



Homes &
Communities
Agency

CONSUMER REGULATION REVIEW (2014/15)

September 2015

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Executive summary

1. In this review the social housing regulator (the regulator) sets out its experience of carrying out its consumer regulation role in 2014/15. Our remit means that we do not proactively seek assurance on compliance with our consumer standards and can use our intervention powers only where we judge that a failure to meet a consumer standard has caused or may cause 'serious detriment' to a tenant or potential tenants. This is the third review since that remit was established in 2012.

2. As our experience of regulating under the remit continues to develop, we are keen to share broader lessons from our work with the sector. This publication uses our published findings of serious detriment and also includes other case studies to help explain our approach.

3. During 2014/15, we published 6 findings of serious detriment. In each of these cases we found that providers had breached the home standard. In previous years, a failure to meet statutory obligations with regard to gas servicing underpinned all of the breaches we identified. In 2014/15 this occurred in the majority of cases, but we also found serious detriment both as a consequence of a structural failure of a building, and a widespread, persistent failure of an emergency repairs service. These cases illustrate how the regulator looks at the combination of factors in considering serious detriment, including the depth (the number of people affected), seriousness and duration of failure.

4. In this year's report the key messages we want to highlight are largely similar to the messages in last year's report:

- Boards are responsible for ensuring that registered providers comply with all of the standards, both economic and consumer. The fact that the regulator regulates consumer standards reactively does not lessen the obligation to comply, but does make the risk of non-compliance significant as interventions in the event of failure are likely to be of consequence.
- The importance of health and safety obligations. Boards and councillors who govern registered providers' service delivery must make sure that they have proper oversight of all health and safety issues, including gas servicing, fire safety and other issues such as asbestos. Meeting health and safety requirements in respect of tenants is a fundamental responsibility.
- We consider all referrals to see whether they indicate a breach of a consumer standard which has or might cause serious detriment. The regulator looks at the combination of factors in considering serious detriment, including the depth (the number of people affected), seriousness and duration of failure.
- Many of the referrals which come to the regulator are ultimately judged to be individual complaints which, however well-founded they may be, do not represent a breach of the standards. The correct route for redress for these continues to be the registered provider's own complaints process, a Designated Person under the terms

of the *Localism Act 2011*, and the Housing Ombudsman. We continue to encourage tenants to pursue the appropriate route for their complaints, and encourage registered providers to ensure their tenants know of that route.

- In the case of private registered providers, when we find a breach of the standard which has or may cause serious detriment, we will also consider the impact upon our view of the registered provider's compliance with the governance and financial viability standard. There is a separate process and basis for consideration: there is no 'double jeopardy' whereby a breach of a consumer standard automatically creates a judgement of a breach of the governance and financial viability standard.
- Where a private registered provider becomes aware of a potential breach of a consumer standard which it believes has or could result in serious detriment to tenants, it should communicate this to the regulator in a timely way. The increasing number of self-referrals by registered providers to the regulator, particularly on well-established gas safety issues, indicates growing awareness of this obligation.
- The consumer standards continue to apply to local authorities, even though the economic standards do not.
- Where another statutory body is investigating a matter which may be a breach of the consumer standards (such as the Health & Safety Executive), we will take into account the action being undertaken by that authority when exercising our own regulatory powers.

Introduction

5. This report provides an overview of the consumer regulation work carried out by the regulator in the financial year 2014/15. It explains our approach to consumer regulation and how we have interpreted and applied the serious detriment test. The extent and nature of consumer issues referred to the regulator during 2014/15 is discussed and information provided on key issues.

6. At this point, 3 years after the implementation of the *Localism Act 2011*, both registered providers and the regulator are increasingly familiar with their revised roles arising from that legislation. Since April 2012, our role has been to investigate only where we have reasonable grounds to suspect there may be actual or potential serious detriment (which we have interpreted to mean serious harm) to tenants as a result of a failure to meet one or more of our consumer standards. We do not have powers to collect and analyse performance information relating to consumer issues and do not therefore provide proactive assurance of compliance with the standards.

7. The *regulatory framework* sets out consumer standards on:

- tenant involvement and empowerment
- home
- tenancy
- neighbourhood and Community

8. These are set out on our website at:

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

9. We set these standards in pursuance of the consumer regulation objective given to the regulator by Parliament, which is set out in more detail in our publication *Regulating the Standards*. Boards and councillors who govern registered providers are responsible for ensuring that their organisations meet the standards.

10. Registered 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. As set out in the *Localism Act 2011*, a tenant with a complaint against their landlord should raise it with their landlord in the first instance. Should the matter remain unresolved, they should then consider contacting a Designated Person (someone identified under the *Localism 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.

