



Homes &
Communities
Agency

Consumer Regulation Review 2016/2017

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Homes and Communities Agency



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Executive summary

This is the fifth annual Consumer Regulation Review which sets out a summary of our consumer regulation work in 2016/17. We acknowledge that the messages in this report will be read within the context of the terrible fire at Grenfell Tower. At the time of writing, the full causes of the fire have not yet been determined. Police and fire investigations are on-going and the Public Inquiry has begun. It will be important that governing bodies of registered providers (boards and councillors) respond as necessary to the conclusions of these inquiries.

Key messages

- Complying with health and safety obligations and the consumer standards has always been and remains a key responsibility for governing bodies of registered providers (boards and councillors).
- 2016/17 saw the regulator deal with a slightly higher number of consumer standard cases than in the previous year and issue seven regulatory notices where a registered provider had failed to meet a consumer standard and thereby caused or risked serious harm to tenants.
- Registered providers are responsible for addressing concerns about their service. In the great majority of cases that the regulator is made aware of, registered providers act quickly and decisively to rectify problems once they are identified. Where problems are deep-seated or symptomatic of broader governance failures, rectification often takes considerable time, effort and resources. It is always better for both tenants and landlords to avoid problems through effective control of compliance.
- To achieve this, registered providers must be clear about what stock they own and are landlord for, and governing bodies must understand their responsibilities to deliver statutory compliance (including but not limited to gas safety, fire safety, electrical safety, asbestos and Legionella).
- Where registered providers are not compliant, the regulator often sees that systems are poorly designed, poorly implemented, or both. Boards that have a poor understanding of their responsibilities or lack accurate and timely data to monitor performance will not have the control they need. Some failures are more isolated in nature, perhaps as a result of individuals' actions or lack thereof. We expect providers to minimise these risks by having systems in place that allow problems to be identified and rectified promptly, thus protecting tenants.

- Registered providers are responsible for ensuring that tenants know how to complain, and for responding to complaints effectively. Failure to do so can have significant implications for tenants as well as for a registered provider's reputation. Complaints provide valuable insight for boards and councillors about the performance of services. It remains important that boards have access to and understand the messages that their tenants are giving them. Handling complaints poorly is potentially a breach of the regulator's Tenant Involvement and Empowerment Standard, which requires all providers to have an approach to complaints which aims to resolve them promptly and fairly.
- Transparency with the regulator is essential. Where consumer compliance problems come to light in cases where the registered provider has failed to be transparent with the regulator, this is both a direct concern in relation to compliance with the Governance and Financial Viability Standard, and may be indicative of broader governance issues. Boards of private registered providers are reminded that they are required to sign off their compliance with the [Governance and Financial Viability Standard](#), which includes the requirement to adhere to all relevant law,¹ through a statement in their annual accounts.

How we regulate

- In line with our overall co-regulatory approach (as set out in our publication [Regulating the Standards](#)²), responsibility for compliance with standards lies with the governing bodies of registered providers. We consider referrals and information received to decide whether they represent a provider's failure to meet a consumer standard which has caused, or risked, serious detriment as set out in the Localism Act 2011. We only intervene where we find that a provider's failure to meet a consumer standard has caused, or may cause, serious detriment to tenants or potential tenants. Where we find this to be the case, we publish a regulatory notice and consider the most appropriate regulatory means of securing the necessary improvements. While we expect the provider to address the failings, and will ensure that any voluntary undertakings to do so are implemented, we have a range of graduated enforcement powers available should we need to use them. We do not routinely monitor or seek assurance of compliance with the consumer standards in the absence of complaints or referrals, because our role on consumer standards is reactive rather than proactive.
- We have a duty to be proportionate and to minimise interference as far as possible. The regulator focuses on whether there is evidence of systemic failures on the part of the registered provider. This is usually where there is evidence that a system or process is inadequate or broken.

¹ Governance arrangements shall ensure registered providers:

(a) adhere to all relevant law

The Governance and Financial Viability Standard is available on the Regulatory Standards page:

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

² <https://www.gov.uk/government/publications/social-housing-regulation-regulating-the-standards>

- Many of the cases we consider are complaints from tenants. Depending on the facts and the circumstances, they may represent evidence of a systemic failure. Multiple referrals from different tenants (or a referral from a representative such as an MP covering complaints by a number of tenants) may in particular indicate an underlying systemic problem.
- For cases where the facts in front of the regulator lead us to conclude that, while there may be an individual issue, there is no evidence of a systemic problem that represents a failure to meet a consumer standard, usually the correct route is for the person concerned to pursue the registered provider's complaints process, then speak to a Designated Person and/or the Housing Ombudsman Service. The Ombudsman seeks to resolve complaints from individuals about registered providers of social housing. It deals with each complaint to find the best outcome for the individual circumstances. To promote transparency and be as clear as possible about respective roles to help people navigate the system, in 2016/17 we published a [Memorandum of Understanding with the independent Housing Ombudsman](#)³. That sets out the functions of each organisation and describes the arrangements for cooperation and communication between the regulator and the Ombudsman.
- Where a regulatory notice is published, the regulator stays closely engaged with the registered provider, to ensure that effective action is taken. To date, the regulator has not had to use its enforcement powers to force any registered provider to take action in relation to the consumer standards.
- If we find that a private registered provider has breached a consumer standard and there has been a risk of, or actual serious harm, we also consider whether that failure would change our view of the registered provider's compliance with the Governance and Financial Viability Standard. This is a separate decision: a breach of the consumer standard does not automatically result in a breach of our governance requirements.
- Under the Governance and Financial Viability Standard, private registered providers have a duty to communicate with the regulator in a timely and transparent way. We place significant importance on the duty of providers to be transparent with the regulator, and work on a co-regulatory basis. Where a provider fails to be transparent with the regulator, we take that into account as part of our decision about whether an issue would change our view of a registered provider's governance. (As an economic standard, the Governance and Financial Viability Standard does not apply to local authorities under the Localism Act.)
- If another statutory body (such as the Health and Safety Executive) is investigating a matter which may represent a breach of the consumer standards, we will take into account the actions of that organisation when deciding whether to exercise our own regulatory powers.

