



Governance update for the housing sector

The Sector Risk Profile 2021

The Sector Risk Profile was published in October and can be found [here](#). This is essential reading for all senior executives and board members (or councillors) of registered providers (RPs) including relevant local authorities.

Private RPs and local authorities have very different governance and financial structures and constraints, but many of the operational risks identified apply equally to both parts of the sector as is seen from spread of recent regulatory notices issued by the Regulator.

The report is a reasonably short document summarising the key risk issues that the Regulator has identified for the sector arising from the regulatory information provided to it by RPs and its wider engagement with the sector and other key stakeholders.

Proactive economic regulation is still key and forms the core of the Regulator's activity covering compliance with the governance and financial viability standard, the value for money standard and the rent standard. Of course, the first two do not apply to local authorities, but the rent standard now does.

We will not attempt to summarise the Sector Risk Profile as a whole here, but it is worthwhile noting some recurring and cross-cutting themes that the Regulator has identified.



Reputational risks

Firstly, reputational risks for both individual RPs and for the wider sector have a significant prominence within the report.

The Regulator identifies a number of different sources of reputational risks including:

- having to make strategic choices as to the allocation of resources and having those choices scrutinised;
- health and safety;
- housing stock quality; and
- service delivery and accountability to tenants.

They have identified that the sector is under significant scrutiny, that the White Paper has increased expectations of RPs and that there are risks of these expectations being disappointed.

For the sector as a whole, not just for the landlords directly involved, the recent degree of media interest in and highlighting of negative stories relating to the quality of housing and repairs and maintenance services provided to social housing residents has been a significant shock. The Sector Risk Profile makes it clear that the Regulator expects all RPs to proactively manage the quality of the housing and the services actually being provided so as to be compliant.

Whilst the quality of housing and service provision are themselves requirements from the consumer regulatory standards, they can also have significant impact on reputation. Currently, the Regulator can only take a reactive approach to the regulation of these standards and is subject

to the serious detriment test, but this does not mean that RPs are not obliged to comply with them. Moreover, it is a requirement of the governance and financial viability standard that *"governance arrangements shall ensure that RPs... protect...the reputation of the sector"*.

In addition to the problems for the residents in question the reputational damage posed by pockets of poor quality housing provision resonates widely and if they are not currently receiving board attention through the existing reporting mechanisms available then some different approaches may be necessary. The Regulator has previously made it clear that it will be seeking evidence that appropriate steps have been taken to identify and address this type of issue as part of its in-depth assessment process.

Data quality

This is not a new issue, but many of the risks identified in the report are heavily reliant upon the data available to RPs for their management, especially in relation to the housing stock and the tenants occupying it.

As well as identifying data integrity as a section of risk of its own the Regulator flags data's importance in relation to:

- stock quality and especially the need for robust and up to date stock condition data;
- health and safety requirements;
- and service delivery (having regard to the diverse needs of residents).

It states that board oversight, control and decision making is undermined by failure to maintain data integrity or by data being isolated in siloed systems. This has been a notable contributory factor in many of the regulatory notices and regulatory downgrades that have been issued.

The Social Housing White Paper: Proactive consumer regulation

The move to a full proactive consumer regulation regime requires primary legislation and we do not yet have a Parliamentary timetable setting out when this will be brought forward. However, we do know that there is a significant amount of consultation that can only be carried out legally once the relevant powers have been enacted and that there will be significant operational changes for the Regulator to achieve before it is in a position to 'go live' with this new role. Given the time that is required to pass this type of legislation and the required consultation it will be two to three years before the full regime can be brought into force.

The Regulator has recently published an update on its thinking for the proactive regime when it is implemented in a paper called 'Reshaping Consumer Regulation: Our principles and Approach' which can be found [here](#). This is still very much a work in progress and will remain subject to the legislative regime and to further consultation and consideration.

Key features of the regime under consideration are that it is co-regulatory with the RP Board taking the lead role in ensuring compliance with the revised Consumer Standards, the RP supplying assurance to the Regulator and the Regulator taking a risk-based approach to involvement. It is intended to address systemic issues rather than individual complaints which would more properly be addressed by the RP and the Housing Ombudsman.

Its thinking is coalescing around a set of outcomes and themes for the consumer standards and it seems clear that this is (as expected) a wholesale rethink of what the consumer standards are seeking to achieve as well as their structure and more detailed content. The six themes stated are: Safety, Quality, Neighbourhood, Transparency, Engagement and Accountability and Tenancy (including allocations and tenant rights to move). These may prove to be the headings for the revised consumer standards although there is much that may change before these can be finalised.

We know that a major thrust of this regime will be to require greater engagement by RPs with their tenants for them to shape and to scrutinise the services that affect them. The Regulator makes the point that RPs should take action now (in advance of any change in regulation) to strengthen this engagement and to improve services.

