



Regulator of
Social Housing

Consumer Regulation Review 2019-20

September 2020

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Executive summary

Executive summary

This Consumer Regulation Review sets out a summary of our consumer regulation work for the year 2019-20. We regulate the consumer standards on a reactive basis, based on cases that are raised with it. This year, the regulator found a breach of the consumer standards and serious detriment in 15 cases, our highest number to date. While we recognise that most registered providers are well-run, and this represents only a small proportion of registered providers, the number of non-compliant providers has increased significantly over the last year.

In this report, we set out the details of the 15 cases where we found a breach of the standards and serious detriment, including seven findings made against local authorities, and for the first time, a breach of the Tenant Involvement and Empowerment standard. This report sets out the themes and learning from our casework. We would encourage all private registered providers and local authority registered providers to read this report, and for governing bodies to reflect on the lessons learned, in order to take steps to improve their systems and processes.

In 2018, the government published the Social Housing Green Paper¹ which set out the government proposals to rebalance the relationship between social housing tenants and landlords. The government has confirmed that it intends to follow this with the publication of a White Paper in 2020. We anticipate some possible changes to our consumer regulation role and remit in future. In the meantime, the regulator has given registered providers a clear steer that they should not wait for the White Paper before taking steps where they need to, to improve areas of their service where they need to, or their engagement with tenants.

¹ <https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>

Lessons from recent cases

1	Ensuring tenants are safe in their homes is a fundamental responsibility of any social landlord. In doing so, registered providers and local authorities must meet the full range of statutory health and safety obligations ² .
2	Registered providers and local authorities must treat tenants with fairness and respect, and they must demonstrate that they have taken tenants' diverse needs into account in the course of their business. The quality of a registered provider's relationship with tenants underpins the trust and confidence that tenants and stakeholders have in the organisation.
3	Registered providers and local authorities should respond to complaints promptly and effectively, and in such a way that allows emerging issues to be identified and addressed at an early stage. The importance of providers getting it right when handling complaints applies to complaints from all tenants, including shared owners.
4	Being able to maintain and evidence compliance is paramount as all registered providers must comply with the consumer standards and be able to demonstrate their compliance to tenants and stakeholders. Registered providers and local authorities must be clear on the legal and regulatory requirements and their responsibilities as well as having a good understanding of the stock they own. It also requires them to have in place robust reporting and oversight arrangements for their governing bodies.
5	Effective assurance relies on good quality data and effective systems.
6	Transparency with the regulator as well as with tenants and stakeholders is critical. The principle of co-regulation relies on openness and transparency, and it gives the regulator confidence that registered providers and local authorities are willing and able to resolve issues as they emerge. Our decision on the level of regulatory intervention required will be shaped, in part, by the quality of the engagement we receive from registered providers.

A short summary of the lessons from previous years is available in Annex B.

² We recognise that the restrictions arising from Covid-19 means that some statutory checks have been delayed, and that compliance may be recorded differently as a result. Our expectation is that registered providers continue to follow advice from relevant professional bodies, including the Health and Safety Executive.

Context and key themes

1. Introduction

- 1.1 This report provides a summary of the regulator's consumer regulation work for the year 2019-20. It sets out our current role and remit and how we approach consumer regulation. As with previous years, we also use this report to highlight key issues and lessons arising from our casework that we wish to share with the sector.
- 1.2 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. Parliament has given the regulator an economic objective and a consumer regulation objective, and a requirement to exercise its functions in a way that minimises interference, and (so far as is possible) is proportionate, consistent, transparent and accountable. This co-regulatory approach means that Board members and councillors are responsible for ensuring their organisations are managed effectively and comply with all regulatory requirements.
- 1.3 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.
- 1.4 To achieve this objective, the regulator sets consumer standards. There are four consumer standards:
- Home
 - Neighbourhood and Community
 - Tenancy
 - Tenant Involvement and Empowerment
- 1.5 In line with our legislative remit, we regulate the consumer standards reactively (i.e. where matters are referred to us), and we do not currently monitor providers' performance. This does not however lessen the obligation on all registered providers to comply with the consumer standards. Providers' boards and local authority councillors are responsible for ensuring they meet the consumer standards.

1.6 We consider all referrals and information received to determine if there are reasonable grounds to suspect that there may have been a breach of the consumer standards and that that breach may result in actual or potential serious detriment (which we take to mean serious harm) to tenants. This report explains how we handle referrals and apply the serious detriment test. Further detail on our approach is set out in annex B of our publication *Regulating the Standards* which is available on our website³.

³ <https://www.gov.uk/government/publications/regulating-the-standards>

2. Key themes arising from our casework

2.1 In the course of our consumer regulation work each year we identify themes and learning points which we consider to be useful to all registered providers and local authorities. We have summarised these themes and feedback messages below.

Understanding the requirements

- 2.2 A significant proportion of our consumer regulation work arises from referrals where registered providers and local authorities have failed to understand what is required of them to ensure tenants are safe in their homes. In a number of cases in 2019-20, we have found a breach of the Home standard where registered providers and local authorities have either not understood the legislative and regulatory requirements, or where they have not understood their role in delivering a compliant outcome.
- 2.3 Ensuring tenants are safe in their homes is the fundamental responsibility of any social landlord. Registered providers and local authorities must ensure that they comply with all of the consumer standards, including the Home standard requirement to meet statutory health and safety obligations which provide for tenant safety. Where things have gone wrong, we have seen evidence that registered providers and local authorities have not adequately understood the legislative requirements relating to health and safety compliance, or they have not adequately understood their responsibility to act on the outcome of checks where risks to tenants have been identified. If registered providers or local authorities are unclear about the requirements, they should take steps to understand what the requirements are, seeking external advice if necessary.
- 2.4 The other emerging issue we have identified this year relates to registered providers understanding their responsibilities particularly where housing management services are delivered by a third party. This has been notable in cases where providers lease their properties from a third party and have in place management agreements which mean that the housing management is contracted out, either to the property owner or to another third party.

- 2.5 It has also occurred in cases where local authorities have contracted out their housing management service to an arms-length management organisation (ALMO). Contracting out the delivery of housing management services does not contract out the responsibility of registered providers and local authorities to ensure compliance with the consumer standards, nor the requirement to ensure tenants are safe in their homes. It is for the governing bodies of registered providers – Boards and local authority councillors⁴ – to ensure the arrangements in place deliver a compliant outcome, and to take appropriate action where they do not have such assurance.