³ <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-regulator-of-social-housing-and-the-housing-ombudsman>

As regulator, we have a duty to be transparent and we are keen to share the lessons from our work with the sector. In 2016/17, we published seven regulatory notices where registered providers had failed to meet a consumer standard and risked or caused serious detriment. In each case, we found that the registered provider had failed to meet the requirements of the Home Standard. As in previous years, the majority of these referrals related to compliance with statutory health and safety requirements (including gas safety or fire safety requirements). However, we also found serious detriment where a registered provider had failed to meet our Home Standard requirements around the quality of accommodation, and where a different registered provider had failed to provide an effective repairs and maintenance service for tenants.

This report reminds readers of the details of those seven cases as was published in our regulatory notices, as well as a number of anonymised cases where we have not found a breach of the consumer standards and serious detriment. These cases demonstrate how the regulator considers a number of factors in reaching our decisions, including the number of tenants affected, the seriousness and duration of the failure.

1. Introduction

This report provides a summary of the regulator's consumer regulation work for the year 2016/17. It is intended to share the key lessons from our casework with the sector. It also explains our approach to consumer regulation and how we have applied the serious detriment test, which is set out in legislation, in our work.

As regulator of social housing, our principal focus 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. 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.

To achieve this objective, the regulator sets consumer standards. There are four consumer standards:

- Home
- Neighbourhood & Community
- Tenancy
- Tenant Involvement & Empowerment

The standards are set out on the [Regulatory Standards page](#)⁴ of our website.

Boards and councillors who govern registered providers are responsible for ensuring that their organisations meet the consumer standards.

Since April 2012, our role in relation to consumer regulation is to investigate where we have 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. We regulate the consumer standards reactively which means that we do not collect and analyse performance information relating to consumer standards and therefore we do not provide proactive assurance of compliance with the standards. However, that does not lessen the obligation to comply. Registered providers should have systems and processes in place to provide the board and councillors with assurance that the standards are being met.

⁴ <https://www.gov.uk/government/publications/regulatory-standards>

The legislation which governs our work requires the regulator to exercise our functions in a way that is proportionate, consistent, transparent and accountable, and in a way that minimises interference. For the consumer standards, that means we must first reach a judgement as to whether a registered provider has failed to meet a consumer standard. A finding of a failure to meet a standard may arise from an individual event, but it is a judgement of a systemic failure at a corporate level.

In order to use our powers, where we judge that a registered provider has failed to meet a consumer standard, the legislation also requires that we must have grounds to suspect that the failure has, or could, result in serious detriment to the registered provider's tenants or potential tenants.

It is clear from the legislation that the threshold for regulatory intervention in relation to breaches of the consumer standards is intended to be significantly higher than that of the economic standards. A failure to meet the consumer standards does not, in itself, automatically lead to a judgement of serious detriment. As set out in our publication [Regulating the Standards](#), we consider that the meaning of serious detriment is where there is risk of, or actual, serious harm to tenants. In reaching this judgement, we consider the particular circumstances of each case. There are no thresholds or trigger points beyond which we would automatically conclude that there had been, or was a risk of, serious harm. Instead, we 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 the issues.

The serious detriment test is not an end in itself. It is the route we follow to determine whether we have the remit to deal with a consumer issue. Where the serious detriment test has been met, enforcement powers can be used if the regulator judges that is appropriate. The regulator's response depends on the facts of the case, based on our evaluation of harm or potential harm, and an assessment of the registered provider's capability to deal with the issue. In responding to these matters, the regulator must be proportionate and the response must be commensurate with the materiality of the breach by the registered provider.

Our handling of individual referrals

Our consumer regulation process consists of up to three stages. First, we carry out an initial review to see whether the matter falls within our remit, is covered by our standards and could potentially represent a breach (we call this 'stage 1').

If so, then secondly, we carry out a more detailed consideration by our Consumer Regulation Panel to determine whether there is a potential breach which has or could cause serious harm (we call this 'stage 2').

Thirdly, where we decide that further information is needed before reaching a view on whether the standards have been breached and the serious detriment test met, we will seek further information (usually from the registered provider or the person making the referral); we call this a 'stage 3 investigation'. Further detail about this is set out in the annex.

As regulator, we do not have a role in resolving individual complaints about registered providers and we are unable to mediate in disputes between tenants and their landlords. A resident with a complaint about their landlord should raise this with their landlord in the first instance. Registered providers have a responsibility to respond and deal with complaints about their services fairly and effectively.

