



Regulator of
Social Housing

Consumer Regulation Review

2017/18



Contents

Executive summary	3
Key messages	3
How we carry out our consumer regulation	6
1. Introduction	8
Consumer regulation and governance	9
How we handle referrals	10
2. The Home Standard	12
Fire safety	12
Gas safety	13
Other statutory health and safety requirements	15
3. The Tenancy Standard	17
4. The Neighbourhood and Community Standard	19
5. The Tenant Involvement and Empowerment Standard	21
Annex A – Analysis of cases	23
Referrals by stage	23
Sources of referrals	25
Cases referred to the Consumer Regulation Panel	26
Annex B – Summary of previous lessons learned	27

Executive summary

This is the Regulator's sixth annual Consumer Regulation Review and it provides a summary of our consumer regulation work in 2017/18. The report sets out our consumer regulation role, how we carry out our consumer regulation work and the key messages we wish to share with the sector.

As with last year's report, we acknowledge that the messages will be read within the context of the terrible fire at Grenfell Tower. Investigations into the cause of the fire are ongoing, and the public inquiry has begun hearing evidence. The government has also announced its plans to publish a Green Paper setting out its review of the social housing sector with government ministers holding a series of meetings to listen to the views of social housing tenants. We await the publication of the Green Paper and the conclusions of the public inquiry in due course.

Following the fire at Grenfell Tower, the regulator wrote to all registered providers. We reminded them of their responsibility to comply with health and safety obligations and the need to notify the regulator in the event of potential non-compliance. As part of our ongoing engagement we also wrote to national tenant organisations to clarify our role and our approach to consumer regulation.

Through our regular engagement, it was evident that the sector was aware of the need to manage health and safety as a key risk. Nevertheless, it is clear that events at Grenfell Tower have further focused attention on ensuring tenants are safe in their homes and compliance with statutory health and safety requirements. This is demonstrated by an increased level of additional work being carried out and assurance sought by providers on all aspects of health and safety. Our key messages for this year are intended to share wider learning from our casework which may help registered providers as they ensure they have assurance that tenants are safe in their homes.

Key messages

- Complying with health and safety obligations remains the most fundamental responsibility for governing bodies of registered providers (boards and councillors). It is essential that registered providers are able to demonstrate that they are meeting their health and safety obligations, and that tenants are not at risk in their homes.
- To achieve this, registered providers must demonstrate that they understand their statutory responsibilities (including, but not limited to, gas safety, fire safety, electrical safety, asbestos, Legionella and lift safety). If necessary, registered providers should take professional advice to ensure that they are clear about their responsibilities, whether stock is owned, managed or leased.

- Registered providers must be clear about their landlord responsibilities, both for stock that they own and stock that they manage, and they should understand what those properties need in terms of statutory checks. As a landlord, registered providers are responsible for ensuring that tenants are safe in their homes. Contracting out delivery of services does not contract out responsibility to meet the requirements of legislation or standards, and so registered providers need robust systems to give boards assurance of compliance.
- Where registered providers are the landlord of leased stock, they remain responsible for ensuring that statutory requirements are met. Where the terms of the lease require the leaseholder to carry out maintenance and statutory compliance checks, those lease arrangements must allow the registered provider to obtain assurance that health and safety requirements are met at the start of the tenancy, and then maintained thereafter.
- Compliance with statutory requirements is a necessary precondition of a registered provider's governance of health and safety risk and assurance that tenants are safe. Registered providers should do whatever is necessary beyond this to demonstrate that health and safety risks are effectively managed. This will include identifying, managing, monitoring and reporting on them in a way that ensures there is effective oversight by the governing body.
- Breaches of the consumer standards arising from a failure to meet health and safety requirements have a greater potential to meet the serious detriment test. However, our expectations are the same across all of the consumer standards and registered providers should understand that it is equally important that they comply with all regulatory requirements. We take a co-regulatory approach and regard board members and councillors as responsible for ensuring that providers' businesses are managed effectively. The regulator provides a backstop role in relation to consumer standard regulation and providers need to gain their own assurance of compliance.
- Compliance with the outcomes set out in 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. The required outcomes are what we would expect any registered provider to achieve in the ordinary course of a well-run business and not simply because they are required by the regulator. We often find that a registered provider's response to consumer matters can be indicative of the governance of the organisation and quality of management.

- Registered providers have principal responsibility for responding to complaints about their service. The Tenant Involvement and Empowerment Standard requires registered providers to have clear mechanisms in place for tenants to complain, and to respond to complaints promptly and effectively. We recognise that complaints can be complex and in some instances may be beyond a registered provider's means to resolve but getting the system and culture right on complaints handling means it is clearer where this is the genuinely the case. How registered providers respond to complaints about their service directly affects the level of trust and confidence tenants have in their landlord. The Governance and Financial Viability Standard requires registered providers to be accountable to tenants. A failure to deal with complaints effectively can impact on our view of a registered provider's governance as well as significantly damaging their reputation.
- Complaints provide valuable insight for boards and councillors about the performance of services. Governing bodies must ensure they understand the messages that tenants are giving them, and should seek to probe where those messages indicate a significant or systemic failure, and to gain assurance that such issues are rectified promptly and effectively.
- Where issues do arise, the regulator often sees systems which are poorly designed, poorly implemented, or both. Registered providers should have assurance that their systems and processes are clear and comprehensive and that key staff know how to implement these processes to achieve compliance. Some failures are relatively isolated in nature, perhaps arising as a result of an individual's actions or lack thereof. Registered providers should minimise these risks by ensuring that systems and controls in place allow issues to be identified and rectified promptly.
- Finally, where issues do arise, transparency with the regulator is essential. A failure to be transparent with the regulator is a direct concern in relation to compliance with the Governance and Financial Viability Standard, and can indicate broader governance concerns. Boards of private registered providers are required to sign off their compliance with the Governance and Financial Viability Standard, which includes the requirement to adhere to all relevant law, through a statement in their annual accounts.

