consumer standard, and that the serious detriment test has been met, our experience is that there can often be a corresponding failure in an organisation's governance.
- 5.3 For private registered providers (as opposed to local authorities), where the Regulator concludes that there has been a breach of the consumer standards and serious detriment, we will consider whether that failure has any implications for our view of the registered provider's governance. Our consideration of governance is a separate decision, taking into account the facts of the case and information we have obtained through our planned regulatory engagement.
- 5.4 We will also take into account:
- whether the failure raises any wider systemic concerns
  - the effectiveness of the board's oversight, for example, whether the board was receiving adequate and timely information and challenging the executive on performance
  - the effectiveness of the registered provider's risk management and internal controls
  - actions taken to mitigate the failure
  - the board's assurance that the failings will be addressed, including their willingness and ability to put things right
  - the registered provider's transparency and the timeliness of communication with the Regulator.
- 5.5 The remainder of this report set out details of the cases we have considered under each of the consumer standards. It includes examples of where we have found a breach of the consumer standards and serious detriment, and for these case studies, we have included details of how we considered the implications for an organisation's governance. The report also includes anonymised case studies where we have not found a breach of the standards.

The case study below shows how the Regulator considered our view of a registered provider's governance, when we had evidence of a breach of the consumer standards.

### **Case study 1 – Links between consumer regulation and governance**

Knowsley Housing Trust (KHT) notified the Regulator that the Merseyside Fire and Rescue Service had issued three fire enforcement notices in November 2017 in relation to a scheme known as Quarry Green. The enforcement notices said that KHT had failed to comply with the provisions of the Regulatory Reform (Fire Safety) Order 2005. The issuing of the enforcement notices followed KHT's completion of a fire risk assessment in June 2017 which identified actions required to reduce the risk of fire at Quarry Green, and two subsequent warning letters from the fire service in August and September 2017 which had not been acted upon.

During our investigation of this referral, we learned that KHT also had a number of high risk fire safety actions outstanding following the completion of fire risk assessments and that an internal audit completed by KHT had found that the board did not have assurance of compliance with statutory health and safety requirements. Taking all of these factors into account, the Regulator concluded that this was a breach of the Home standard, because KHT had failed to have an effective system in place for delivering statutory compliance, particularly in relation to fire safety. We also concluded that tenants had been put at risk as a result. We published a regulatory notice setting out our findings in June 2018.

At the same time as KHT made its referral to the Regulator, the Regulator was undertaking a planned in depth assessment (IDA) of KHT. Taking into account the health and safety issues identified, as well as information gathered during the IDA, the Regulator found that there were significant weaknesses in the effectiveness of board oversight and scrutiny, including incidents of inadequate reporting. We also found that the KHT board did not have sufficient oversight of a range of activities undertaken in other parts of the group, and so was unable to demonstrate that key risks were effectively managed. The Regulator concluded that KHT had failed to comply with our governance requirements, and the provider was downgraded to G3. A regulatory judgement was published in August 2018.

Since then, KHT has been working with the Regulator as it seeks to resolve these issues. Its action plan sets out how it is addressing the failure to comply with our regulatory standards, including both the statutory compliance issues set out above, and the underlying governance issues which led to the health and safety issues arising. The Regulator will continue to engage intensively with KHT until it is satisfied that the issues have been addressed, and KHT is compliant with all regulatory standards.

The case study above shows the clear links between consumer regulation and governance, and how a failure to meet one of our consumer standards is often symptomatic of more widespread weaknesses in an organisation's governance. It also demonstrates the importance of registered providers seeking to understand the causes of health and safety failures when they arise, in order to tackle both the presenting issues and the underlying causes, to prevent a recurrence.

It is often the case that a breach of consumer standards leads the Regulator to conclude that there has been a failure in an organisation's governance. This year however, we also saw the reverse: when we found that a registered provider which was already non-compliant with our governance requirements had also breached the consumer standards. The case study is set out below:

### **Case study 2 – Link between consumer regulation and governance**

The Regulator was already engaging with Kinsman in relation to concerns about its governance when we received a referral from a third party which said that Kinsman had not adequately responded to potential issues with the structural safety of a number of its homes, along with concerns about the safety of gas, fire and electrical installations. Shortly after receiving this referral and on the basis of the information we had gathered during our governance investigation, we completed our assessment of Kinsman's governance, and concluded that it was non-compliant with our governance requirements. We published a regulatory notice<sup>8</sup> setting out our views, and then continued to engage with Kinsman in relation to both our governance concerns, and to complete our investigation into the concerns raised about the safety of the property.

Through our investigation, we learned that Kinsman had been notified of the potential issues in January 2017, but did not put in place plans to carry out the necessary survey work until September 2018, following the referral to the Regulator. While Kinsman's survey on the structure of the building did identify some significant issues, it did not conclude that these posed a serious risk to tenants. However, this initial survey did recommend further, more intrusive inspections including of the gas, electrical and fire safety mechanisms in place.

A subsequent survey carried out in December 2018 identified some serious and wide-ranging concerns in relation to fire safety. In addition, although a fire risk assessment had concluded that the risk was at a tolerable level, there were a number of follow up actions necessary to ensure the property and its tenants were safe.

These risks were known about for a considerable period of time, and the evidence demonstrated that Kinsman were extremely slow to act when concerns were raised. The Regulator concluded that given the seriousness of the issues, and the duration for which

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<sup>8</sup> We do not publish regulatory judgements for registered providers which have fewer than 1,000 social housing units. However, if we have evidence that such a provider has breached an economic standard, we will issue a regulatory notice.

tenants were potentially exposed to risk, that this was a breach of the Home standard and that there had been a risk of serious detriment to tenants. We published a second regulatory notice setting out our conclusions.

Kinsman put in place a schedule of works in relation to fire safety and the other remedial work identified in its surveys and has provided assurance that tenants are not at risk in the meantime. The Regulator continues to engage with Kinsman to seek assurance on the completion of works and evidence that this has remedied the issues found. Alongside this, we are continuing our intensive engagement with Kinsman to ensure that the underlying governance issues which formed the basis of the first regulatory notice are resolved.

- 5.6 This case study highlights that complying with our Home standard goes beyond simply meeting statutory health and safety requirements. It shows the importance of registered providers understanding and acting on their fundamental responsibility for tenant safety by having systems in place which allow them to take prompt and effective action when there is a suggestion that tenants might be at risk. Governing bodies of registered providers should listen to, and engage with, tenants and third parties where they are giving messages that they might be at risk, and should act swiftly to identify whether any such risks exist, and to mitigate those risks.