Oversight, risk management and internal controls

- 2.6 Where we find things have gone wrong, often it is because registered providers or local authorities do not have adequate internal controls, or there are weaknesses in the oversight and risk management arrangements. Good governance is critical to an organisation's ability to manage risks effectively, and it is vital that governing bodies have effective oversight of how key risks, including health and safety, are managed.
- 2.7 Good quality data and reporting is a critical part of ensuring effective oversight of health and safety. It also enables providers to evidence compliance with the consumer standards. In a number of cases, the regulator has seen that a failure by registered providers to maintain good quality data about the homes where their tenants live, means they may not know what is needed in terms of statutory checks or remedial work. Not only is this a failure to comply with the consumer standards it means any potential risks to tenants are not fully known. Good quality data forms the cornerstone on which all other assurance of compliance is based, and we would expect registered providers to seek assurance on the quality and integrity of their data in the course of their business.
- 2.8 On occasions, systems or processes may fail to operate effectively. In such cases, registered providers must ensure they fully understand the causes to reduce the chance of something similar arising again. It may be that the system or process is poorly designed or implemented or may be inadequate and not fit for purpose. In all cases, it is the registered provider's responsibility to ensure systems and processes are effective, even when the delivery of this is contracted to third parties.
- 2.9 As detailed above, having good quality data as well as effective systems and processes are key to an organisation's ability to manage risks. Having good oversight of these controls enables issues to be identified at an early stage, escalated where appropriate, and remedied in a timely manner. Put simply, it means a problem can be addressed before it presents a significant risk to tenants.

⁴ Where we have referenced governing bodies throughout this report, this refers to local authority councillors and Boards of registered providers who hold the same responsibility for ensuring compliance with regulatory standards.

Taking tenants into account

- 2.10 How an organisation takes account of its tenants' needs, and how it interacts with tenants, is a key indication of organisational culture, and it speaks to why registered providers exist and their purpose. With that in mind, the Tenant Involvement and Empowerment standard requires registered providers to treat tenants with fairness and respect, and to take their diverse needs into account. For the first time this year, the regulator concluded that a registered provider had failed to meet the requirements of this standard and we published a regulatory notice – details of that case study are set out below.
- 2.11 Registered providers should not seek only to comply with the consumer standards because the regulator requires them to do so, but because the expectations set out in these standards are the minimum that a provider should expect to deliver in the course of a well-run business. Taking account of tenants' needs, focusing on delivering the right outcome for tenants, and working and engaging effectively with tenants and stakeholders are important in delivering effective services and taking into account tenants' diverse needs, as well as managing potential reputational risk.

Putting things right

- 2.12 In the course of running an organisation, it is inevitable that sometimes things go wrong. Where that happens, the regulator expects registered providers to respond in a prompt and effective way to address the issue, and in such a way that any risks to tenants are mitigated as quickly as possible.
- 2.13 Sometimes issues are identified through a registered provider's own systems, at other times it is identified by tenants who have direct experience of the services provided by their landlord. Complaints provide an opportunity for registered providers to identify and address weaknesses in their systems and processes, and to share learning within the organisation. The Tenant Involvement and Empowerment standard requires registered providers to respond to complaints promptly and effectively, and where organisations fail to do so, it can have a detrimental impact on tenants, as well as a significant reputational impact for registered providers. It may also affect our view of a registered providers' governance grading.
- 2.14 Complaints data, including trends over time, can inform a registered provider's understanding of the messages tenants are giving to them, and can allow them to identify potentially significant failures at an early stage. Registered providers should have mechanisms in place to hear, and learn from, the messages their tenants are giving. Governing bodies should ensure there is sufficient oversight over the complaints handling arrangements and outcomes.

2.15 Lastly, where issues do arise, transparency with the regulator is essential. The Governance and Financial Viability Standard requires registered providers to communicate with the regulator in a timely manner where it identifies non-compliance (or potential non-compliance) with the regulatory standards⁵. For all registered providers, including local authorities, the principle of co-regulation is based on transparency and co-operation between the regulator and the provider. 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 in determining our regulatory response. Transparency and a commitment to co-regulation, gives us confidence that registered providers are willing and able to work effectively with the regulator, and can shape the level of regulatory intervention which may be required.

⁵ <https://www.gov.uk/guidance/regulatory-standards>

3. How we regulate the consumer standards

- 3.1 The consumer standards, which the regulator sets as part of the framework for regulation, details the outcomes the regulator expects to see delivered by all registered providers, including local authorities.
- 3.2 Boards and councillors are responsible for ensuring that registered providers meet the consumer standards. This is a fundamental part of a registered provider's commitment to co-regulation. Registered providers should have the systems and processes in place to provide assurance to their Boards and councillors that the standards are being met. The regulator does not currently have a mandate to proactively monitor registered providers' performance or compliance with the consumer standards. However, we will consider all information we receive about potential non-compliance with our standards, to determine if this evidence indicates systemic or organisational failing within the registered provider, for example in their systems or processes. Such a systemic failing may lead us to determine there has been a breach of our standards. In line with our legislative remit, we also consider whether a breach of the consumer standard has caused or has the potential to cause serious harm. This is referred to as the serious detriment test and unless this test is met our legislative powers in consumer cases are limited.
- 3.3 As set out in Regulating the Standards, 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, including the number of tenants affected, the duration of harm or risk of harm and the seriousness of the issue. Where the regulator judges there is a breach of standard(s) and the serious detriment test has been met, we will publish a regulatory notice.
- 3.4 Under our current remit 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 in all cases to a judgement of serious detriment by the regulator. Where we judge the test has not been met but shortcomings have been found, we are likely to still engage further with registered providers to share findings and address any issues informally, and we are likely to also consider whether our Governance and Financial Viability Standard has been complied with.

- 3.5 The consumer regulation process consists of up to three stages. As noted above, we will consider all information received. This is Stage 1 of the process. During this initial consideration we will determine if the matter falls within our remit, if it is covered by our consumer standards and if it could potentially represent a breach of those standards. 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 there is a potential breach of the standard which could meet the serious detriment test. That is, has this matter caused or could it cause serious harm to tenants? If the CRP is unable to conclude on these points based on the information received, Stage 3 of the process will commence where further enquiries will be made. We will engage with the provider, the referrer and/or third parties to obtain the necessary information.
- 3.6 Referrals can range from relatively straightforward matters that can be concluded quickly to complex investigations requiring time and extensive engagement with the parties involved. A full explanation of our process is provided in Annex A below, and a diagram showing our process is included on our website⁶.
- 3.7 If we determine that the information received is not within the regulator's remit to consider (for example, it relates to 100% leaseholders, or non-social housing) we will, wherever possible, advise a referrer of the appropriate route to pursue the concerns raised. For example, we may conclude that the referral relates to an individual complaint or disagreement between a tenant and the registered provider. The regulator does not have a role in resolving individual disputes such as these, and in these cases, we will signpost the referrer to the registered provider's own complaints procedure and the Housing Ombudsman.⁷
- 3.8 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 and the Housing Ombudsman) or information obtained during our planned regulatory engagement with registered providers. Registered providers and local authorities may also refer a matter directly to the regulator where they themselves have identified failings. In line with our co-regulatory settlement, registered providers and local authorities should notify the regulator of any breach or potential breach of the consumer standards.