11. The legislation specifies that the regulator must exercise its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. The regulator's ability to use its powers in relation to a provider failing to meet a consumer standard is subject to this legislation. Firstly, we must establish that a consumer standard has not been met. A finding of failure to meet a standard may arise from an individual event, but it is a judgment of failure at a corporate level.

12. We can use our powers where we judge that both a standard has been breached and there are reasonable grounds to suspect that:

- the failure has resulted in a serious detriment to the registered provider's tenants
- there is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the registered provider's tenants.

13. In defining serious detriment, it is clear from the legislation and the government's review of social housing regulation (from October 2011) which preceded it, that the threshold for regulatory intervention on breaches of consumer standards is intended to be significantly higher than that in relation to the economic standards. Failure to meet one or more of the consumer standards does not in itself lead automatically to a judgement of serious detriment by the regulator. As set out in the regulatory framework, we consider that the meaning of serious detriment is when there is risk of, or actual, serious harm to tenants. In reaching this judgement, we consider the circumstances of the case. For this reason there can be no simple trigger points or thresholds beyond which we automatically conclude serious detriment has been caused or risked. Rather, we must balance the factors of the case including the number of tenants, the duration of the harm or risk of harm, and the seriousness or potential seriousness of it.

14. The serious detriment test is not an end in itself. It is the route we must follow to establish whether we have the locus to deal with a consumer issue. In each case, the regulator's response (including whether any enforcement action is to be taken) depends on the specific facts and circumstances. It is based on the regulator's evaluation of harm or potential harm and the registered provider's response and capability to address any identified breach of the standards. In line with the relevant statutory obligations and guidance, the regulator is expected to ensure the response is proportionate and commensurate with the materiality of the breach by the registered provider.

15. Boards are responsible for ensuring that registered providers comply with all of the standards, both economic and consumer. The fact that the regulator regulates consumer standards reactively does not lessen the obligation to comply. Registered providers should have the systems and processes in place to provide assurance to the board that the standards are being met.

16. Where there is a failure by a private registered provider to meet the consumer standards, we will consider what implications that failure has on our view of the governance of the registered provider. By the nature of our consumer role, which is reactive and therefore takes place either after a failure has occurred or after we have found that there is a significant risk that failure will occur, our intervention is likely to be both public and have significant consequences for the registered provider.

17. Where the test for serious detriment has been met, enforcement powers can be used where there has been actual harm (where there is, for example, the power to award compensation or to fine a registered provider). Or, where the regulator believes that the use of enforcement powers is necessary to prevent future serious harm. In seeking assurance about this, the regulator will take into account the behaviour and effectiveness of the registered provider in dealing with the issue to date.

18. As set out in our previous reports, our process continues to consist of 3 stages: an initial review to see whether the matter alleged falls within our remit (Stage 1), a more detailed consideration by our Consumer Regulation Panel (CRP) to determine whether there is a potential breach which has or could cause serious harm (Stage 2) and a detailed investigation (Stage 3). Further information on the process we have developed to deal with these cases and on the initial stages of case consideration is set out in the regulatory framework.

Summary of cases

19. During 2014/15, 589 consumer referrals were received by the regulator. Cases arose from a range of sources including:

- self-reporting
- whistleblowing or similar from employees
- tenants
- representatives (MPs, councillors, tenant panels)
- friends, relatives and other concerned individuals
- awareness through media reports

20. Of these, 238 were judged to have sufficient potential for a finding of breach/serious detriment that they were then considered by the CRP.

21. Of these 238 cases, CRP sought further information on 89 cases. Following that, 6 were found to meet the test for serious detriment arising from a breach of the consumer standards.

22. The cases where a finding of serious detriment was made are summarised in the regulatory notices available on our website. Further information about the nature and volume of our cases is set out below in Annex A.

Learning from cases

23. For this edition of the consumer review, in order to illustrate our approach we provided examples of where serious detriment as a result of breach has been concluded and where it has not. Where cases have resulted in a published judgement, we have referred to the registered provider by name, otherwise case studies are anonymised.

1) Consumer regulation and governance

24. In each of the cases where we found serious detriment in a private registered provider (as opposed to a local authority), we then considered the implications for our existing assessment of their compliance with the regulatory requirements set out in the governance and financial viability standard.

25. As explained in the introduction above, the threshold for regulatory intervention is intended to be significantly higher than that in relation to the economic standards. So a finding of breach or serious detriment raises questions about the effectiveness of a registered provider's governance arrangements. However, the regulator makes a consideration separately against different standards: there is no 'double jeopardy' whereby a provider has 2 judgements made against it for a single breach.

