



Homes &
Communities
Agency

CONSUMER REGULATION REVIEW (2013/14)

September 2014

Executive summary

1. This document sets out the Social Housing Regulator's (the regulator) experience of carrying out its consumer regulation role in 2013/14. This was the second year in which we exercised our revised legal remit which means that we do not proactively seek assurance on compliance with our consumer standards and can use our intervention powers only where we judge that a failure to meet a consumer standard has caused or may cause 'serious detriment' to a tenant or potential tenants.
2. During 2013/14, we published three findings of serious detriment. In each of these cases we found that providers had breached the Home standard, in particular, that they had failed to meet their statutory obligations with regard to gas servicing and that as a consequence, there was potential for serious detriment to tenants.
3. 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 explores our published findings of serious detriment and also includes other case studies to help explain our approach.
4. In this year's report the key messages we want to highlight are:
 - Boards are responsible for ensuring that providers comply with all the standards, both economic and consumer. The fact that the regulator regulates consumer standards reactively does not lessen the obligation to comply, but does make the risk of non-compliance significant as interventions in the event of failure are likely to be of consequence.
 - The importance of health and safety obligations. Boards and councillors who govern registered providers' service delivery must make sure that they have proper oversight of all health and safety issues, including gas servicing and fire safety. Meeting health and safety requirements in respect of tenants is a fundamental responsibility.
 - In the case of private registered providers, when we find a breach of the standard which has or may cause serious detriment, we have and will also consider the impact upon the provider's compliance with the Governance standard.
 - Where a registered provider becomes aware itself of a breach of a consumer standard which it believes has or could result in serious detriment to tenants, it should communicate this to the regulator in a timely way.
 - The consumer standards continue to apply to local authorities, even though the economic standards do not.
 - We continue to receive a large number of complaints from tenants about their landlord which do not fall within our remit. Registered providers are required under the consumer standards to operate complaints processes that are clear, simple and accessible and to ensure that complaints are resolved promptly, politely and fairly.
 - Whilst we have no statutory mandate to deal with individual complaints, we do consider the issues raised to see whether they indicate a breach of the standard which might cause serious detriment. We continue to encourage tenants to pursue the appropriate route for their complaints.

- Where another statutory body is investigating a matter which may be a breach of the consumer standards (such as the Health & Safety Executive), we will take into account the action being undertaken by that authority in exercising our own regulatory powers.

Homes and Communities Agency

Consumer Regulation Review (2013/14)

Introduction

1. This report provides an overview of the consumer regulation work carried out by the regulator in the financial year 2013/14. It explains our approach to consumer regulation and how we have interpreted the serious detriment test. The extent and nature of consumer issues referred to the regulator during 2013/14 is discussed and information provided on key issues.
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 providers' boards (in the case of private registered providers) and with councillors (in the case of local authorities). 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. Since April 2012, our role has been to investigate only where we have reasonable grounds to suspect there may be 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 do not have powers to collect and analyse performance information relating to consumer issues and do not therefore provide pro-active assurance of compliance with the standards.
4. The Regulatory framework sets 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 organisations meet 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, a councillor or a designated tenants' panel) and subsequently the Housing Ombudsman.
7. The Housing and Regeneration Act 2008 (as amended by the Localism Act 2011) 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 this legislation. 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. It is 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. Boards are responsible for ensuring that providers comply with all the standards, both economic and consumer. The fact that the regulator regulates consumer standards reactively does not lessen the obligation to comply and providers should have the systems and processes in place to provide assurance to the board that the standards are being met.
11. Where there is a failure by a private registered provider to meet the consumer standards, we will consider what implications that failure has on the governance of the provider. By the nature of our role, which is reactive and therefore takes place after the failure has occurred, our intervention is likely to be both public and have significant consequences for the provider.
12. Where the test for serious detriment has been met, enforcement powers can be used where there has been actual harm (where there is, for example, the power to award compensation or fine) or where the regulator believes that the use of enforcement powers is necessary to prevent future serious harm. In seeking assurance about this, the regulator will take into account the behaviour and effectiveness of the provider in dealing with the serious detriment to date.
13. As set out in our 2012/13 report, our process continues to consist of three stages: an initial review to see whether the matter alleged falls within our remit (Stage 1); more detailed consideration by our Consumer Regulation Panel to determine whether there is a potential breach which has or could cause serious harm (Stage 2) and a detailed investigation (Stage 3). Further information 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.

14. Three cases in 2013/14 were found to meet the test for serious detriment. The cases where a finding of serious detriment has been made are summarised in the regulatory notices set out in Annex C.

