



Homes &
Communities
Agency

CONSUMER REGULATION REVIEW 2012/13

November 2013

Executive summary

1. This document sets out the Social Housing Regulator's (the Regulator) experience of its revised consumer regulation role, which changed with effect from 1 April 2012. Under the new legislation, the Regulator no longer proactively obtains assurance on compliance with consumer standards - its intervention powers are limited to cases in which a failure to meet a consumer standard has caused or may cause 'serious detriment' (which we have interpreted as serious harm) to a tenant or potential tenants.
2. Details of this new legislation, and other changes to the regime reflected in our standards, are set out in the Introduction.
3. The document gives examples of the cases which we have investigated in detail under our four consumer standards. It then summarises cases which we have not investigated in such detail, together with the reasons why. Details of the process we follow, and the nature of the referrals to the Regulator are set out at Annex 2.
4. Our first finding of potential serious detriment, which was the subject of a regulatory notice in October 2013, related to a breach of the Home standard. We found that a provider had failed to meet its statutory obligations with regard to gas servicing and that as a consequence, there was potential for serious detriment to tenants.
5. As our experience of regulating under the new legislation and clarity around our role develops, we are keen to share broader lessons from our work with the sector. This publication includes case studies to demonstrate the kind of issues we have dealt with and how we have developed our approach. Key messages emerging include:
 - Providers need to ensure that they make use of the legal mechanisms available to them to provide for tenants' health and safety in a timely way. We recognise that, for good reason, providers prefer to work with tenants in seeking to resolve such issues. However, as in Case Study 1 (relating to the failure to carry out gas servicing), the welfare of both tenants and their neighbours can be put at risk by such matters not being resolved quickly.
 - Where providers are aware of specific circumstances, as in Case 2 (relating to the death of a tenant who was a hoarder), it may be appropriate to share this information with relevant partners. This is to mitigate the risk to others such as staff or members of the emergency services who may have to access the property quickly.
 - The standards apply for the benefit of every tenant. Whilst we will always look to be proportionate in our judgements and will consider the materiality of the failure in determining both whether the test has been met and what our response should be, it is not a pre-requisite that there must be a systemic failure to meet the serious detriment test.

Homes and Communities Agency

Consumer Regulation Review (2012/13)

Introduction

1. This report provides an overview of the consumer regulation work carried out by the Regulator in the financial year 2012/13. It explains the process that we have followed in carrying out our new consumer regulation role and how we have interpreted the new serious detriment test. The extent and nature of consumer issues referred to the Regulator during 2012/13 is discussed and information provided on recurrent themes.
2. Consumer regulation for registered providers was fundamentally changed by the introduction of the Localism Act 2011 and subsequent directions. Primary responsibility for compliance with the standards remains with the providers' boards, but the enforcement of the standards was limited to a reactive approach where the intervention of the Regulator was only possible if certain conditions were met. The Act, which abolished the Tenant Services Authority, sought to enable social housing tenants to hold their landlords to account, as part of a fundamental shift in accountability from national to local level.
3. From April 2012, as Regulator, our role has been to investigate only where we have reasonable grounds to suspect there is actual or potential serious detriment (which we have interpreted to mean serious harm) to tenants as a result of a failure to meet one or more of our consumer standards. We no longer have powers to collect and analyse performance information relating to consumer issues and can therefore provide no proactive assurance of compliance with the standards.
4. The Regulatory Framework sets clear service standards on:
 - Tenant Involvement and Empowerment
 - Home
 - Tenancy
 - Neighbourhood and Community
5. We set these consumer standards (detailed at Annex A to this report) so that tenants, landlords and stakeholders know the outcomes that are expected. Boards and councillors that govern providers' services are responsible for ensuring that their organisation meets the consumer standards. In accordance with the terms of the Localism Act, the Regulator does not have a role in monitoring providers' performance or routine compliance with the consumer standards.
6. Providers have principal responsibility for dealing with, and being accountable for, complaints about their service. The Tenant Involvement and Empowerment standard requires that they have clear and effective mechanisms for responding to tenant complaints. A tenant with a complaint against their landlord should raise it with their landlord in the first instance and, should the matter remain unresolved, consider contacting first a designated person (someone identified under the Act to deal locally with the resolution of complaints such as an MP or a designated tenants' panel) and the Housing Ombudsman.

7. The Localism Act specifies that the Regulator must exercise its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable. The Regulator's ability to use its powers in relation to a provider failing to meet a consumer standard is subject to the Localism Act. Firstly, we must establish that a consumer standard has not been met. We can use our powers where we judge that a standard has been failed and there are reasonable grounds to suspect that:
 - The failure has resulted in a serious detriment to the provider's tenants. Or
 - There is a significant risk that, if no action is taken by the Regulator, the failure will result in a serious detriment to the provider's tenants.
8. In defining serious detriment, it is clear from the Localism Act and the Government's review of social housing regulation (October 2011) which preceded the legislation, that the threshold for regulatory intervention is intended to be significantly higher than that in relation to the economic standards. Failure to meet one or more of the consumer standards does not in itself lead directly to a judgement of serious detriment by the Regulator. As set out in the Regulatory Framework, we consider that the meaning of serious detriment is when there is risk of, or actual, serious harm to tenants.
9. The serious detriment test is not an end in itself, rather the route we must follow to establish whether we have the locus to deal with a consumer issue. In each case, the Regulator's response (including whether any enforcement action is to be taken) depends on the specific facts and circumstances. It is based on the Regulator's evaluation of harm or potential harm and the provider's response and capability to address any identified breach of the standards. The Regulator is expected (pursuant to its statutory obligations and guidance) to ensure its response is proportionate and commensurate with the materiality of the breach or failing by the provider.
10. In summary, our process consists of three stages: an initial review to see whether the matter alleged falls within our remit (Stage 1); more detailed consideration as to whether there is a potential breach which could cause serious harm (Stage 2) and a detailed investigation (Stage 3). Further details on the process we have developed to deal with these cases and of the initial stages of case consideration are set out at Annex B.
11. One case so far has been found to meet the test for serious detriment. This case, together with a number of others, is outlined in a series of case studies for illustrative purposes.