26. Any evaluation of compliance with the governance aspects of the standard will look at the whole organisation and reach a balanced conclusion. The issues that will be considered arising from a finding of a breach/serious detriment are likely to include:

- how effective are the registered provider's risk management and internal controls?
- how effective was the board's oversight of the issue? Was it receiving adequate and timely information and challenging the executive on performance?
- was the registered provider transparent with the regulator?
- was effective action taken to mitigate the failure?
- does the registered provider recognise any wider systemic concerns raised by such a failure or does it see the problem as only relating to one narrow issue?
- how has the board assured itself that the failings have been or will be addressed?

27. The cases highlight an important sector-wide issue about openness. As we do not proactively collect information relating to the consumer standards, we are most likely to become aware of issues via referrals. We do not expect providers to tell us everything that goes wrong or causes them concern in their business. But in accordance with section 2.3 of the governance and financial viability standard, and in line with the co-regulatory nature of the overall framework and the principles of openness and transparency, we expect all private registered providers to make us aware in a timely way of likely breaches of one or more of the consumer standards which they themselves identify.

Case study 1 - implications for governance where there has been a breach of a consumer standard and a finding of serious detriment

Where we judge that there are reasonable grounds to conclude that a breach of a consumer standard has resulted in, or risked, serious detriment to tenants, we publish a regulatory notice setting out our findings. We also consider whether the information we have received indicates a wider failure which constitutes a breach of the governance and financial viability standard (section 2.34 of Regulating the Standards). The examples below illustrate how the regulator keeps the consideration of the consumer and economic standards separate.

In each case the regulator had concluded that there had been a breach of the home standard which had or could cause serious detriment to tenants and issued a regulatory notice to that effect.

1 a) Circle - governance downgrade G1 to G3

The governance and financial viability standard requires providers to have in place effective systems for risk management and internal control.

The regulator's assessment of the material relating to the delivery of the repairs service to 13,000 homes was that it represented a chronic failure by Circle to ensure delivery of a satisfactory emergency and urgent repair service to those tenants for a long period of time.

The regulator found:

- the service failure had been made possible or contributed to by serious and enduring failures in, or in the operation of, Circle's strategic planning and control framework such that Circle did not adequately manage or mitigate the strategic and operational risks inherent in the delivery of that service
- these failures represented a systemic problem in the organisation's risk management and internal controls

The regulator therefore concluded that Circle was not compliant with the governance and financial viability standard

1 b) First Wessex - governance downgrade G1 to G2

Over at a 2 year period, First Wessex had a significant number of overdue gas servicing certificates. First Wessex had identified this and had already taken effective remedial action. The regulator considered that First Wessex had recognised the problem, had taken effective action to improve performance, that its gas servicing certificates were now up to date, and that it recognised that there were broader governance implications. However, the regulator did not consider that effective measures had been taken quickly enough to address the situation. In addition, whilst the registered provider had been aware of this issue for some time while addressing the issues, it had not informed the regulator. An independent governance review commissioned by First Wessex identified a number of areas for improvement, including weaknesses in First Wessex's risk management and internal controls assurance framework.

The regulator concluded that First Wessex remained compliant with the governance and financial viability standard, but that it needed to improve some aspects of governance to maintain compliance.

2) Home standard – gas safety

28. One of the required outcomes under the home standard is that registered providers meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes. With regard to gas safety, landlords' legal obligations are clear. The Gas Safety (Installation and Use) Regulations 1998 state that gas safety checks should be carried out annually by a Gas Safe registered engineer.

29. We recognise that the requirements of landlords in respect of gas safety are strict for good reason, given the potential danger to both tenants in their home and those who live nearby. In examining whether there had been a breach of the standard, we take into account the materiality of the issues: the circumstances of and reasons for the failure to have a valid certificate, the length of time and how many tenants had been affected. In keeping with previous years, the cases where we concluded there had been a breach of the standard either had a large number of properties or some of the properties had been without certificates for a number of years.

30. In cases where providers were in breach of the home standard, we then had to determine if there was potential for serious harm to the tenants in the affected properties and to neighbouring tenants. The risk of harm which can be caused by faulty gas appliances is well-known and we concluded in each case that the serious detriment test had been met.

31. A general lesson from these cases is the importance of having asset management systems in place and maintaining an accurate record of the condition of properties, including outstanding gas safety requirements. Failures occurred where those systems were not fit for purpose, and where those responsible (the boards) did not sufficiently probe, or challenge in a timely way, the information with which they were being presented and the basis for their own assurance of compliance. The issues then came to light later, after tenants had been exposed to risk.