The role of the Housing Ombudsman is to resolve disputes and to encourage the resolution of disputes by others. The Housing Ombudsman Service works with landlords and tenants to support the local resolution of disputes through the landlord's complaints procedures. If a complaint is not resolved via the registered provider's complaints procedure, the resident may contact a Designated Person such as an MP, a local authority councillor or a designated tenants' panel to help with the resolution of the complaint. The Designated Person may help resolve the complaint or may refer the case to the Housing Ombudsman. A tenant can also escalate their complaint to the Housing Ombudsman directly. Information about the Housing Ombudsman is available on their [website](http://www.housing-ombudsman.org.uk/)⁵.

⁵ <http://www.housing-ombudsman.org.uk/>

2. Consumer regulation and governance

Where there has been a failure by a private registered provider (as opposed to a local authority) to meet the consumer standards and the serious detriment test has been met, we will consider whether that failure has any implications for our view of the registered provider's governance.

The threshold set in legislation for regulatory intervention for a breach of the consumer standards is intended to be significantly higher than that of the economic standards. Nevertheless, a finding of a breach of the consumer standards and serious detriment potentially raises questions about the effectiveness of a registered provider's governance arrangements. For that reason, where we find that there has been a breach of a consumer standard in a private registered provider, and that that breach has resulted in, or risked, serious harm, we will then go on to consider the implications for our existing assessment of the organisation's compliance with the governance element of the Governance and Financial Viability Standard. The decision on governance is a separate consideration and there is no 'double jeopardy' whereby a breach of the consumer standards automatically results in a breach of the regulator's governance requirements.

Any evaluation of compliance with the governance element of the Governance and Financial Viability Standard will look at the whole organisation and reach a balanced conclusion. Our consideration of this matter is likely to include:

- the effectiveness of the registered provider's risk management and internal controls
- the effectiveness of the board's oversight, for example, whether the board was receiving adequate and timely information and challenging the executive on performance
- the registered provider's transparency and the timeliness of communication with the regulator
- any actions taken to mitigate the failure
- whether the failure raises any wider systemic concerns
- how the board has assured itself that the failings will be addressed.

Case study 1 sets out how the regulator considers compliance with the Governance and Financial Viability Standard following a decision that there has been a breach of a consumer standard and serious detriment.

Case study 1 – Consumer regulation and governance

St Vincent's Housing Association notified the regulator of a potential breach of fire safety legislation. It said that an internal audit had identified that St Vincent's had failed to implement a large number of very high and high priority actions arising from fire risk assessments. St Vincent's said that tenants had been put at risk from the failure to complete the actions but that there had been no injuries as a result. St Vincent's said that the issue appeared to have occurred due to performance and reporting issues, and it began work to complete the outstanding fire risk actions.

The regulator noted that an internal audit by St Vincent's had identified the issue, and that it had promptly reported this matter to the regulator. However, the regulator concluded that the failure to implement a large number of very high and high priority actions for a significant period of time represented a failure to comply with the Home Standard, and that tenants had been at risk of serious harm as a result.

Following that decision, the regulator went on to consider the implications for St Vincent's governance grading. Our investigation into St Vincent's governance found that although St Vincent's remained compliant with our governance requirements, it needed to improve some aspects of its governance to support continued compliance. We concluded that there had been a failure of operational internal controls in this case. We noted that St Vincent's had been open and transparent with the regulator and that the issue was reported to the regulator in a timely manner. We also noted that St Vincent's had acted swiftly once it had been alerted to the problems. We downgraded our assessment of compliance with the governance element of the Governance and Financial Viability Standard from G1 to G2 and we published a regulatory judgement setting out our view.

Since then, we have worked with St Vincent's as it sought to strengthen its operational control arrangements. St Vincent's confirmed that all of the outstanding fire safety actions had been completed. St Vincent's also made changes to its fire safety framework to ensure that actions arising from fire risk assessments were prioritised, and that there was adequate management, supervision and monitoring in place to confirm that actions were completed as required. St Vincent's then carried out a further internal audit which provided 'substantial assurance' with regard to the internal controls in operation in this area. Noting the assurance from St Vincent's that the processes for ensuring adherence to health and safety legislation were in place, and that the board now had appropriate oversight of this issue, we subsequently upgraded St Vincent's governance grading from G2 to G1.

The rest of this publication sets out details of the cases we have considered under each of the consumer standards. It includes further examples of cases where we have found a breach of the consumer standards and serious detriment, as well as anonymised case studies where we have found no breach of the standards.

3a. The Home Standard – repairs and maintenance

The Home Standard requires registered providers to provide a cost-effective repairs and maintenance service that responds to the needs of tenants, and has the objective of completing repairs and improvements right first time. In 2016/17 we found that Circle Anglia (Circle) had breached this Standard and, in doing so, had risked serious harm to tenants.

The regulator has previously only made one other finding of a breach and serious detriment in relation to performance of a registered provider's repairs and maintenance service. This was in 2015 where we again found that Circle had failed to meet the Standard. Although such findings are rare, we considered this matter in line with our usual processes, taking into account the materiality of the case, noting the seriousness of the issues, the number of tenants potentially affected and the duration of the failure. The case study below sets out a brief summary of our previous engagement with Circle, and the approach we took in this case.

Case study 2 – Repairs and maintenance

In February 2015 the regulator published a regulatory notice in relation to Circle's repairs and maintenance service. At the time we noted that there were chronic and long-standing difficulties in the delivery of the repairs service to tenants and we noted that less than 20% of urgent emergency repairs had been completed on time. In line with our usual approach, we went on to consider the implications for Circle's governance and in April 2015, Circle's governance was downgraded from G1 to G3. In response Circle developed, and the regulator accepted, a voluntary undertaking which demonstrated that the issues identified were being addressed. We worked with Circle as it sought to fulfil the voluntary undertaking. In early 2016, Circle gave the regulator evidence which provided assurance that the performance of its emergency and urgent repairs service had improved and was then at an adequate level. Having considered the evidence and assurance provided by Circle, the regulatory notice was removed and Circle's governance was then upgraded to G2 which meant that Circle was compliant with our governance requirements but that it needed to improve some aspects of governance to support continued compliance.