Consumer regulation cases

12. The relevant standards in the Stage 3 cases (where there is evidence of a potential breach of the standards that could have caused actual or potential harm) were predominantly the Home, Neighbourhood & Community and Tenant Involvement and Empowerment standards. In some cases, allegations related to one or more of the four consumer standards.
13. Our first finding that a breach of standards had the potential to cause serious detriment was published in October 2013. A copy of the notice publishing our findings is at Annex C and the case study (1) is set out below. Although the case related to one specific tenant and their individual property, there was the potential for harm to neighbours as a result of gas servicing not having been carried out for over two years. Providers are under a legal obligation to carry out gas safety checks annually and there are legal

means of securing access if required. The HCA expects providers to use the options available to them in a timely way to gain access. We are obliged to be proportionate and will take all factors in a case, including the time the service has been outstanding and the number of tenants affected into account.

Case Study 1 – Gas safety and asbestos management

The Regulator received a complaint from a tenant alleging that there had been asbestos in his flat for three years and that his landlord, a registered provider, had boarded the room up but not dealt with the problem. In addition, he also alleged that there had been no gas safety inspections carried out for the last three years. The tenant stated that he had not received a response to the complaint which he had raised with his landlord.

As part of our investigation, we sought evidence of the provider's efforts to engage with the tenant to resolve these specific issues and more generally of its policies and procedures for dealing with asbestos management and gas servicing. The association provided evidence of satisfactory compliance with asbestos management requirements and evidence of compliance generally with gas safety requirements in its properties, except for this home where the gas safety check had been outstanding for over two years.

While the provider supplied the Regulator with evidence of the difficulties it had experienced in obtaining access and the repeated attempts that it had made to reach a negotiated agreement to organise works to the property, it was in breach of gas safety legislation which stipulates that gas safety checks should be carried out annually. The provider did not seek legal resolution to the issue until two years after the previous gas safety check was completed. It only eventually gained access and serviced the boiler during the course of our engagement.

We concluded that the provider's statutory legal obligations under 1998 Gas Safety Regulations had not been met in relation to this tenant and that there was a breach of the Home standard.

We also concluded that the potential for serious harm both to the tenant in the property and to neighbouring tenants existed during the period of the breach of the Home standard. The potential harm resulting from a faulty gas appliance, such as escape of carbon monoxide or an explosion, is well known and meets the threshold for serious harm. Hence, in this case we concluded that the serious detriment test had been met.

In this case, while there was potential for serious detriment, no harm actually occurred. The provider's overall compliance with gas safety requirements is satisfactory and does not raise concerns of a systemic failure which might affect other tenants. The provider has now streamlined its procedures for gaining access to properties. It will now apply to court for injunctions for access to carry out gas safety checks as soon as 12 months have elapsed. The provider has also strengthened the way it reports information regarding gas safety to the board, making clear the actions being taken on cases of gas safety checks that are 90 days overdue.

We did not consider further regulatory action was needed to prevent serious detriment and did not take any enforcement action. However, we concluded that

the case raised governance concerns about the board's oversight of this matter which were dealt with through other regulatory engagement with the provider.

Further Home standard cases

14. The majority of the cases which went to Stage 3 of the process related to alleged breaches of the Home standard. The required outcomes under the Home standard relate to:
 - Quality of accommodation (tenants' homes should meet the standards set out in government 'Decent Homes' guidance and continue to maintain their homes to at least this standard).
 - Repairs and maintenance. (Cost effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choices to, tenants; and meeting all applicable statutory requirements that provide for the health and safety of the occupants in their homes.)
15. One of the key decisions we must make in considering consumer standards related referrals, is whether there is evidence to suggest that there has been a breach of one or more of the four relevant standards. The majority of the cases handled by our consumer regulation panel related to the Home standard and often in these cases we needed to establish whether or not providers had met all of the applicable statutory requirements providing for the health and safety of tenants. Unfortunate and sometimes tragic incidents do happen in homes and may well cause serious harm to tenants. However, the Regulator must first establish the extent of the landlord's responsibility and whether a standard has been breached before it is able to take further action.
16. It was the requirement to meet all applicable statutory requirements that provide for the health and safety of occupants in their home which was the most relevant aspect of the standard to a number of cases we investigated. This is consistent with the Regulatory Framework which states that serious detriment is likely to exist where there is evidence of harm or potential harm to tenants, in particular with relation to, amongst other things, health and safety.
17. In carrying out our assessment of cases against the Home standard, a key consideration therefore was determining the exact nature and extent of the statutory obligations placed on landlords. Registered providers' responsibilities under the Defective Premises Act (1972) are particularly worth noting. This act imposes an obligation to repair in matters of health and safety which is not dependent on notice. The landlord is deemed not to need notice as he has rights of entry and so could and should make sure the property is safe. This is a much greater obligation on the part of the landlord than the repairing responsibilities under the Landlord and Tenant Act (1985) and the tenancy agreement which require notice. Where the obligation is established, the landlord has to act reasonably, which includes taking proactive steps to ensure the property is safe. In determining whether a statutory obligation has been breached, the Regulator therefore has to ascertain whether the defect relates to health and safety and whether the landlord has acted reasonably to prevent harm.
18. The type of matters relating to the Home standard we considered included poor condition of a property (damp, resulting in mould) impacting upon health of the tenant, concerns about fire safety, lack of electrical testing or electrical testing carried out by unaccredited staff, gas safety and concerns about asbestos removal.

