



## Scottish Housing Regulator consultation on Regulation of Social Housing Response from Crisis

December 2018

Crisis is the national charity for homeless people. We are dedicated to ending homelessness by delivering life-changing services, including our Crisis Skylight service working with around 800 homeless people a year in the Lothian region, as well as across ten other locations around Great Britain, working with local authorities across Scotland, and campaigning for change.

Crisis welcomes the opportunity to respond to this consultation. Crisis recently published a ground-breaking Plan to End Homelessness, *Everybody In: How to end homelessness in Great Britain*. This sets out the actions needed to end homelessness for good in Scotland and across Great Britain. There are a number of recommendations in the Plan of direct relevance to the work of the Scottish Housing Regulator (SHR). These include:

- That the regulation, monitoring and inspection of how local authorities, other public bodies, and social housing providers discharge their homelessness duties is fit for purpose
- Ensure that the rent setting framework for social housing delivers rents that are affordable to those on low earnings and in receipt of Housing Benefit
- Ensure that all social housing providers fulfil their responsibilities to co-operate with local authorities in meeting their homelessness duties, and are encouraged to adopt best practice in supporting homeless people into social housing – including best practice in the use of pre-tenancy assessments
- Ensure local authorities and housing providers monitor and report publicly on their performance providing settled homes for homeless people

### Key points

- Crisis strongly welcomes homelessness being one of the key priorities for the Scottish Housing Regulator. This reflects the statutory objectives for the Regulator.
- We generally agree with the approach set out in relation to scrutiny of social landlords. However overly focusing on risk can lead to a reluctance to support homeless households who are perceived to present greater risk.
- More could be done to recognise the work social landlords do to support homeless households, including through prevention work and tenancy sustainment.
- However, we do not believe there is sufficient focus throughout the Framework or generally on the needs of homeless people or on ensuring transparency and accountability of non-landlord services for which the Regulator has responsibility,

including local authority homelessness services. In particular, this needs to be reflected in the gathering and publishing of data and assurance of services.

- We welcome the revision of the homelessness indicators to reduce duplication and better reflect RSL (registered social landlord) lets to homeless households. We make recommendations to amend this to make it effective.
- There is also greater potential for the SHR to examine:
  - councils' ability to fulfil their statutory duties, for example through examining access to a statutory homelessness application, housing officer caseloads, speed of access to housing options advice, and the quality and depth of housing options advice
  - the provision of effective Housing options services, for example through monitoring the implementation of guidance on provision of rent deposit guarantee schemes
  - average rehousing timescales for different household sizes and tenure types, and individuals' total length of time and number of placements in temporary accommodation
  - the effectiveness of the Housing Support Duty, including the quality of assessment, the support provided as a result of the assessment and the support provided during the course of a homelessness application
- Substantial changes are expected to the homelessness framework following the publication of the Scottish Government's Ending Homelessness Together Action Plan. The regulatory framework will need to keep pace with these changes in order to ensure their effective implementation. These include changes to the restrictions on unsuitable temporary accommodation, an increased focus on prevention, an amended Code of Guidance and a new Code of Practice.

### **Questions 1-3: Regulatory framework: overall approach**

Crisis strongly welcome the emphasis on homelessness as a regulatory priority. We do not believe this is sufficiently prioritised at present.

In primary legislation<sup>1</sup> the first stated objective for the Scottish Housing Regulator is to safeguard and promote the interests of people who are or who may become homeless. While we recognise that the Regulator's main functions relate to regulating social housing, it is vital that the interests of homeless people are prioritised by the SHR. People who are, or who are at risk of homelessness, can be among some of the most vulnerable in our communities and have particular need of effective regulation of the services that are required to support them. Crisis works with a number of councils who regularly breach their statutory duties in relation to homelessness.

This priority needs to be reflected clearly in the work and language used by the Regulator. Currently this does not happen. In corporate communications, such as the website and the consultation document, the services that the Regulator oversees are generally referred to as landlords, beneficiaries of the SHR's work as "social tenants and

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<sup>1</sup> Housing (Scotland) Act 2010

other service users". The shorthand version of SHR's description of itself makes no mention of the responsibilities towards homeless people. The telephone line does not provide an option to make contact in relation to homelessness, only for social tenants, private tenants and landlords.

This makes it very difficult for homeless people and their representative groups to recognise the relevance of the SHR's work to them, understand the performance of their local homelessness services or hold them to account. It also indicates to those who are aware of the Regulator's role that the homeless functions of the Regulator are secondary to the social housing functions.

The language and structure of the SHR's corporate communications needs to reflect homelessness as a priority to ensure content is relevant and accessible to people who are homeless or scrutinising homelessness services.