Case study 2 – the home standard: repairs and maintenance - gas safety

The regulator received evidence of failure to adhere to the Gas Safety (Installation and Use) Regulations 1998 which state that gas safety checks should be undertaken annually by a Gas Safe registered engineer. In all cases, the regulator considered the case as a potential breach of the home standard, and specifically the regulatory requirement to 'meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes'.

2 a) Cases of breach / serious detriment

In 2014/15 the regulator issued 4 regulatory notices relating to gas safety at registered providers (Yorkshire Housing Group, First Wessex Housing Group, Merlin Housing Society and Severn Vale Housing Society). In each case there were a significant number of properties without a valid certificate, and properties that had been without a gas safety certificate for a long period of time (over a year). This had been caused in some cases by poor processes and others by poor data and record management. In each case, the combination of the seriousness, duration and number of tenants potentially affected, together with the registered provider's corporate response, led the regulator to judge that it

was proportionate to conclude that a breach of standard had occurred in a way which caused or risked serious harm to tenants. Regulatory notices were published.

Cases where breach / serious detriment was not found

During 2014/15 we also considered a number of cases where gas safety services were overdue but we did not conclude that there had been a breach of the home standard. Examples of these have been anonymised and set out below:

2 b) Registered provider A

A very large provider contacted the regulator to advise that it might have breached the home standard owing to gas safety failures. Following the CRP process, we concluded that there was no breach of the home standard. Material factors in this decision included:

- the contact came immediately when the registered provider discovered that a number of properties lacked a valid gas safety certificate
- the issue was uncovered by the registered provider's own systems and checks
- the board was also informed immediately
- most of the properties had lacked a certificate for fewer than 3 months, with a very small number being without for several years. The number of properties was a very small proportion of the registered provider's overall housing stock
- all of the properties were tested and had a valid certificate within one week
- a rapid audit to identify and manage further risk was carried out, which gave assurance that there were no further systemic problems

Considering the scale, duration and seriousness of the failure, the registered provider's response and transparency, the regulator concluded that there had not been a breach of the home standard in a way which caused or risked serious harm to tenants.

2 c) Registered provider B

The regulator was contacted by the vice chair of the board to advise that the registered provider had uncovered a potential problem with gas servicing following a planned internal audit. We concluded that there was no breach of the home standard. Material factors in this decision were:

- the proportion of properties identified to have been without a valid certificate was small, relative to the number of homes owned by the registered provider (less than 1%). Of these, a significant majority were out of date for a period of less than 3 months and a very small number were more than a year out of date
- the matter had come to light through the registered provider's own systems and processes
- the regulator was informed promptly following an urgent board meeting
- all properties identified as being without a certificate were swiftly brought into compliance
- an audit was accelerated to cover all parts of the registered provider's group and reported quickly. The registered provider addressed its auditor's immediate

recommendations and put an improvement plan in place to reduce the risk of a recurrence of the issue, delivery of which is being overseen by the board

- the registered provider commissioned further independent validation work and investigation into the circumstances which caused the situation to arise

Considering the scale, duration and seriousness of the failure, as well as the registered provider's transparency and its response to the failure, the regulator concluded that there had not been a breach of the home standard in a way which caused or risked serious harm to tenants.

3) Home standard – asbestos

32. During the year, we considered several cases of potential asbestos exposure. The legal position here is less simple than in regard to the gas safety regulations. Under the Control of Asbestos Regulations 2012, landlords do not have a duty to manage asbestos risks in private houses (except in relation to their employees and contractors), individual flats, private rooms above shops, rooms let to lodgers or domestic garages let to a specific tenant. However, they are responsible for common areas of purpose-built flats and houses converted into flats, such as foyers, corridors, staircases, roof spaces, gardens, lifts and lift-shafts. The regulations also apply to the stairs and access areas of flats above retail and commercial premises.

33. However, the Defective Premises Act 1972 and the Landlord and Tenant Act 1985 place broad duties on landlords to maintain property and take reasonable care that tenants are safe from personal injury and illness caused by the condition of the property. In addition, the Decent Homes standard ranks exposure to asbestos fibres (though not simply the presence of asbestos) as a 'Category 1 Hazard'.

34. In both of the cases set out below, the regulator reached a conclusion that no standard had been breached, despite the Health & Safety Executive (HSE) successfully prosecuting the registered providers concerned. The regulator's remit is not the same as that of the HSE and in every case, the regulator considers whether, in the round, the standard has been complied with. In the first case, the regulator concluded that there had been no breach because the case concerned an isolated failure, and in the second there was no evidence of tenants having been put at risk. The obligations of providers to their employees and contractors are part of their obligations to comply with 'relevant law' and serious breaches would be considered against the governance and viability standard.