## 6. Local authorities' compliance with the consumer standards

- 6.1 Although the Regulator's economic standards do not apply to local authorities, the Regulator's consumer standards apply equally to private registered providers and local authorities and we expect all registered providers to be open and transparent with the Regulator when issues arise which indicate non-compliance (or potential non-compliance) with our standards.
- 6.2 The Regulator also expects that all tenants, regardless of whether their landlord is a private registered provider or a local authority, should have the same experience: they should have homes that are safe and of reasonable quality, access to an effective complaints process when things go wrong, and the opportunity to have a say in decisions which affect them.
- 6.3 With this in mind, where the Regulator receives a referral relating to a local authority, we will consider that in the same way as we consider referrals relating to private registered providers. The example below shows how we determined a breach of the Home standard and serious detriment in relation to a local authority.

### **Case study 3 – Regulating local authorities' compliance with the consumer standards**

We received a referral from an individual raising concerns about how Arun District Council had responded to reports of repairs in their home and fire safety. We followed up this referral and sought assurance from Arun District Council that it was responding appropriately to the reports of repairs and that it met all applicable statutory health and safety requirements.

Through our investigation, we learned that up until 2016, Arun District Council did not have a comprehensive programme in place to carry out fire and Legionella risk assessments across its entire stock. Sheltered housing schemes were subject to a programme of works, but the general needs stock was assessed on a reactive basis when issues were reported. That meant that Arun District Council could not provide assurance that all of the relevant properties had a risk assessment in place until very recently. A programme of works had been developed to resolve the issues and Arun District Council was implementing a new structure and resourcing to improve the oversight and delivery of compliance work. However this had not yet addressed the issues at a speed which would reflect the level of risk to its tenants.

The Regulator concluded that Arun District Council had breached the Home standard as it had not had a system in place which allowed it to effectively meet its statutory duties to assess the risks of fire and legionella.

In response, Arun District Council commissioned an external review of its health and safety compliance, which identified weaknesses in the overall system for managing health and safety, and it developed an improvement plan to resolve the issues. The Regulator is now working closely with Arun District Council as it implements the actions set out in the improvement plan. That includes actions to complete outstanding risk assessments and any actions arising from those risk assessments, as well as addressing the underlying causes of the breach of the consumer standards.

## 7. The Home Standard

- 7.1 Ensuring tenants have good quality accommodation and are safe in their homes is a fundamental responsibility of registered providers. Each year, the Home Standard features in around half of all referrals considered by Consumer Regulation Panel, covering issues relating to repairs and maintenance, the decency of tenants' homes and registered providers' compliance with statutory health and safety requirements.
- 7.2 This year, all of the cases where the Regulator found a breach and serious detriment related to the Home standard, in particular in relation to the repairs and maintenance service provided by registered providers, and their compliance with statutory health and safety requirements across a range of areas including fire safety, gas safety, electrical safety, lifts and Legionella. Most common were issues relating to fire safety, which featured in five of the six cases where we found a breach and serious detriment. However, it was striking that in a number of those cases, where we considered concerns relating to fire safety, weaknesses across other areas of health and safety were also identified.
- 7.3 As the case studies below will demonstrate, complying with fire safety requirements is critical for registered providers to ensure tenants are safe. However providers also need to continue to seek assurance on the systems they have in place for delivering safe homes for their tenants across all areas. This includes data management, policy and processes, monitoring, reporting and oversight.

### Fire safety

#### Case study 4 – Meeting fire safety requirements

Beyond Housing was formed following the merger of Yorkshire Coast Homes and Coast & Country Housing in October 2018. Like all registered providers, Beyond Housing, and its predecessor organisations, has a duty to comply with the Home Standard which requires registered providers to comply with statutory health and safety requirements which provide for the safety of tenants in their homes; the applicable statutory requirements include the Regulatory Reform (Fire Safety) Order 2005 which requires registered providers to make a suitable and sufficient assessment of the risks of fire. Having identified those hazards and people at risk, it has a duty to take precautions to prevent the risk of fire, and to update the risk assessments regularly.

As part of the pre-merger process, Yorkshire Coast Homes had identified concerns about fire safety. In particular, it found that a large number of fire risk assessments had passed their review date, and a small number of properties did not have a risk assessment in place. It said it also had concerns about the quality of the fire risk

assessments which had been carried out, and that there was limited evidence to demonstrate that actions identified had been completed.

The Regulator concluded that Yorkshire Coast Homes had breached the Home Standard as it had failed to have an effective system in place to provide assurance that tenants were not at risk from fire. A regulatory notice was published. Yorkshire Coast Homes put in place an urgent plan to deliver actions and to mitigate the risk to tenants. It brought in additional resources and carried out initial inspections to ensure there were no combustible materials in communal areas. It also carried out the outstanding fire risk assessments, prioritised by risk. When the merger was completed, Beyond Housing became the organisation responsible for completing this work and for resolving the issues set out in the regulatory notice.

Since then, the Regulator has had regular engagement with Beyond Housing, as it has progressed in the delivery of this work. It has completed all of the fire risk assessments, and is now working through the actions which were identified, tackling the highest risk actions first to mitigate any risk to tenants. Beyond Housing has also looked at the underlying causes of the breach of the Home standard, and has completed work to cleanse its data, to implement a new compliance system, and to improve reporting to the board.

### Electrical safety

- 7.4 For some areas of health and safety, the legislative requirements are very explicit (for example, the Gas Safety (Installation and Use) Regulations 1998 states clearly that gas appliances and flues must be tested annually). In other areas, the law is less explicit, but that does not lessen the obligation on registered providers to act to ensure their tenants are safe.
- 7.5 The Health and Safety at Work Act 1974 requires registered providers to conduct their undertakings in such a way that third parties (including tenants) are not exposed to risk. Recently there has been increased focus on electrical safety and recognition of the importance of registered providers setting their own policies and procedures that clearly articulate the arrangements they operate in order that tenants are not exposed to risk.

7.6 Below is an example of how we considered a case relating to electrical safety.

**Case study 5 – Meeting electrical safety requirements**

Lincolnshire Housing Partnership (LHP) made a self-referral to the Regulator in July 2018, having identified concerns about the quality of its electrical testing programme and the certification available to demonstrate that electrical testing had taken place. LHP explained that for a number of properties, electrical certificates were either missing or were over 10 years old. Quality control checks had also found a number of errors in both the categorisation of works, and completion of certificates.

LHP was created as a result of the merger of two organisations: Boston Mayflower and Shoreline Housing Partnership. In their engagement with the Regulator, LHP set out that a previous external assessment of a sample of electrical inspections for Boston Mayflower had found a high proportion had failed quality requirements. LHP then commissioned a review which raised concerns about the lack of valid or in-date certificates for the majority of Boston Mayflower properties.

The Regulator noted LHP's self-identification of the issues, and its subsequent referral to the Regulator, but taking into account the seriousness of these issues, and the number of tenants potentially affected, the Regulator determined that it was proportionate to find a breach of the Home Standard and serious detriment in this case. A regulatory notice was published and the Regulator also considered implications for LHP's governance, concluding that its current interim G2 grade remained appropriate. In reaching that view, the Regulator was assured that once the issue was identified, LHP immediately put a plan in place to address the issues and commissioned a review to understand how the failing had happened. It put in place a programme of remediation which prioritised the works required by risk and is addressing the issues in line with that programme.