Consumer regulation cases – gas safety

15. Our first finding that a breach of standards had the potential to cause serious detriment was published in October 2013 (Gallions). We reported upon this case in our previous report, as it was already in the public domain. However, given the links between this case and our subsequent findings of serious detriment, the regulatory notice is included in Annex C together with those for the two subsequent findings, Your Housing Group (February 2014) and The Guinness Partnership (March 2014).
16. One of the required outcomes under the Home standard is that registered providers meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes. With regard to gas safety, landlords' legal obligations are clear. In each of our three findings of serious detriment, we found that the providers had not met their statutory legal obligations under the Gas Safety (installation and use) Regulations 1998 which state that gas safety checks should be carried out annually by a gas safe engineer.
17. We recognise that the requirements of landlords in respect of gas safety are strict, and with good reason, given the potential danger to both tenants in their home and those who live nearby. In concluding that there had been a breach of the standard, we took into account the materiality of the issues, namely how many tenants had been affected and for how long and whether they were systemic in nature. In the cases where we concluded a breach of the standard there had either been a large number of properties (over 100) or some of the properties had been without certificates for a number of years.
18. Having established that the providers were in breach of the Home standard, we then had to determine if there was potential for serious harm to the tenants in the affected properties and to neighbouring tenants. The harm which can be caused by faulty gas appliances is well-known and we concluded in each case that the serious detriment test had been met.
19. We have had other cases (Case study 1) where the certificates have been outstanding for a matter of months, but the landlord has been taking all reasonable action to gain access (including court action). No harm has occurred. We concluded that although the standard had been breached (the requirement is to comply with the regulations and they require the certificates to be no less than 12 months old), in that case, we did not consider that the threshold for serious harm had been met as the exposure was limited and appropriate action was being taken.
20. In the case of Your Housing Group, we were made aware of weaknesses in gas safety not by the provider but by a whistle-blower. In the case of Guinness, we were informed directly by the provider. As this suggests, the regulator will act upon the information it has and consider each case on its merits, regardless of the source of the referral.
21. The case studies demonstrate the importance of providers maintaining fit for purpose gas safety programmes and data systems. Providers must ensure that where, for

example, they acquire new stock, their gas safety programme encompasses this new stock and that monitoring systems are comprehensive and coherent. The regulator expects boards to maintain proper oversight of gas safety. They need to have assurance that the system generating the information they receive about gas safety compliance is accurate and to take timely remedial action where problems are identified.

22. The cases also demonstrate the importance of taking timely action to gain access. There are legal routes available to do this and providers should use those to ensure that the needs of any individual tenant who is obstructing access are balanced with ensuring not only the tenant's safety but the safety of those nearby.

Case study 1

Home –gas servicing –materiality

The provider is directly responsible for the gas servicing of circa 25,000 properties.

A routine review of performance information identified that the provider's level of gas safety compliance was below the expected norm. This caused it to trigger an investigation into the data. Following this investigation, the provider concluded and reported to its executive management team that gas servicing compliance was lower than had previously been reported. Circa 500 properties were overdue for inspection and without current gas certificates. This compared with a previously reported 118 properties, all within its usual range of its no-access referrals process. At this point out of the 500 properties, 39 had gas certificates that were more than one month overdue. Compliance was therefore 98.2% of the total properties for which it had gas servicing responsibility. The remaining 461 were all less than one month overdue and within the no-access referrals system.

An age analysis of the 39 properties revealed: 29 were 1 – 3 months old; nine were 3 – 6 months old and one was 6 – 12 months old. The provider appointed its internal auditors to undertake a formal investigation and reported the matter to the group board and its audit and risk committee. The matter was reported to the regulator promptly, within one week of confirming and clarifying the scale of the problem, and the provider has kept the regulator regularly updated since then. The auditor's report has not identified any inherent weaknesses in the design of the provider's gas servicing systems. But following organisational changes, some procedures had not operated as designed. The provider subsequently reported that it was compliant with valid certificates reported as 99.4%. Two of the 39 properties identified as over one month overdue remained without valid certificates and were being followed up within its no access referral procedures.

Our decision

- The regulator considered whether the test for serious detriment had been met in this case and concluded that there had been a breach of the Home standard.
- The regulator considered whether there was any serious harm to residents as a consequence of the failure to meet the Home standard. It concluded that given the small number of properties involved (39 overdue more than a month) and the short time scale of the identified problem (November 2013 to January 2014) and

that the provider's own control systems identified the problem, the risks of serious harm were modest and therefore the serious detriment test had not been met.

