

“Our Regulation of Social Housing  
in Scotland – A Consultation” by the  
Scottish Housing Regulator

Response to Consultation

December 2018

JOHNSTON  
CARMICHAEL 

Johnston Carmichael LLP is Scotland's largest independent firm of Chartered Accountants and Business Advisers, and a UK top-20 firm.

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## General remarks

We have read the consultation document along with the proposed revised framework and considered the key questions which you have asked for responses to.

We have not responded to all questions, focusing instead on those where we are best placed to comment by virtue of our existing client base and market experience. As such, most of our comments are focused on the process for self-assessment and assurance by RSLs and how these will be reported in the most transparent and accountable means.

We would be happy to clarify any of the points we have made directly with you.

## Specific responses:

### **Question 1: Is the overall approach set out in Chapter 2 right? Any other comments?**

We have no specific comments to add on the overall approach to regulation as set out, as this accords with our view on appropriate, risk-based regulation which builds on self-assessment by the RSL / landlord.

Two comments on the text structure:

- Paragraph 2.6 - we would suggest the last sentence may be better expressed by replacing the word "failures" with "concerns", as tenants should feel free to bring significant concerns to the regulator before these have demonstrably become actual failures.
- Paragraph 2.7 - we would suggest re-ordering the bullets so that current bullet 7 becomes bullet 6, as this would allow a clear linkage between the last two as follows:
  - o use our powers in a proportionate way
  - o give landlords the opportunity to improve where there are problems
  - o when a landlord does not have the capacity or willingness to improve, act quickly to take decisive, effective action to safeguard the interests of tenants and other service users

### **Question 3: Is there anything missing? Or any other comments?**

#### **Scottish Social Housing Charter Performance**

The consultation draft sets out the requirement to report on performance by October each year. Since, from our reading of the published guidance, the Annual Return on the Charter should be provided to SHR through the Landlord Portal by the end of May each year, it seems unnecessary to allow landlords a further five months before reporting their performance on the previous year to tenants and service users.

Strongly encouraging earlier performance reporting would, in our view, improve the accountability of landlords.

In other sectors, there is a significant move to include wider performance reporting within the Annual Report and Accounts of an organisation. This is a feature of corporate reporting, is an expressed view of the Accounts Commission and Scottish Government guidance for local authorities, and falls within the requirements of both the Charities and Education Statements of Recommended Practice (SORPs).

The housing SORP also requires narrative reporting around the key performance indicators, although there is variable practice in terms of the amount of narrative around key performance indicators in annual reports.

Since reporting on performance is a key regulatory requirement, we would be supportive of a regime that strongly encouraged this reporting to be more closely linked with the annual report and accounts (supplemented as necessary by links to any additional information for tenants as agreed between the landlord and its tenants).

#### **Specific requirement on page 7**

“Make our report on its performance easily available to its tenants, including online” – to reduce duplication, we believe it would be more appropriate if landlords highlighted that the information can be obtained directly from yourselves by provision of a link to the section on the website where you report on the landlord. In our view this would also reiterate the independent nature of your performance report.

#### **Structure of regulatory framework**

As a very minor point, while the grouping of requirements under different main headings is useful, the mixed format between two-column and one-column boxes is, in our view, slightly confusing and would look better presented as page-wide boxes of requirements.

### **Question 6: Would you like to make any other comments about the Standards?**

#### **Standard 4 – guidance paragraph 4.4**

This paragraph refers to where the RSL is a parent within a group. We recognise that you have sought to ensure that the group structures guidance is reflected within the standards, however, in our view there is a risk that this is only seen as applicable in terms of Standard 4.

For example, while paragraph 4.4(c) is most applicable to Standard 4, paragraph 4.4(b) would perhaps be more applicable to Standard 3.

We believe it may be more appropriate to preface all the standards with a reference to where the RSL operates as part of a group structure, stating that the relevant standards should be applied appropriately to how the group delivers its objectives through its use of the parent RSL and any subsidiaries (which may or may not be RSLs in their own right). This would be consistent with the Group Structures statutory guidance consultation draft, paragraph 2.1.