After that, from April 2016 onwards, the regulator began to receive an increasing number of complaints about the repairs and maintenance service provided to Circle tenants. We also received new referrals about the performance of Circle's customer contact systems and complaints in relation to those systems, and information relating to Circle's general statutory compliance. Unlike our earlier engagement which had focused on Circle's urgent and emergency repairs service, the referrals we had received since April 2016 related to a broad range of issues including: the performance of the heating and hot water repairs service, general repairs, difficulties contacting Circle to raise concerns and a very large number of complaints outstanding for long periods of time. Taking all of this information into account, the regulator concluded that Circle's repairs service had failed to respond to the needs of tenants and that Circle had failed to meet the requirements of the Home Standard. In light of the broad nature of the issues, the number of tenants affected (including potentially vulnerable tenants) and the duration of the problems, the regulator concluded that this risked serious harm to Circle's tenants.

In December 2016, Circle merged with Affinity Sutton to form the Clarion Group. Clarion is now responsible for addressing the issues we identified. A regulatory notice was published setting out our views on Circle's compliance, and explaining that Clarion was now responsible for resolving the issues set out in that notice. Clarion has acknowledged the issues and has put in place resources and structures to allow them to improve services. Clarion has developed an improvement plan which addresses issues relating to repairs and maintenance, statutory compliance, call handling and complaints handling. It is working through this action plan and we continue to liaise closely with Clarion as this work continues.

The case study above sets out how the regulator will respond where there is evidence of a systemic failure in relation to a repairs and maintenance service. However, the regulator is mindful of the requirement to be proportionate; so not every failure to resolve repairs and maintenance issues necessarily represents a breach of the Home Standard.

More often, the regulator considers these to be individual complaints which are best addressed through the registered provider's complaints system and, if appropriate, the Housing Ombudsman. The case study below demonstrates how the regulator is proportionate in reaching a decision about whether there has been a breach of the Standard.

Case study 3 – No breach of the Home Standard

A tenant contacted us to say that a registered provider had failed to deal with repairs issues within their home. They told us that there was damp and mould in the property and that their heating had not been working for some time.

We considered whether this matter represented a breach of the Home Standard requirement to provide a cost-effective repairs and maintenance service. In doing so, we made enquiries of the registered provider who told us that they had been working with the tenant to try and resolve the issues of damp and mould in their home. The registered provider told us that an inspector had visited the property and concluded that the mould was due to poor ventilation and limited use of the heating system. A heating officer had also visited the property and had found that the heating was working appropriately. We sought assurance about the overall performance of the registered provider's repairs and maintenance service and it provided details which showed high levels of customer satisfaction and a high proportion of repairs completed first time.

In reaching our decision, we noted the registered provider's assurance that the heating system in this property was working, and that the registered provider had responded promptly to reports of repairs issues. We also noted that the information did not indicate a systemic problem with the provider's overall repairs and maintenance service. We concluded that the Home Standard had not been breached in this case.

3b. The Home Standard – meeting statutory requirements

As well as setting requirements around repairs and maintenance and the quality of accommodation, the Home Standard requires registered providers to meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes (including gas safety, fire safety, electrical safety, asbestos and Legionella).

In 2016/17, the regulator published three regulatory notices in relation to gas safety, and two regulatory notices in relation to fire safety. The case studies below set out our approach to each of these issues and our conclusions. These cases highlight the importance of having strong asset management systems in place, maintaining an accurate record of stock profiles and knowing what statutory checks are required and by when. Failures occurred where systems were not fit for purpose, or where boards had failed to sufficiently challenge the information that they were presented with and the basis for their assurance of compliance. Failures also occurred when there was insufficient oversight of those responsible for implementing actions around statutory compliance, or responsibilities were not sufficiently well understood by boards.

Gas safety

The *Gas Safety (Installation and Use) Regulations 1998* clearly state that gas safety checks should be carried out annually by a Gas Safe registered engineer. The legislative requirements in respect of gas safety are strict for good reason given the potential danger to tenants and those who live nearby.

In considering whether there has been a breach of the Home Standard, we take into account the materiality of the issues including: the reasons for the failure to have a valid certificate in place, the length of time without a certificate and how many tenants have been affected.

Case studies 4 and 5 show how we balance these factors in reaching our view. In case study 4, there had been a large number of properties without a certificate for a relatively short duration; and in case study 5, a small number of properties had been without certificates for a significant period of time. The risk of harm arising from faulty gas appliances is well known and, in these cases, having concluded that there had been a breach of the Home Standard, we concluded that the serious detriment test had been met.

Case study 4 – Gas safety

As part of our planned regulatory engagement with Luminus Group Limited through an In-Depth Assessment, the regulator learned that an internal audit had identified that 25% of a small sample of properties did not have a valid gas safety certificate. Following a further assessment, it was identified that more than one thousand properties had not had a valid gas safety certificate for at least some part of the previous two years. Most of the certificates had been overdue for a short period.

We concluded that the issue had arisen as a result of inadequate policies and systems which had resulted in failure to schedule inspections in a timely manner, and then problems gaining access to properties. We also noted that this matter had not been reported to the regulator.