Governance

23. In each of the three cases where we found serious detriment, as the providers concerned were private registered providers and not local authorities, we then considered the implications for our existing assessment of their compliance with the regulatory requirements set out in the Governance and Financial Viability standard. As explained in the introduction above, the threshold for regulatory intervention is intended to be significantly higher than that in relation to the economic standards, and so a finding of serious detriment and the issuing of a regulatory notice raises questions about the effectiveness of a provider's governance arrangements. In fact, it may be the case that issues are raised about the governance of a provider even where the serious detriment threshold has not been met. As is always the case, where we have concerns about a provider's governance, from whatever source, we will evaluate and take action where appropriate.
24. Any evaluation of compliance with the governance aspects of the standard will look at the whole organisation and reach a balanced conclusion. It will also consider any other issues which are current at the time, as was the case with Gallions and the payments to a departing Chief Executive.
25. The issues that will be considered in relation to a finding of serious detriment are likely to include:
- a. the effectiveness of the provider's internal controls (were systems and data rigorously checked? Did the provider discover the problem themselves through those checks and balances?)
 - b. how effective was the board's oversight of the issue? Was it receiving adequate and timely information and challenging the executive on performance?
 - c. has the provider been transparent with the regulator and reported the issue in a timely way?
 - d. what action has been taken to mitigate the failure?
 - e. does the provider recognise any wider systemic concerns raised by such a failure or does it see the problem as only relating to one narrow issue?
 - f. how has the board assured itself that the failings have been or will be addressed?
26. The regulator's assessment of each of the three providers' compliance with the governance elements of the standard was downgraded. With Gallions and Your Housing Group, we concluded that the providers were not compliant (G3) and, in the case of Guinness, that although the provider remained compliant, it needed to improve some aspects of its governance arrangements to support continued compliance (G2). For each provider we issued a new narrative regulatory judgement, setting out the reasons why our assessment had been downgraded.

27. The cases highlight an important sector-wide issue about openness. As we do not proactively collect information relating to the consumer standards, we are most likely to become aware of issues via referrals. In accordance with the co-regulatory nature of the overall framework and the principles of openness and transparency, we expect all registered providers to make us aware in a timely way of likely breaches of one or more of the consumer standards which they themselves identify.

Further consumer regulation cases

28. As in 2012/13, the majority of the consumer cases which were referred to the regulator came from tenants. Most of these matters related directly to the individual tenant. The regulator has no statutory mandate to become involved in the resolution of individual complaints. Our expectation is that providers will meet the required outcome under the Tenant Involvement & Empowerment standard of maintaining an approach to complaints that is clear, simple and accessible that ensures that complaints are resolved promptly, politely and fairly.
29. However, once an individual matter has been brought to our attention, we must discharge our remit of determining whether or not it constitutes a breach of a consumer standard, notwithstanding that the matter may be subject to the provider's complaints process, subject to legal action or to some other ongoing third-party investigations (save as set out below). As our three findings of serious detriment in 2013/14 suggest, it is more likely that we will judge serious detriment where there is a standards breach which has resulted in actual or potential serious harm to tenants stemming from failures that impact on more than just one tenant. But we recognise that, as in the Gallions case, investigation of an individual case may lead us to conclude that we have insufficient assurance of compliance with the standard.
30. The case studies below illustrate the approach we have adopted:

Case study 2

Tenant Involvement & Empowerment standard (TI & E) –resident associations and resident involvement

We received a complaint from a group representing sheltered housing tenants that their council landlord had decided to stop recognising the group, cutting all communication and financial support. They alleged that this had occurred at a time when important decisions were being made about sheltered housing and that residents in these schemes were not represented.

Our investigation of the case revealed that the council had set up a project board to reach decisions about sheltered housing in its area, but that the complainant's group had chosen not to have representatives on the project board. At the time we received the complaint, the council advised us that, following a review of tenant involvement mechanisms, it had decided to consult directly and on an individual basis with sheltered housing tenants. It advised that it would ballot all tenants once available options were known as a result of the project board outcomes. There was evidence that the provider had set up a series of consultation events at each sheltered housing scheme.

Our decision

We considered the complaint in relation to the TI & E standard. We concluded that no breach of the TI&E standard was indicated because based on the evidence provided by the council, alternative arrangements had been put in place. We noted that the regulator is not prescriptive about how providers meet the standards and this includes the way in which tenants are involved.

Case study 3

Neighbourhood and Community standard – neighbourhood management; ASB

The regulator received a complaint from a private house owner who was complaining that she was being bullied and harassed by her neighbour, the tenant of a social housing provider. She stated that this had been going on for 9 years and that both the council and the provider were aware but that the provider was doing nothing to help her.