⁶ <https://www.gov.uk/government/publications/consumer-regulation-process>

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

**Detailed findings
and case studies**

4. The link between consumer regulation and governance

- 4.1 A registered provider's ability to comply with the consumer standards depends on the governance arrangements in place, and the effective operation of the provider's risk management and internal controls framework. It also requires commitment and focus from Boards and councillors to ensuring they are an efficient and well-governed social housing provider. In line with our co-regulatory approach, registered providers should assess their own compliance across all consumer standards and where appropriate, take steps to mitigate any risks to tenants. Registered providers should ensure that the governance arrangements in place allow them to identify, at an early stage, when something is going wrong, and to implement appropriate controls and mitigations to respond effectively.
- 4.2 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 the failure often indicates a failure in the organisation's governance and risk management arrangements. Our experience also shows that where there are weaknesses in a registered provider's governance arrangements, it is not uncommon for that to be demonstrated by poor controls over key risks, including health and safety.
- 4.3 Where the regulator concludes that there has been a breach of the consumer standards and serious detriment, for private registered providers we will consider whether that failure has implications on 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 the information we have received through our regulatory engagement. The regulator does not have a role in regulating the governance of local authorities, but in the event that we conclude a breach of the consumer standards and serious detriment, we would expect to see the local authority seeking to understand the causes of the failure, and taking steps to address the underlying issues which led to the breach of the consumer standard.
- 4.4 The case study below shows how the regulator considered a registered provider's governance where we had concluded there to be a breach of the consumer standards.

Case study 1 – Link between consumer regulation and governance

Cheshire Peaks and Plains Housing Trust (CPPHT) made a self-referral to the regulator notifying us of potential non-compliance with health and safety requirements. The information provided by CPPHT identified failings in relation to fire safety, electrical safety and asbestos. The regulator noted that CPPHT had identified the issues and reported them to the regulator, but taking into account the seriousness of the issues and the range of health and safety areas where failings were identified, the regulator concluded that there had been a breach of the Home standard and risk of serious detriment to tenants. A regulatory notice was published setting out our conclusions.

Around the same time, the regulator was also engaging with CPPHT in relation to a breach of a non-financial loan covenant. CPPHT was subsequently granted waiver letters from its funders, but nevertheless it had failed to safeguard social housing assets during that period.

Taking into account the governance issues underpinning the breach of the Home standard, and the issue with the breach of the non-financial covenant, the regulator concluded that there were weaknesses in CPPHT's governance arrangements and downgraded CPPHT's governance to G3. These two issues demonstrated that CPPHT had failed to have in place an effective risk management framework and showed serious weaknesses in the operation of the internal controls' framework. A regulatory judgement was published in December 2019 setting out our conclusions.

Since then, CPPHT has been working with the regulator as it seeks to resolve these issues. It has taken steps to strengthen the Board and executive team and has developed an action plan which sets out how it is addressing the failure to comply with our regulatory standards, including both the statutory compliance issues, and the underlying governance issues. It has commissioned external support and provided additional resources to resolve the outstanding health and safety actions, including addressing weaknesses in CPPHT's data. The regulator will continue to engage intensively with CPPHT until it is satisfied that the issues have been addressed, and CPPHT is compliant with all regulatory standards.

- 4.5 The case study above shows the 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 arrangements. It also demonstrates the importance of registered providers seeking to understand the causes of failures when they arise in order to strengthen systems and controls to try and prevent other issues arising.

- 4.6 This year, the regulator has also seen a small number of cases where we have been engaging with a registered provider in relation to their compliance with our governance requirements, and through that work, we have also identified weaknesses in their compliance with our consumer standards. An example of that is set out below.

Case study 2 – Link between consumer regulation and governance

The regulator was already engaging with Bespoke Supportive Tenancies (BEST) in relation to concerns about its governance and financial viability, and we had previously issued a regulatory notice⁸ in May 2019 setting out our concerns about the effectiveness of BEST's risk management framework and that we lacked assurance that the Board was managing BEST's affairs with an appropriate degree of skill, diligence, effectiveness, prudence and foresight. As part of our engagement with BEST, we asked for assurance about how BEST was managing risks around health and safety compliance.

Through our investigation we learned that BEST had a number of statutory checks and risk assessments overdue in relation to gas, fire, electric, asbestos and Legionella. We also learned that for a significant number of its properties, BEST had been unable to provide assurance that statutory checks and follow-up actions had been completed by the property owners. The regulator concluded that given the seriousness and breadth of the issues, 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 in August 2019 setting out our conclusions.

In response, BEST took steps to improve its statutory compliance position, and commissioned a number of statutory checks, as well as demonstrating an improved understanding of its responsibilities in relation to its leased stock. The regulator continues to engage with BEST to seek assurance that it has effective systems in place to ensure risks around health and safety are managed, and to seek assurance that it is remedying the non-compliance set out in both regulatory notices.

- 4.7 This case study highlights the importance of providers having effective systems in place that allow them to comply with all relevant health and safety legislation. This is particularly important when there is a contract in place which relies on a third party such as a head landlord or property owner to carry out the checks. The responsibility for ensuring tenants' homes are safe for them to live in rests with the registered provider, and there should be an effective system of risk management and internal controls to deliver that outcome.

⁸ 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

5. Local authorities' compliance with the consumer standards

- 5.1 The regulator's consumer standards apply equally to private registered providers and local authorities. We expect all social housing tenants, regardless of whether their landlord is a private registered provider or a local authority, to have the same experience: they should have homes which are safe and of reasonable quality, the opportunity to have a say in decisions which affect them, and access to a complaints process which addresses concerns in a prompt and effective way.
- 5.2 This year the regulator has received a significant increase in the number of referrals relating to local authorities' compliance with our consumer standards (up by 76% on the previous year), and we found a breach of the Home standard and serious detriment in seven of those cases. We consider the increase in referrals to be the result of increased engagement with local authorities as well as wider stakeholder engagement detailing local authority responsibilities around consumer regulation.
- 5.3 Annex A shows the increase in the number of referrals we have seen from local authorities in the last year, and the increase in findings of a breach of the consumer standards and serious detriment. The case studies below show the detail of these cases and a reminder of the responsibility councillors hold for ensuring a local authority's compliance with the consumer standards.