Although the gas safety inspections were typically overdue for a relatively short period of time, the number of homes that had been without valid certificates was extremely high. We concluded that Luminus had failed to meet the Home Standard and that tenants had been exposed to a risk of serious harm as a result. A regulatory notice was issued.

As a result of evidence gathered during the In-Depth Assessment, including the information relating to gas safety, we downgraded our assessment of Luminus' governance from G1 to G3. We are working closely with Luminus as it seeks to develop a comprehensive plan to address these issues.

Case study 5 – Gas safety

The regulator received a referral from Paradigm Housing Group which said that following a data-reconciliation exercise, it had identified a relatively low number of properties without valid gas safety certificates. Most of those properties had been without certificates for a considerable period of time and some for a period of years. Paradigm provided assurance that once it had uncovered the issue, the outstanding gas safety checks had been completed. The numbers involved in this case were relatively low but we noted that the certificates had been overdue for a significant period of time, and we concluded that this had exposed a number of tenants to potentially serious harm for lengthy periods.

We concluded that Paradigm had breached the Home Standard requirement to meet all statutory health and safety requirements, and that there had been a risk of serious harm as a result. A regulatory notice was issued. Following discovery of this issue, Paradigm promptly carried out a review and concluded that the issue had arisen as a result of inaccurate data about the presence of gas appliances in its properties. Paradigm also developed and implemented an action plan to ensure that the situation did not occur again.

Issues of statutory compliance also arise when boards do not sufficiently understand their responsibilities in relation to health and safety, and so fail to gain appropriate assurance of compliance. An example of that is set out in Case study 6.

Case study 6 – Understanding statutory requirements

As part of our planned regulatory engagement with Manningham Housing Association Limited through an In-Depth Assessment, the regulator learned that a year earlier, the Health and Safety Executive had issued a notice of contravention setting out its views that Manningham had breached health and safety legislation.

The Health and Safety Executive had found that Manningham did not have a robust system in place to maintain gas fittings and flues and concluded that this was a breach of the *Gas Safety (Installation and Use) Regulations 1998*.

Although we noted that Manningham had since carried out a full review of its policy, and had sought external advice which confirmed that it was now compliant with the regulations, we also noted that Manningham did not inform the regulator of the Health and Safety Executive's judgement. In this case, the regulator noted that although Manningham had completed the required annual gas safety checks, it had failed to carry out servicing to ensure fittings and flues were safely maintained. Manningham's gas safety processes did not require a servicing element and so this failure to meet the legislative requirements applied across all of Manningham's stock. We concluded that this represented a breach of the Home Standard and that tenants were exposed to risk of serious harm. A regulatory notice was issued.

As a result of evidence gathered during the In-Depth Assessment, including the information relating to gas safety and the lack of transparency with the regulator, we downgraded our assessment of Manningham's governance from G1 to G3. We are working closely with Manningham as it seeks to address these issues. Manningham has developed an action plan in which it commits to strengthening the board to ensure that it has appropriate skills and experience and to improving awareness of Manningham's health and safety obligations. We will be working closely with Manningham as it delivers the commitments in this plan.

Fire safety

In 2015/16 the regulator published its first regulatory notice for a breach of fire safety legislation. In 2016/17, two further regulatory notices were published. The *Regulatory Reform (Fire Safety) Order 2005* requires registered providers to identify and assess the risk of fire in certain properties including common areas of flats, maisonettes, houses in multiple occupation and sheltered housing. If it identifies hazards which would put people at risk, registered providers have a duty to take precautions to prevent the risk occurring.

Case study 1 above shows how we considered one such referral in relation to fire safety. Case study 7 sets out the second example.

Case study 7 – Fire safety

In March 2016, the regulator published a regulatory judgement which downgraded Tower Hamlets Community Housing's (THCH) governance grading to G3. We concluded that THCH's governance arrangements had failed to deliver an effective risk management and internal controls framework. In response, THCH developed an action plan intended to address the regulator's governance concerns.

As part of THCH's actions to address the weaknesses in governance, it identified a further weakness relating to fire safety and notified the regulator. THCH said that it had failed to implement a large number of very high and high risk actions arising from fire risk assessments. THCH told the regulator that there were several hundred actions outstanding, relating to hundreds of properties, and that in some cases the actions had been outstanding for more than two years.

THCH accepted that tenants had been put at risk but said that there had been no injuries as a result. THCH told the regulator that it was progressing work on the outstanding actions, and that a health and safety consultant had been engaged to help THCH strengthen its approach to health and safety. The regulator noted that THCH's own systems had identified the issue, and that it had reported this matter to the regulator. However, the regulator concluded that the failure to implement a large number of very high and high priority actions for a significant period of time represented a breach of the Home Standard, and that tenants had been at risk of serious harm as a result. A regulatory notice was issued.

In response to the regulatory notice, THCH quickly amended their action plan to address the issues relating to fire safety. THCH continues to work closely with the regulator as it delivers the commitments in this plan in order to return to compliance.

3c. The Home Standard – quality of accommodation

This year, for the first time, the regulator found a breach of part 1.1 of the Home Standard as a result of a breach of the requirement to provide accommodation of an appropriate quality.

Part 1.1(a) of the Home Standard requires registered providers to meet the requirements of the government's Decent Homes Standard. In turn, the Decent Homes Standard requires homes to be free of category 1 hazards. The case study below sets out the detail of the case.