How we carry out our consumer regulation

We consider all referrals and information we receive to determine whether that information indicates a failure to comply with the consumer standards which has caused, or risked, harm to tenants. Our consumer regulation role is reactive which means that we do not routinely monitor or seek assurance of compliance with the consumer standards.

The legislation which governs our work requires us to be proportionate and to minimise interference as far as possible. In considering consumer standard referrals, we focus 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 is not working effectively. In line with the legislation which governs our work, before taking regulatory action against a registered provider, we must also see evidence that the breach of the standard has caused or risked harm to tenants. We call this the serious detriment test.

As set out in our publication *Regulating the Standards*¹, we operate in a co-regulatory manner with registered providers. That means that responsibility for complying with standards lies with the governing bodies of registered providers.

Where we find a breach of the consumer standards and serious detriment, we will publish a regulatory notice. We will also consider the most appropriate means of securing sustainable and long-term improvements based on our assessment of the registered provider's willingness and ability to resolve the issue. Registered providers should take prompt action to address failings where they are identified, but if they will not, or cannot, do so, we have a range of graduated enforcement powers available. 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 because we have been able to secure the required changes through the registered provider putting in place an action plan which we agree with, and monitor delivery of.

A finding of consumer standard breach and serious detriment raises questions about the effectiveness of a provider's governance arrangements. We 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 failure to meet a consumer standard does not automatically result in a breach of our governance requirements. It may also be the case that issues are raised about the governance of a provider even where the serious detriment test has not been met. A lack of assurance on how a registered provider manages key risks (for example health and safety) at a governance level can lead to, or be a factor, in a change to our assessment of a private registered provider's regulatory gradings.

¹ <https://www.gov.uk/government/publications/regulating-the-standards>

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 in a co-regulatory manner. If a registered provider fails to be transparent with the regulator, we will take that into account as part of our consideration of a registered provider's governance. Through our programme of In Depth Assessments we get assurance about how providers are managing compliance with health and safety requirements based on the risk profile of the organisation's stock, or where we have had prior evidence that this is an area of weakness in their performance or we have wider concerns about their risk management or internal control framework.

Although they may be well-founded, many of the referrals we receive are individual complaints. We recognise that individual disputes can potentially be evidence of a systemic failure that represents a breach of the standards, and consider the facts in that context. However where it does not indicate a systemic failure which may be a breach of the consumer standards there remains an obligation on the registered provider to deal with these complaints promptly and effectively. A failure to do so can have significant implications for tenants' trust and confidence in their landlord, and the reputation of the registered provider. In cases which we consider to be individual complaints, we would explain to the individual that the correct route is to pursue the registered provider's complaints process, then speak to a Designated Person and/or the Housing Ombudsman Service.

The Housing Ombudsman seeks to resolve complaints from individuals about registered providers of social housing. It can assist complainants and registered providers to reach an earlier local resolution while the complaint is going through the registered provider's complaints procedure. It can also investigate once the complaints procedure is complete and the matter is either referred by a Designated Person, or eight weeks have passed since the complaints process ended. It deals with each complaint to find the best outcome for the individual circumstances.

If another statutory organisation (such as the Housing Ombudsman, the Health and Safety Executive and the Care Quality Commission) also has remit over the issues raised, we will signpost individual tenants to the appropriate organisation, and where appropriate, we may make a direct referral to these organisations.

As regulator, we have a duty to be transparent in our work and we are keen to share lessons from our work with the sector. In 2017/18, we published five regulatory notices where registered providers had failed to meet a consumer standard and had risked or caused serious detriment to tenants. This report reminds readers of the details of those five cases. It also includes a number of anonymised cause studies where we did not find a breach of the consumer standards and serious detriment. These cases demonstrate how the regulator considers a number of factors in reaching our decisions, and it is intended to provide valuable insight for registered providers and other stakeholders.

1. Introduction

This report provides a summary of the regulator's consumer regulation work for the year 2017/18. It sets out our approach to consumer regulation and key lessons arising from our casework that we wish to share with the sector.

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.

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 and Community
- Tenancy
- Tenant Involvement and Empowerment

The standards are available on the Regulatory Standards page² of our website.

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 we do not collect and analyse performance information relating to consumer standards. However, that does not lessen the obligation to comply. Registered providers and local authorities, including where they have contracted out their housing management, should have systems and processes in place to provide their boards and councillors with assurance that all regulatory standards (including the consumer standards) are being met.

The legislation which governs our work requires the regulator to exercise our functions in a proportionate, transparent and accountable way, and to minimise interference. For our consumer regulation role, that means that we consider whether the information we receive represents a breach of a consumer standard.

² <https://www.gov.uk/government/publications/regulatory-standards>

A finding of a failure to meet a standard may arise from an individual event, but we are proportionate in reaching that view, and it is a judgement of a systemic, corporate level failure. Further detail on our approach is set out in annex B of our publication *Regulating the Standards*³ which is available on our website.

Where we judge that a registered provider has breached a consumer standard, in order to use our powers, the legislation also requires that there must be grounds to suspect that the failure has, or could, result in serious detriment to the registered provider's tenants (or potential tenants). The legislation which governs our work sets a high threshold for regulatory intervention in relation to breaches of the consumer standards and in applying the serious detriment test – we consider this to be where there is actual, or a risk of, serious harm to tenants. In reaching that view, we would seek to balance the factors of the case including the number of tenants, the duration of the harm (or risk of harm) and the seriousness of the issue.

The serious detriment test is the route we follow to determine whether we can take regulatory action against a registered provider. The regulator's response to a breach of a consumer standard and serious detriment depends on the facts of the case, based on our judgement of harm or potential harm, and our assessment of the registered provider's ability to deal with the issue. We are proportionate in determining our regulatory response, and the response must be commensurate with the materiality of the breach by the provider.

Consumer regulation and governance

Where the regulator finds that a private registered provider (as opposed to a local authority) has failed to meet a consumer standard and that 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.

Although the threshold for regulatory intervention for a breach of the consumer standards is intended to be higher than that of the economic standards, a finding of a breach of the consumer standards raises potential questions about the effectiveness of a registered provider's governance arrangements. For that reason, where we find that a private registered provider has breached the consumer standard, we will 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.