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

Last year, the regulator received information from third parties about three local authorities: Gateshead Metropolitan Borough Council (Gateshead MBC), Runnymede Borough Council (Runnymede BC) and London Borough of Lambeth (LB Lambeth). In each case concerns were raised about the local authorities' compliance with health and safety requirements.

In line with our approach to consumer regulation, the regulator sought assurance from each of the Councils about their compliance with statutory health and safety requirements and concluded that they had failed to meet these requirements, and therefore had breached our Home standard. We published regulatory notices for Gateshead MBC in April 2019, for Runnymede BC in October 2019 and LB Lambeth in November 2019.

The regulator learned that through its ALMO, Gateshead MBC had failed to carry out fire risk assessments on its properties (with the exception of its high-rise blocks) and had failed to carry out electrical safety checks and asbestos surveys for several hundred properties.

In the case of Runnymede BC, the regulator learned that it had failed to complete urgent or high priority remedial actions arising from fire risk assessments and that it had no reliable means of evidencing the completion of remedial actions across its homes. It was also unable to evidence the completion of electrical safety checks, and where checks had been carried out, a number of them were over ten years old.

For LB Lambeth, the regulator learned that the local authority had had a number of overdue remedial actions arising from fire risk assessments, including some which resulted in levels of intolerable or substantial risks (according to LB Lambeth's system of classification, but which had been remedied at the time the regulatory notice was published). It also had a number of communal areas where asbestos surveys had not been carried out, including in high and medium risk properties, and a smaller number of gas safety certificates which were out of date.

In response to our conclusions, each of the Councils put significant resource into improving practices and systems, including procuring additional capacity and resources where needed. The Councils have taken steps to complete the required statutory checks and relevant safety actions to ensure tenants are not at risk as a result. In each case, the local authorities continue to make progress in addressing the issues and the underlying causes and are continuing to work closely with the regulator.

- 5.4 In the case studies above, the regulator received information from third parties about the local authorities' compliance with the consumer standards. That continues to be the most common route by which the regulator learns of emerging issues within local authorities. In our Consumer Regulation Review last year, we set out our expectation that all registered providers should be open and transparent with the regulator when they identify issues which indicate non-compliance (or potential non-compliance) with our standards and we re-state that position here. Where a local authority identifies issues and is transparent with the regulator about them, we will take this into account in our engagement. A local authority's transparency with the regulator, and its willingness to work with us, affects the level of confidence the regulator can have in the local authorities' ability to put things right and can shape the level of regulatory intervention required.
- 5.5 In previous years, we have made the point that where private registered providers contract out delivery of housing management services, that does not remove their responsibility to ensure that tenants are safe in their homes. The same point applies where local authorities' housing management services are delivered by an ALMO. The Gateshead MBC case is a good example of this, and the case study below shows how four local authorities with an ALMO failed to comply with the consumer standards.

Case study 4 – Regulating local authorities’ compliance with the consumer standards

East Kent Housing Limited (East Kent Housing) is an ALMO providing housing management services to four local authorities: Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council. The regulator received a referral from East Kent Housing on behalf of the four Councils, and further referrals from third parties, which suggested a failure to meet our consumer standards. The referral from East Kent Housing said that following an internal audit there was no assurance in relation to fire, electric, lift and water safety, and only limited assurance in relation to gas safety.

From our investigation, we learned that there were a number of gas safety checks outstanding and that little action had been taken to address high risk actions identified in relation to fire, electrical, water and lift safety. The regulator concluded that none of the Councils, through East Kent Housing, had an effective system to allow them to meet their statutory health and safety responsibilities. Taking into account the breadth and scale of the failures and the longstanding nature of the issues, the regulator concluded that the Councils had breached the requirements of the Home standard and risked serious detriment to tenants. We published a regulatory notice for each of the four Councils in September 2019.

Each of the Councils developed a programme of works arising from the internal audit and procured additional resources to complete the outstanding safety works. They also put in place actions to mitigate any risk to tenants in the meantime.

The regulator is working closely with each of the four Councils as they continue to improve compliance and deliver a programme of works to address the underlying causes of the failures which led to the breach of the Home standard. The Councils involved have also decided to wind up East Kent Housing and transfer the management of all housing functions back to the four Councils in due course.

6. Home standard

- 6.1 The Home standard requires registered providers to provide homes of a decent quality, and to have an effective repairs and maintenance service which responds to the needs of tenants. Much of our work however relates to the other requirement of the Home standard, for registered providers to meet all applicable health and safety requirements which provide for the safety of tenants in their homes.
- 6.2 For the first time, in 2019-20, gas safety issues did not represent a significant issue in the cases where we found a breach of the Home standard and serious detriment, and this is an area where the sector in aggregate appears to have been making good steady progress over recent years based upon referrals and data received⁹. Instead in 2019-20, we investigated a number of referrals about potential breaches of the Home standard in regard to electrical, fire and asbestos safety. We have detailed below case studies of five providers with failings in one or more areas of health and safety compliance which we concluded amounted to a breach of standards and risked serious harm to tenants.

Case study 5 – Compliance with electrical safety requirements

Magenta Living, formerly Wirral Partnership Homes Limited, informed the regulator that while moving to a five-year electrical installation inspection programme, it identified that it could not evidence that it had completed urgent electrical remedial works in a large number of its properties, potentially affecting a significant number of tenants. The evidence demonstrated that weak data management and insufficient oversight and reporting of electrical safety contributed to the failure.

The regulator concluded that Magenta Living had failed to have effective systems in place and an appropriate programme of planned work to identify electrical safety risks and had therefore breached the Home standard. We noted Magenta Living's self-identification of these issues and its subsequent reporting to the regulator but taking into account the seriousness of the issues and the number of properties involved, the regulator determined a breach of the Home standard in this case and published a regulatory notice in April 2019.

In response to this issue, Magenta Living sought additional resources to deliver the remedial work needed and commissioned an external review to understand why this situation arose and how it could be prevented in the future.