The issue was first reported in 2005 and the neighbour was served with an anti-social behaviour (ASB) contract. The neighbour has recently been charged with making threats and is due to appear in court.

It is alleged that the provider had queried whether the issue was within the regulator's regulatory remit as the complainant was a private owner.

Our decision

The complainant has provided information that the ASB issue of which she was complaining was being dealt with within the local ASB partnership agreement in which the provider was a participant. Action had been taken, as confirmed by the complainant, that the alleged perpetrator had been charged with making threats and was due to appear in court.

The regulator considered that the provider had dealt with the matter appropriately through the partnership and that there was no evidence of a breach of standard.

The regulator also considered the question of its remit in relation to owner occupiers. The panel concluded that the issue raised was within the regulator's remit because it was relating to the Neighbourhood and Community standard where the expectation is that the provider has a responsibility for the condition of the neighbourhood where they own homes and should work in partnership with other agencies to prevent and tackle ASB in these neighbourhoods. The issue was raised by a private home owner who was resident in the neighbourhood.

Case study 4

Home – repairs and maintenance; TI & E –customer service, choice and complaints

We received a complaint from a tenant who stated that she had found it extremely difficult to report urgent repairs, including a lack of communal lighting and lift breakdowns, to her provider and that she had been unable to contact the repairs line by phone on a number of occasions. She had also been unable to raise a complaint regarding the repairs service via the provider's on-line complaint service. The tenant advised that she was heavily pregnant at the time of her complaint and that some older tenants and those with a disability had been unable to leave their homes as a result of the lift not working and the lack of communal lighting.

Our investigation

Home – repairs and maintenance

The complainant was unable to report problems with the communal lighting and then the breakdown of the lift by the advised repairs reporting routes; by email, on the website or by phone. It was not until she contacted the executive team and logged a complaint that the repairs issues were resolved. There was some evidence therefore that the complainant experienced barriers in accessing the repairs service.

Our investigation of the complaint also highlighted wider issues with accessibility to the provider's repairs service. Following a change in maintenance service, the provider experienced initial problems with its systems which led to longer waiting times. In addition, the provider identified that its telephony system was cutting off calls at peak times, which explains why the complainant experienced difficulties in accessing the repairs service by telephone.

In respect of the wider impact of the telephony problems, only a small proportion of the provider's residents would have been affected, around 2% which equates to approximately 300 tenants, for a period of three weeks. Interim measures were put in place to resolve the issue once it had been identified with tenants having access to the repairs service through other reporting routes; email, social media and in person at the provider's offices. A replacement of the telephony system was expected to provide a permanent solution.

TI & E standard—customer service, choice and complaints

There was evidence that the complainant had found it difficult to access the complaints service, and had to take steps outside the normal access route by contacting the executive team on two occasions before her complaint was acknowledged and the issues were resolved.

The provider has provided assurance around its general approach to complaints and there was no evidence to suggest that the provider is breaching the standard in its general approach to complaints.

Our decision

Home – repairs and maintenance

The problems experienced by the complainant were indicative of a wider systemic problem with repairs reporting at the provider at the time. We gave serious consideration as to whether the issues of accessibility to the repairs service could indicate serious detriment. Although only a small proportion of tenants were potentially affected, this was for a considerable period of time and tenants could have experienced problems in reporting repairs that related to health and safety issues. There was therefore some evidence of a breach of the Home standard. However, we concluded that actual or potential serious harm did not result from this because tenants had alternate routes to report a repair and the provider had taken reasonable steps to resolve and prevent a recurrence of the problem.

TI & E standard–customer service, choice and complaints

We found that the provider had not dealt with the complaint promptly and that the process was not accessible, both of which are expectations of the standard. There was as a consequence some evidence of a breach of standard. However, we found no evidence of actual or potential serious harm as a consequence.