Case study 3 – asbestos

3 a) Registered provider C

It came to the regulator's attention that a registered provider had been taken to court by the HSE, found guilty and fined a substantial sum for putting tenants at risk of asbestos exposure during the replacement of a lift in common area of a sheltered housing scheme.

The conviction provided evidence that the registered provider had not complied with health and safety legislation. Whilst there was no evidence of actual harm to tenants, there was the risk of harm. However, it was an isolated incident. There was no evidence of a systemic problem across the registered providers' properties. Although the registered provider did not inform the regulator, this was judged to be an oversight as they had informed the HSE promptly of the incident, responded appropriately to the HSE investigation, and demonstrated otherwise robust control systems. The regulator therefore concluded it would not be proportionate to determine that the incident was a breach of the standard.

If the registered provider had not complied with HSE recommendations it is likely that the regulator would have taken further action.

3 b) Registered provider D

In a similar case, a registered provider informed the regulator of a historic incident in 2012 which had been reported to the HSE. The HSE had decided to prosecute both the registered provider and its contractor. The registered provider entered a guilty plea to the charge of failing to provide all of the asbestos information in its possession, or which was reasonably obtainable, to its contractor and received a fine.

The regulator's interest is in relation to whether the health and safety of tenants was put at risk by this incident. Asbestos panels were damaged whilst installing heating systems and one of the asbestos air tests for the 3 affected properties showed a level of contamination which would pose a potential risk to the health and safety of anyone coming into contact with it.

However, the home standard relates to tenants, not contractors or employees. The property in question was unoccupied at the time of the incident because the tenant was in residential care. The HSE had not prosecuted the registered provider for putting its tenants at risk. There was no evidence that health and safety legislation in respect of tenants had been breached. On that basis, the regulator concluded that this did not constitute a breach of the home standard.

The regulator further concluded that, on the facts, this incident did not constitute a breach of the governance and financial viability standard.

4) Home standard – local authorities

35. Local authorities are subject to the consumer standards, but not the economic standards. The requirement for a provider to be transparent with the regulator is part of the governance and financial viability standard which is an economic standard and therefore does not apply to local authorities. As a potential consequence of that, and the local route for redress that local authority landlord status offers tenants, the regulator considers relatively few local authority cases. However, the ones it does consider (for example, when the matter is brought to our attention via the media or another statutory agency) are treated in the same way as private registered providers.

36. This is illustrated by the 2 case studies below. The first case study represents the first time the regulator made a finding of breach/serious detriment for a structural problem with a property. The second was a gas safety case where no breach was found.

Case study 4 – local authorities

4 a) Blackpool Council

In January 2015 the regulator published a regulatory notice about Blackpool Council, the first concerning a local authority. Blackpool Council owns 5,300 homes which are managed by Blackpool Coastal Housing (BCH), an arms-length management organisation which is not registered with the regulator. As a local authority, Blackpool Council is required to comply with the consumer standards.

In May 2012 a second floor balcony collapsed in a block of flats managed by BCH on behalf of Blackpool Council. The HSE took legal action and BCH pleaded guilty to risking the health and safety of tenants in a breach of the Health and Safety at Work Act 1974. The court concluded that the structural flaws in the balconies were present for a significant period of time and the registered provider failed to heed multiple warnings. On recording a guilty verdict, the court ordered BCH to pay a £50,000 fine plus court costs.

At that point the regulator became aware of the case and sought and received immediate assurance that there was no continuing risk to the health and safety of tenants. The regulator also received further assurance from Blackpool Council that it had taken effective steps to prevent such an event happening again, including completing a programme of remedial works for all balconies and tackling the organisational culture which could have contributed to an environment which allowed the balcony to collapse.

The regulator considered the case as a potential breach of the home standard, and specifically the regulatory requirement to 'meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes'. Notwithstanding the subsequent remedial action, the circumstances that led to the conviction were evidence of a breach of the standard. In particular, the registered provider had failed to heed warnings, meaning the failure exposed a substantial number of tenants to the risk of serious harm for a long time. We therefore issued a regulatory notice.

4 b) Local authority E

Local authority E owns 15,000 homes which are managed by LA Homes, an arms-length management operation which is not registered with the regulator.

During the review of a consents application from local authority E, the regulator noted poor performance regarding gas safety certificate compliance before January 2015. The regulator sought further information from LA Homes which revealed that during 2014 LA Homes had a relatively small number of homes with gas servicing under a year overdue. This was addressed by LA Homes by it replacing its gas contractor. By January 2015 there were no properties with overdue gas safety certificates.

The regulator concluded that as there were a relatively small number of properties involved where the gas safety certificate was overdue for a short period of time, the registered provider had not breached the home standard.