7.7 The case study shows the importance of registered providers having assurance that tenants are safe in their homes. In this case, LHP was not able to be certain that the relevant electrical safety checks had been completed and it was not assured that the checks carried out were of appropriate quality. Clearly this had an impact on understanding whether remedial actions arising from electrical safety checks had been assessed correctly and completed. It was these factors which led the Regulator to conclude a breach of the Home Standard and serious detriment. LHP's interim G2 governance grade remained unchanged reflecting the registered provider's identification of the issues, quality of response and timely self-referral to the Regulator.

### Meeting all statutory health and safety requirements

- 7.8 The case studies above set out two different cases where we found a breach of the Home Standard relating to a failure to comply with one area of health and safety requirements (fire safety for Beyond Housing and electrical safety for LHP). However, in a number of cases this year, we have identified that registered providers have failed to comply with our consumer standards because of failures which were more widespread across a range of health and safety areas. The case study below is an example of that.

#### **Case study 6 – Meeting all applicable statutory health and safety requirements**

GreenSquare Housing Group (GreenSquare) made a self-referral to the Regulator in July 2018, followed by a second referral in November 2018 when it had found a number of properties with overdue gas certificates. On commissioning a wider review of compliance with statutory health and safety requirements, GreenSquare also identified issues relating to fire safety and lift safety and made a further referral to the Regulator.

The main concern related to fire safety. GreenSquare told the Regulator that although all fire risk assessments were up-to-date, it had identified that there was a large number of overdue actions arising from fire risk assessments including some that had been categorised as high priority that had not been completed. Some of these urgent actions had been outstanding for a number of months, and the issue affected a significant number of tenants, including potentially vulnerable tenants. A number of lifts were also found to have an out-of-date lift service check. The Regulator concluded that this was a breakdown in the overall systems in place to allow GreenSquare to deliver an effective repairs and maintenance service and therefore found that GreenSquare had breached the Home Standard with potential serious detriment as a result. A regulatory notice was published.

Given the seriousness of the issues, GreenSquare had commissioned a root cause analysis review to fully understand the factors that led to this including governance, culture and leadership as well as operations and management.

The Regulator was carrying out an in-depth assessment of GreenSquare at the time of the second referral. We considered the implications of this for the Regulator's view of GreenSquare's governance as part of the in-depth assessment and we concluded that a downgrade to G2 was appropriate.

## 8. Responding when things go wrong

- 8.1 The case studies above set out a number of cases where things have gone wrong, and where the Regulator has judged the registered provider to have breached our regulatory standards and risked serious detriment to tenants. However, we seek to be proportionate in our regulation of the consumer standards and simply because something has gone wrong, it does not necessarily mean the standards have been breached. In reaching our view, we consider whether the issues identified indicate a systemic failure by the registered provider. We also take into account the seriousness and duration of the issue, and the number of tenants potentially affected. We also consider what action the provider is taking, to put things right.
- 8.2 Registered providers should design effective systems and processes which allow them to comply with our consumer standards, and which allow them to identify at an early stage when things are going wrong. How an organisation responds when things have gone wrong tells us a lot about the organisation and how it is run. Well-run organisations will seek to address the underlying causes of the failure as well as the presenting issues. They will also seek to learn the lessons from the failure, in order to strengthen systems and processes where necessary. The case study below sets out an example of that.

### **Case study 7 – Learning lessons when things go wrong**

The Regulator was contacted by a registered provider who told us that there were longstanding repair and defects issues relating to one of its mixed tenure new build housing schemes. This was causing a relatively high volume of complaints from residents as well as attention more widely, including through the media.

The Regulator considered this self-referral under its consumer standards and specifically the requirement for registered providers to have an effective repairs and maintenance service, as well as the requirement to have an approach to complaints to ensure they are resolved promptly, politely and fairly.

The Regulator received a significant amount of information from the registered provider, including the report from a review it commissioned externally into the issues, their handling of complaints and lessons learnt. This looked across a number of the registered provider's new build schemes.

From this, we concluded that the registered provider had a repairs service in place that was effective overall and there was evidence they had responded to all the issues raised and followed up where they were not resolved. We noted that there were some incidences where the registered provider's response was not as timely as it should have been. There was also the added complexity of establishing responsibility for remedial work, given the scheme was within its defects period.

Notwithstanding the ongoing repair issues, evidence was provided of compliance with statutory health and safety requirements.

We considered carefully the information provided regarding the provider's approach to complaints. There was a clear, accessible and timely process in place with evidence that residents had been able to make complaints and have those responded to.

- 8.3 However, as the provider's own review highlighted, there were a number of improvements that could be made. In particular where an issue or area of service is resulting in complaints and dissatisfaction over a protracted period, more should be done to escalate this, identify trends and learning and adjust the approach. Changes relating to training and support for staff, as well as improving communication across different departments, were recommended, as was an emphasis on effective resolution rather than seeing the delivering the process as the outcome in itself. We considered whether, in light of these issues, this changed our view of the registered provider's governance. The information and responses gained through our engagement provided assurance that this was not the case.



## 9. The Tenancy Standard

Registered providers may at times have tenants who are facing challenges maintaining their tenancies. A decision to evict a tenant should never be taken lightly and the consumer standards set out the expectation that registered providers will support tenants in such situations and avoid unnecessary evictions. The case study below shows an example of a referral we considered under this standard.

### **Case study 8 – Supporting tenants to maintain their tenancies**

We received a referral from the friend of a tenant in a supported housing scheme who had sadly died in their property shortly after the registered provider was granted a possession order. The referrer alleged poor treatment of the tenant by the registered provider including taking unnecessary steps to evict. We considered this referral under the Tenancy Standard which states registered providers should provide support to tenants to enable them to maintain their tenancies and prevent unnecessary evictions.

We do not have a role in resolving individual complaints about registered providers. This can include complaints such as this where it appears to be an individual issue regarding an eviction rather than one which indicates systemic failings. However, the Tenancy Standard as outlined above, places an expectation on registered providers to ensure tenants are appropriately supported to try and avoid situations such as this and given the tragic circumstances of this case, the Regulator considered the matter to ensure the registered provider had appropriate systems in place for all its tenants in similar cases.

While it is not our role to consider if the eviction itself was reasonable, we sought information from the registered provider to ensure that any action taken was in line with the Tenancy Standard. The registered provider told us that from the tenancy commencement, the tenant had been in breach of the visitors' policy and tenants' charter. The tenant had also failed to engage with support from the specialist drug team and had fallen into arrears. The registered provider engaged with the tenant and agreements to pay were made. Unfortunately the payments were not made and possession action began on the grounds of rent arrears. The registered provider told us that it tried to arrange re-housing for the tenant in another supported unit but they refused the offer of a place which they could have moved to before the court hearing that led to the possession order.

