

Regulator of Social Housing consultation on Statutory Guidance under section 215 of the Housing and Regeneration Act 2008

Consultation question on the Statutory Guidance: Does the proposed approach set out in the Statutory Guidance seem a reasonable basis on which to use these powers?

Southern Housing agrees with the Regulator's proposed approach. We believe the Regulator's overall strategy – adopting a proportionate, transparent and collaborative approach that prioritises self-improvement by social landlords – is the right one for all parties. Enforcement and regulatory powers should be kept in reserve for where this strategy has failed rather than used as a first course of action.

Given the new and revised powers outlined in the Statutory Guidance are substantial, it is important to get the detail right and it is here that we have a few observations.

Firstly, there is considerable overlap between some of the circumstances triggering the different powers. For example, failure to meet a standard under section 193, 194 or 194C of the Act can variously trigger:

- Inquiry and extraordinary audit
- Performance improvement plans
- Enforcement notices
- Penalties
- Compensation
- Management tender
- Management transfer
- Appointment of a manager
- Transfer of land
- Amalgamation
- Appointment of new officers

Likewise, 'mismanagement of affairs' is listed as a potential trigger under nine of the powers. Clarity over what breaches can trigger what actions is critically important given the nature of the Regulator's updated powers, most of all its ability to issue unlimited fines. A lack of clarity could open the Regulator up to long and drawn-out appeals processes if social landlords believe application of an alternative regulatory or enforcement power might have been more appropriate.

Southern Housing consultation response



Secondly, we note draft guidance notes one and six regarding Surveys and Emergency Remedial Action both enable the Regulator to authorise an appropriate person to enter social housing premises. We believe registered providers should have the right to accompany the authorised person, if anything to offer the resident some reassurance about why entry by a third party is necessary. More broadly, we note the Statutory Guidance does not impose a requirement to notify registered providers before exercising powers, other than where it is a statutory requirement. It would be helpful to clearly set out where notification is a statutory requirement.

Thirdly, we note an Inquiry or Extraordinary Audit (guidance note three) can be triggered by (risk of) failure to meet a standard under section 193, 194 or 194C of the Act. This suggests the Regulator could instigate an Inquiry or Extraordinary Audit for failure to meet either economic or consumer standards. We believe there's an argument for restricting this to economic standards because grounds for an extraordinary audit typically relate to issues with financial statements, solvency, fraud or where the external auditor has raised a serious concern – in other words, matters covered by the economic standards. Inspection is the more appropriate tool for investigating consumer-related matters under the consumer standards. If that is the Regulator's intention (extraordinary audits for breaches of the economic standards and inspections for breaches of the consumer standards), it would be helpful for this to be made explicit in the guidance.

Fourthly, we note draft guidance note seven (Penalties) enables the Regulator to issue unlimited fines. While we appreciate financial penalties offer an effective deterrent, it feels uncomfortable for these to be completely unlimited with no clear criteria offered as to the potential scale of penalties issued for different breaches. Even the Information Commissioner's Office (ICO), which can levy huge fines, gives some indication of what the potential value of these may be.

Finally – and recognising the forthcoming fee increase– we feel it would be beneficial if the Regulator were obliged to take value for money considerations into account when considering exercising powers associated with draft guidance notes 9 (Management Tender), 10 (Management Transfer), 12 (Appointment of advisers to local authorities) and 14 (Amalgamation). We also feel the need to consider value for money should be explicit within the guidance.

Consultation question on the business engagement assessment : Do you have any comments on business engagement assessment (including the equality analysis) at Annex 3?

No