Concurrent investigations

31. This year we have been dealing with a number of cases where there has been an investigation by another body, in most cases, the Health and Safety Executive (HSE). Our approach to a case, where we are notified of an investigation, is first of all to ensure that the provider is managing the presenting risks so there is no risk of recurrence. Our responsibility then is to determine whether there has been a breach of the standard which has or may cause serious detriment.
32. In many cases, the question of whether the standard has been breached will be intrinsically linked to the conclusion of the investigation by the other regulator. For example, if we are seeking to determine whether the provider has complied with all applicable statutory requirements relating to Health and Safety, then whether a provider is found guilty of a breach in a case brought by the HSE will be directly relevant. In those circumstances, as it would be inappropriate to either duplicate or second guess the primary investigation, we will wait until the investigation is concluded.
33. Once the case has been decided, we will take the conclusions of the case into account in considering whether there has been a breach of the standard which has or may lead to serious detriment. In reaching that conclusion, we will comply with our obligations of materiality, proportionality and minimising interference. This latter obligation is of particular relevance when dealing with cases where action has already been taken by another regulator to avoid duplication. It is, however, the case that our specific duties differ from those of other regulators and we will always be obliged to carry out those duties, even where there has been action by another regulator.
34. Where we conclude that there has been a breach of the standard which has or may cause serious detriment, we will publish a regulatory notice and consider whether the use of our enforcement powers is necessary to ensure future compliance. As mentioned above, providers must notify the regulator of instances where there is the potential for such a breach.

35. As in all cases, we will consider the implications throughout the case on our assessment of the governance of the provider and will take action where we conclude that the Governance and Viability standard has not been met, noting that this will not apply in the case of a local authority, which is not bound by the economic standards

Misdirected complaints

36. In the first year of our operation we received a number of mis-directed complaints (310). Action has been taken to improve online signposting for tenants and work continues on wider promotion of understanding. The Housing Ombudsman's website gives a clear and easy to understand explanation of the process and the Homes and Communities Agency's on-line guidance explains its role and gives advice on where and how to make a complaint. The GOV.UK website also sets out how to make a complaint.
37. Nonetheless, in 2013/14, there were 407 complaints which we judged at Stage 1 not to require further consideration. While this represents an increase it was less marked than this figure alone suggests because the overall number of consumer referrals increased in 2013/14. As set out in Annex B, in 2012/13 74% of referrals did not proceed beyond Stage 1, compared with 80% in 2013/14. We will continue to monitor the proportion of cases which do not proceed beyond Stage 1 and to support the government in clarifying the appropriate complaints channels.
38. We recorded a higher proportion of Stage 2 cases in 2013/14 where we considered that there could be a breach of the Tenant Involvement & Empowerment standard. Sometimes this was not the only standard impacted by the complaint – for example, where a tenant had raised issues relating primarily to the Home standard, but then also presented evidence that the way in which his or her complaint had been handled did not meet required outcomes under the Tenant Involvement & Empowerment standard. We will also continue to monitor these figures in 2014/15.
39. Where cases do not progress (either beyond stage 1 or stage 2) we always set out the key stages in the complaint process which are:
Step 1 - in the first instance a tenant should make a formal complaint to their landlord
Step 2 - if the complaint cannot be resolved, a tenant can contact a designated person that is either their MP, local councillor or designated tenant panel. The designated person can take up the case to resolve locally or, if necessary, refer the case to the Housing Ombudsman
Step 3 - if neither of the previous two steps have managed to resolve the complaint, a tenant can contact the Housing Ombudsman directly
40. We have set out below some examples of cases that did not progress beyond Stage 1 (ie: were not referred to the panel).

Case study 5

The complainant raised a complaint over the length of time it was taking for the provider to implement a repair. The provider had inspected the boiler and found it to be fine, but had found that a supply pipe needed replacing. Due to the location of the pipe and nature of the work needed, the provider had advised that it would take another week to complete the repair. In the meantime, the tenant had been supplied with heaters. The facts of the case therefore suggested that having identified the need for a repair, the provider had both taken steps to mitigate the impact on the tenant, and scheduled the repair within a reasonable timescale. One week to secure the necessary parts and access a difficult to reach supply pipe appeared reasonable and did not indicate a breach of any of the standards.

Case study 6

The complainant was a resident in the process of selling his flat, but delays by the provider had meant that the original valuation had expired and he was now having to pay for another. The complainant was advised that there was no breach of any standards as they do not relate to the contractual arrangements between the provider and the buyer in a sale. The tenant received a written response from the HCA in which he was advised to address the issue through the provider's formal complaints procedure in the first instance, and then if not satisfied, escalate the complaint to a designated person, then on to the Housing Ombudsman if necessary. Further information was also provided in the written response on the process and remit of designated persons and the Housing Ombudsman. The case was therefore not escalated because it was beyond our remit.

Case study 7

The complainant raised a complaint about what he described as 'cupboards' being taken away from the use of the residents. The complainant claimed this was bullying and harassment, and mentioned illegal eviction. In fact, the cupboards were dry risers and/or service cupboards, and the provider was ensuring they were kept maintained and clear as part of a fire risk assessment to ensure fire safety. The case was not escalated further as there was no evidence of bullying, harassment or eviction, and the registered provider was taking this action to ensure the health and safety of tenants.