⁹ We recognise that the restrictions arising from Covid-19 has made it more challenging for registered providers to manage their statutory compliance, including in relation to gas safety. The Health and Safety Executive publishes guidance on how registered providers should seek to manage this, including in relation to gaining access to tenants' homes.

Case study 6 – Compliance with fire safety requirements

Through a small number of self-referrals and from our planned regulatory engagement, the regulator identified weaknesses in Connexus Housing Limited's (Connexus) approach to fire safety. We found that urgent remedial repairs to solid fuel appliances had not been completed in a timely way. We also found that Connexus was not able to evidence that fire risk assessments had been carried out for a number of properties and there was no system in place for prioritising or monitoring remedial works arising from those fire risk assessments.

The regulator identified that weaknesses in relation to data quality and oversight of health and safety remedial work, had resulted in these failures. The regulator acknowledged Connexus' improvements to its approach and systems for health and safety but given the seriousness of the failings concluded that Connexus has breached the Home standard with the potential to cause serious detriment to tenants. We published a regulatory notice in August 2019.

6.3 During the year we found that a number of failings around health and safety were in part due to poor record keeping. Having effective data reporting and monitoring systems in place is key to ensuring any risks to tenants are appropriately identified and managed. We found that this essential element of health and safety compliance was not being managed effectively in the three case studies below.

Case study 7 – Compliance with fire, electrical and asbestos safety requirements

As a result of an In-Depth Assessment of Brunelcare, and following self-referrals from Golding Homes and Shepherds Bush Housing Association Limited (Shepherds Bush), the regulator learned that each of the registered providers had failed to meet statutory health and safety requirements in a number of areas.

In relation to Brunelcare, we identified an internal audit which concluded only partial assurance in relation to fire safety and electrical safety. There remained outstanding work, including actions categorised as high and medium risk, in relation to fire safety and electrical safety. Some of this work had been overdue for a number of years, and with the potential to affect a significant number of tenants.

Regarding Golding Homes, the provider notified the regulator of potential non-compliance with health and safety requirements in relation to fire safety and electrical safety. An audit found that Golding Homes' compliance was poor, and it was unable to fully validate the compliance position due to a lack of reliable data. It had failed to complete a number of high risk actions arising from fire risk assessments and electrical safety checks.

In the Shepherds Bush case, it had identified a significant number of properties, including communal areas, where it was unable to evidence that electrical safety checks had taken place and was unable to determine if there were remedial actions which should have been addressed. It also identified that asbestos surveys had not been carried out for a number of communal areas in its properties.

We published a regulatory notice for Brunelcare in April 2019, for Golding Homes in February 2020 and for Shepherd Bush in March 2020. In response, each of the registered providers demonstrated a willingness to understand the causes of the failures and took steps to complete the remedial works as a priority, and in a risk-based way. Where appropriate, the registered providers allocated additional resource to improving systems and practices.

- 6.4 The above case study highlights an issue we are increasingly seeing in our work where the identification of one failing, often leads to finding similar failings across other areas of health and safety. The requirement to have assurance across all areas of health and safety is paramount, and we would encourage all registered providers to ensure compliance across all relevant health and safety areas.

7. Neighbourhood and Community standard

- 7.1 The Neighbourhood and Community standard includes three specific expectations of registered providers. These are in relation to neighbourhood management, local area co-operation and anti-social behaviour. Anti-social behaviour negatively affects the quality of life for tenants and others living and working in the community.
- 7.2 All registered providers are required to work collaboratively with other agencies to tackle and prevent this behaviour. We have received a number of complaints about anti-social behaviour in 2019-20 and where we have made enquiries with registered providers, this has included seeking assurance they have robust policies and procedures in place to address such concerns. An example of that is set out below.

Case study 8 – Supporting tenants experiencing anti-social behaviour

We received a referral from a tenant who complained they were experiencing anti-social behaviour and were being harassed by neighbours because of their race.

Due to the seriousness of the matters described and potential risk to a vulnerable tenant, we made some follow-up enquiries and saw that the registered provider had clear policies and dedicated staff to help deal with anti-social behaviour and hate crimes. In this case the registered provider had met with and spoken to the tenant to understand the concerns and had worked closely with the local police. The registered provider maintained regular contact with the tenant while they investigated the matter through their internal procedures.

The registered provider said it had a position of zero tolerance on incidents and allegations where race may be a factor. They said these complaints are categorised as their most serious and all necessary steps were taken, including legal intervention where necessary to protect victims. We recognise that issues relating to anti-social behaviour can be complex and require a multi-agency response. In this case we saw that the registered provider had taken appropriate steps to engage with and support the tenants and investigate the complaint, seeking involvement from other agencies, including the police. On the basis of the information and evidence we received we concluded there were no systemic failings and the registered provider had not breached the Neighbourhood and Community standard.

- 7.3 Effective neighbourhood management is also an obligation under the Neighbourhood and Community standard. This includes registered providers ensuring that communal areas associated with the homes they own are clean and safe. The case study below demonstrates how registered providers can learn from incidents to improve the safety of communal areas even though we have found no breach of standards.

Case study 9 – Improving safety around communal areas

A registered provider informed the regulator of an incident when a child sustained a minor injury when using an entrance gate to one of their schemes when the brick pier connected to the gate collapsed. The registered provider told us that it had inspected the gate within the last two years as part of its asset management routine and it had been found to be in good condition.

Following the incident, the registered provider identified the type of brick pier that had been involved and undertook checks across their stock where these had been used. This revealed that although the design was robust and fit for purpose, the pier could weaken over time. The registered provider identified all brick piers of a similar design and tested each for structural integrity. Removal or repairs were completed where needed. The registered provider then extended its asset review to cover all properties with external boundary walls in the region to identify any similar issues.

Although a child had sustained a minor injury in this case, we found that this was not as a result of failing by the registered provider who had a system in place prior to the incident to identify potential hazards in communal areas. The registered provider had also responded positively, taking steps following the incident to help prevent this happening again.

8. Tenant Involvement and Empowerment standard

8.1 The Tenant Involvement and Empowerment standard requires registered providers to take the diverse needs of tenants into account. Specifically, it says that registered providers shall treat all tenants with fairness and respect and demonstrate they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs¹⁰. The case study below details the first case where we have found a breach of the Tenant Involvement and Empowerment standard.

Case study 10 - Taking account of vulnerable tenants' needs

The regulator was already engaging with Westmoreland Supported Housing Limited (Westmoreland) in relation to its failure to comply with our governance and financial viability requirements. We then received a small number of referrals about the quality of accommodation provided and how Westmoreland had taken tenants' needs into account.