One area that does not require primary legislation is putting in place the reporting requirements flagged in the White Paper as the Tenant Satisfaction Measures (the TSMs). It is expected that a new regulatory standard will be brought forward requiring a range of new reporting measures by RPs. Consultation upon these requirements is anticipated imminently and RPs need to be on the look out to engage with this consultation when it comes out. In responding, RPs need to be aware of the groundswell of tenant feedback that fed into the generation of the White Paper and the issues that this is intended to address. We recommend that RPs not only look at this from a corporate perspective, but seek the views of resident groups and where appropriate support and encourage them to respond too.

Whilst we understand the pragmatic imperative to make progress on the areas that do not require legislation it is perhaps unfortunate that the TSMs will be seen out of their full context. The mere fact of measuring something often changes underlying behaviours. In some cases this may be appropriate, but in other ways they may take priority over other issues that are harder to measure, but are valued as highly or more highly by residents.

It will be important to remember that the TSMs will only be one element of the regime and that the wider consumer regulatory regime will be much more broadly based than just a reaction to the data that is produced through this process. For this reason the Regulator's willingness to publish its current thinking is particularly welcome to provide greater context for the consultation on the TSMs.

A reminder of the governance implications of the Building Safety Bill and the Social Housing White Paper

It is clear that the Home Standard continues to be one of the most breached standards of the Regulator's seven standards that apply to registered providers. It is the Home Standard which includes the required outcome of ensuring that all statutory requirements that provide for the health and safety of occupiers are met.

With the increased focus on health and safety, pushed very much into the public consciousness by the horrific events that unfolded during the Grenfell tragedy, boards should not consider health and safety issues as things that happen to other organisations without fully testing whether such issues could arise within their own organisation. For some this has meant undertaking comprehensive reviews of their compliance and assurance frameworks. That issues may not have arisen does not necessarily mean that existing frameworks are as robust as they could be, and there should be no assumptions here.

Boards should be asking, if they haven't already, "exactly what is in our compliance framework, how do we know that the information and assurance we are getting is as clear and as transparent as it can be, when was the last time we tested the way that we do things?". In our experience, it is only when things do go wrong that some boards start to ask these questions. Being able to demonstrate that you have taken "all reasonable steps" to ensure compliance is a far more comfortable position to be in should health and safety issues arise.



Over more recent years, many organisations have increased the level and frequency of external audit and validation that they obtain in order to assess, and indeed challenge, current approaches to health and safety compliance. This can be an essential tool for ongoing improvement, and something that the Regulator will consider should issues arise. It is therefore reasonable for boards to ask when their business had an assessment from someone outside the organisation to identify any gaps or weaknesses and flag areas where current approaches could be strengthened. It is also reasonable for boards to ask how often they get that external assurance and whether they are getting it as frequently as they should.

There is much coming over the hill in terms of new legislation including the Building Safety Bill and secondary legislation together with legislation that we know will be needed in order to give effect to the new consumer regulation regime. We already know what is in the building safety legislation (drafts have been in circulation for some time), and the Regulator has stated many times that the direction of travel in terms of consumer regulation is already clearly laid out, including in the White Paper. Whilst it may take a number of years for new obligations to actually come into effect, RPs and their boards should be considering now what they will need to do in order to achieve compliance. The Regulator has also been clear that there will be little "transition" flexibility for providers given how much is already known about the new requirements and obligations.

Some providers have already jumped into action, establishing working groups and programme boards to look at what's coming, where gaps currently lie within their organisation and what they will need to do to ensure compliance with new obligations. Others have been giving thought to where health and safety oversight sits, and should sit, within their governance structures, at board level or committee level, looking at whether terms of reference are clear enough in that respect.

Others have also started to consider the need for specific skills around health and safety and consumer regulation compliance within their governance and management team structures. The Building Safety Bill introduces numerous new dutyholder and accountable person positions for certain landlords. The White Paper also talks about introducing new legislation which will require landlords to identify and make public a nominated person responsible for compliance with their health and safety requirements, and states that the Regulator will in future require all landlords to identify a "responsible person" who will ensure that the organisation is complying with consumer standards. Don't forget that as you start to consider enhancing health and safety expertise within the business others will too, meaning that talent and expertise pools will get smaller. It is not too soon to start considering organisational needs as part of board succession planning and staff recruitment.

It is also important that boards fully understand what is actually on the horizon. There can be a misunderstanding that the new Building Safety Bill (and secondary legislation) is concerned only with "high risk buildings". This is not the case and the new legislation also sets out a general duty of "competence" in relation to all "building work" and "design work" carried out in England pursuant to the Building Regulations 2010.

We have produced an Essential Guide to the Building Safety Bill which can be found [here](#) and provides a helpful overview for boards. As for consumer regulation, the White Paper is very clear about the changes that will come about. Again, we have previously published a Social Housing White Paper at a Glance which can be found [here](#) and should help boards and their organisations start to consider what changes they will need to implement in the years to come.

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