We considered that the evidence did not indicate a systemic issue within the registered provider as to the way they dealt with vulnerable residents. We saw that consideration was given to the requirements under the Tenancy Standard. Possession action was carried out as a last resort after other options had been pursued and we saw evidence of attempts by the registered provider, alongside other agencies to support the tenant during this time.

9.1 The Tenancy Standard in regards to tenure states that registered providers shall publish clear and accessible policies which outline their approach to tenancy management and set out their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members. The case study below shows how we considered a referral under the Tenancy Standard and how the registered provider had taken appropriate steps to ensure this standard was met.

### **Case study 9 – Managing succession rights**

We received a complaint from a tenant regarding the alleged lack of transparency of their registered provider's succession policy. The tenant also complained that the registered provider did not make discretionary allowances to its succession policy if there are vulnerable household members. The tenant stated that they were classed as disabled and they had been trying to find out about discretionary succession from the registered provider.

We saw that the registered provider had written to the tenant to clearly explain its succession policy. The registered provider had explained in detail why the policy did not apply to the tenant based upon their current circumstances but that this would be reviewed should these circumstances change. We also saw the information the registered provider considered when taking into account the tenant's needs and those of their household members and that they had provided a single point of contact who was able to assist the tenant by collating information and co-ordinating responses to him.

The steps taken by the registered provider were in line with expectations under the Tenancy Standard and we found no breach in this case.

## 10. Neighbourhood and Community Standard

- 10.1 The Neighbourhood and Community Standard places an expectation on registered providers that they will work collaboratively with other agencies to address anti-social behaviour. This year we have received several referrals from tenants who are concerned about this issue. We recognise the challenges registered providers face in tackling such issues, however tenants should expect to feel safe and comfortable in their homes and communities. For that reason, where we receive complaints of this nature, we ask registered providers what assurance they have that they are listening to tenant concerns and taking reasonable actions to address these.

### **Case study 10 – Dealing with anti-social behaviour**

We received a referral from a tenant on behalf of a registered provider's residents association. The residents association was concerned that the registered provider had not acted properly to deter anti-social behaviour in and around their block of flats.

We considered the referral under the Neighbourhood and Community Standard which states that registered providers shall work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhood where they own homes.

We saw that the registered provider had clear policies and dedicated staff to help deal with anti-social behaviour. The registered provider said they cooperated fully with local agencies and partners including the police and the local authority. There had been two instances of anti-social behaviour reported and the registered provider was liaising with the police and the council's environmental noise enforcement department to address this. The registered provider was also aware of rough sleepers in and around the block of flats and was working in conjunction with the police and the council's rough sleeper team to tackle this.

The registered provider said it attended the residents association's quarterly meetings and intended to discuss with them the further measures that would be taken to make the property more secure. On the basis of the information and evidence we received, we concluded that the registered provider had taken reasonable steps to listen and respond to tenant concerns and had not breached the Neighbourhood and Community Standard.

- 10.2 The Neighbourhood and Community Standard also places an obligation on registered providers to keep the areas surrounding their properties such as communal gardens and play areas clear and safe. In line with standard, we expect registered providers to ensure that these areas are maintained to a reasonable standard for tenants to enjoy. The case study below highlights that although we found no breach of our standards, there may be times when we will follow up with registered providers where we see improvements to service can be made.

### **Case study 11 – Standard of estate services**

A local councillor complained to the Regulator on behalf of residents about the estate maintenance services provided by the registered provider. This service was previously outsourced but the registered provider had since taken the service back in house. Tenants were unhappy that costs had increased and considered the work carried out was substandard. We considered this referral under the Neighbourhood and Community Standard which states that registered providers shall keep the neighbourhood and communal areas associated with the homes they own clean and safe.

We sought information from the registered provider about the service it was providing in relation to estate maintenance. The registered provider said it monitored this work through quality inspections and then posted the inspection reports on the building's notice board for residents. Evidence was provided that demonstrated that work of the estates team was being monitored and completed to an agreed standard.

We acknowledged that some residents might be dissatisfied with the estate maintenance service, particularly since the service was taken back in house, and as the costs had increased. However the evidence from the registered provider did not indicate a failure to keep communal areas clean and safe as the standard requires. When investigating a referral, even if we do not find a breach of our consumer standards we do feedback to registered providers, where appropriate, and in this case we sought to reinforce the expectation that all registered providers engage constructively with tenants and their elected representatives.

## 11. The Tenant Involvement and Empowerment Standard

- 11.1 The Tenant Involvement and Empowerment Standard sets out expectations of how registered providers should treat their tenants and the importance of demonstrating that they understand the different needs of tenants including those with additional support needs. Registered providers should recognise the importance of building trust with tenants and compliance with this standard helps to achieve this.

### **Case study 12 – Understanding and responding to the diverse needs of tenants**

A registered provider self-referred to the Regulator following the death of tenant in one of their homes. The tenant was not found until two weeks after her death. We considered this referral under the Tenant Involvement and Empowerment Standard which requires all registered providers to demonstrate they understand their tenant's diverse needs, treating each fairly and with respect. We followed up with the registered provider to seek assurance that they had arrangements in place to ensure this was the approach being taken with their tenants.

The tenant was living in housing for older people with communal facilities and alarm pull cord system but no onsite warden. The registered provider had found it difficult to keep in regular contact with the tenant as she did not have a telephone and was often not at home when staff visited the property. When the registered provider was able to contact the tenant, they made offers of support and visits to the tenant, however these were all refused. The tenant also declined to use the alarm pull cord system and had stated she only used the property to sleep in.

It is inevitable that at times tenants will pass away in their homes and in this case it is particularly sad given that the tenant was not found for some time. When considering the relevant consumer standards in this case, we took into consideration that the registered provider had made reasonable attempts to arrange support for the tenant over the course of her tenancy and that when these were firmly refused, staff respected the tenant's requests. While a registered provider should understand their tenants' needs and take steps to assist with support where appropriate, this must also be balanced with a tenant's wishes and their desire to live their preferred lifestyle. For those reasons, we concluded that the registered provider had an approach in place that meant tenants' specific needs were understood and taken into account and that the Tenant Involvement and Empowerment standard had not been breached in this case.

- 11.2 Throughout the year we have also received a number of referrals about the customer service delivered by registered providers and the way they handle tenant complaints. The standard sets out that a registered provider shall provide choices, information and communication that is appropriate to the diverse needs of their tenants in the delivery of all standards and has an approach to complaints that is clear, simple and accessible. A registered provider should also ensure that complaints are resolved promptly, politely and fairly.

### **Case study 13 – Complaints handling**

We received a referral from a tenant who had raised various complaints with the registered provider, including about anti-social behaviour in his neighbourhood. The tenant did not consider that the registered provider had responded appropriately to their concerns or followed their complaints procedure. They said that they felt that the registered provider's handling of his complaint had caused their mental health condition to become worse.