19. Two further cases which related to the Home standard are detailed below to give a flavour of the kind of issues considered by the Regulator, the response made and conclusion reached.
20. In general, we found that the registered providers with which we dealt during 2012/13 took their responsibilities seriously and responded quickly and effectively when they became aware of issues. However, we did note that sometimes the difficulties of dealing with a particular tenant may have obscured the overall responsibilities of the landlord to take action. For example, in Case Study 1 above, during the extended period of time in which a boiler in an individual tenant's property was not serviced, not only was he put at risk of serious harm, but his neighbours were too. With regard to gas safety, landlords' legal obligations are clear. It is their responsibility and the remedies are available to them to take swift action to gain access.
21. Case Study 2 which involved the tragic death of a hoarder as a result of fire in her property, also suggests the importance of providers taking action in a timely way in such circumstances. In this case, our investigation concluded that the provider had not breached any of its statutory obligations to provide for the health and safety of its tenants. However, the case highlights a wider learning point for the sector about the need to balance working with the tenant to gain their co-operation with making properties safe.
22. As the report explains, one of the key decisions we must make in considering consumer standards related referrals is whether there is evidence to suggest that there has been a breach of one or more of the four relevant standards. The majority of the cases handled by our consumer regulation panel related to the Home standard and often in these cases we needed to establish whether or not providers had met all of the applicable statutory requirements providing for the health and safety of tenants. Unfortunate and sometimes tragic incidents do happen in homes and may well cause serious harm to tenants. However, the Regulator must first establish the extent of the landlord's responsibility and whether a standard has been breached before it is able to take further action.

Case Study 2 – Coroner's referral relating to the death of a hoarder

This case involved the death of a tenant, due to smoke inhalation. The tenant was a 'hoarder' whose house was full with the accumulated items of at least 18 months' worth of hoarding. The coroner reported that 'there was a staggering amount of goods, rubbish etc. hoarded in the property'. The fire was the result of damaged electrical cabling in the property, partly attributable to objects having been placed on top of it. Heat from exposed copper wire caused surrounding items to ignite. The amount of flammable material in the property led the fire to take hold rapidly and also caused difficulties for the fire fighters, both in gaining access to the property and then in moving around it.

The coroner recorded a verdict of accidental death. Where the particular circumstances of the death in question gives rise to a concern that there is risk that other deaths will occur or risks will continue to exist in the future, the coroner can issue a Rule 43 Report under the Coroners' (Amendment) Rules 2008 to parties. This is with a power to take action to prevent the occurrence or continuation of these circumstances. In this case, the coroner wrote to the landlord of the deceased, other registered providers with significant amounts of stock in the area in question, and to the Regulator.

The coroner reported that the living conditions of the tenant were known to the landlord. While the landlord had made some efforts to engage with the tenant, the coroner reported that little or no progress had been made in this regard and that the property was a significant risk to the occupants, neighbours and members of the emergency services. The coroner concluded that it was very likely that had there been earlier and more effective intervention, the tenant would not have died. The coroner recommended that an urgent review should be undertaken of tenanted properties and immediate steps taken to rectify problems where they existed to remove the risk of similar fatalities in the future.

As part of its investigation of the case, the Regulator asked the provider to provide evidence of its efforts to engage with the tenant and more generally its procedures for dealing with such cases; its efforts to communicate and co-ordinate any intervention with other relevant agencies; how the provider's governing body receives assurances that policies and procedures are followed; and if and how existing procedures were being reviewed in the light of the tenant's death.

The provider supplied the Regulator with a comprehensive response, which included a detailed chronology of its engagement with the tenant and actions taken to identify and address the tenant's hoarding; additional efforts made to mitigate the risks from fire, once the tenant's hoarding was known by the landlord; efforts made to communicate and co-ordinate intervention with other relevant agencies and whether enforcement action had commenced.

The tenant's hoarding came to light at the annual gas safety check. Subsequent to this the provider was able to gain access to the property on a number of occasions to remove some contents but not enough to remove the fire risks. When it became clear that the tenant was not going to engage with staff and other agencies, enforcement action was escalated by the provider. The fatal fire occurred after this escalation.

The provider also supplied evidence of its review of the effectiveness of its interventions and lessons learned. The review and strengthening of procedures included earlier escalation to enforcement action, an improved referral process with earlier referral to other relevant agencies including social services, fire and rescue services and environmental health. The association also provided evidence and assurance of actions taken to identify other tenants with hoarding problems.