Our consideration of governance is a separate decision, taking into account the facts of the case and what we also know about the organisation's governance from our planned regulatory engagement. Our consideration of this matter is likely to take into account:

- actions taken to mitigate the failure
- the board's assurance that the failings will be addressed
- the effectiveness of the board's oversight, for example, whether the board was receiving adequate and timely information and challenging the executive on performance

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

- whether the failure raises any wider systemic concerns
- the effectiveness of the registered provider's risk management and internal controls
- the registered provider's transparency and the timeliness of communication with the regulator.

How we handle referrals

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. However, we consider all information we receive to determine whether it provides evidence of a systemic failure which may represent a breach of a consumer standard. Our consumer regulation process comprises 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, we then 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 (called '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 our approach is set out in annex A.

We consider all information we receive from a regulatory perspective and we recognise that individual disputes between tenants and landlords can potentially be evidence of a systemic failure that represents a breach of the standards. Registered providers have a responsibility to resolve complaints about their services promptly, fairly and effectively, and a failure to do so may represent a breach of our Tenant Involvement and Empowerment Standard.

There are also well-established routes for tenants seeking to resolve an individual dispute with their landlord. In the first instance, tenants should raise their concerns with their landlord. The Housing Ombudsman can assist residents and registered providers to resolve disputes locally. 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 for investigation. A resident can also escalate their complaint to the Housing Ombudsman directly.

The Housing Ombudsman's role is to resolve disputes and to encourage the resolution of disputes by others. Information about the Housing Ombudsman is available on their website. In April 2017, we published a Memorandum of Understanding with the Housing Ombudsman⁴. That sets out the functions of each organisation and describes the arrangements for cooperation and communication between the regulator and the Ombudsman, including when we might share information.

⁴ <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-regulator-of-social-housing-and-the-housing-ombudsman>

The remainder of this report set out details of the cases we have considered under each of the consumer standards. It includes examples of where we have found a breach of the consumer standards and serious detriment, and for these case studies, we have included details of how we considered the implications for an organisation's governance. The report also includes anonymised case studies where we have not found a breach of the standards.

2. The Home Standard

The Home Standard requires registered providers to meet all applicable statutory requirements for the health and safety of the occupants in their homes (including, but not limited to gas safety, fire safety, electrical safety, asbestos, Legionella and lift safety).

Following the terrible fire at Grenfell Tower, we wrote to all registered providers to remind them of their obligation to comply with all statutory health and safety requirements. We acknowledged that registered providers' boards were already seeking assurance of compliance, but reminded registered providers of the importance of having proper oversight of all health and safety issues and to notify the regulator of any instances of non-compliance. We also reminded the sector that if registered providers were unclear on their statutory obligations, they should seek appropriate professional advice.

In 2017/18, the regulator published four regulatory notices in relation to registered providers' compliance with statutory health and safety requirements. One of those regulatory notices related to fire safety, two related to gas safety and, for the first time, one related to both electrical safety and Legionella. Below we set out the details of those cases, and the key lessons from these cases.

Fire safety

In the aftermath of the Grenfell Tower fire, we received a number of self-referrals from registered providers in relation to fire safety. Some of those referrals were from registered providers who had cladding on their blocks and these referrals set out what actions the registered provider was taking to ensure tenants were not at risk. Other referrals related compliance with the *Regulatory Reform (Fire Safety) Order 2005*. These referrals demonstrated that registered providers were taking their obligations to tenants and their statutory obligations seriously. We also saw that there was a growing focus on what good assurance looked like in relation fire safety as a key risk, and that registered providers were taking appropriate actions to ensure tenants were not at risk.

One of the fire safety referrals we received was from Central and Cecil Housing Trust (Central and Cecil). The detail of this case is set out below.

Case study 1 – compliance with fire safety requirements

Like all registered providers, Central and Cecil has a statutory duty under the *Regulatory Reform (Fire Safety) Order 2005* to regularly assess the risk of fire in properties where it has responsibility for maintenance, and to take precautions where risks are identified.

In July 2017 Central and Cecil made a self-referral to the regulator in relation to fire safety. The organisation told the regulator that a number of its blocks did not have an up-to-date fire risk assessment, and that some had been overdue for a number of years.

The regulator considered that Central and Cecil's failure to regularly review its fire risk assessments in line with the recommended review dates, and on occasions for the reviews to be overdue for a significant period of time, to be a breach of the Home Standard. Central and Cecil's view was that the issue had arisen because it had a number of different systems in place to manage fire safety.

Central and Cecil accepted that there had been an unknown level of risk to tenants from fire over a long period of time, but said that there had been no injuries as a result. Central and Cecil reviewed all of its fire risk assessments and provided the regulator with assurance that all of the fire risk assessments were now up to date and that fire safety actions arising from those risk assessments would be completed in a timely manner, and prioritised according to risk.

The regulator also reconsidered our view of Central and Cecil's governance and concluded that a G2 grading remained appropriate. In reaching that decision, we noted Central and Cecil's assurance that had promptly addressed the fire safety issue, and that it had a plan to rectify the underlying causes of the failure and to prevent them from arising again.

The case above highlights the importance of registered providers having clear and joined up systems in place to manage health and safety to they are managing this key risk, and to ensure boards receive adequate assurance of compliance.

Gas safety

Alongside the fire safety regulatory notice, we published two regulatory notices in relation to gas safety. *The Gas Safety (Installation and Use) Regulations 1998* state clearly that gas safety checks should be carried out annually by a Gas Safe registered engineer. Each year, the regulator receives a number of gas safety referrals from registered providers and, in reaching our view, we take into account the materiality of the issues, the length of time the gas safety checks were overdue, and the number of tenants potentially affected. We also consider whether the registered provider has been transparent in notifying the regulator, and how it has responded to the issue once it was identified.

The two case studies below show how we balance these factors in reaching a view. In the first case study, there were a large number of properties with overdue gas safety checks, albeit for a relatively short amount of time. In contrast, the second case study shows a registered provider who identified a small number of properties with overdue gas safety certificates, but for significant periods of time.