We saw that the tenant had raised a significant number of complaints with the registered provider. The evidence showed that the registered provider had sought to provide detailed responses to each complaint and tried to implement alternative measures to allow the tenant full access to their complaints processes in a pragmatic way. This included providing dedicated case managers and contacts. The evidence demonstrated that the registered provider's approach to complaints met the expectations of the standard and there had not been a systemic failing with the registered provider's complaint handling or procedures.

- 11.3 The Tenant Involvement and Empowerment Standard sets clear expectations that registered providers should communicate with and listen to their tenants. This is particularly important where registered providers are proposing a change in landlord for one or more of their tenants or a significant change in their management arrangements.
- 11.4 Consultation should be carried out in a fair, timely, appropriate and effective manner with any proposals clearly set out in an appropriate amount of detail including on any actual or potential advantages and disadvantages (including costs) to tenants in the immediate and longer term. Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision. The following case study illustrates the importance of registered providers having a robust approach to their decision making and in how they consult with tenants, taking fully into account whether the proposals are aligned with their objectives as a social housing provider and meet regulatory expectations.

#### **Case Study 14 – Consulting with tenants**

A registered provider notified the Regulator of its disposal of a tenanted social housing scheme to a non-charitable organisation (for profit registered provider). The information submitted by the registered provider in its notification raised questions on the consultation carried out with tenants.

We considered whether the approach taken by the registered provider met the expectations within the Tenant Involvement and Empowerment Standard. Our follow up engagement sought further detail of the range and quality of consultation carried out and asked the registered provider to provide evidence that it had met the requirements of the standard including setting out clearly for tenants any potential costs and disadvantages of the proposed disposal.

We concluded that, although improvements could be made to the approach taken by the registered provider, there was not a breach of standard and serious detriment. In reaching this conclusion we took into account that the tenants would remain in the regulated sector.

However we also considered how the registered provider had made its decision to dispose of the social housing scheme and whether this changed our view of its governance. The Regulator concluded that improvements were required to the registered provider's governance to ensure that key decisions of this nature are informed by a sufficiently broad range of quality information and that appropriate delegations are in place. There had been insufficient board oversight of the disposal and the registered provider's governance was downgraded as a result.

## 12. Annex A – Analysis of cases

### Referrals by stage

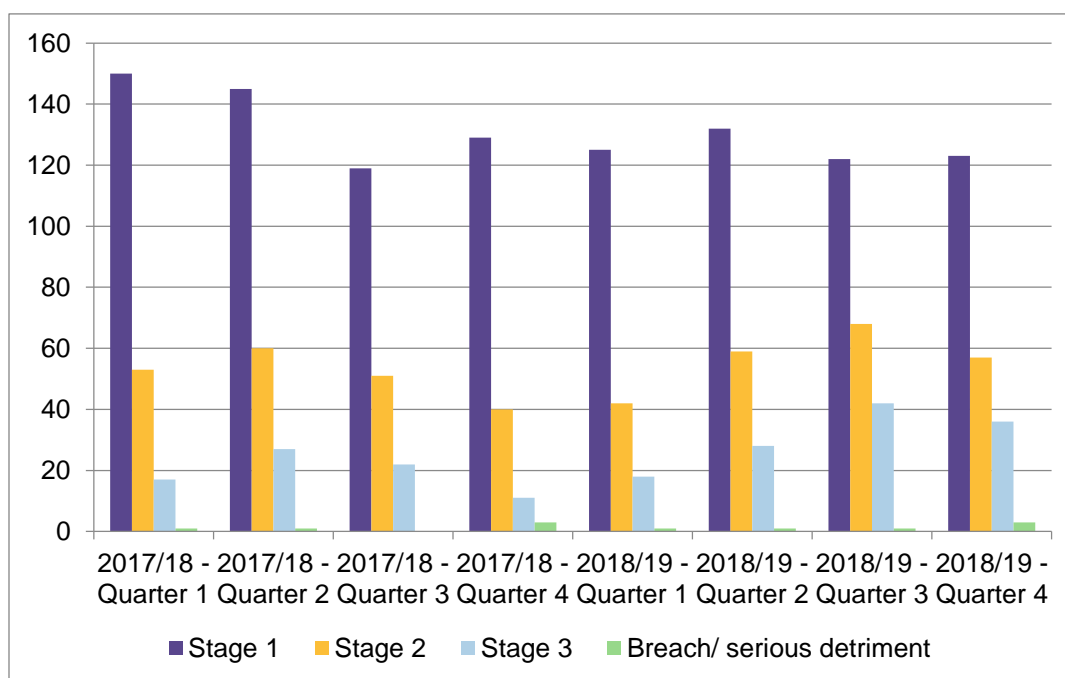
12.1 Our consumer regulation process has three stages:

- Stage 1 – the Referrals and Regulatory Enquiries (RRE) team is responsible for collating all referrals to the Regulator. The RRE team’s role is to review referrals and determine whether the issues raised appear to be within the Regulator’s remit, and if there appears to have been a breach (or a risk of a breach) of the consumer standards. If so, the RRE team refers the case to the Consumer Regulation Panel.
- Stage 2 – the Consumer Regulation Panel considers each case to determine whether there is evidence of a breach of the standards and, if so, whether there has been harm, or potential harm, to tenants. It considers two questions:
  - I. if the issues raised were true, is it likely that there has been, or could be, a breach of a consumer standard?
  - II. if the issues raised were true, would there be any impact on tenants which would cause serious actual harm or serious potential harm?
- Stage 3 – if the Consumer Regulation Panel considers that the evidence could indicate a breach of the standards, or if there is a suggestion that tenants are at risk of serious harm, we will carry out an investigation. During the investigation, we will usually seek information from the individual making the referral and the registered provider, as well as any third parties if necessary.



12.2 The table below shows the total number of consumer regulation referrals handled by the Regulator by quarter and how many of those went on the subsequent stages of our process. The 2017/18 figures are shown in brackets.

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
Stage 1 – All consumer referrals	125 (150)	132 (145)	122 (119)	123 (129)	502 (543)
Stage 2 – Considered by Consumer Regulation Panel	42 (53)	59 (60)	68 (51)	57 (40)	226 (204)
Stage 3 – Investigation undertaken	18 (17)	28 (27)	42 (22)	36 (11)	124 (77)
Published findings of breach of standard and serious detriment	1 (1)	1 (1)	1 (0)	3 (3)	6 (5)



12.3 In 2018/19, we received 502 consumer standard referrals. Of those, 226 (45%) were referred to the Consumer Regulation Panel, and 124 (25%) were investigated further. We found a breach and serious detriment in six cases (1%).