As part of its work on this case, the Regulator sought to assess whether there had been a breach of the Home standard, in particular whether the provider had met all applicable statutory requirements that provide for the health and safety of the occupants in their homes.

Obligations were considered under the Landlord and Tenant Act 1985, the Defective Premises Act 1972, the Regulatory Reform (Fire Safety) Order 2005 and the Environment Protection Act 1990. It was established that the landlord had no statutory obligation to deal with the hoarding and therefore there was no breach of the standard on which to base any future action.

Case Study 3 - Fire safety assessment

The Regulator received a complaint from a leaseholder that a registered provider had not implemented the actions identified following two fire safety assessments within a scheme (where both tenants and leaseholders were resident) within the required time frame. The assessments had identified priority 2 and 3 deficiencies which required rectifying within one and six months respectively but were still outstanding. A further fire safety assessment also identified additional priority 1 deficiencies requiring urgent attention.

The Regulator asked the association to provide additional information on the circumstances of the particular case; its general approach to fire risk assessments and addressing resulting recommendations; and the extent of any outstanding fire risk assessments.

Analysis of the detailed information on the circumstances of this case demonstrated that the timescales for implementing recommendations were frustrated by the technicalities of leaseholder consultation requirements. The works necessary as a result of the recommendations were the subject of consultation with leaseholders. In terms of legislative compliance, the assessment identified the need for a fire detection system within the building. After liaising with the local Fire and Rescue Service to establish the most appropriate course of action, the provider had produced a schedule of works for the installation of a hard-wired fire detection system. It installed lithium powered smoke alarms (as recommended by Fire and Rescue Service) in the property as an interim control to manage the risk until the hard-wired fire detection system was installed.

With regard to the provider's general approach to fire risk assessments and addressing resulting recommendations, we found evidence that it understood its responsibilities under the Regulatory Reform (Fire Safety Order) 2005 and had appropriate procedures in place. However, the provider acknowledged that this case highlighted that in some instances it was not managing customers' expectations as clearly as it could and made a commitment to take action to address this.

The Regulator concluded that the provider was adhering to relevant fire safety legislation and that it has a proper system of control in place to ensure fire risks are managed. We found no evidence that the provider was in breach of the Home standard.

The Regulator's conclusion was based upon the following considerations:

- The provider's procedures were based on the correct and current legislation.
- There was evidence that the provider prioritised compliance with statutory duties and took immediate action to address any issues that do not meet legislative requirements.
- There was no evidence that these procedures had been breached in this particular instance or more generally.

- The provider was up to date with its fire risk assessments and had an adequate system in place to ensure recommendations were being implemented.

Neighbourhood and Community standard

23. The second largest category of complaints which we investigated related to the Neighbourhood and Community standard. Amongst other things, the standard requires registered providers to keep the neighbourhood and communal areas associated with the homes that they own clean and safe; and to work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.
24. Two cases considered relating to this standard are outlined below to give a flavour of the kind of issues considered by the Regulator, the response made and conclusion reached:

Case Study 4 - Alleged failure to deal with anti-social behaviour

The complaint concerned an alleged failure to deal effectively with a noisy and threatening neighbour. The complainant's GP had written to the registered provider to say that the impact of the noise was having a detrimental effect on the complainant's health. The Regulator identified a potential breach of the Neighbourhood and Community standard. We investigated the matter further, requested copies of correspondence between the provider and the complainant and sought to establish the timing of the incidents referred to in the complaint. As a result of these further investigations, the Regulator did not find evidence of a failure to meet the standard which had or could cause actual or potential serious harm and it advised the complainant to continue going through the provider's complaint process.

Case Study 5 - Allegation of failure to deal with anti-social behaviour

The tenant alleged that she and her family were the victims of sustained anti-social behaviour which had taken the form of fly-tipping, verbal abuse, vandalism, assault, dog nuisance and burglary. The complainant alleged that the provider had sided with the perpetrators of the anti-social behaviour and that she and her family were being treated differently from other tenants because of their race.

The Regulator identified a potential standards breach and decided to investigate the case to find out more about the provider's response to date and to ascertain if the alleged discrimination had been raised as an issue with the provider. Following this investigation, we found insufficient evidence to demonstrate a breach of the consumer standards. One of the features of this case was that the complainant was unable to provide the information requested to substantiate the allegations which made it difficult for the Regulator to establish 'reasonable grounds' upon which to act.

Tenant Involvement and Empowerment standard

25. The Tenant Involvement and Empowerment (TI&E) standard specifies that registered providers should provide choices, information and communication that is appropriate to the diverse needs of their tenants and resolve complaints promptly and fairly. The standard also sets out how providers should ensure that tenants are given a wide range of involvement opportunities; and that they should treat all tenants with fairness and respect, demonstrating an understanding of different needs of tenants, including in relation to the equality strands.
26. The cases which we considered in the greatest depth tended to relate most closely to issues about the effectiveness of providers' complaint processes and/or alleged failures to meet tenants' differing needs.
27. Two cases considered under this standard are outlined below to give a flavour of the kind of issues considered by the Regulator, the response made and conclusion reached.

Case Study 6: Allegation of a lack of consultation in connection with a change in service

The complaint related to a decision taken by a provider to close a restaurant at one of its schemes on financial grounds. The complainant said that the service the restaurant offered, including provision of hot meals directly to rooms, was important for the well-being of vulnerable residents at the scheme. No alternative provision had been offered to residents and it was alleged that the change had not been subject to consultation.