Case study 2 – compliance with gas safety requirements

The regulator received information which showed that a number of Creative Support Limited's gas fittings had not had a valid gas safety certificate for at least some time over the previous year. Most of the certificates had been overdue for a relatively short period of time, but they represented a significant proportion of Creative Support's stock.

We concluded that the issue had arisen as a result of ineffective systems which had caused a failure to schedule and book inspections in a timely manner, and in sufficient time to allow Creative Support to comply with its statutory obligations. We also noted Creative Support did not inform 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 significant. We concluded that Creative Support 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.

In response to this matter, Creative Support reviewed its gas safety policies, introduced additional control measures and enhanced report to its board.

As Creative Support is a small provider of social housing, the regulator has not published a governance grading for this registered provider. However, in line with our published approach, the regulator considered whether this gas safety issue indicated a wider failure of Creative Support's governance. In doing so, we sought to understand Creative Support's statutory compliance across other health and safety areas and received assurance of compliance. Taking that information into account, and taking into account Creative Support's response to the gas safety issue, we were satisfied that a non-compliant assessment of governance was not proportionate in this case.

Case study 3 – compliance with gas safety requirements

The regulator received a referral from Vivid Housing Limited (Vivid) which said that following the merger of First Wessex and Sentinel Housing Association, in the process of integrating the two systems, 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. Vivid 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 Vivid had breached the Home Standard requirement and that there had been a risk of serious harm as a result. A regulatory notice was issued.

Following discovery of this issue, Vivid initiated a review which established that the issue had arisen due to inaccurate data about the presence of gas appliances in some of its properties.

Vivid developed and is implementing an action plan to rectify the underlying causes of the failure and to prevent a similar issue from arising again. We considered the implications of this matter for our published view of Vivid's governance. Taking into account Vivid's self-identification of the issue and the actions it had taken since it was discovered, we were satisfied that a compliant G1 grading remained appropriate.

The Creative Support case study highlights the importance of having effective systems in place which allow registered providers to meet their statutory requirements, and ensuring those systems are operating as intended. It also demonstrates the importance of being transparent with the regulator when issues of non-compliance, or potential non-compliance, are identified.

The Vivid case indicates the importance of organisations having good quality data available and maintaining an accurate record of stock profiles, knowing what checks are required and by when. It also demonstrates the importance of obtaining robust assurance, and verifying that assurance wherever possible.

Other statutory health and safety requirements

In previous years, our findings of a breach of the Home Standard in relation to statutory compliance have arisen in relation to gas safety and fire safety but we have continued to highlight the importance of compliance with other aspects of health and safety. In 2017/18, for the first time, we found a breach of the standard and risk of serious detriment arising from a failure to meet Legionella and electrical safety requirements.

For both electrical safety and Legionella, legislation requires registered providers to ensure tenants are not exposed to risks to their health and safety. For electrical safety, that requirement arises from the Health and Safety at Work Act 1974, which requires registered providers to conduct their undertakings in such a way that third parties (including tenants) are not exposed to risk.

In relation to Legionella, the Control of Substances Hazardous to Health Regulations 2002 require registered providers to identify and assess the risks of exposure to Legionella and implement any necessary measures to control risk. The regulator judged that Raven had failed to meet these requirements. The detail of the case is set out below:

Case study 4 – compliance with health and safety requirements

Raven engaged with the regulator regarding two breaches of health and safety requirements: one a historic issue in relation to electrical safety, and the second in relation to water safety.

In respect of electrical safety, Raven told us that in 2015, it had identified a large number of remedial actions arising from electrical safety checks which had not been completed. Some of the actions were overdue for a number of years. The overdue actions were considered to be potentially dangerous and required urgent remedial action to remove the potential danger.

Regarding water safety, Raven identified an issue with a recently procured water testing contract which meant that a number of properties had been omitted from the water testing programme. The failure to carry out these risk assessments affected hundreds of properties and potentially affected a large number of tenants.

Taking into account the seriousness of both issues, and the durations involved, the regulator determined that it was proportionate to find a breach of the Home Standard in this case. The regulator considered the risk of serious harm to be demonstrated because of the large number of tenants potentially exposed to risks arising from unsafe electrical installations, and an unknown risk of danger from Legionella. A regulatory notice was published.

Following the referral, Raven provided assurance that all of the overdue electrical safety actions had been addressed and that all of its properties had been included in the water testing programme. In line with our usual approach, the regulator also considered implications for Raven's governance and concluded that its current G1 grade remained appropriate. In reaching that view, the regulator was assured that Raven's new leadership had undertaken a comprehensive programme to rectify the underlying causes of these failures and to prevent them from arising again. Improvements were made to Raven's governance and risk management framework, and the board was then able to provide assurance of compliance across all aspects of health and safety legislation.

The Raven case demonstrates the importance of registered providers understanding all aspects of health and safety where tenants might be at risk rather than focusing on a narrow range of requirements.

The case demonstrates that risks to tenants can arise in a range of ways and it is important that registered providers clearly understand their responsibilities in this area. Registered providers should seek appropriate professional advice in the event that they are unclear on their statutory obligations.

3. The Tenancy Standard

In previous years all of the regulatory notices we have published relate to breaches of the Home Standard, but the legislation clearly envisages that serious harm can arise from breaches of the other consumer standards. This year, for the first time, we found a breach of the Tenancy Standard in relation to a number of tenants who had been evicted without sufficient notice. The case study below sets out the detail of the case.

Case study 5 – Meeting statutory tenancy requirements

The regulator received a referral from WM Housing Group Limited (WM Housing) that it had identified a breach of the Tenancy Standard in one of its temporary accommodation schemes. WM Housing told us that since the scheme opened in 2015, a number of individuals with protected licences were not given sufficient notice as required by the Protection from Eviction Act 1977. In some cases individuals had been given no notice, and in other cases they had been given seven days' notice.

The Tenancy Standard requires registered providers to meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation. The regulator concluded that WM Housing had failed to meet this requirement because it had not complied with the statutory requirement to give 28 days' notice when evicting individuals with protected licences from this scheme.