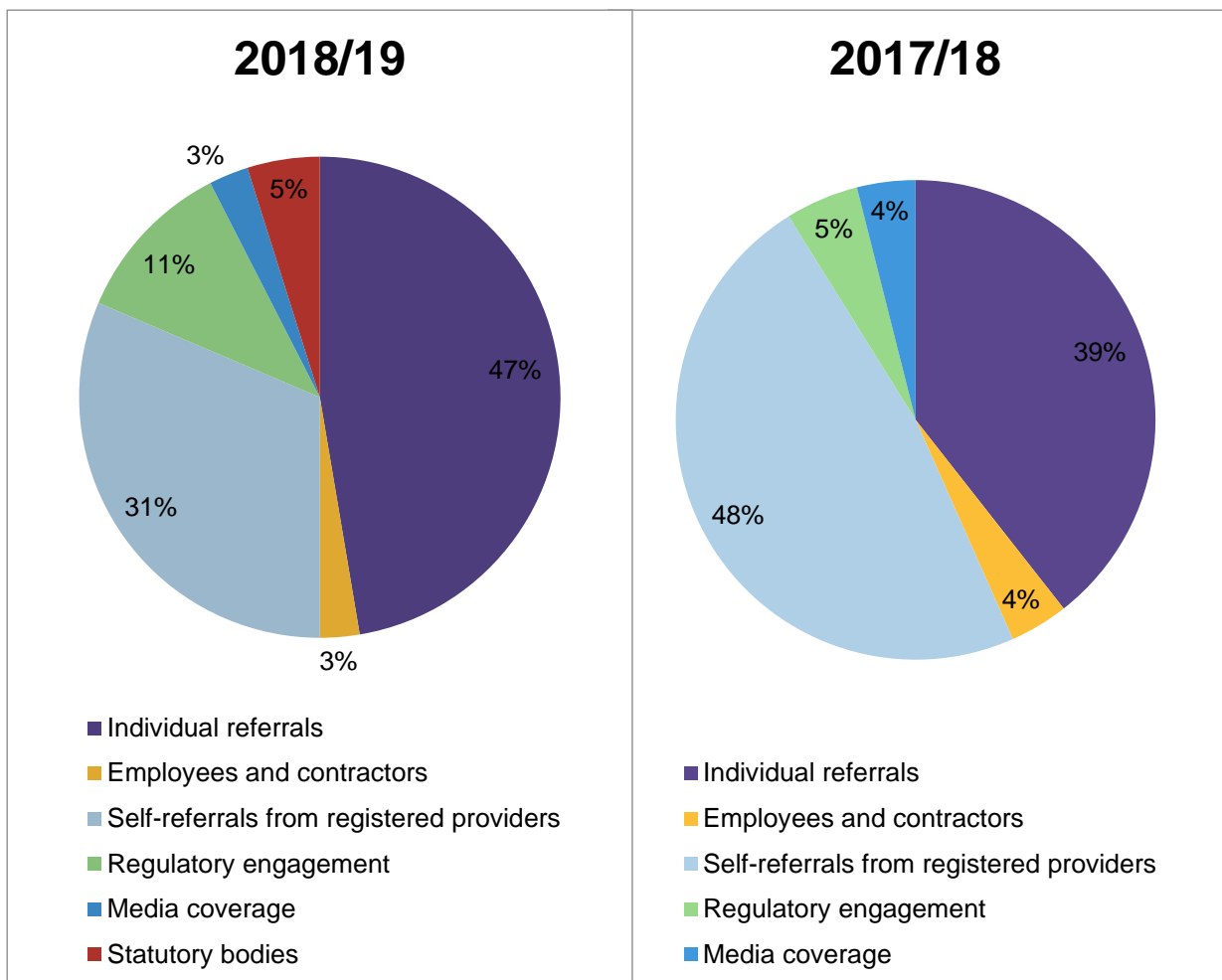
## Consumer Regulation Review 2018-19

- 12.4 The data shows that the overall number of referrals to the Regulator in 2018/19 declined slightly (502 in 2018/19 compared to 543 in 2017/18), but the total is in line with the average across previous years. The number of cases referred to CRP increased slightly on the previous year (45% compared to 38%) but we do not consider this to be a material change.
- 12.5 For the cases which were not escalated to Consumer Regulation Panel, there are a number of reasons why this may be the case. Often referrals are not within our remit, for example: they were made by homeowners or leaseholders, the issues raised related to private landlords or organisations which were not registered providers, or the issues raised did not fall under our regulatory standards. In a number of cases, tenants also sought advice on how to complain about their landlord. In response, we would signpost the tenant to their landlord's complaints process and the Housing Ombudsman where appropriate.
- 12.6 The number of cases reaching a stage 3 investigation increased from 77 cases (14%) in 2017/18 to 124 cases (25%) in 2018/19. This is a significant year-on-year increase. However, the rate of investigations for 2017/18 was low compared to previous years (for example, in 2016/17 we investigated 112 cases (20%), and in 2015/16 we investigated 98 cases (21%)), and the figures for 2018/19 year are more in line with previous years' investigation rates. We do not consider there to have been a material change in the Regulator's thresholds for investigating referrals, but rather we consider the presenting facts on each case before making a decision about whether an investigation is reasonable and proportionate.
- 12.7 Our data shows that of the cases we investigate, 33% are self-referrals from registered providers, 21% are from tenants or their representatives, 15% are issues identified through our regulatory engagement. The remainder are from a range of other stakeholders including MPs and Councillors, leaseholders or homeowners, or employees.

### Sources of referrals

12.8 The Regulator receives referrals from a range of sources, most commonly from tenants and as self-referrals from registered providers. We also receive information from employees or contractors, and we identify referrals in the course of our regulatory engagement with providers.

12.9 The charts below show that while the number of referrals to Consumer Regulation Panel remained relatively consistent, the number of referrals from individuals increased from 39% in 2017/18 to 47% in 2018/19, and this year, unlike previous years, 5% of our referrals were received from other organisations such as local authorities, NHS services and the Housing Ombudsman.