The Regulator considered that there was a potential breach of the TI&E standard – not involving tenants in a change of service - and that the withdrawal of the service could have a detrimental impact on vulnerable tenants. The complaint was therefore referred to Stage 3 for further investigation. As part of this investigation, the provider produced evidence of resident consultation throughout the changes to the service, including on an individual basis with residents to ensure that additional support needs were taken into account. Evidence was also provided of alternative food service provision that had been made available. We concluded that in this case there had not been a breach of the TI& E standard and took no further action.

Case Study 7 - Allegation of lack of access to complaints procedure

The complainant advised the Regulator that because of his disability, he had experienced difficulties in accessing the provider's complaints procedures which he had been informed required complaints to be submitted in writing. The complainant alleged that his request to receive a copy of the complaints policy had been refused, on the basis that it was available on the internet, even though he was unable to access the internet due to his disability.

We identified this as a potential breach of the TI& E standard because one of the required outcomes is to have an accessible approach to complaints. Through our investigation we obtained satisfactory evidence that the provider

did have appropriate arrangements in place to ensure its complaints process was accessible, including for residents with a disability. Subsequent to our involvement, the provider made a home visit to discuss the issues raised by the complainant and a copy of the complaints policy was provided. The policy states that tenants can make complaints by telephone and in person, as well as in writing. The Regulator concluded that even if it were the case that there had been a failure to meet the standard, in this case there was not evidence of serious harm but it did seek further assurance from the provider about the practical implementation of its complaints policy.

Cases not taken forward for further investigation

28. During the course of the year, we did consider a number of matters which were not taken forward for further investigation. Many of these had simply been misdirected to us and were not within our remit. In others, the panel concluded that either the matter referred to, even if fully proven, would not constitute a breach of the standard or that the matter, again if fully proven, would not constitute serious harm to tenants or potential tenants. Complainants were informed of the conclusions and the reasons for this and, where applicable, referred to other appropriate means to pursue the issue.
29. Some cases studies are set out below to illustrate the issues we considered and the reasons for our response:

Case Study 8 - Allegation of damp and mould

The tenant alleged that her property had damp and mould problems which were exacerbating her partner's asthma and her depression. The tenant claimed that the provider told her there was no damp in the property when she took the tenancy. The provider had advised the tenant that the problem was condensation and this was confirmed by the local authority's environmental health department. The tenant had taken advice on ways to limit condensation. She had been using the trickle vents and an extractor fan provided by the landlord but was unable to have the heating on as much as needed to prevent mould growth.

The Regulator identified a potential breach of the Home standard. However, the evidence provided by the complainant showed that the provider was trying to deal with the issue by installing vents and an extractor fan and offering appropriate advice. We found insufficient evidence to demonstrate a breach of the Home standard. The tenant appeared to be unable to afford to heat the property sufficiently and this was a major contributing factor in this case.

Case Study 9 - Allegation of scaffolding posing a security risk

The tenant alleged that scaffolding erected on a neighbouring private property presented a security risk to her property as someone could use the scaffolding to gain access to her roof. The tenant's property had already been subject to break-ins in the past and the tenant received counselling for post-traumatic

stress following the most recent break-in whilst she was in her home. Her landlord had given permission for the scaffolding to be erected.

The Regulator considered the complaint in relation to all the consumer standards and decided that the consumer standards did not extend to the matters raised in this case. We therefore concluded that there was no breach of a consumer standard and took no further action.

Case Study 10 - Allegation of asbestos in a flat

The tenant alleged that there was asbestos present in his flat and that his landlord told him that there was no danger to tenants. He then contacted the Health and Safety Executive (HSE) who asked the landlord to remove the asbestos in a broken panel. The landlord complied with the HSE's request.

The HSE ordered an asbestos survey and this confirmed there was asbestos in the floors and ceiling, but said there was no risk to the tenant as the material was in good repair and undisturbed. Nevertheless, the landlord said it would encapsulate one ceiling and screed the concrete floor which the tenant's independent surveyor said contained asbestos. At the time of considering the case, no action had been taken to carry out this work due to difficulties arranging access with the tenant. Subsequently, the tenant contacted the HSE again to inform them that a neighbour was experiencing similar problems to him and stated that the HSE were speaking to the landlord about this.

The Regulator identified a potential breach of the Home standard but the evidence provided by the complainant showed that the landlord had removed the damaged panel as required by the HSE, and was trying to encapsulate the ceiling and apply a screed to the floor even though these did not present a risk to health. We found insufficient evidence to demonstrate a breach of the Home standard.

Going forward

30. When we published 'Regulating the Standards' in April 2012, we said that the Regulator would keep its internal processes (outlined in Annex B) for assessing serious detriment under review. This would be in the light of operational experience, in order to ensure it is dealing with cases consistently, effectively and efficiently. In reviewing the Regulator's approach to consumer regulation in 2012/13, we have identified the following issues which we are currently addressing:

- a. impact of concurrent legal processes
- b. relationship between individual complaints and systemic problems
- c. changes to our internal processes

31. In the light of our first year of applying the serious detriment test there are some changes which we plan to make and where necessary these will be reflected in 'Regulating the Standards'.