We noted that WM Housing had identified this issue and had been transparent with the regulator. However, we also noted that WM Housing had failed to ensure that the implementation of its eviction processes provided licensees with the level of protection required in law. That meant that all licensees were at risk of an unlawful eviction. Although the issues only related to this one scheme, given the large number of individuals who were evicted without complying with the necessary legislative requirements, the regulator concluded that it was proportionate to find a breach of the Tenancy Standard in this case.

WM Housing was satisfied that it had valid grounds to serve the notices when it did, but licensees were not given sufficient notice of the eviction and although most secured alternative accommodation in the time available, a small number had not done so and were thought to be sleeping rough. We concluded that the serious detriment threshold had been met in this case.

As a result of this issue, we downgraded our assessment of WM Housing's governance from G1 to G2, and we worked closely with WM Housing as it sought to address the issues. WM Housing carried out a review of the scheme operations and identified a number of actions to prevent a recurrence of the situation, including changes to how key policies were implemented and the level of reporting and oversight of higher risk decisions such as this.

WM Housing completed their action plan and kept the regulator updated as it did so. We noted WM Housing's assurance that it had strengthened its control framework and had ensured appropriate oversight of this critical area, and upgraded our assessment of WM Housing's governance to G1.

The case study above shows the role of the regulator in ensuring that registered providers give tenants an appropriate degree of protection in relation to their tenancies, and in line with statutory tenancy requirements.

To be clear though, it is not the role of the regulator to determine whether a registered provider has reasonable grounds to evict a tenant; that is a matter for the court. The case study below shows how we considered one such referral.

Case study 6 – tenant eviction

The regulator was contacted by a tenant representative who said that a large registered provider had inappropriately evicted a vulnerable tenant. From the information provided, we noted that the registered provider had had concerns about the condition and safety of the property and had found it difficult to gain access to carry out statutory health and safety checks (for example the annual gas safety check). The registered provider had obtained a court injunction to gain access, but was still unable to access the property and so it sought possession. The tenant contested the eviction notice but, following a court hearing, the eviction was granted and the tenant was subsequently evicted.

We noted that the court was the appropriate body to determine whether there were reasonable grounds to evict the tenant in this case and that although the grounds for the eviction had been challenged, the court had granted the eviction. We also noted that the registered provider had followed a reasonable process in trying to gain access to the property to ensure the safety of the tenants, and had only sought possession when all other options had been unsuccessful. In the meantime, the registered provider had offered assistance and support to the tenants during this time. The evidence available did not suggest that the registered provider had failed to meet statutory requirements in relation to the decision to evict this tenant, and there was evidence that the registered provider had taken the needs of this vulnerable tenant into account as it did so. For those reasons, we concluded that this was not a breach of the Tenancy Standard.

4. The Neighbourhood and Community Standard

As in previous years, the regulator continues to receive a small number of complaints from tenants and stakeholders about the role registered providers have in the neighbourhoods where they own properties. The Neighbourhood and Community Standard requires registered providers to work in partnership with other relevant agencies to address issues such as the cleanliness of the area and anti-social behaviour. The Standard, in line with the regulator's general approach, envisages that such issues are best dealt with locally. Below are examples of two such cases we considered.

Case study 7 – keeping neighbourhoods clean and safe

We were contacted by a tenant who raised concerns about the impact of a new housing development that was being built close to their home. The tenant raised concerns about noise nuisance and disturbance from contractors and dust and dirt created by the works.

We considered this matter under the Neighbourhood and Community Standard which requires registered providers to keep their neighbourhoods clean and safe. We sought information from the registered provider who told us that although its contractors had been served with an improvement notice from the local authority the previous year in relation to the noise and disturbance, it had addressed the issues and been compliant with the notice since. The registered provider said that the works did not breach any planning conditions and that it had investigated the tenant's complaint but had not found any further breaches planning conditions or anything to suggest that the site or neighbourhood was unsafe.

We noted that the registered provider had worked with the contractor and the local authority at the time that the improvement notice had been served, and that it had continued to work with both parties to ensure compliance since.

We acknowledged that the situation had caused the tenant difficulty but we concluded that the matter did not indicate a systemic failure by the registered provider to ensure the neighbourhood was clean and safe as the Neighbourhood and Community Standard requires.

Case study 8 – anti-social behaviour

We received a referral from a tenant who said that their landlord had failed to deal with a longstanding issue of anti-social behaviour. The tenant described issues with noise nuisance from the commercial premises nearby, drug use outside of their home, and acts of aggression by neighbours.

The Neighbourhood and Community Standard requires registered providers to work in partnership with other agencies to prevent and tackle anti-social behaviour. We sought information from the registered provider who told us that it had installed noise monitoring equipment on a number of occasions and had met with other tenants in the area to understand the extent of the issue.

The registered provider had also met with the local environmental health department, the owner of the commercial premises, and the individuals believed to be causing the anti-social behaviour to agree a plan to address the issues. As part of that meeting, the registered provider and other relevant parties had agreed to relocate the manager and change delivery times for the commercial premises, and to remove the stereo from the premises.

It will not always be possible for registered providers to resolve all instances of anti-social behaviour, but our Neighbourhood and Community Standard sets clear expectations of how registered providers should attempt to do so by working in partnership with other agencies.

Although the registered provider's actions had not resulted in a satisfactory outcome for the tenant, we could see evidence that it had attempted to address the issue and had worked with appropriate partners (including the owner of the commercial premises and the environmental health department) to do so. On that basis, we concluded that the registered provider had not breached the Neighbourhood and Community Standard.

5. The Tenant Involvement and Empowerment Standard

The Tenant Involvement and Empowerment Standard is intended to ensure that tenants are able to hold their landlord to account. It sets out how registered providers should engage and interact with their tenants, how they should handle complaints, and the importance of taking tenants' needs into account.

In July 2017 we amended our Tenant Involvement and Empowerment Standard to take into account the deregulatory measures introduced in the Housing and Planning Act 2016. Until 5 April 2017, registered providers were required to seek the regulator's consent to the disposal of social housing and to constitutional changes such as mergers.