Through our consideration of these referrals, the regulator learned that Westmoreland had issued eviction notices to a number of tenants to vacate a property to allow it to return the lease to the head landlord. We found that Westmoreland had failed to consult with tenants, to provide appropriate advice and assistance, and to consider what would happen to tenants during and after the notice period. As a result, we considered that Westmoreland had failed to properly take the needs of these potentially vulnerable tenants into account. We concluded that was a breach of Tenant Involvement and Empowerment standard and published a regulatory notice in May 2019. In the same regulatory notice, we also concluded that Westmoreland lacked assurance that it complied with the Home standard in relation to both the quality of accommodation and its compliance with statutory health and safety requirements, and had breached the Tenancy standard by failing to take steps to support tenants to maintain their tenancies.

Westmoreland accepted the regulator's findings and have since been able to successfully rehouse affected tenants. The regulator has been engaging intensively with Westmoreland throughout in relation to these matters, and in relation to the wider governance and financial viability issues, including making statutory appointments to the Westmoreland Board to support them in resolving these weaknesses. The regulator has seen that Westmoreland have acquired additional internal and external resources to address the issues identified and are working to improve wider tenant management as well as systems and processes.

¹⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725831/Tenant_Involvement_and_Empowerment_Standard.pdf

- 8.2 In addition to the above obligations under the Tenant Involvement and Empowerment standard, registered providers should also ensure they have an approach to complaints that is clear, simple and accessible and ensures that complaints are resolved promptly, politely and fairly. The case study below highlights that while complaints can be lengthy and complex, the requirements of the standard must be met.

Case study 11 – Effective complaint handling

A tenant complained that their registered provider had failed to complete a number of repairs to their home and refused to approve adaptations needed for their family before they moved into their home. The tenant felt that their complaints about these matters had not been handled properly by the registered provider.

We noted that both the tenant and a family member had physical disabilities and additional support needs. We made enquiries with the registered provider to ensure their needs were understood. In response to our enquiries, the registered provider told us that they had received a number of complaints from the tenants since they moved into the property, and that they were continuing to receive a high level of contact from the tenants to raise additional issues about the property via email and telephone. The registered provider said that it had endeavoured to work with the tenants to address all of the issues raised including face to face meetings. The registered provider provided evidence to demonstrate that the tenancy had been properly advertised and let, a significant number of repairs had been completed in a timely manner, and it had engaged with a number of agencies to understand and address the tenant's concerns around adaptations and accessibility.

We found no indications of systemic failings by the registered provider and therefore no breach of the Tenant Involvement and Empowerment standard in this case. We saw that the registered provider had in this case been flexible in its approach to complaint handling and had used a number of communication methods to ensure that it fully understood the tenants' needs.

9. Tenancy standard

- 9.1 The Tenancy standard places an obligation on registered providers to ensure that their homes are let in a fair, transparent and efficient way. Registered providers should demonstrate how their lettings make best use of available housing and there should be clear application, decision-making and appeals processes. It also requires registered providers to enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant. When letting homes, the Tenancy standard also requires registered providers to take into account the housing needs and aspirations of tenants and potential tenants. This is particularly important where tenants have access needs due to disability.
- 9.2 We have included the Tenancy standard and several of the expectations this standard places on registered providers for completeness in respect of our consumer standards. However, we have not included examples of specific case studies. We have not found instances of breach of the Tenancy standard in 2019/20. Although we have received referrals regarding tenancy issues, these have generally constituted individual complaints and reflect dissatisfaction with outcomes rather than issues with systems or controls, or with fair treatment of tenants. In these referrals, we have not found instances where there has been evidence of systemic failure or breach of our consumer standards.

Annexes

Annex A – Analysis of cases

Referrals by stage

10.1 Our consumer regulation process has up to three stages. We have summarised this below, and a diagram is provided on our website¹¹.

- **Stage 1:**

The Referrals and Regulatory Enquiries (RRE) team is responsible for managing 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 (CRP).

- **Stage 2:**

The CRP 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 (i.e. they were found to be substantiated), is it likely that there has been, or could be, a breach of a consumer standard?
- ii. if the issues raised were true (i.e. they were found to be substantiated), would there be any impact on tenants which would cause serious actual harm or serious potential harm?

- **Stage 3:**

If the CRP 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. We will usually seek information from the individual making the referral and the registered provider, as well as any third parties if necessary.

¹¹ <https://www.gov.uk/government/publications/consumer-regulation-process>

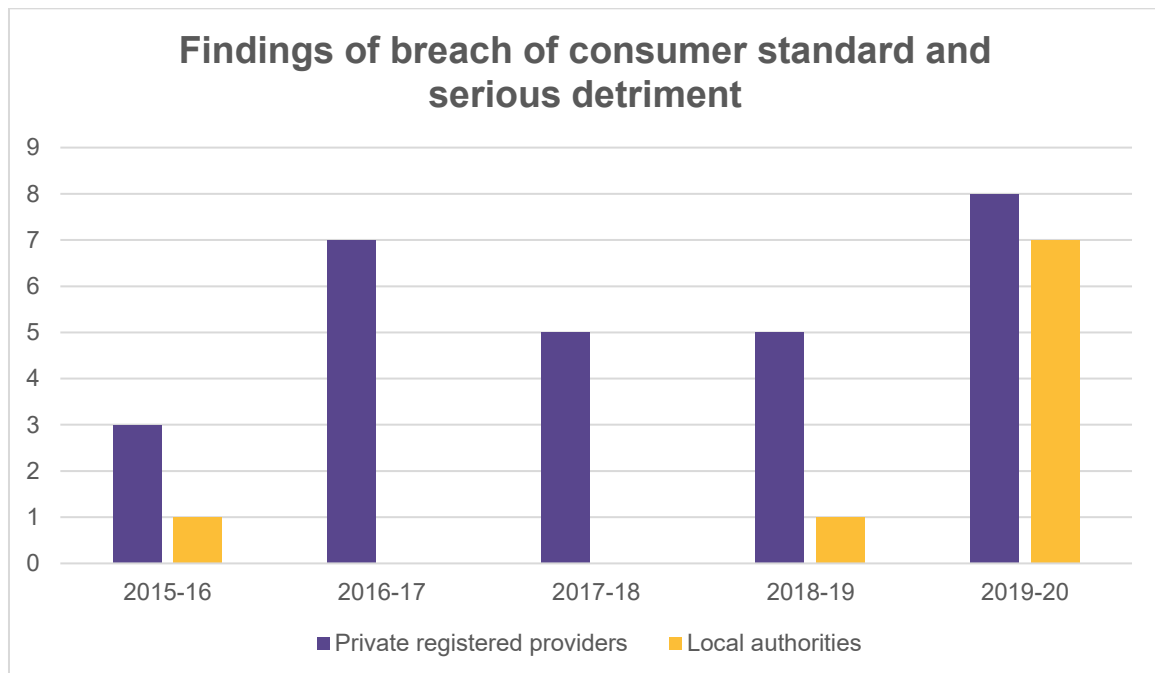
- 10.2 The table below shows the total number of consumer regulation referrals handled by the regulator in 2019-20 and how many of those went on the subsequent stages of our process. The 2018-19 figures are also given for comparison purposes.