Concurrent legal processes

32. During 2012/13, some of the cases referred to the Regulator were subject to concurrent legal processes. As part of our review of these cases, we have concluded that, other than in exceptional circumstances, the Regulator will continue to reach a view on whether or not it finds the serious detriment test has been met. It is the Regulator's unique responsibility to determine serious detriment and we will reach a view on whether or not there is potential or actual serious detriment arising from a standards breach before considering the impact of other legal processes on our ability to act.

Individual complaints and systemic problems

33. Another recurrent issue with which the Regulator grappled throughout 2012/13 was the relationship between an individual complaint and what could be considered more systemic problems. It is clear that the Regulator should not become involved in the resolution of individual complaints and that registered providers should operate their own complaints procedures. But almost all of the consumer regulation complaints which we received in 2012/13 came from individuals rather than groups of tenants.
34. In considering any case, we sought to judge whether the issue raised, if true, could be symptomatic of a wider problem. However, as outlined above, we recognise that our primary aim is to concentrate on the substantive issue (whether a breach of standards has occurred and the likelihood of serious detriment arising) rather than the nature of the issue raised. We recognise that it is possible that a matter which falls into our remit which constitutes a breach of a consumer standard and causes actual or potential serious harm may impact on an individual tenant. The legislation is not prescriptive about the number of tenants impacted by the breach. We will continue to consider each individual case referred to us proportionately and on its merits, recognising that while serious detriment is most likely to be present where there is a systemic failure against a consumer standard, this is not a pre-requisite.

Changes to internal processes

35. We will be making some changes to our internal processes to ensure that investigations are dealt with more quickly. In addition, with the recent appointment of a new senior post of Deputy Director, Intervention & Enforcement, this post holder now has delegated authority for determining all consumer regulation cases. We believe that these changes in our internal processes will help us to expedite cases.

Consumer standards – required outcomes (extract from the Regulatory Framework)

These standards apply to all registered providers. Providers' boards and councillors are responsible for ensuring their organisation meets the consumer standards. The Regulator's role is limited to setting the consumer standards and intervening only where failure of the standard could lead to risk of serious harm to tenants (the 'serious detriment test') as described in chapter five.

Tenant Involvement and Empowerment standard

Required outcomes

1 Customer service, choice and complaints

Registered providers shall:

- Provide choices, information and communication that is appropriate to the diverse needs of their tenants in the delivery of all standards.
- Have an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly.

2 Involvement and empowerment

Registered providers shall ensure that tenants are given a wide range of opportunities to influence and be involved in:

- The formulation of their landlord's housing related policies and strategic priorities.
- The making of decisions about how housing related services are delivered, including the setting of service standards.
- The scrutiny of their landlord's performance and the making of recommendations to their landlord about how performance might be improved.
- The management of their homes, where applicable.
- The management of repair and maintenance services, such as commissioning and undertaking a range of repair tasks, as agreed with landlords, and the sharing in savings made.
- Agreeing local offers for service delivery.

3 Understanding and responding to the diverse needs of tenants

Registered providers shall:

- Treat all tenants with fairness and respect.
- Demonstrate that they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs.

Home standard

Required outcomes

1 Quality of accommodation

Registered providers shall:

- Ensure that tenants' homes meet the standard set out in section five of the Government's Decent Homes Guidance¹ and continue to maintain their homes to at least this standard.
- Meet the standards of design and quality that applied when the home was built, and were required as a condition of publicly funded financial assistance², if these standards are higher than the Decent Homes Standard.
- In agreeing a local offer, ensure that it is set at a level not less than these standards and have regard to section six of the Government's Decent Homes Guidance.

2 Repairs and maintenance

Registered providers shall:

- Provide a cost-effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choices to, tenants, and has the objective of completing repairs and improvements right first time.
- Meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes.

Tenancy standard

Required outcomes

1 Allocations and mutual exchange

1.1 Registered providers shall let their homes in a fair, transparent and efficient way. They shall take into account the housing needs and aspirations of tenants and potential tenants. They shall demonstrate how their lettings:

- Make the best use of available housing.
- Are compatible with the purpose of the housing.
- Contribute to local authorities' strategic housing function and sustainable communities.

There should be clear application, decision-making and appeals processes.

1.2 Registered providers shall enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services.

¹ 'Decent Homes Guidance' means A Decent Home: Definition and Guidance for Implementation, published by the Department for Communities and Local Government in June 2006, and any guidance issued by the department or its successors, in relation to that document.

² 'Financial assistance' is assistance given by the Homes and Communities Agency (HCA) under section 19(3) of the Housing and Regeneration Act, 2008; and (with effect from 1 April 2012) given by the Greater London Authority (GLA). For the purpose of this standard, it includes financial assistance provided by predecessor bodies to the HCA.

Tenure

- 2.1 Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.
- 2.2 They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.

Neighbourhood and Community standard

Required outcomes

1 Neighbourhood management

Registered providers shall keep the neighbourhood and communal areas associated with the homes that they own clean and safe. They shall work in partnership with their tenants and other providers and public bodies where it is effective to do so.

2 Local area co-operation

Registered providers shall co-operate with relevant partners to help promote social, environmental and economic wellbeing in the areas where they own properties.