Case study 8 – Quality of accommodation

Expectations (UK) provides around 300 units of hostel / sheltered accommodation in the Birmingham area. The regulator received information from the Charity Commission which suggested that Expectations had failed to ensure that its properties met the requirements of the Home Standard. There were concerns about non-compliance with the government's Decent Homes Standard and concerns about compliance with fire safety requirements. Expectations had explained that it leased properties from head landlords and that it had had difficulty securing appropriate repairs in these properties. It also stated that as it became aware of problems with properties, it had taken individual units out of use to ensure clients were not at risk.

Notwithstanding the situation described by Expectations, the regulator considered that it was Expectations' responsibility to ensure compliance with the Home Standard, and to have arrangements in place that delivered compliance for its tenants. Taking into account the seriousness of the issues, the number of tenants potentially affected and the lack of assurance provided by Expectations, the regulator concluded that Expectations had not complied with the Home Standard. The regulator noted that Expectations had taken units out of use once problems were discovered but, until then, the units were tenanted. The regulator considered that Expectations had not effectively prevented tenants (including potentially vulnerable tenants) from being put at risk by poor conditions before it was made aware of specific problems. The regulator therefore concluded that Expectations had failed to meet the Home Standard and risked serious harm to tenants. A regulatory notice was published.

4. The Neighbourhood and Community Standard

Although all of the regulatory notices we have published relate to breaches of the Home Standard, the legislation clearly envisages that serious harm can arise from breaches of the other consumer standards. We do not produce a definitive list of what might constitute serious harm as such a list would inevitably fail to cover every eventuality. However, as set out in [Regulating the Standards](#), we note that serious harm could potentially include:

- tenants' health and safety
- loss of homes
- unlawful discrimination
- loss of legal rights
- financial loss

Antisocial behaviour, by its nature, has the potential to negatively impact on tenants and that impact could amount to serious harm. During the year, the regulator received a number of referrals about how registered providers dealt with issues relating to antisocial behaviour. The Neighbourhood and Community Standard sets expectations about how registered providers should deal with issues relating to antisocial behaviour. The expectations are quite specific: registered providers are required to work in partnership with other agencies to prevent and tackle antisocial behaviour and are also required to publish a policy setting out how they will do that. The requirements imply, in line with the regulator's general approach, that such issues are best dealt with at a local level. The example below shows our consideration of one such referral.

Case study 9 – Antisocial behaviour

A tenant contacted the regulator and said that their landlord had failed to deal with an issue of antisocial behaviour. The tenant said that they had experienced noise disturbances, threatening behaviour and abuse from their neighbour, but that the registered provider had failed to take action.

We considered this matter under the Neighbourhood and Community Standard which says that registered providers must work in partnership with other agencies to prevent and tackle antisocial behaviour. We sought information from the registered provider who told us that it had worked closely with the police and the local authority to try and resolve this matter. It said it had installed sound monitoring equipment on a number of occasions, had employed a professional witness service and had offered mediation to try and resolve matters.

The Neighbourhood and Community Standard does not require registered providers to resolve all instances of antisocial behaviour, but to work in partnership with other agencies to seek to do so. Although the registered provider's actions had not brought an end to the antisocial behaviour experienced by the tenant in this case, we could see evidence that it had attempted to address the issue and had worked with appropriate partners (including the police and the local authority) to do so. On that basis, we concluded that the registered provider had not breached the Neighbourhood and Community Standard.

The Neighbourhood and Community Standard also envisages that risks to tenants can arise outside of the home, in the neighbourhoods where tenants live. The Standard sets requirements of registered providers to ensure that neighbourhoods are kept clean and safe.

Case study 10 – Keeping areas clean and safe

We received a referral from a tenant who complained about the cleanliness of the estate where they lived. The tenant told us that the registered provider did not maintain the grounds in the area, that there was litter present and that the bin store was not clean or secure.

We considered this matter under the Neighbourhood and Community Standard which requires registered providers to ensure that neighbourhoods are kept clean and safe. In this case, although we acknowledged the concerns raised by the tenant, we considered this to be an individual referral. We had not received any other information suggesting this registered provider was failing to keep its neighbourhoods clean or safe. Also, the referral did not indicate that tenants were at risk of serious harm as a result. We concluded that it was not proportionate to find a breach of the Neighbourhood and Community Standard in this case. We directed the tenant to the registered provider's complaints process and to the Housing Ombudsman.

5. The Tenancy Standard

Local authorities are subject to the regulator's consumer standards, but not subject to its 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; it does not apply to local authorities. As a result, the regulator considers relatively few local authority cases. However, when we receive a referral relating to a local authority, we will consider this in the same way as we consider referrals relating to private registered providers. The example below shows how we considered a referral about how a local authority was allocating social housing properties.

Case study 11 – Allocations

The tenant of a local authority contacted the regulator and said that they had been waiting to be rehoused for a considerable period of time. The tenant explained that they believed their medical needs made their current home unsuitable and that they needed to move to more suitable property. The tenant explained that they had applied for a large number of properties but had not yet been rehoused.

We considered this matter under the Tenancy Standard which says that registered providers must let their homes in a fair and transparent way, and that they should take into account the needs of tenants and potential tenants. It is for registered providers to decide how they allocate their properties, but the Tenancy Standard sets out the general principles they should follow.