	2019-20	2018-19
Stage 1 – All referrals	597	502
Stage 2 – Considered by Consumer Regulation Panel	274	226
Stage 3 – Investigation undertaken	143	124
Published findings of breach and serious detriment	15	6

- 10.3 In 2019-20 we received 597 consumer standard referrals which was a 19% increase on the previous year. As a result, numbers proceeding through each stage of the consumer regulation process all showed an increase on the previous year, with 21% more cases being considered at Stage 2 by CRP, and 15% more cases being investigated at Stage 3.
- 10.4 Although the numbers of referrals we received increased in 2019-20 from the previous year, the proportion of cases moving through each stage of our consumer regulation process remained consistent. 274 (46%) of referrals were moved to a Stage 2 review by the CRP (compared to 45% last year), and of these 143 (24%) were investigated further (compared to 25% last year). A key difference this year was that we found a breach and serious detriment in 15 cases (2.5%) compared to six cases (1%) the previous year. Although this still represents a small proportion of our work, we consider this increase to be significant. We attribute this to the increase of our communication with the sector, particularly the level of engagement with local authorities about the importance of comply with the consumer standards. Previously, we have had limited involvement with local authorities and have found a breach in relatively few cases. This year, we found a breach of the consumer standards in seven cases.

Referrals about local authorities

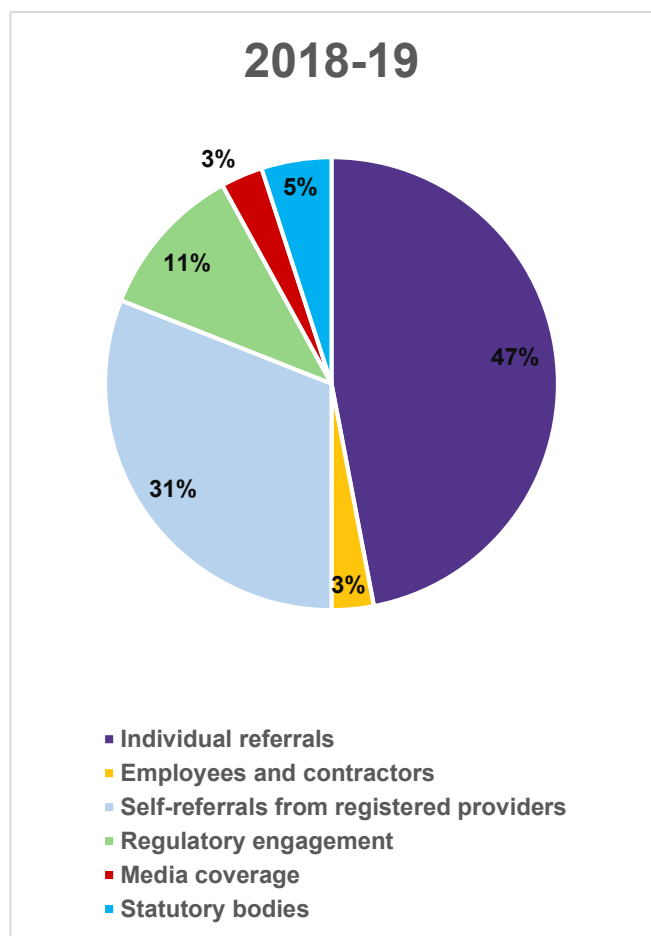
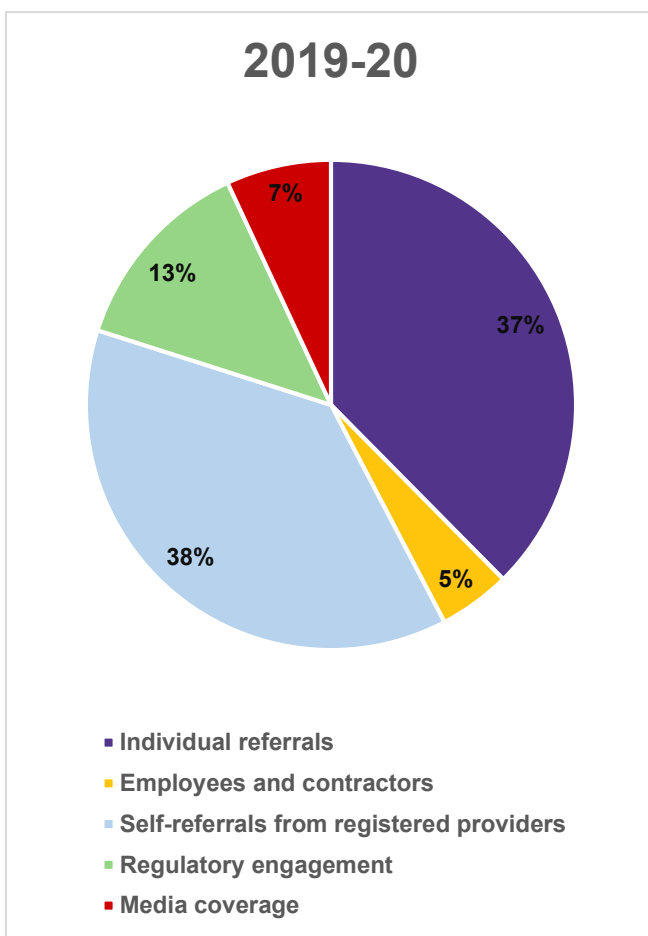
- 10.5 In relation to local authorities, the regulator has seen an increase in the number of referrals either from, or about, local authorities in the last year. In 2018-19, referrals about local authorities represented just 7% of referrals received by the regulator, and we did not receive any self-referrals directly from local authorities. This year, with the increase in our communication with the sector, including local authorities, referrals about local authorities represented 11% of all referrals to the regulator, and included a number of self-referrals directly from local authorities.
- 10.6 We encourage local authorities to continue to self-refer issues relating to non-compliance (or potential non-compliance) with the regulator in a timely manner. In absolute terms, referrals in relation to local authorities increased by 76% from the previous year. We consider this to be a material change in the way local authorities monitor and report their compliance to the regulator and is key in explaining the higher numbers of cases where we found a breach of the consumer standards and serious detriment this year. The graph below shows the number of cases where we have found a breach and serious detriment each year, split between private registered providers and local authorities.