Case study 8

This complaint was made on behalf of the caller's daughter. The issue arose from a broken lock and the inability for the tenant to gain access to the property. This created further inconvenience as the tenant had a small child and had to collect her other child from school with no one nearby to assist. From the case it can be assumed the tenant reported this to the registered provider as the case states that a maintenance engineer was en route to fix the lock. However, there was an hour's wait due to the location of the engineer at the time. The provider informed the tenant that once the repair was completed she could register a complaint if she was still dissatisfied, and gave the tenant assurance the work would be completed that day.

This case was not escalated as the provider took the appropriate immediate action to rectify the maintenance issue, and worked within its full capabilities to get the engineer out to the property as soon as possible. There was no evidence of a failure material enough to constitute a breach of our standards.

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

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.

exchange services.

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.

Nature and volume of cases in 2013/14

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:

- 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?
- does the issue raised relate to a matter within the Regulator's remit?

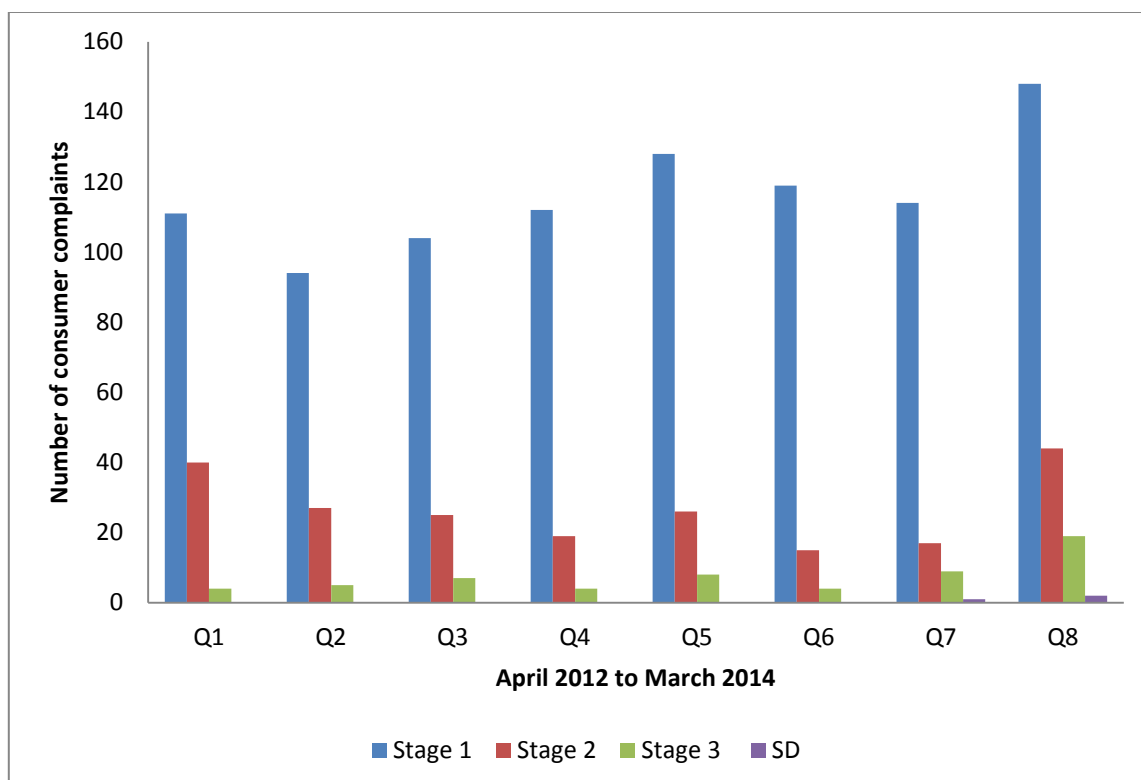
Stage 3: Those cases which are identified by CRP as requiring further investigation are subject to more detailed work to ascertain if there has been a breach of the standards which has or may cause serious detriment and to determine whether regulatory action is required.

2. The table below shows the total number of consumer complaints handled by the Regulator by quarter and how many of these went on to the subsequent stages of our process. The 2012/13 figures are in brackets.

	Q1	Q2	Q3	Q4	Totals
Stage 1: Total consumer complaints	128 (111)	119 (94)	114 (104)	148 (112)	509 (421)
Stage 2: Referred to Consumer Regulation Panel	26 (40)	15 (27)	17 (25)	44 (19)	102 (111)
Stage 3: Further investigations undertaken	8 (4)	4 (5)	9 (7)	19 (4)	40* (20)
Published findings of serious detriment	0 (0)	0 (0)	1 (0)	2 (0)	3 (0)

*22 of these cases were the subject of further investigation at 31 March 2014.