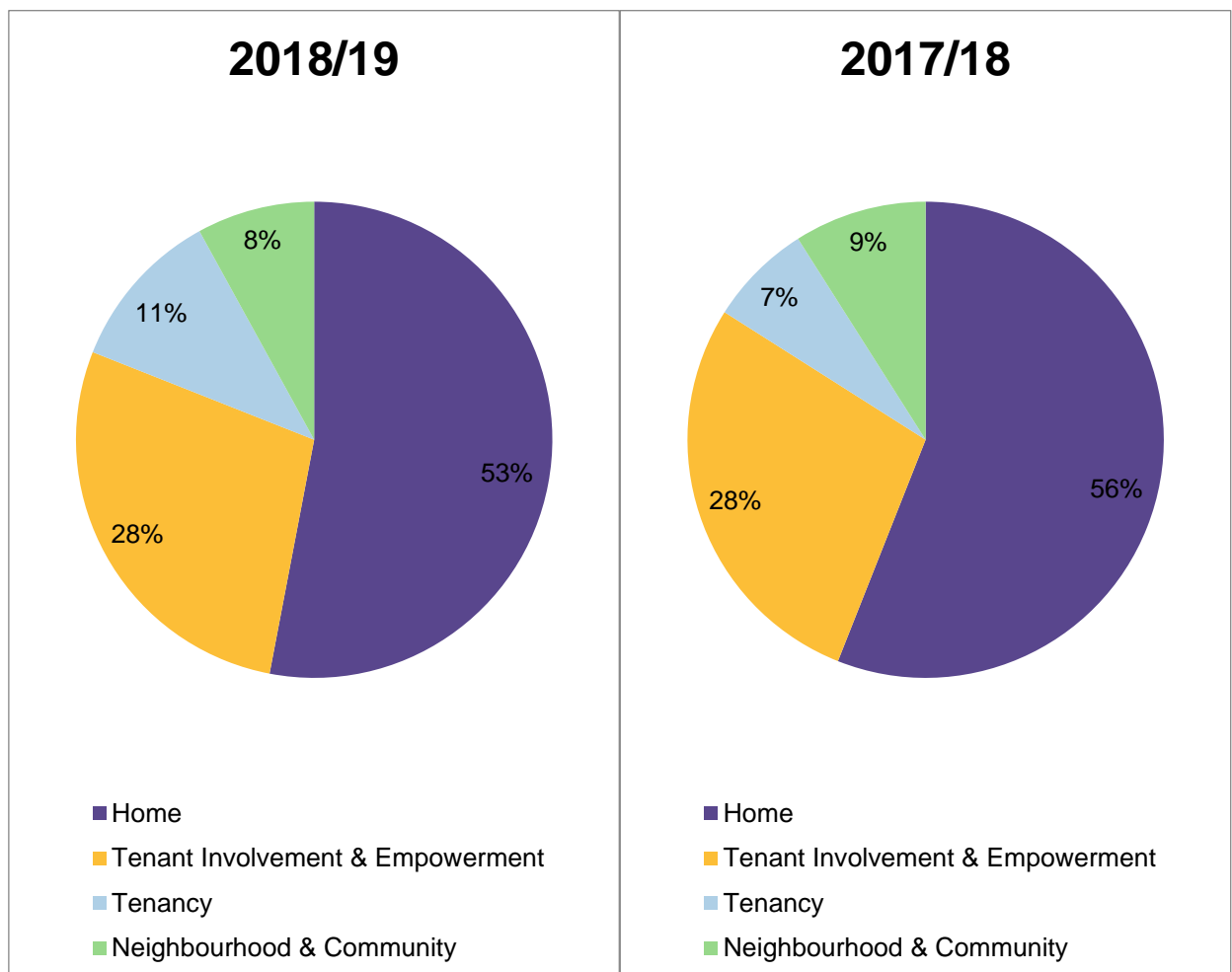
## Consumer Regulation Review 2018-19

- 12.10 The number of referrals from registered providers decreased from 48% in 2017/18 to 31% in 2018/19. Our analysis shows that the figure for self-referrals the previous year (2017/18) was relatively high, and we attribute this to a number of referrals we received from registered providers in the immediate aftermath of the Grenfell Tower fire, notifying the Regulator of the presence of cladding on buildings and providers' plans to mitigate risks to tenants. Although the number of self-referrals we have considered has declined this year, it is in line with previous years' figures and represents a significant proportion of our casework.
- 12.11 We have also noted a correlation in some cases between the timing in which we notify a registered provider of our intention to carry out an in-depth assessment and their self-referral to the Regulator, accounting for 1 in 7 of all self-referrals. We therefore continue to remind registered providers of their co-regulatory responsibilities, in accordance with the requirements of our Governance and Financial Viability Standard, to communicate with the Regulator in a timely manner in all cases of potential non-compliance with our regulatory standards.
- 12.12 This year, we have also identified more consumer regulation cases through our planned regulatory engagement (an increase from 5% to 11% of our casework), and accounting for 32% of all regulatory engagement referrals. We attribute this partly to boards having an increased focus on compliance with consumer standards including health and safety requirements, and better reporting across all areas, which is subsequently identified by our Regulatory Operations team when reviewing board papers and information submitted to the Regulator during our in-depth assessments. Our in-depth assessment process focuses on the quality of governance and risk management in relation to a registered provider's key risks. The safety of tenants is usually amongst the top risks registered providers.

### 13. Cases referred to the Consumer Regulation Panel

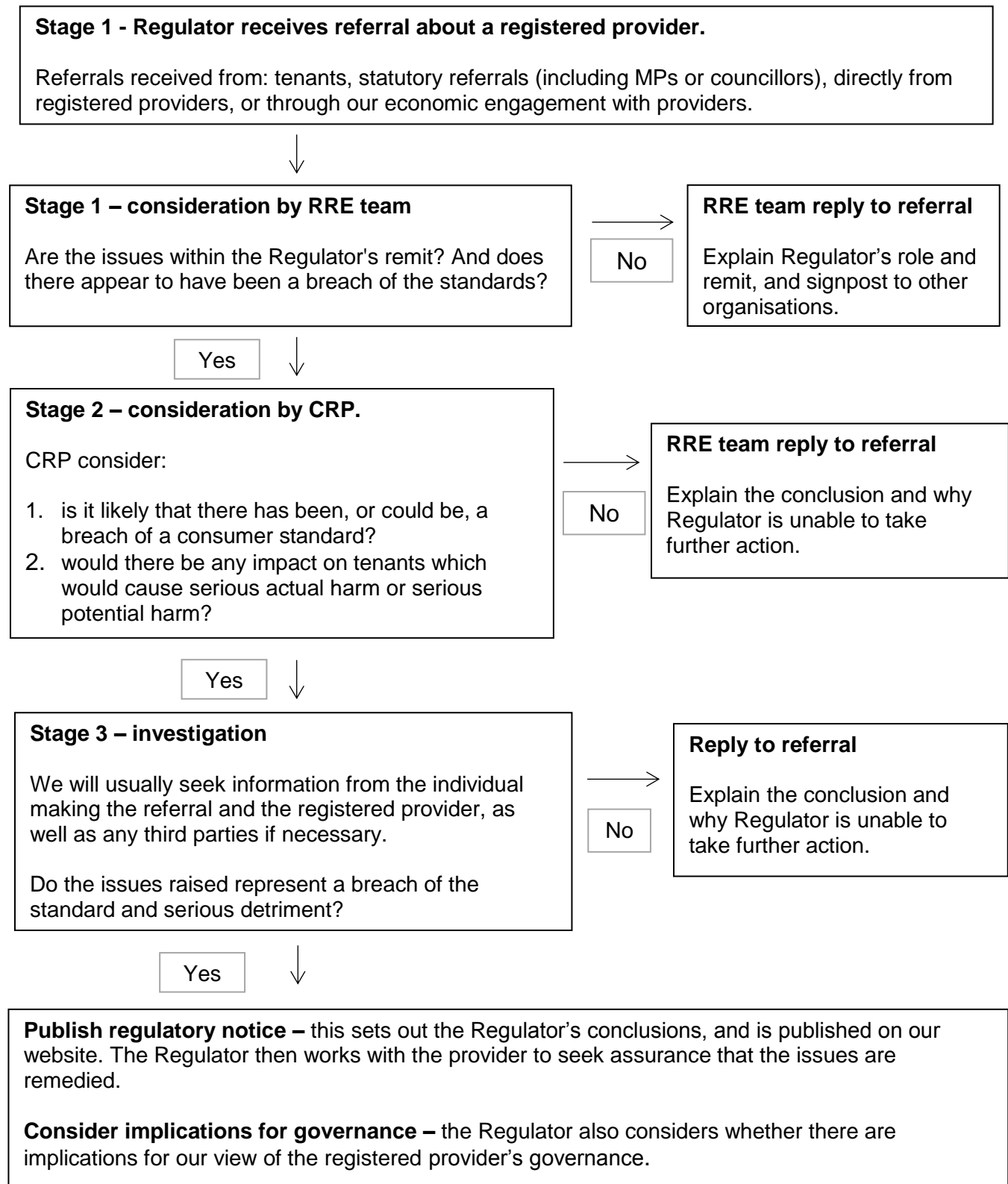
13.1 As in previous years, the Home Standard continues to be the consumer standard which is most often cited. Although the percentage of cases in relation to the Home Standard declined slightly this year, it still accounts for more than half of all referrals considered by the Consumer Regulation Panel. Referrals across all standards have remained relatively consistent, with a slight increase in referrals relating to the Tenant Involvement and Empowerment standard, offset by a small decline in referrals relating to the Neighbourhood and Community Standard. The percentage figures and representative charts are set out below.