We sought information from the local authority which told us that it had received an application for rehousing from the tenant a number of years ago. At the time, the tenant had been given a low priority to move, but the local authority had kept that under review whenever it received new information about the tenant's medical needs. The local authority told us that following new information received recently, the tenant had been given a high priority for rehousing. It said that the tenant had applied for a number of properties but that the applications had been rejected either because the property did not meet the tenants' needs, or because there were other applicants with a higher priority.

The information we received suggested that the local authority had a fair and transparent process in place for allocating its properties. We noted that the tenant's needs had been assessed and that the local authority had reassessed the tenant's priority for moving whenever it received new information. Although we acknowledged that the tenant had been waiting some time to be rehoused, we did not see evidence of a breach of the Tenancy Standard.

The Tenancy Standard also sets requirements that registered providers allow their tenants opportunities to exchange their home with another tenant. Over the year, the regulator received a number of referrals raising concerns about how mutual exchanges had been carried out. An example of such a case is set out below.

Case study 12 – Mutual exchange

We received a referral from a tenant of a large housing provider in relation to the provider's handling of a mutual exchange. The tenant told us that their application had exceeded the prescribed 42 day period, and that the registered provider was withholding consent to the exchange.

We considered this matter under the Tenancy Standard which requires registered providers to allow their tenants opportunities to exchange their home with another tenant. We made enquiries of the registered provider and it told us that the mutual exchange was progressing but had been slightly delayed. It explained that the delay was due to repairs which were being completed before the exchange took place and it confirmed that the exchange would go ahead once the repairs had been completed.

From the information provided, we saw evidence that the registered provider had given the tenant the opportunity to complete a mutual exchange as the Tenancy Standard requires. Although the registered provider had not met the prescribed 42 day requirement in this case, this was a single incident and there was no suggestion of any wider problems with the mutual exchange opportunities offered by the registered provider. For those reasons, we concluded that it was not proportionate to find a breach of the Tenancy Standard.

6. The Tenant Involvement and Empowerment Standard

The Tenant Involvement and Empowerment Standard sets out how registered providers should engage and interact with their tenants. It sets requirements around communication, complaints, consultation and understanding the diverse needs of tenants.

Throughout the year, the regulator received a number of referrals raising concerns about how registered providers had responded to the needs of individual tenants.

Case study 13 – Making adjustments

A tenant contacted the regulator explaining that they were disabled and that their property was not suitably adapted for their needs. We considered this under the Tenant Involvement and Empowerment Standard which requires registered providers to demonstrate that they understand their tenants' diverse needs.

In response to our enquiries, the registered provider told us that before the tenant moved into the property, there had been a joint inspection with the tenant, a social worker, an occupational therapist and an adaptations officer, and that a schedule of required works was drawn up. The registered provider told us that it had completed adaptations in the kitchen and bathroom, as well as altering the door entry system. It had also revisited the property and carried out further adaptations when the tenant's needs changed. We noted that the registered provider had worked with the tenant, as well as with relevant professionals, to understand the tenants' needs. We saw evidence that the registered provider had taken advice from appropriate professionals and completed the recommended adaptations in the property. For those reasons, we concluded that the Tenant Involvement and Empowerment Standard had not been breached in this case.

Often referrals to the regulator fall under more than one Standard. For example, a referral may relate to an issue of repair or antisocial behaviour, and then also raise concerns about how a registered provider has responded to the individual's complaints about this matter. Where we receive a referral relating to complaints, we consider this under the Tenant Involvement and Empowerment Standard. The case study below shows how we consider these types of cases.

Case study 14 – Complaints

We were contacted by a tenant of a large registered provider who raised concerns about the suitability of their accommodation. In relation to complaints, the tenant told us that they had raised their concerns with the registered provider but that the registered provider had not handled their complaints properly and was delaying the complaints process. The tenant said that the complaint had reached the third stage of the registered provider's complaints process but that no date had been scheduled for the complaints review meeting.

We considered the concern about the registered provider's complaints handling under the Tenant Involvement and Empowerment Standard. We made enquiries of the registered provider and asked for details of its response to this complaint. In response to our enquiries, the registered provider gave us a timeline of its handling of the tenant's complaint.

The information showed that the complaint was progressing through the complaints process and there was no evidence of a delay by the registered provider. There has been some difficulty arranging the complaints review panel but that was because the tenant was unable to attend on the suggested date. We noted that a date for the review panel had since been agreed and was due to take place shortly.

The Tenant Involvement and Empowerment Standard requires registered providers to have an approach to complaints which is clear, simple and accessible and which aims to resolve complaints promptly, politely and fairly. In this case, we saw evidence that the tenant had been able to access the complaints process and had been able to follow that process through to stage 3. We also saw evidence that the registered provider had attempted to deal with the complaint in a timely manner, and that there were no undue delays in the process. Taking that information into account, we concluded that this did not represent a breach of the Tenant Involvement and Empowerment Standard. In response, we explained to the tenant that it was not our role to resolve individual complaints such as this. However, we suggested that the tenant may wish to refer their complaint to the Housing Ombudsman Service and we provided the relevant contact details.