The introduction to the draft Framework for the Regulation of Social Housing in Scotland clearly states that the Framework covers the performance of the housing and homelessness services provided by local authorities, but we do not believe this is sufficiently reflected in the Framework, particularly in the sections on data and assurance.

We welcome the emphasis on empowering tenants (paragraph 2.5), people who are homeless and other service users in this section. However, the text only references a "strong tenant voice". We note that only 3% of the National Panel of Tenants and Service Users membership have any experience of homelessness, or around 13 people out of 422. This compares with 8% of the Scottish population having had experience of homelessness<sup>2</sup>. The voice of homeless people may be different from that of tenants, and because of the nature of their circumstances, homeless people may require services to engage with them in particular ways. There needs to be an explicit focus on engaging the voices of people who are homeless. This is something that Crisis would be happy to support the Regulator with.

It may be useful to consider a discussion with social tenants to gain a better understanding of their views on the provision of social housing for homeless households. Feedback from the Homes for Cathy group of housing associations in England suggests that some housing associations have been surprised how positively their tenants viewed their housing association's work to house and provide support to people who are homeless.

#### **Question 7: Getting and publishing data**

The approach set out in the chapter on "gathering and publishing data in ways tenants and others can use" focuses exclusively on the role of landlords and neglects homelessness and wider services for which the Regulator has responsibility. This is

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<sup>2</sup> Scottish Government (2018) Health and homelessness in Scotland

unhelpful in terms of safeguarding and promoting the interests of people who are homeless and who require the non-landlord services regulated by the SHR.

Currently on the website there are no permanent links on the home page to information about services for homeless people, and the Compare Landlord function provides no information or reference about council's performance in relation to non-landlord responsibilities, such as provision of homelessness services. This is despite undertaking monitoring activity in 16 councils and more in-depth scrutiny activity in a further four councils during 2018/19. There is no information about how to make a complaint about a local authority homelessness or housing service.

As a minimum, there should be information easily accessible from the home page of the website to allow people to scrutinise the performance of local authority homelessness and housing services and a means to make a complaint about these services.

#### **Question 8-12: Getting Assurance**

Overall, we welcome the focus on assurance by supporting responsible landlords to self-assure, balanced with taking appropriate action where necessary. This is the focus of our work with the Homes for Cathy network of RSLs who seek to better support households who face homelessness. Crisis are currently working with the network to develop a draft charter for Scottish RSLs (see appendix).

Feedback from RSLs we have spoken to suggests that a strong regulatory focus on Key Performance Indicators such as voids, arrears and re-let times can encourage a risk-averse approach in some parts of the sector. Where homelessness is seen to bring more risk to an organisation, this can be undermining to RSLs' social purpose in providing access to households who may have vulnerabilities. Some RSLs have been clear that they would welcome greater recognition of their work to support homeless households, even where this involves increased risk.

There is no mention in this chapter of what the approach is to assurance of non-landlord services, i.e. homelessness and housing services, and how this information is published and made transparent. This lack of attention is also reflected in the lack of a clear link to non-landlord assurance information on the main website. The information in the "Find and Compare Landlords" section of the website relates to landlord services and not other services scrutinised by the Regulator.

For example, Dumfries and Galloway Council have no landlord responsibilities as a stock transfer authority, so the landlord report provides no meaningful information. However, its homelessness service is subject to a scrutiny plan but this is not mentioned on the Council page of the site.

This means that the information published is not of benefit to people who are homeless unless they are social tenants.

We strongly recommend that information published on assurance covers all the functions that the Regulator scrutinises and not just the landlord functions, to promote the interests of people who use these services. Information about a landlord or service provider should be collected in one place. Information about whether the service is undergoing scrutiny or monitoring should be provided alongside information on achievement of the Charter.

#### **Question 13: Taking action where we need to**

In general, we support the approach to taking action. We note the almost exclusive use of the terms “landlords” and “tenants” throughout this section, and that this does not represent the full range of stakeholders or objectives of the Regulator. As discussed above, this is consistent with the website which only provides information about making complaints about landlords, and not other services for which the SHR has responsibility.

We recognise that the Regulator’s remit does not extend to individual service-related complaints, which are the responsibility of the Ombudsman. However, Crisis has made formal complaints about services, and supported clients to do so, which have not been treated as complaints, or have not been actioned. As a complaint cannot be taken to the Ombudsman until it has been handled by the service, it is critical that the SHR maintains a strong and rigorous focus on how services deal with complaints.