13.2 Our data shows that the majority of self-referrals from registered providers (88%) relate to compliance with the Home Standard, with only 9% of self-referrals relating to the Tenant Involvement and Empowerment Standard. In contrast, referrals from individuals such as tenants and their representatives are spread more evenly across the standards, with referrals relating to the Home Standard accounting for 37% of all referrals, and the Tenant Involvement and Empowerment Standard representing 35% of referrals.



## 14. Annex B – How we carry out our consumer regulation

14.1 Through this report, we have explained how we carry out our consumer regulation work and our consumer regulation processes. Below is a diagram which sets this out in more detail.



## 15. Annex C – Summary of previous lessons learned

- 15.1 This is our seventh Consumer Regulation Review and each year our reports set out the key messages we wish to share with the sector. Full versions of each of the reports are available on our website<sup>9</sup>:
- 15.2 Compliance with the Home Standard, including health and safety requirements and transparency with the Regulator, are recurring themes, but each year we identify new lessons that we wish to share with the sector. We have set out a short summary of these lessons below.

### 2012/13

- 15.3 This was the first annual Consumer Regulation Review. That year we published one regulatory notice for a failure to meet gas safety requirements.
- 15.4 In the report, we said:
- Registered providers are responsible for meeting statutory health and safety requirements. We recognise that, for good reason, registered providers prefer to work with tenants to secure access to properties. However, on occasion, registered providers may need to make use of legal mechanisms available to ensure the safety of tenants, and they should do so in a timely manner.

### 2013/14

- 15.5 In our second Consumer Regulation Review, we set out details of the three cases where we had found a breach of the consumer standards and risk of serious detriment. All three cases related to a failure to meet gas safety requirements. We also reminded registered providers of their duty to be transparent with the Regulator.
- 15.6 We said:
- Registered providers have a responsibility to communicate with the Regulator in a timely way. Where a registered provider becomes aware of a breach of the standard which might cause serious detriment, it must notify the Regulator promptly.

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<sup>9</sup> <https://www.gov.uk/government/collections/consumer-regulation-review>

## Consumer Regulation Review 2018-19

### 2014/15

15.7 In 2014/15, we set out the details of six cases where we had found a breach of the consumer standards and risk of serious detriment. Four of those cases related to compliance with gas safety requirements but, for the first time, two of those cases related to the repairs and maintenance service provided to tenants.

15.8 In the report, we highlighted that:

- Responsibility for complying with the consumer standards applied to local authorities as well as private registered providers.
- It is important for registered providers to have in place good asset management systems. Where failures occur, we often find those systems are not fit for purpose, or that the board did not probe or challenge the assurance they were given.

### 2015/16

15.9 In our fourth Consumer Regulation Review, we set out the details of the four regulatory notices we published that year, all in relation to gas safety. One of those cases related to a registered provider who had contracted out delivery of gas safety compliance. We explained that that did not remove the responsibility on the landlord to ensure statutory compliance.

15.10 We said:

- Meeting health and safety obligations is a primary responsibility for registered providers. Contracting out the delivery of services does not contract out responsibility to meet the requirements of legislation or standards.

### 2016/17

15.11 In our fifth Consumer Regulation Review, published shortly after the terrible fire at Grenfell Tower, we again reiterated the importance of complying with statutory health and safety obligations, and for registered providers to have clarity over their statutory responsibilities. We also shared our view on the importance of good complaint handling and the need for transparency with the Regulator.

15.12 We said:

- Compliance with health and safety obligations and the consumer standards has always been a key responsibility for governing bodies of registered providers.
- Registered providers must be clear about what stock they own and are the landlord for, and must understand their responsibilities to deliver statutory compliance.



- Registered providers are responsible for ensuring tenants know how to complain, and for responding to complaints effectively. Boards should have access to the messages that tenants are giving them.
- Transparency with the Regulator is essential. Where consumer compliance problems come to light and the registered provider has failed to be transparent with the Regulator, this is a concern in relation to compliance with the Governance and Financial Viability Standard, and may be indicative of broader governance issues.

### 2017/18

15.13 In our last Consumer Regulation Review, we set out the details of five cases where we had found a breach of the consumer standards, and serious detriment. We reiterated the importance of landlords meeting their statutory health and safety obligations. We also set out the importance of providers having an effective complaints process, and listening to the messages their tenants give.

15.14 We said:

- Complying with health and safety obligations remains the most fundamental responsibility for registered providers. Registered providers should be clear about their responsibilities, including for properties that are leased or managed.
- Compliance with the consumer standards, including how tenants are listened to, reflects the culture of the organisation, and goes to the heart of why registered providers exist and their purpose.
- Providers are responsible for responding to complaints about their service, and getting the culture right on complaints handling affects the level of trust and confidence tenants have in their landlord. Registered providers must ensure they understand the messages that tenants are giving, and should probe where those messages indicate a significant or systemic failure.



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**RSH regulates private registered providers of social housing to promote a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs.**