Sources of referrals

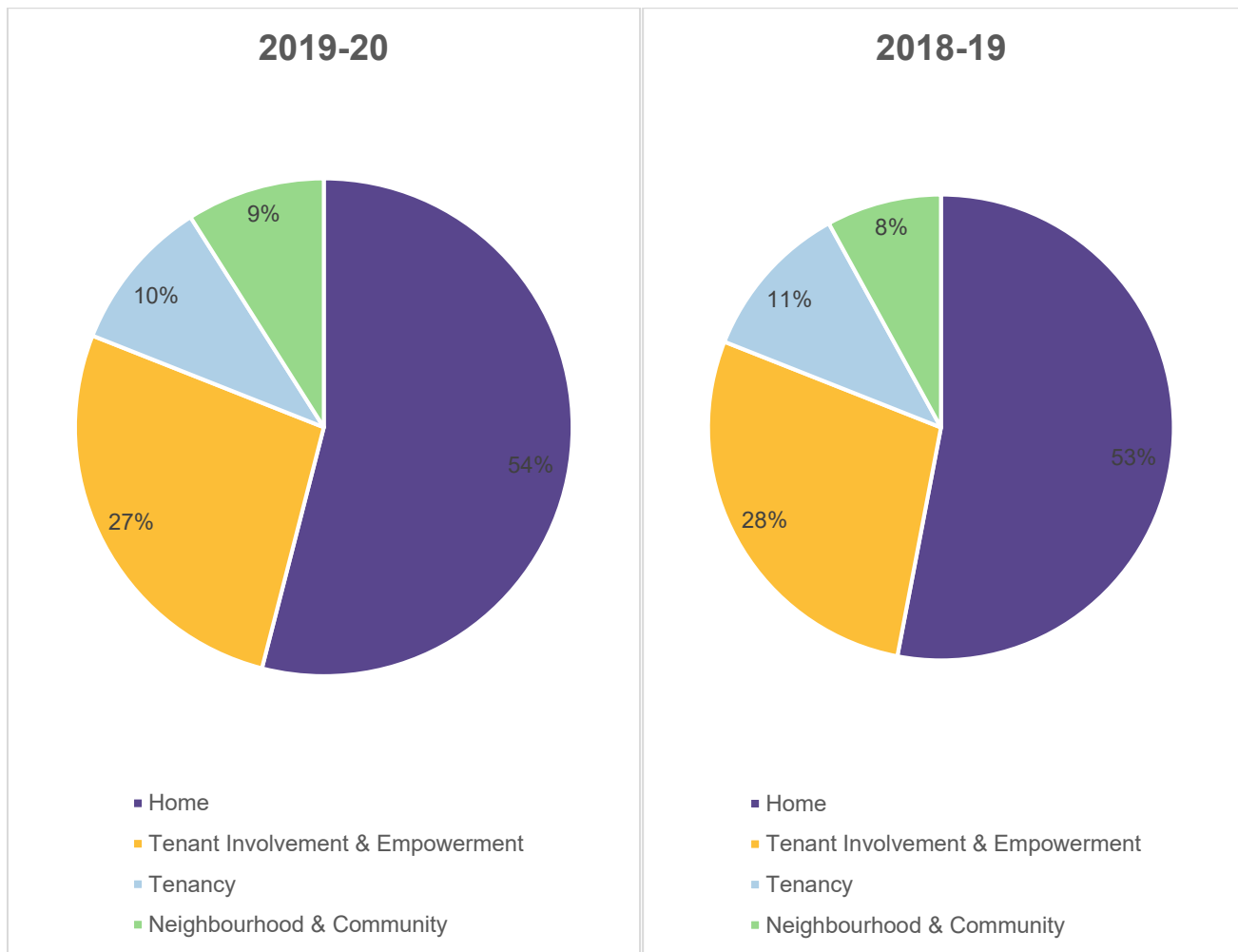
10.7 The regulator receives referrals from a range of sources, most commonly from tenants and as self-referrals from registered providers. We also receive information from employees or contractors, and we identify referrals in the course of our planned regulatory engagement with providers.

10.8 The charts below show that of the cases we investigated, 38% were self-referrals from registered providers (an increase of 7% on the previous year). 37% of referrals were from tenants or their representatives (a decrease of 10% on the previous year), and 13% were issues identified through our regulatory engagement (a slight increase of 2% from 2018-19).



Referrals by standards

10.9 The proportion of referrals relating to each of the consumer standards remains consistent year-on-year. As in previous years, the Home standard continues to be the consumer standard which is most often cited in referrals and represents more than half of all referrals considered by the Consumer Regulation Panel. The Tenant Involvement and Empowerment standard is the next most frequently cited standard, accounting for just less than 30% of cases each year.



Annex B – Summary of previous lessons learned

11.1 This is our eighth annual Consumer Regulation Review and each year our report sets out the key lessons we wish to share with the sector. Full versions of each of the reports are available on our website¹². We have set out a short summary of these lessons below.

2018-19

11.2 In our last Consumer Regulation Review, we set out the details of six cases where we had found a breach of the consumer standards and serious detriment. We reiterated the importance of registered providers ensuring the homes where their tenants live were safe. We said:

- Registered providers must meet the full range of statutory health and safety obligations. This requires robust reporting and assurance arrangements, to allow effective oversight by Boards and councillors.
- Effective assurance relies on good quality data and effective systems.
- Registered providers should 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.
- 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.

2017-18

11.3 In our 2017-18 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 focused on the importance of landlords meeting their statutory health and safety obligations and set out the importance of providers having an effective complaints process, and listening to the messages their tenants give. 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.

¹² <https://www.gov.uk/government/collections/consumer-regulation-review>

- 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.

2016-17

11.4 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. 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.

2015-16

11.5 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. 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.

2014-15

11.6 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. 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.

2013-14

11.7 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. 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.

2012-13

11.8 In our first annual Consumer Regulation Review, we provided details of one regulatory notice for a failure to meet gas safety requirements. 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 occasions 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.



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