#### **Question 14: Thematic work**

Thematic work is an important part of the Regulator’s work. It is important that action can be taken and enforced following thematic reviews. The last review of homelessness in relation to RSLs was 2009 and some of the main conclusions continue to be relevant some nine years later.

#### **Question 19: Charter indicators guidance**

We welcome the intention of the new indicators (22 and 23) to give greater clarity on the proportion of social lets to homeless households. This is much needed and something we recommend as part of our Plan to End Homelessness. However, we note that the focus is on lets through section 5 referrals. In some areas of Scotland section 5 referrals are not used to allocate social lets to homeless households, including those with choice-based lettings systems or those who take households directly off the waiting list, so these indicators will only give a partial picture.

In addition, collecting data by RSL this way will not provide local authority-level information as some RSLs operate across local authority boundaries. Being able to monitor this at local authority level would help with local accountability and transparency. We recommend indicator 22 be amended to proportion of social lets an RSL makes to households with an open homelessness application / HL1, broken down by local authority area (which should be recorded by RSLs anyway). We also believe that this will need to be supported by very clear guidance to ensure that offers are transparent, for example made without conditionality, such as a requirement to pay the first month’s rent

up front where the applicant is on full benefit, or that the applicant is deemed 'tenancy-ready'.

Indicator 23 should be amended to cover council nominations as well as section 5 referrals. However, this does not work for areas which use choice-based lettings. As this is an area that the Scottish Government's Ending Homelessness Together Action Plan (EHTAP) identifies for future development, we recommend the SHR works with the sector to develop a way to monitor practices around bypassing homeless households where choice-based letting is an application approach used in an area.

We believe that RSLs would welcome more opportunity to demonstrate their work in preventing homelessness and sustaining tenancies. It would be helpful to recognise where RSLs take new tenants from social housing waiting lists in order to prevent statutory homelessness or respond to non-statutory homelessness.

Another way to do this would be to amend the indicator on percentage of homeless lets which are sustained after a year. Currently this is a blunt tool, as some moves can be positive, for example where a tenant forms a relationship or transfers to another property.

Crisis also believes there is a role for the Regulator in monitoring access to a statutory homelessness application, and the provision and quality of Housing Options services, such as the provision of tenancy relations services and schemes for accessing the Private Rented Sector (PRS). Rent deposit guarantee schemes are a form of PRS access scheme and a requirement in the Code of Guidance<sup>3</sup>. However, not all areas have these and so are not complying with the guidance, yet there has been no follow up around this failure.

Crisis feels there is a need to develop methods to accurately portray and report on average rehousing timescales for different household sizes and tenure types, and individuals' total length of time and number of placements in temporary accommodation. For example, Crisis is aware of individuals who have been in temporary accommodation, often unsuitable, for many years. These are not captured in national data from Scottish Government or the SHR.

#### **Question 22: Feedback on other aspects of the draft Framework and guidance**

We understand that the Regulator will consider bringing forward new indicators in relation to standards of temporary accommodation and rapid rehousing in response to the Scottish Government's EHTAP. This Action Plan also sets out work on the housing support duty and maximising tenancy sustainment, as well as actions around restricting the use of unsuitable temporary accommodation, a stronger emphasis on preventing homelessness, a revised Code of Guidance and a Code of Practice.

We have set out some suggestions above around nuancing the indicator for tenancy sustainment. In relation to the Housing Support Duty, better understanding is needed on

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<sup>3</sup> Scottish Government (2005) Homelessness Code of Guidance, p19

the quality of the assessment, the support provided as a result of the assessment and the support provided during the course of a homelessness application. The Housing Support Duty has the potential to be a powerful tool, but often does not lead to meaningful support<sup>45</sup> - too often in our experience homeless people have no understanding of their right to a Housing Support Duty. During research Crisis carried out with people in unsuitable temporary accommodation, many people had had no recent contact with their housing officer, and sometimes had only seen them once in the last year or two, unless they had lost their temporary accommodation placement or made a complaint. Lack of understanding of the right to housing support and lack of contact with a housing officer impacts on people's ability to understand and act on their housing options and access any support they made need.

We would also like to see better monitoring of councils' ability to fulfil their statutory duties, for example through examining housing officer caseloads, speed of access to housing options advice, and the quality and depth of housing options advice, in terms of empowering people to take action.

It will be important that the regulatory framework maintains pace with developments in the homelessness framework. Crisis would be happy to work with the SHR to develop these areas.

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<sup>4</sup> Crisis (2018) Everybody In: How to end homelessness in Great Britain

<sup>5</sup> Fitzpatrick, S, et al (2015) Homelessness Monitor Scotland 2015. Crisis