Annex

Analysis of cases

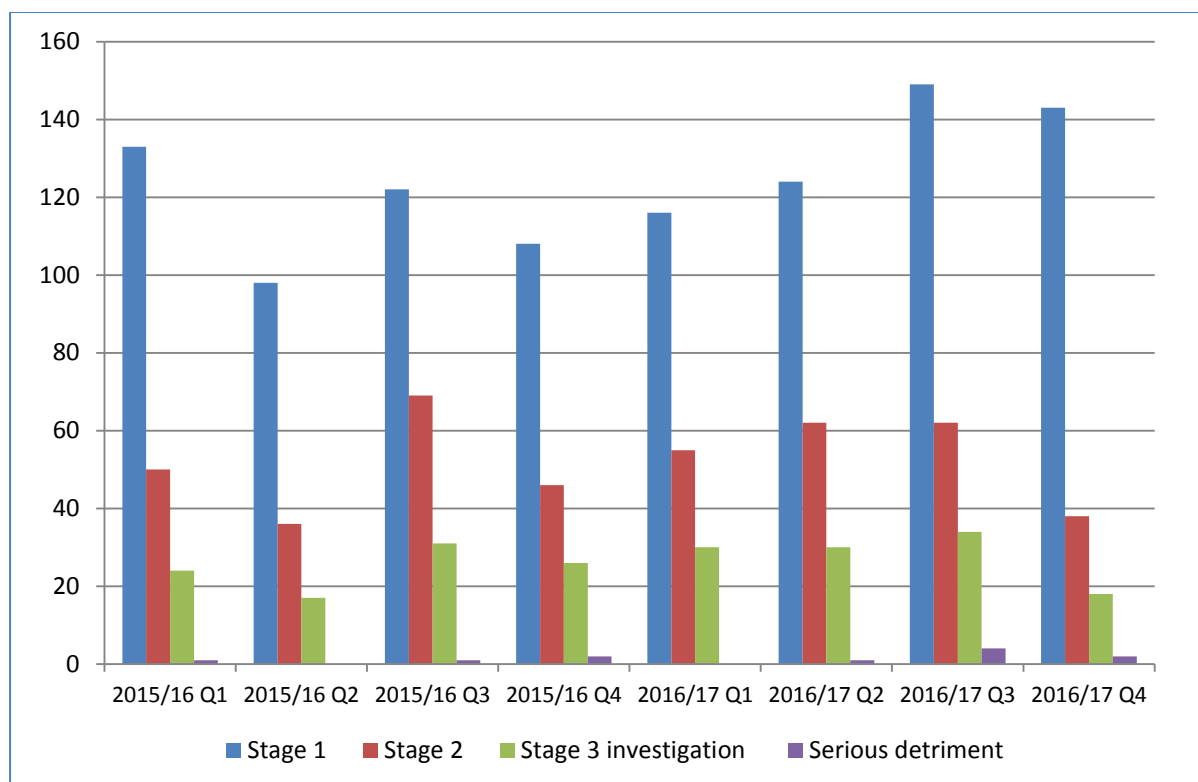
Our consumer regulation process comprises three stages:

- Stage 1 – the Referrals and Regulatory Enquiries (RRE) team collates all enquiries referred to the regulator. The RRE team is responsible for determining whether the issues raised fall within the regulator’s remit, and if there appears to have been a breach (or a risk of a breach) of the consumer standards. If so, the RRE team refers the case to the Consumer Regulation Panel.
- Stage 2 – the Consumer Regulation Panel considers the detail of each case to determine whether there has been a breach of the standards and, if so, whether there has been harm, or potential harm, to tenants. It considers two questions:
 1. if the issues raised were true, is it likely that there has been, or could be, a breach of a consumer standard?
 2. if the issues raised were true, would there be any impact on tenants which would cause serious actual harm or serious potential harm?
- Stage 3 investigation – if the Consumer Regulation Panel determines that a case requires more work to determine whether the standards have been breached or if there is evidence to suggest potential serious detriment, we will carry out an investigation.

The table below shows the total number of consumer regulation referrals handled by the regulator by quarter and how many of those went on the subsequent stages of our process. The 2015/16 figures are shown in brackets.

	Q1	Q2	Q3	Q4	Total
Stage 1: All consumer referrals	116 (133)	124 (98)	149 (122)	143 (108)	532 (461)
Stage 2: Referred to Consumer Regulation Panel	55 (50)	62 (36)	62 (69)	38 (46)	217 (201)
Stage 3 investigation: Further investigations undertaken	30 (24)	30 (17)	34 (31)	18 (26)	112 (98)
Published findings of breach/serious detriment	0 (1)	1 (0)	4 (1)	2 (2)	7 (4)

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



A statutory referral is a referral from an authority or individual specified in the Housing and Regeneration Act 2008 (as amended). These include: the Housing Ombudsman, tenant representative bodies, MPs, a councillor of the local housing authority for the district in which the property concerned is located, the Health and Safety Executive, and fire and rescue authorities. The Consumer Regulation Panel considers all statutory referrals received. There were 19 statutory referrals in 2016/17 compared to 12 in 2015/16.

In 2016/17, we received 532 consumer referrals. Of those, 217 (41%) were passed onto the Consumer Regulation Panel, 105 (20%) have been investigated further, and we found breach and serious detriment in seven cases (1%).

There was an increase of 15% in the number of referrals relating to consumer standards in 2016/17. The proportion of cases reaching stage 2 was slightly lower in 2016/17 than in 2015/16 (41% compared with 44%). The number of cases reaching a stage 3 investigation also decreased slightly (from 21% to 20%).

The Home Standard continues to be the consumer standard which is most often cited in the cases referred to the Consumer Regulation Panel.

Cases referred to the Consumer Regulation Panel

The percentage figures are shown below.

Consumer standard	2015/16	2016/17
Home	51	48
Tenant Involvement and Empowerment	30	29
Neighbourhood and Community	11	13
Tenancy	8	9