On 5 April 2017, the regulator's disposal consents framework was withdrawn and, as a result, the regulator decided that the Tenant Involvement and Empowerment Standard should be strengthened to ensure that registered providers fully understood our requirements. Since then, the regulator has received a small number of referrals from tenants in relation to consultation. The case study below shows how we consider these types of cases.

Case study 9 – Consultation with tenants

We were contacted by a tenant who raised concerns about their landlord's proposal to merge with another registered provider. The complainant said that there was a low level of support among tenants for the merger.

We considered this referral under the revised Tenant Involvement and Empowerment Standard, which requires registered providers to consult with tenants where they are proposing a significant change in their management arrangements. The revised standard sets out that registered providers should consult with tenants in a fair, timely and effective manner, and that they should clearly set out the potential advantages and disadvantages to tenants.

In line with the de-regulatory measures introduced in April 2017, it is not for the regulator to determine whether any merger between registered providers should go ahead but we expect registered providers to consult with tenants in line with the requirements of the Tenant Involvement and Empowerment Standard.

From the information we had received, there was evidence to show that the registered provider had consulted with tenants, that it had done so in advance of any decision being taken, and that it had given tenants sufficient time to respond. We also saw evidence that the registered provider had set out the costs and benefits associated with the merger for tenants. The overall response rate to the consultation from tenants was relatively low, but the majority of views were either positive or neutral. There was also evidence that the registered provider had provided a range of ways for tenants to respond to the consultation, and that it had publicised the consultation with tenants.

Taking this information into account, we concluded that this did not represent a breach of the Tenant Involvement and Empowerment Standard. In response, we explained our role and our decision to the tenant. We also suggested that the tenant may wish to refer their complaint to the Housing Ombudsman Service and we provided the relevant contact details.

Throughout the year, the regulator has also received a number of referrals raising concerns about how registered providers had responded to individual complaints about their service.

Case study 10 – Complaints handling

A tenant of a large registered provider contacted the regulator explaining that they were dissatisfied with their landlord's handling of a complaint about anti-social behaviour in their neighbourhood. The tenant told us that their complaints had been ignored by the registered provider.

We considered the concern about the registered provider's complaint 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 detailed account of how it had handled the complaint.

The information showed that the registered provider had acknowledged the complaint when it was received, and had acknowledged subsequent contact from the tenant within one working day. There was evidence that the registered provider had arranged for an independent investigation into the complaint, that it had provided a full response and had signposted the tenant to the next stage in the complaints process.

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, that the registered provider had carried out an investigation into the matters raised, and that the tenant was able to escalate their complaint to the next stage. We saw evidence that the registered provider had dealt with the complaint in a timely manner, and had sought to resolve the concerns raised.

There was evidence that the registered provider had the systems in place to respond to complaints in line with our standard, and we were satisfied that the registered provider was committed to resolving the complaint.

We therefore concluded that this did not represent a breach of the Tenant Involvement and Empowerment Standard. In response, we explained our conclusions to the tenant. We also suggested that the tenant may wish to escalate their complaint through the registered provider's complaints process or to refer their complaint to the Housing Ombudsman Service.

Annex A – Analysis of cases

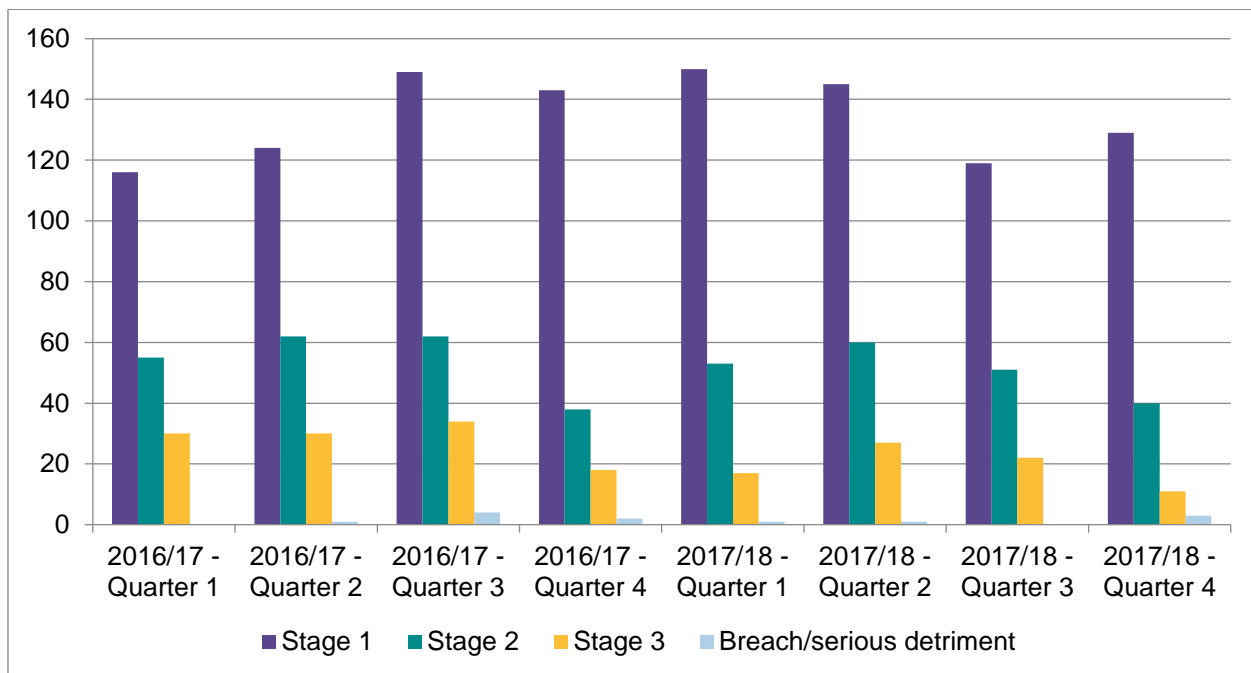
Referrals by stage

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’s role is to review referrals and determine whether the issues raised are 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 analyses 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:
 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 – If the Consumer Regulation Panel lacks assurance of a registered provider’s compliance with the standards, or if there is a suggestion that tenants are at risk of serious harm, 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 2016/17 figures are shown in brackets.