3 Anti-social behaviour

Registered providers shall work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

The process and 2012/13 headline figures

1. Our serious detriment process, as set out in 'Regulating the Standards' comprises three stages:

Stage 1: the Regulatory Referrals and Enquiries (RRE) Team collates and routes all complaints and other enquiries referred to the Regulator. Where the matter relates to consumer standards, the RRE Team is responsible for determining if it falls within the Regulator's remit and if there appears to be a breach or risk of a breach of a consumer standard. If so, the RRE Team then refers the issue to the Consumer Regulation Panel (CRP) which normally meets weekly.

Stage 2: The Consumer Regulation Panel (CRP) considers the circumstances of each individual case referred to it to determine the degree of harm or potential harm caused to tenants by a breach of consumer standards. Its discussion is framed around four questions:

- Does the issue raised relate to a matter within the Regulator's remit?
- If the issue is true, is it likely that there has been or could be a breach of a consumer standard?
- If the issues raised are true would there be any impact on tenants which would cause actual or potential harm?
- If the issues raised are true, is the actual or potential harm likely to be serious?

Stage 3: Those cases which are identified by CRP as requiring further investigation are subject to more detailed work to ascertain if there has been a breach of the standards which has or may cause serious detriment and to determine whether regulatory action is required.

2. Figure 1 below shows on a month-by-month basis the number of issues received during 2012/13 which related to the consumer standards and how these were handled.

Fig 1: Serious Detriment Cases 2012/13

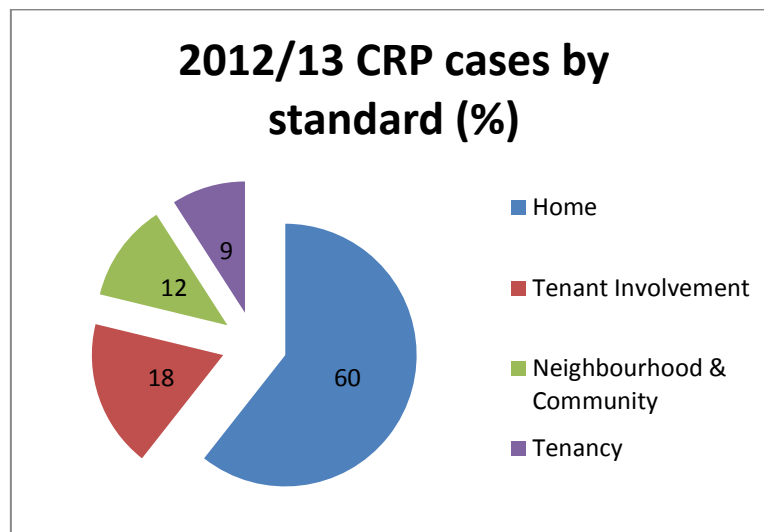
	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Totals
Stage 1: Total Consumer Complaints/issues	47	29	35	27	32	35	39	35	30	39	37	36	421
Stage 2: Referred to Consumer Regulation Panel	20	8	12	9	10	8	10	6	9	5	5	9	111
Stage 3:	2	1	1	1	3	1	6	1	0	1	1	2	20

3. The Consumer Regulation Panel (CRP) is responsible for considering all statutory referrals, complaints and allegations relating to the consumer standards which are referred to it by the RRE Team. There were eight statutory referrals in 2012/13. The panel also deals with cases where regulatory intelligence acquired in the course of routine economic regulation leads the Regulator to suspect actual or potential serious detriment.

Themes

4. During 2012/13 CRP met 41 times. 60% of the cases it considered (see Figure 2 below) concerned health and safety matters relating to the Home standard. The majority of these cases concerned gas and electrical safety in individual properties. However, there were also a significant number of issues raised about other aspects of the condition of properties felt to be impacting on tenants' health (e.g. mould and damp). The other complaints included in this category related to the state of communal areas and the quality of repair services.

Fig 2: Consumer Regulation Panel Cases by Consumer Standard 2012/13



5. The next category (18%) comprises cases relating to alleged breaches of the Tenant Involvement & Empowerment (TI&E) standard. They included issues about the efficacy of providers' complaints processes and alleged failures to involve tenants effectively in key decisions. Half of the cases in this category alleged discrimination. The TI&E standard requires registered providers to treat all tenants with fairness and respect and to demonstrate they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs.
6. The third largest category of consumer matters in 2012/13 (12%) concerned anti-social behaviour. In most cases these were allegations that landlords were not dealing effectively with anti-social behaviour which was causing distress, sometimes to vulnerable tenants. The Neighbourhood and Community standard states that registered providers should work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.
7. The fourth category (9%) related to alleged breaches of the Tenancy standard. These concerned a mixture of cases about evictions and the implementation of allocation policies.
8. The subset of 20 cases which CRP referred for further investigation reflects this categorisation. Half of the cases referred related to Home standard issues (mainly gas, electric and fire safety matters). A quarter concerned breaches of the Neighbourhood &

Community standard (largely anti-social behaviour). The remainder related to the Tenancy and TI&E standards.

9. Where cases were concluded at Stage 2 the panel decided either that the matter referred to, even if fully proven, would not constitute a breach of the standard or that the matter, again if fully proven, would not constitute serious harm to tenants or potential tenants. Complainants were informed of the conclusions and the reasons for this and, where applicable, referred to other appropriate means to pursue their complaint. The Stage 2 cases form the basis of case studies 8-10 in the body of the report.
10. Finally, in 2012/13, the Consumer Regulation Panel referred 20 cases to Stage 3. These were the cases which it felt warranted further investigation. Those cases which did not go to Stage 3 were judged either not to constitute a breach of a consumer standard or, if a potential breach, as not resulting in serious actual or potential harm. The Stage 3 cases form the basis of case studies 1-7 in the body of the report.