5) Home standard – systemic failure of repairs and maintenance

37. Most instances, even cases that are judged to be a breach of the standard arise from a specific incident or referral, the severity of which provides evidence of the systemic failure that represents a breach.

38. However, the number and scale of cases can also indicate systemic failures. Alongside considering consumer cases prompted by specific incidents or referrals, where it appears that a registered provider is generating an unusually large number of referrals relative to its size, the regulator also looks in the round at cases to get a broad picture of whether it is complying with the standard, and may follow this up with the registered provider. In doing so we are sensitive to the duty to minimise interference. But we do consider any information we have, in order to make a judgement on assurance.

39. We reached one conclusion of breach / serious detriment in 2014/15 arising from this type of broader consideration; the case of Circle. In this case, the regulator concluded that the risk of serious harm was evident because a large number of tenants, including vulnerable tenants, were affected by the failure to complete emergency and urgent repairs on time for a prolonged period. The regulatory notice setting out the detailed reasons for this can be found on the GOV.UK website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402779/20150211_Regulatory_Notice_-_Circle_Anglia.pdf.

6) Tenant Involvement and Empowerment standard

40. By applying the serious harm test to all consumer standards, the legislation clearly envisages that serious harm may arise from a breach of standards in ways other than as a matter of health and safety. We set out in Annex B of our publication Regulating the Standards examples (which are not exhaustive) of instances where this might happen. They include:

- loss of home
- unlawful discrimination
- loss of legal rights
- financial loss

41. During the year, the regulator considered several referrals from tenants and representative bodies relating to how providers were involving them (or not) in issues such as how tenants may make representations to the registered provider, and the management of properties.

42. The case study below illustrates that the regulator will consider carefully the framing and meaning of the standard when making a judgement.

Case study 6 – tenant involvement

6 a) Registered provider F

The regulator received a complaint alleging that a registered provider had in effect abolished a tenants' association at a sheltered housing scheme and that this breached the Tenant Involvement and Empowerment standard.

The registered provider had decided to no longer recognise a tenants' association as it was not, in the registered provider's view, representative of the residents in the scheme. The registered provider supplied evidence that as an alternative they had formalised a monthly meeting into a tenants' forum open to all residents. These sessions were used for tenant consultation and discussion with staff. If the tenants wished to elect a representative committee, the registered provider would support this providing an appropriate constitution and arranging training for committee members.

The regulator considered this complaint in relation to the Tenant Involvement and Empowerment standard. The standard requires registered providers to ensure tenants are given a wide range of opportunities to influence and be involved in the management of their homes but it is not prescriptive about how this is done. In the regulator's judgement, the registered provider had given evidence of compliance, and found no breach of the standard.

7) Neighbourhood and Community standard

43. The regulator continues to receive a range of referrals from tenants and stakeholders in this area. Many of these focus on neighbourhood management.

Case study 7

7a) Registered provider G

The regulator received a referral from a local authority councillor complaining about the state of repair on an estate. The councillor alleged that:

- paths were poorly maintained
- cracked walls led to stones falling onto paths and caused trip hazards
- there was inadequate lighting
- fly-tipping was taking place

Photographs were provided in support of the allegations. The information was considered under the neighbourhood and community standard and a response sought from the registered provider. The registered provider responded and:

- set out their programme of management and maintenance for the estate and gave evidence of progress
- demonstrated working with the local authority and community
- showed that in some cases the photographs provided in the complaint related to land not under their control

The regulator therefore concluded that the standard had not been breached.

8) Tenancy standard

44. During the year, the regulator received a number of referrals which it considered against the tenancy standard. In no case was both a breach of standard and serious detriment identified.

45. There were common themes in referrals including:

- allocations, and in particular taking account of individual needs (including disability / health)
- the appropriateness of tenancy issued

Case study 8

8 a) Registered provider H

The regulator received a complaint alleging that a registered provider had breached the tenancy standard in the course of a large estate regeneration scheme by:

- not transferring tenants who had been on Assured Shorthold Tenancies (ASTs) since 2007 onto other tenancy types in April 2012, when the current tenancy standard came into force
- preparing to evict those tenants in the course of progressing the regeneration, to free up properties for decanting other tenants on other tenancy types, in breach of their responsibility to prevent unnecessary eviction

The background to this case was complex as it stretched back over several years. The regulator considered that:

- there is an exceptional circumstance component to the Secretary of State's 2011 Direction to the regulator which does therefore does not entirely prohibit ASTs
- the tenancy standard is prospective and applies to the granting of tenancies rather than requiring changing existing tenancies
- the standard obliges providers to work to prevent unnecessary eviction. Eviction in the course of delivering a regeneration scheme, which had been agreed with the local authority, could reasonably be considered necessary
- the tenants had been informed before taking the tenancies that the accommodation was temporary and they could not expect a permanent offer of accommodation
- the registered provider had made reasonable efforts to help AST tenants by supporting them to find alternative accommodation, and that in allocating properties on the regenerated estate it was reasonable for the registered provider to be guided by the local authority's allocations policy and priorities

The regulator therefore concluded that the tenancy standard had not been breached.