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
Stage 1 – All consumer referrals	150	145	119	129	543
	(116)	(124)	(149)	(143)	(532)
Stage 2 – Considered by Consumer Regulation Panel	53	60	51	40	204
	(55)	(62)	(62)	(38)	(217)
Stage 3 – Investigation undertaken	17	27	22	11	77
	(30)	(30)	(34)	(18)	(112)
Published findings of breach of standard and serious detriment	1	1	0	3	5
	(0)	(1)	(4)	(2)	(7)



In 2017/18, we received 543 consumer standard referrals. Of those, 204 (38%) were referred to the Consumer Regulation Panel, and 77 (14%) referrals were investigated further. We found a breach and serious detriment in five cases (1%).

The referral data shows that the number of referrals to the regulator over 2017/18 was consistent with the number of referrals received the previous year (543 in 2017/18 compared to 532 in 2016/17). There was a slight decrease in the number of cases referred to the Consumer Regulation Panel (38% compared to 41%) but we do not consider this to be a material change.

There are a number of reasons why referrals were not escalated to the Consumer Regulation Panel. For example: referrals were from homeowners or leaseholders, the issues raised related to organisations which were not registered providers, or the issues raised did not fall under our regulatory standards, and therefore were not within our remit.

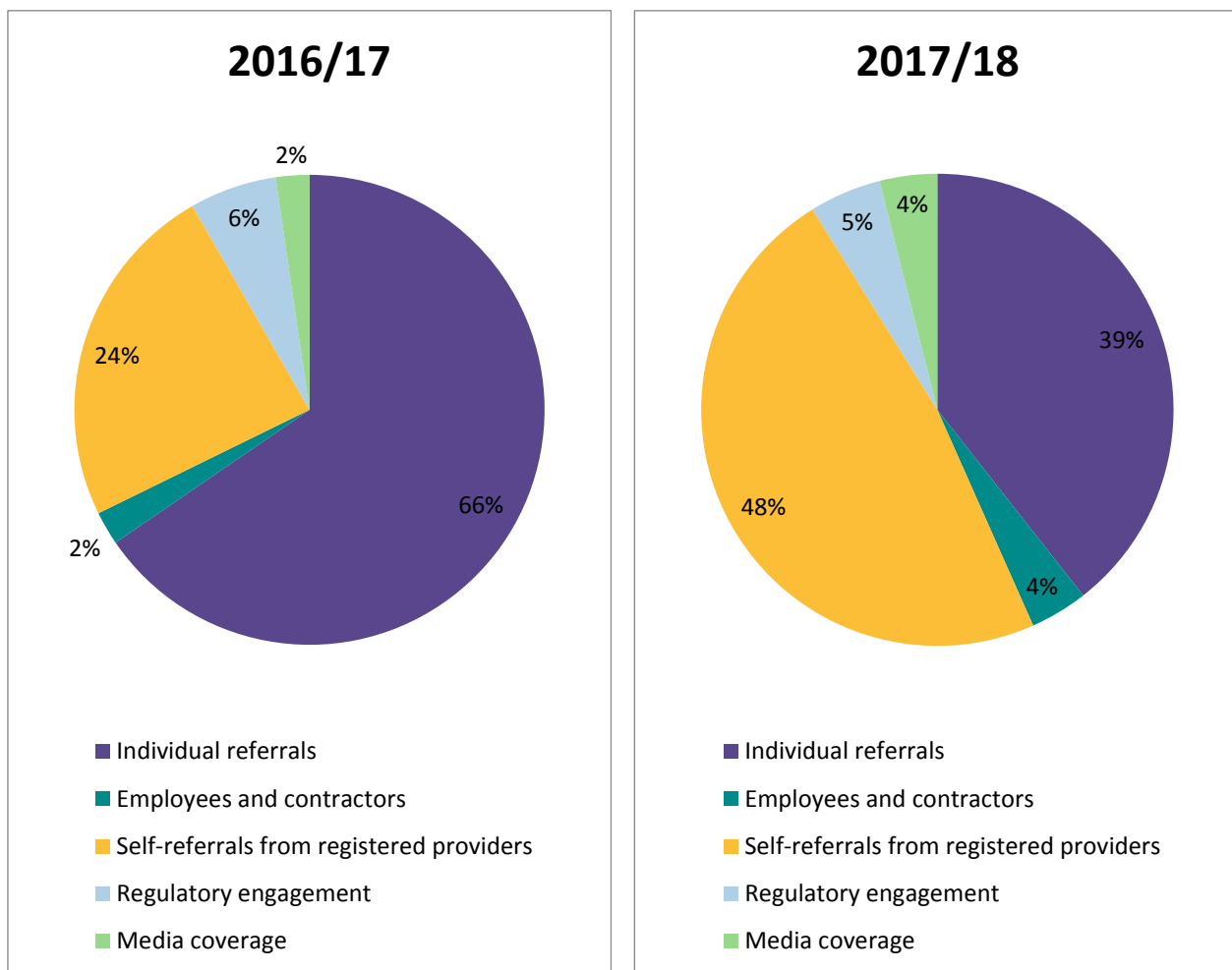
In a number of cases, tenants also sought advice on how to pursue a complaint with their landlord. In those cases, we would explain the process and signpost the tenant to their landlord's complaints process and the Housing Ombudsman.

The number of cases reaching a stage 3 investigation declined in 2017/18 to 14% from 21% in 2016/17. Analysis of our data suggests that this decline is attributable to the increase in self-referrals from registered providers (details set out below) and associated improvements in the quality of information provided to the regulator from registered providers, which meant that further investigations were not required.

Sources of referrals

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 regulatory engagement with providers.