Types of provider

11. Analysis of the different types of provider which were the subject of cases referred to CRP last year shows that smaller associations (i.e. those with less than 1,000 units) accounted for 23% of the total number of cases, and local authority providers for just 5%.
12. The table below shows how the other 72% of cases break-down by size of provider:

<i>Provider size (units)</i>	<i>% of CRP cases</i>
<5,000	11
5,000 – 10,000	12
10,000 – 20,000	17
20,000+	32

13. There was no evidence to suggest recurrent problems with any particular individual provider. One association had four cases and three providers had three cases which were considered by CRP. Twelve providers had two cases and the other providers only had a single case.

Equalities issues

14. Analysis of the cases referred to CRP shows 22 issues in which a protected characteristic was noted.
15. The 22 cases fell into the following categories:
 - Race (3)
 - Gender (2)
 - Age (3)
 - Disability/Additional Support Needs (14)
16. Of the 14 cases in which disability or additional support needs were a factor, the substantive issues related mainly to tenancy, repairs, allocations and anti-social behaviour issues. Only one expressly referred to allegations of discrimination.

17. In each case we considered both the substantive matter and then separately, the equalities issues to determine whether there had been a breach of the standard which had or could cause serious harm.
18. In determining whether any apparent discrimination or detrimental treatment in respect of a protected characteristic constituted a breach of a standard, the focus was primarily on the Tenant Involvement & Empowerment standard. This standard requires registered providers to provide choices, information and communication appropriate to the diverse needs of their tenants. This is to ensure that complaints are resolved fairly, to treat all tenants with fairness and respect and to demonstrate understanding of the different needs of tenants, including in relation to the equality strands.
19. As with potential or actual breaches of other Standards, the test whether or not to refer to Stage 3 remains whether serious harm has resulted or may result from failure to meet a standard.
20. Where it was concluded that there had been no failure to meet a consumer standard, as with other cases, complainants were signposted, where appropriate, to other avenues where they might pursue their complaint.

Annex C

HCA REGULATORY NOTICE

Registered provider

Gallions Housing Association Limited (L4274) ('Gallions')

Consumer regulation regulatory finding

The Regulator has concluded that:

- a) Gallions has failed to meet the Home standard.
- b) As a consequence of this breach there was the potential for serious detriment to Gallions' tenants.
- c) Gallions has now rectified the breach to the Regulator's satisfaction by implementing an agreed action plan and we have decided that there are not grounds for further action to be taken using enforcement powers.

The case

A Gallions tenant contacted the Regulator alleging that there had been no gas safety inspections carried out in his property for the last three years.

The Regulator's investigation sought evidence of the provider's efforts to engage with the tenant to resolve the specific issue and more generally of its policies and procedures for dealing with gas servicing.

Gallions provided evidence of robust procedures and could demonstrate that it had a satisfactory gas servicing record. However, on receipt of further information from the tenant we identified that the provider's handling of this particular case could have put the tenant at risk of serious harm as his gas boiler had not been serviced for two years.

Gallions supplied the Regulator with evidence of the difficulties it had experienced in obtaining access and the repeated attempts that it had made to reach a negotiated agreement to organise works to the property.

The Regulator's findings

The Regulator considered the case as a potential breach of the Home standard, and specifically the regulatory requirement to 'meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes'.

The Regulator has found evidence of failure to adhere to the Gas Safety Regulations 1998 which state that gas safety checks should be undertaken annually by a gas safe engineer. The necessary inspection did not take place for a period of over two years. We recognise that there were access difficulties in this case, but Gallions did not seek legal resolution to the issue until two years after the previous gas safety check was completed. We have concluded that there has been a breach of the Home standard.

The delay in seeking a legal resolution led to the tenant and his neighbours being exposed to the potential dangers of an unserviced gas boiler for an unnecessarily long period of time. The potential harm resulting from a faulty gas appliance, such as escape of carbon monoxide or an explosion is well-known and meets the threshold for serious harm. Hence, in this case we have concluded that the serious detriment test has been met.

Action taken

Section 198A of the Housing Act 2008 (as amended) states that regulatory and enforcement powers may be used if the Regulator thinks that a standard has been failed and there are reasonable grounds to suspect that the failure has resulted in a serious detriment to the provider's tenants (or potential tenants) or that there is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the provider's tenants (or potential tenants).

In this case, while there was a breach of the standard, no harm actually occurred. Gallions has now serviced the gas boiler and overall compliance with gas safety requirements is satisfactory and does not raise concerns of a systemic failure which might affect other tenants.

As a result of this case, Gallions has streamlined its procedures for gaining access to properties. It will now apply to court for injunctions for access to carry out gas safety checks within an appropriate time period. The provider has also strengthened the way it reports information regarding gas safety to the board, making clear the actions being taken on cases of gas safety checks that are 90 days overdue.

As there is no evidence that further action is now required to prevent serious harm we do not have the powers to take enforcement action in relation to that breach of the Home standard (a consumer standard). However, we have concluded that this case raises governance concerns about the board's oversight of this matter. We are in the process of following-up these concerns

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