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 was only one statutory referral in 2013/14. 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.
4. The chart below shows the number of complaints by stage over the eight quarters that we have been exercising our new consumer regulation role.

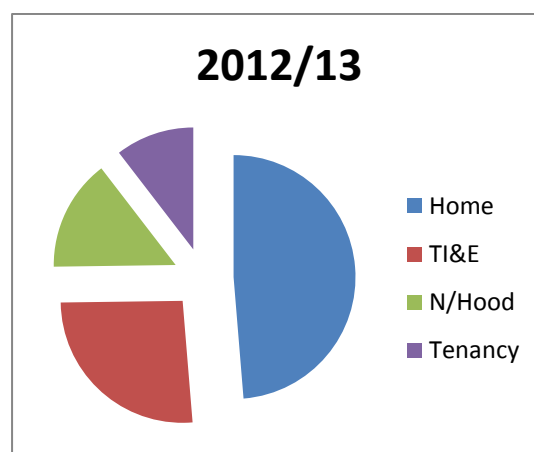
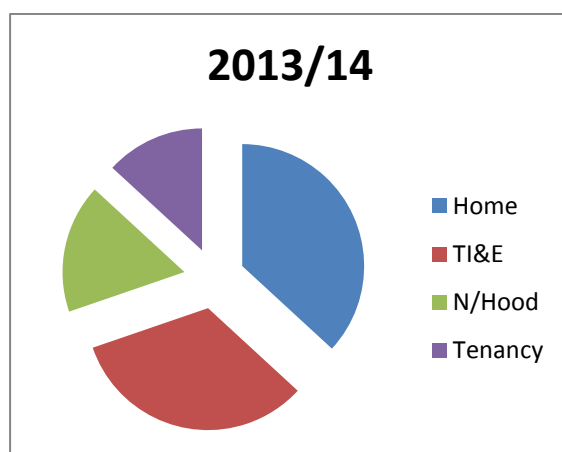


5. Over the two years we have received 930 consumer standard related complaints. Of these, 213 (23%) have gone to the panel. 60 (6.4%) have been investigated further and as at 31 March 2014 we had found serious detriment in three cases (0.3%).
6. There was an increase of 20% in the number of consumer standards related complaints in 2013/14. It may be that some of this increase (which was most marked in Quarter 4) was linked to the regulator's first published findings of serious detriment and the associated publicity.
7. The proportion of cases reaching Stage 2 was higher in 2012/13 than in 2013/14 (26% compared with 20%). However, the 20% figure for 2013/14 masks significant variation between the quarters. In Quarter 4, 30% of cases were referred, compared with only 12% in Quarter 2. A higher proportion of cases have also been subject to further investigation in Quarter 4.

Nature of the cases

8. Unlike in 2012/13, the regulator did receive some self-referrals from providers in 2013/14, but there was a reduction in the number of statutory referrals. We recorded only one statutory referral out of the 509 complaints we handled, compared with 8 in the previous year.
9. Equalities issues were recorded in 34% of CRP cases considered in 2013/14. This compares with 20% in 2012/13.
10. The Home standard continues to be the consumer standard which is most often germane to the cases referred to the panel. However, in 2013/14 it was relevant in 37% of CRP cases whereas the year before the figure was 49%. There has been a notable increase in the number of cases where the Tenant Involvement & Empowerment standard is relevant, either on its own or in addition to other consumer standards.
11. The percentage figures are shown below and in two pie charts:

Consumer standard	2013/14	2012/13
Home	37	49
Tenant Involvement & Empowerment	33	26
Neighbourhood and Community	17	15
Tenancy	13	10



- 12 The percentage of Stage 2 cases by type of provider for the two years is shown below. The figures continue to suggest that local authority tenants may be less likely to refer matters to the regulator than other tenants. There has been a slight shift from large providers to those with less than a thousand units.

Type of provider	2013/14	2012/13	Change
Small housing associations (i.e. less than a thousand units)	30	23	+7
Large housing associations (i.e. over a thousand units)	62	72	-10
Local authority providers	8	5	+3

Annex C

HCA regulatory notices

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

October 2013

Registered Provider

Your Housing Group Limited (L4203) (YHG)

Consumer Regulation Regulatory Finding

The Regulator has concluded that

- a) YHG has failed to meet the Home Standard; and
- b) As a consequence of this breach there was the potential for serious detriment to YHG's tenants.
- c) The Regulator is considering what further action should be taken, including whether to exercise any of its regulatory or enforcement powers.