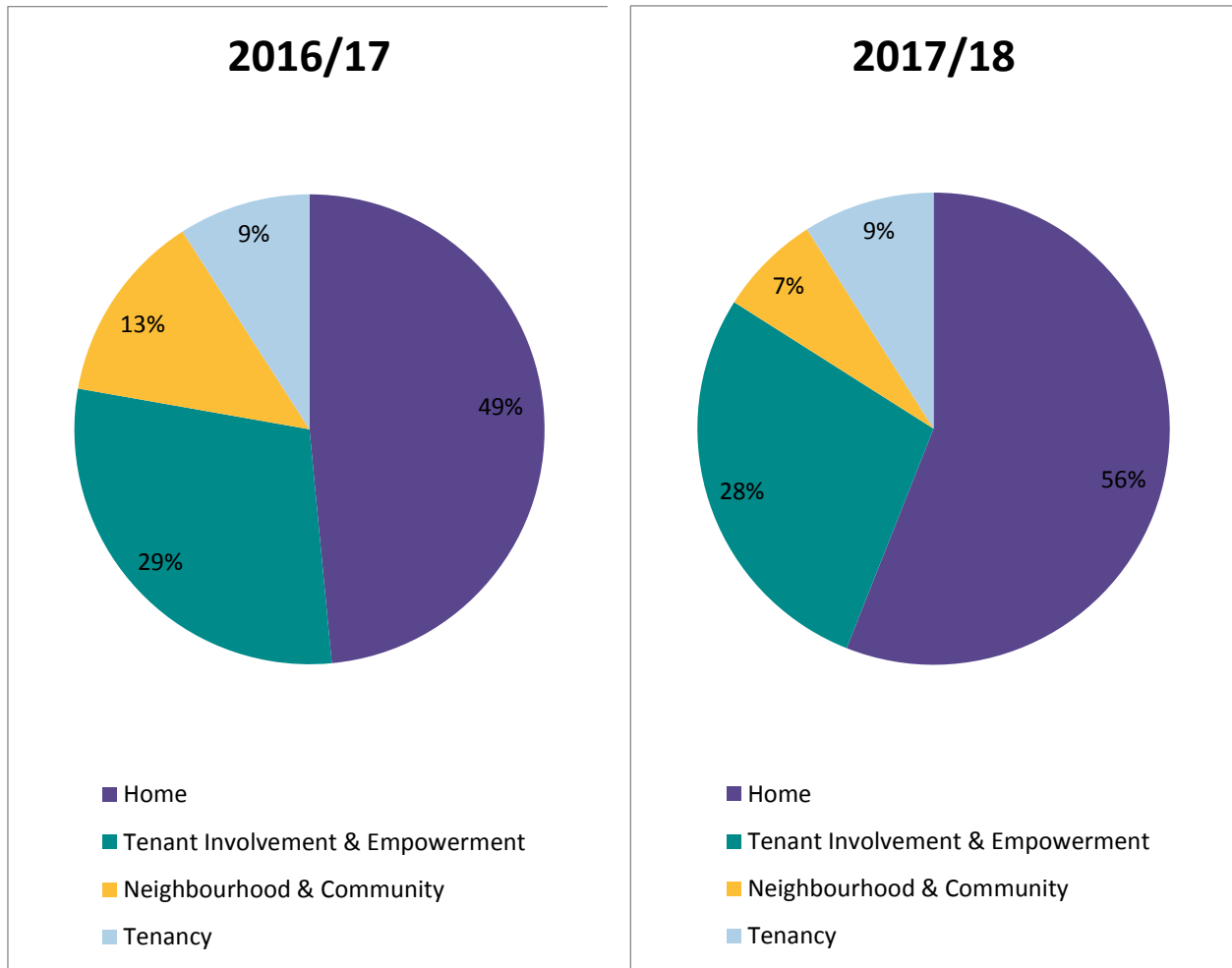
The charts below show that while the number of referrals to Consumer Regulation Panel remained relatively consistent, the number of referrals from individuals declined from 66% in 2016/17 to 39% in 2017/18. Alongside that change, the number of referrals from registered providers doubled from 24% in 2016/17 to 48% in 2017/18. Other types of referrals remained relatively consistent across both years.



In previous editions of this report, and in our other engagement with registered providers, we have encouraged the sector to be transparent with the regulator, in line with their co-regulatory responsibilities and in accordance with the requirements of our Governance and Financial Viability Standard. The evidence from this year's cases suggests that registered providers are being transparent and communicating with the regulator in cases of potential non-compliance with our regulatory standards.

Cases referred to the Consumer Regulation Panel

As in previous years, the Home Standard continues to be the consumer standard which is most often cited in the cases referred to the Consumer Regulation Panel. As expected given the increased focus on tenant health and safety by the sector, there has been an increased percentage of referrals relating to the Home Standard. This has been offset by a decline in referrals relating to the Neighbourhood and Community Standard. The percentage figures and representative charts are set out below.



Annex B – Summary of previous lessons learned

This is our sixth annual Consumer Regulation Review and each year, our reports set out the key messages we wish to share with the sector. Full versions of each of the reports are available on our website.

For obvious reasons, compliance with health and safety requirements and transparency with the regulator are recurring themes but each year we identify new lessons that we wish to share with the sector. We have set out a short summary of the lessons set out in the five previous versions of this report below.

2012/13

This was the first annual Consumer Regulation Review. That year we published one regulatory notice in relation to 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.

2013/14

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.

2014/15

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 to tenants. 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.

2015/16

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.

2016/17

In our last 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 and local authorities.
- 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.
- Transparency with the regulator is essential. Where consumer compliance problems come to light and the registered provider has failed to be transparent with the regulator, this is a concern in relation to compliance with the Governance and Financial Viability Standard, and may indicate broader governance issues.



© HCA copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/social-housing-regulation-england

Any enquiries regarding this publication should be sent to us via enquiries@rsh.gov.uk or call 0300 124 5225.

or write to:

Regulator of Social Housing
Fry Building
Marsham Street
London SW1P 4DF

The regulation of social housing is the responsibility of the Regulation Committee, a statutory committee of the Homes and Communities Agency (HCA). The organisation refers to itself as the Regulator of Social Housing in undertaking the functions of the Regulation Committee. References in any enactment or instrument to the Regulator of Social Housing are references to the HCA acting through the Regulation Committee. Homes England is the trading name of the HCA's non-regulation functions.