8 b) Local authority I

The regulator received a complaint that local authority I had failed to approve a mutual exchange for tenants who wished to move into another local authority area for health

reasons. The referrer argued that local authority I had not taken sufficient account of the tenants' health needs in refusing the mutual exchange on the grounds that the incoming tenants would be under-occupying the property. The property was configured as a 3 bedroom house.

The regulator considered this as a potential breach of the tenancy standard, and sought information from the council concerned, in particular the requirement to let homes in a fair, transparent and efficient way, and to enable tenants to gain access to opportunities to exchange tenancies via mutual exchange services.

The local authority acknowledged that it had refused the proposed exchange, and explained that the property currently let to tenants was significantly under-occupied and that the proposed swap would perpetuate under-occupation. It argued that the property could be let as at least a 5 bedroom house which would enable them to let the stock in a more efficient way.

The local authority also provided evidence of the support they had provided, and continued to provide, the tenants in seeking to move to a new area thereby demonstrating compliance with both the mutual swap element of the standard, and also that account had been taken of tenants' diverse needs.

On this basis, the regulator concluded that the standard had not been breached.

Nature and volume of cases in 2014/15

1. Our consumer regulation process, as set out in Regulating the Standards comprises 3 stages:

Stage 1: the Regulatory Referrals and Enquiries (RRE) team collates and routes all referrals and other enquiries referred to the regulator. Where the matter relates to consumer standards, the RRE team is responsible for determining if it falls within the regulator's remit and if there appears to be a breach or risk of a breach of a consumer standard. If so, the RRE team then refers the issue to the CRP which normally meets weekly.

Stage 2: the CRP considers the circumstances of each case referred to it to determine the degree of harm or potential harm caused to tenants by a breach of consumer standards. Its discussion considers 4 questions:

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

Stage 3: those cases which are identified by CRP as requiring further investigation are subject to more detailed work to ascertain if there has been a breach of the standards which has or may cause serious detriment and to advise whether regulatory action is required.

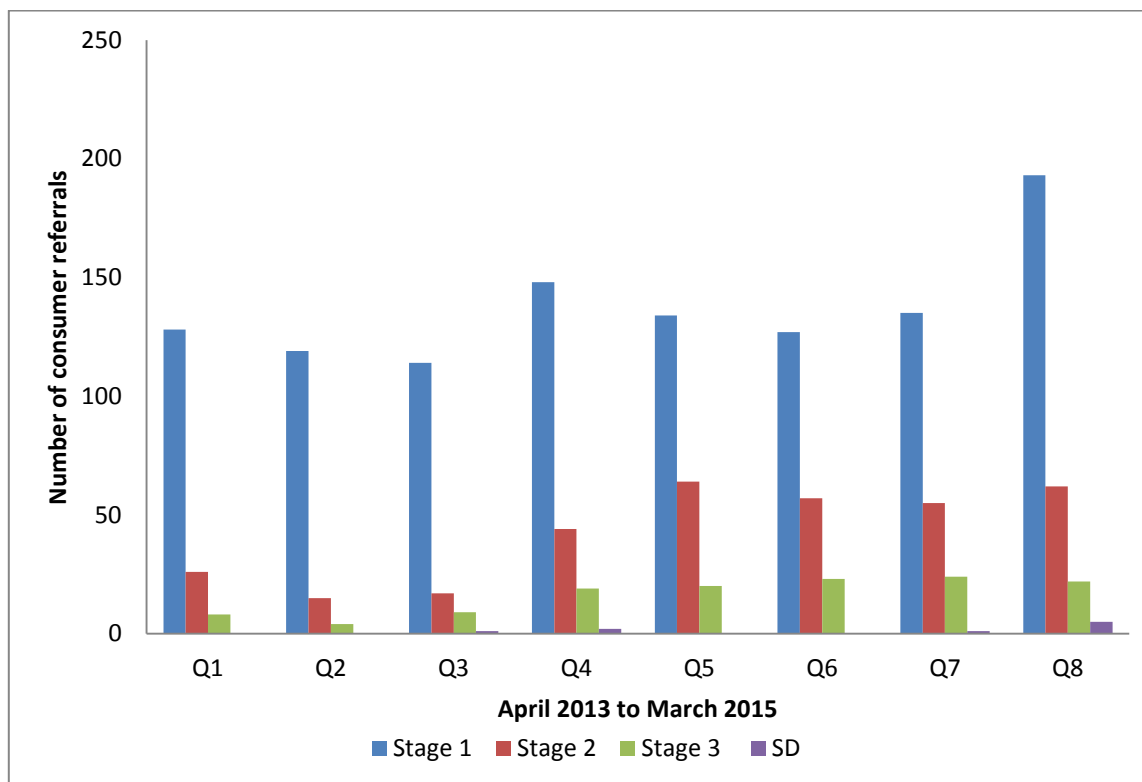
2. The table below shows the total number of consumer referrals handled by the regulator by quarter and how many of these went on to the subsequent stages of our process. The 2013/14 figures are in brackets.