The case

A former employee of YHG contacted the Regulator with an allegation that there were serious weaknesses in the provider's gas safety regime, including that some properties had not had gas safety checks for a significant amount of time.

The Regulator's investigation revealed that the provider had previously commissioned an internal investigation as a result of whistleblowing and had already taken disciplinary action as well as delivering an action plan to rectify the faults identified. In addition the provider commissioned an internal audit of its gas servicing programme. This audit concluded that there was limited assurance in the design and effectiveness of the control framework in the gas servicing regime at YHG, including that the gas contractors' property database and service records were not reconciled with the provider's own records so that the provider could not be sure of the integrity of its gas safety monitoring and reporting.

The Regulator's investigation also revealed that, while some of the issues raised with the Regulator by the complainant had already been addressed, further short-comings in gas safety existed. In particular, it revealed a significant number of properties without an up-to-date gas safety certificate, some of which were overdue by a substantial period, and that no gas safety check had been made on catering equipment at 12 commercial sites. This is relevant for retirement villages and community centres where kitchens and laundry rooms are in use.

YHG continues to deliver the action plan of the recommendations from the gas servicing audit and is working to rectify the issues brought to its attention by the Regulator. It has also commissioned independent reviews of the action it has taken which will report shortly with the aim of providing assurance that YHG has addressed all outstanding matters and is fully compliant on gas safety.

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 (Installation and Use) Regulations 1998 which state that gas safety checks should be undertaken annually by a gas safe engineer. The necessary inspections were overdue in a significant number of cases. There is also substantial evidence in the internal audit report of weakness in the gas servicing controls and systems at YHG exposing a significant number of tenants to the potential of serious detriment, with the risk exposure being undetected for lengthy periods. This is clear evidence of a breach of the statutory obligation to carry out gas servicing and thus of the Home Standard in respect of the requirement to meet all applicable statutory requirements that provide for the health and safety of the occupants in providers' homes.

Despite the actions YHG are taking, the Regulator is of the view that YHG has failed to meet the Home Standard.

Section 198A of the Housing and Regeneration Act 2008 (as amended) states that the Regulator's regulatory and enforcement powers may be used if a registered provider has failed to meet a consumer standard and the Regulator thinks that 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).

We are working with YHG as it addresses the issues which have led to this situation and we will consider what, if any, enforcement action in line with our powers we will take in relation to the breach of the Home Standard.

In addition, we have concluded that this case raises governance concerns about the YHG board's oversight of this matter. We are in the process of following up these concerns.

February 2014

Registered Provider

The Guinness Partnership Ltd (4729) (TGPL)

Consumer Regulation regulatory Finding

The Regulator has concluded that

- a) TGPL has failed to meet the Home Standard; and
- b) As a consequence of this breach there was the potential for serious detriment to TGPL's tenants.
- c) The Regulator is considering what further action should be taken, including whether to exercise any of its powers.

The case

TGPL contacted the Regulator to inform us that during a data reconciliation exercise a number of out of date gas safety certificates had been identified. In some cases the certificates had been expired for a long time. Further investigation by the provider revealed additional out of date gas certificates across the Partnership's housing stock.

TGPL has commissioned an independent review of its gas safety systems and processes including how the problem occurred. The review will report shortly with the aim of providing assurance that TGPL is now compliant on gas safety and that it is taking appropriate action to prevent a recurrence of the situation.

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 received evidence of failure to adhere to the Gas Safety (Installation and Use) Regulations 1998 which state that gas safety checks should be undertaken annually by a gas safe engineer. The necessary inspections were overdue in a significant number of cases exposing a substantial number of tenants to the potential of serious detriment, with the risk exposure being undetected for lengthy periods. This is clear evidence of a breach of the statutory obligation to carry out gas servicing and thus of the Home Standard in respect of the requirement to meet all applicable statutory requirements that provide for the health and safety of the occupants in providers' homes.

Notwithstanding the actions TGPL is taking, the Regulator is of the view that TGPL has failed to meet the Home Standard.

Section 198A of the Housing and Regeneration Act 2008 (as amended) states that the Regulator's regulatory and enforcement powers may be used if a registered provider has failed to meet a consumer standard and the Regulator thinks that 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).

We are working with TGPL as it addresses the issues which have led to this situation and we will consider what, if any, further action we will take in relation to the breach of the Home Standard.

In addition, we will also consider whether this case raises governance concerns about the TGPL board's oversight of this matter

March 2014

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500



Homes & Communities Agency

Homes and Communities Agency
Fry Building
2 Marsham Street
London SW1P 4DF

The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.