



The costs of statutory action by the Scottish Housing Regulator

GWSF submission to the Parliament's Local Government and Communities Committee, January 2019

1 Summary

1.1 This short submission seeks to raise awareness about the financial cost of statutory actions taken by the Scottish Housing Regulator (SHR). It does not seek to be directly critical of SHR but rather raises the complex issue of the delicate balance between (a) the need to take action where an association is performing poorly, and (b) the extent to which the very high cost of that action can in itself further destabilise an association already facing serious problems.

2 The importance of strong regulation

2.1 On behalf of our 64 member associations, GWSF would firstly wish to emphasise the importance we attach to robust regulation. It enables us to demonstrate to tenants, the wider public, lenders, politicians and other stakeholders that our sector demands high standards of governance and services for tenants and is rigorously assessed against those standards.

2.2 From time to time there may be aspects of the regulatory system which concern us and which we want to discuss with SHR and/or raise more widely, and we welcome SHR's ongoing willingness to discuss these issues with us on a regular basis. Any such concerns are generally raised in the context of our members' recognition that strong regulation is extremely important for the sector overall.

3 Taking action where it is needed

3.1 SHR's engagement with housing associations takes many different forms. When we refer to 'statutory action' we mean SHR using its powers (under the Housing (Scotland) Act 2010) to appoint a statutory manager to an association and to appoint people to join an association's management committee/board.

3.2 It is generally acknowledged that SHR's use of statutory powers has been very necessary in the great majority of the cases we have seen in the years since the powers came into force. Whilst one or two cases may have involved more technical governance breaches which have been resolved in a relatively short period of time, most cases have involved a range of failures of governance and, in some cases, financial management too. It remains a priority for GWSF to support members to ensure their governance is as strong as possible and that local community controlled housing associations are fit and ready to flourish long into the future.

4 The financial costs of statutory action

4.1 GWSF believes that, particularly outwith the housing association sector itself, there may be a general lack of awareness about the scale of the financial costs which associations will face as a result of statutory intervention measures taken by SHR.

4.2 We readily acknowledge that in most cases it will be poor governance and/or bad management on the association's part which will have led to the action being taken, so we are not suggesting that the financial costs are SHR's responsibility. But we do believe a discussion is needed on whether, in the future, some of the crippling costs of statutory intervention, which are ultimately borne by tenants, can be reduced.

4.3 Whilst costs will vary from one case to another, the costs directly attributable to SHR intervention will typically include:

- The daily rate of consultants appointed by SHR as statutory managers
- Flight and accommodation costs for the many statutory managers appointed to Scottish associations but based in southern England
- The often crippling cost of lenders calling in or re-pricing loans, because the loan terms allow them to do this if SHR takes statutory action.

4.4 There will usually be a range of further costs, such as for consultants engaged by the statutory manager to carry out specific tasks (such as a governance review) not being carried out by the statutory manager themselves. We recognise that some or all of these costs may have been needed regardless of whether statutory action had been taken by SHR.

4.5 By way of examples, SHR's published report on the statutory action it took at Wellhouse HA detailed direct costs of £222,000 for the statutory manager spanning three financial years. Wellhouse HA has 800 tenancies.

4.6 In another case involving an association with 330 tenancies, our understanding is that the overall cost of the statutory action was in excess of £750,000, including over £500,000 in increased interest as a result of a repriced loan. There is no suggestion that the statutory measures were not needed in this case, but there is considerable

unease within the sector that we appear to have a system which leads associations already facing serious challenges to be further destabilised by the consequences of the action being taken.

4.7 In a further, more recent (and ongoing) case, whilst the cost of consultants etc. is not yet known, it looks likely that the association's 800 tenants will be paying increased rents to cover an additional £2.6 million over the next 10 years because of a low-interest loan which has been repriced by the lender after statutory action was triggered. This case is especially concerning, with GWSF having significant doubts as to whether the statutory action was necessary in view of the alternative remedial plan proposed by the association but very quickly dismissed by SHR.

5 Who is controlling the costs of statutory action?

5.1 We recognise that almost any kind of remedial action will lead to costs being incurred by an association: this is the price paid for poor management or governance over what might have been a long period of time. However, controlling and accounting for such costs can sometimes appear to be lacking, with statutory managers appointed by and responsible to SHR but potentially without sufficient oversight of the costs being incurred. A vulnerable association, and in particular its committee/board, is unlikely to feel confident enough to question or challenge the extent of the costs being incurred.

6 Transparency over the costs of statutory action

6.1 It is welcome that SHR's reports of statutory action make reference to the costs of the statutory manager, which can sometimes span two or three financial years. But there is no breakdown of the costs which would allow, for example, separate identification of flight and accommodation costs as opposed to consultancy/salary costs. It would also be helpful to see the reports details any costs arising as a result of loan repricing.

6.2 Greater transparency over the normally very high costs of statutory intervention is needed not only as a matter of principle: additionally it would act as a salient warning to associations that the price to pay for poor management or governance is usually a high one.

7 Greater consideration of alternatives to statutory action?

7.1 The high costs of statutory action make it crucial that if SHR is to convince itself and others that its actions are in the best interests of tenants, it needs to be certain that no other viable alternatives to statutory action are available. In discussions with GWSF, SHR has said that ultimately each decision comes down to a judgement on the particular circumstances and, critically, whether SHR believes an association can

manage its problems without the input of statutory appointments to the staff and committee/board. Needless to say, we will continue to monitor our members' experiences of engagement with SHR leading up to statutory actions being taken.

7.2 Recognising that the circumstances of each case will always be unique, we are not convinced that statutory measures, with all the financial penalties they bring, are always the best way forward when alternative, less draconian measures may be just as effective – or more effective – in supporting the association to deal with its issues.

7.3 Some members have suggested to us that they would like to see SHR develop an approach in which, where the immediate viability of an association is not in question, there could be some kind of 'breathing space' or 'cooling off' period which would allow measured decisions to be made on whether any realistic alternatives to statutory action might be available. We believe SHR's current approach may cater for this in some cases but not in others.

7.4 This is *not* about associations not facing up to the seriousness of the situation, but about assessing whether, in some cases, there may be alternative ways of addressing the challenges, at least for a trial period and in such a way as to fully retain SHR's powers to take statutory action where it chooses to.

7.5 One option which may be open to some associations is not only to make co-options to the committee/board but to also engage external managerial input to work alongside and support existing senior staff. Such managerial support would in no way be equivalent to a statutory manager as this would be a voluntary appointment by the association. But it may in some cases be enough to help the association deal with its problems and avert the need for statutory action – albeit the statutory action could be triggered at any point if deemed by SHR to be necessary. GWSF would be willing to explore how it could assist associations to identify such sources of support where it is needed.

8 A new approach in the longer term?

8.1 In the longer term, we believe a constructive discussion is needed over whether a different regulatory framework could be developed which would retain the very important need for SHR to take action but would not automatically result in such crippling costs being incurred by tenants. This discussion should involve, as a minimum, SHR, the Parliament, Scottish Government, lenders and our colleagues at the Scottish Federation of Housing Associations.

9 Next steps

9.1 GWSF thanks the Committee for considering our submission, and would be very happy to discuss its concerns further with the Committee at any point.