	Q1	Q2	Q3	Q4	Total
Stage 1: All consumer referrals	134 (128)	127 (119)	135 (114)	193 (148)	589 (509)
Stage 2: Referred to CRP	64 (26)	57 (15)	55 (17)	62 (44)	238 (102)
Stage 3: Further investigations undertaken	20 (8)	23 (4)	24 (9)	22 (19)	89 (40)
Published findings of breach/serious detriment	0 (0)	0 (0)	1 (1)	5 (2)	6 (3)

3. The CRP is responsible for considering all statutory referrals and other referrals and allegations relating to the consumer standards which are sent to it by the RRE team. There were 19 statutory referrals in 2014/15 compared to 1 in 2013/14. The panel also

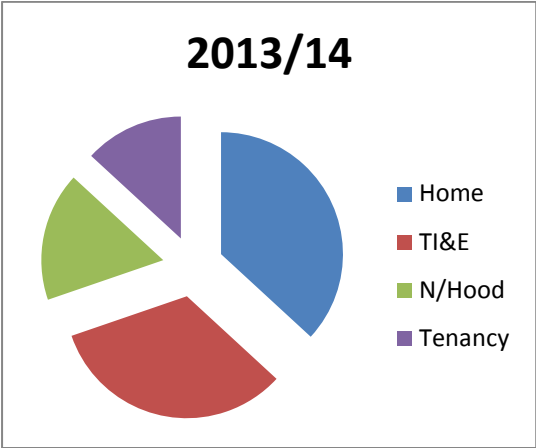
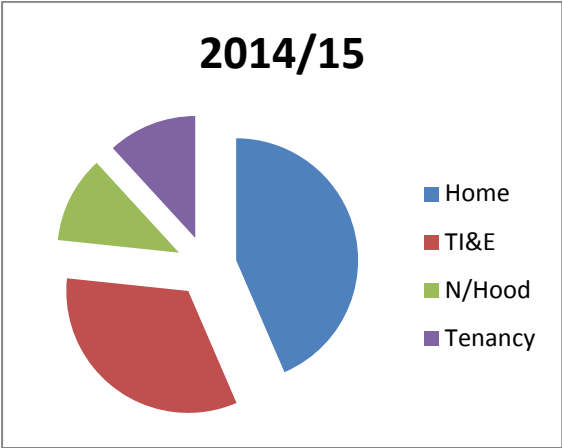
deals with cases where regulatory intelligence acquired in the course of routine engagement with providers leads the regulator to suspect a standard has been breached resulting in actual or potential serious detriment.

- The chart below shows the number of referrals by stage over the last 8 quarters.



- Over the last 2 years we have received 1098 consumer standard related referral. Of these, 340 (31%) have gone to CRP. 129 (11.7%) have been investigated further and we found breach and serious detriment in 9 cases (0.8%).
- There was an increase of 16% in the number of referrals relating to consumer standards in 2014/15. We do not know exactly why the number of cases has gone up but think it may relate to the greater awareness generated by the publication of Regulatory Notices.
- The proportion of cases reaching Stage 2 was higher in 2014/15 than in 2013/14 (40% compared with 20%). The increase in cases considered at stage 2 was as a consequence of both the increase in number of cases overall and a change to internal decision making procedures. Volumes of cases reaching Stage 3 also increased in 2014/15 but percentage remained consistent at 35%.
- Equalities issues were recorded in 26% of CRP cases considered in 2014/15. This compares with 34% in 2013/14.
- The home standard continues to be the consumer standard which is most often cited in the cases referred to the panel.
- The percentage figures are shown below and in 2 pie charts:

Consumer standard	2014/15	2013/14
Home	44	37
Tenant involvement & empowerment	33	33
Neighbourhood and community	12	17
Tenancy	12	13



homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

Homes and Communities Agency

Fry Building
2 Marsham Street
London SW1P 4DF

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