## **Standard 4 – paragraph 4.5**

As currently written, this paragraph includes the regulatory requirements of internal audit (mandatory) and audit committees (non-mandatory but per paragraph 4.18 of the consultation you “believe that all RSLs should work towards this”).

We believe it would make sense to separate these requirements into different paragraphs, one covering internal audit and one on the arrangements for audit committees. This would aid clarity on the different status of each requirement.

Given your expressed view on RSLs working towards operation of an audit committee, we believe it would also be appropriate to include the requirement of the governing body to satisfy itself on a regular basis that the alternative arrangements to having an audit committee remain fit for purpose.

Our view here is informed by The UK Corporate Governance Code 2018 which makes audit committees mandatory and strongly recommends internal audit – in this case the audit committee is required to consider annually whether there is a need for an internal audit function.

We believe by analogy, without changing your mandatory requirements, a regular review of the need for an audit committee would demonstrate good practice.

The Draft for Consultation statutory guidance on the Annual Assurance Statement covers internal audit at paragraphs 2.6-2.8. Some of this text also exists within the existing paragraph 4.5 of Standard 4. Since internal audit is a mandatory requirement, we believe it would be clearer to incorporate the requirements on internal audit and its effectiveness, which are set out within the Annual Assurance Statement, within Standard 4 rather than spread the requirements over separate guidance elements.

## **Question 8: Are our proposals for the Annual Assurance Statement right?**

We have a number of comments on the Annual Assurance Statement as follows:

1. We believe there could be greater clarity on whether the Statement is designed as covering the arrangements in place for the ‘financial year’, or a point in time statement made by the Board at the time it is approved. The draft statement as worded implies point in time reporting, when it is considered by the Board. Reporting on compliance throughout a period enhances accountability as it demonstrates the governing body has ensured compliance on an ongoing basis over an extended period of time.
2. We note that the intention is for the Annual Assurance Statement to be delivered to you by the end of October. In practice, as an auditor, we believe we would be unlikely to sign off on the annual report and financial statements in advance of a governing body making its compliance statement for the year, in case any matters of material non-compliance were going to be disclosed which could impact on the opinion (or require additional disclosure in the financial statements).

The Statement of Internal Financial Control which RSLs currently include in the Annual Report generally reports on “the system of internal control in existence for the year ended [date] and until the date of signing the financial statements”.

Taken together, we believe that the Annual Assurance Statement would be significantly strengthened if it also covered the reporting period and (if not incorporated into the Annual Report and Financial Statements – see comment 3 below) should, at a minimum, be a deliverable to accompany the submission of the financial statements to you.

3. RSL Report and financial statements currently include the requirement for the Statement on Internal Financial Control, and the report by the auditors on corporate governance matters. In requiring an annual assurance statement, we would contend that the natural parallel with other sectors would be to expand the statement of internal financial control to a wider Corporate Governance Statement which would include this type of broader assurance required under your regulatory framework. This would provide a natural fit with providing assurance over an annual reporting period.

This would bring the sector into line with best practice in other public and not-for-profit bodies e.g. the further and higher education sectors which state compliance with relevant governance codes. We note this would also move the statement into the remit of the external audit, whereby the objectives of the auditor having read the other information accompanying the financial statements is reviewed under ISA (UK) 720 THE AUDITOR'S RESPONSIBILITIES RELATING TO OTHER INFORMATION:

- a) To consider whether there is a material inconsistency between the other information and the financial statements;
- b) To consider whether there is a material inconsistency between the other information and the auditor's knowledge obtained in the audit;
- c) To respond appropriately when the auditor identifies that such material inconsistencies appear to exist, or when the auditor otherwise becomes aware that other information appears to be materially misstated.

[Given the wider auditor responsibilities under ISA (UK) 720, we would highlight that consideration could be given as to whether there is a continuing separate requirement for the auditor report on corporate governance matters as the requirements under ISA (UK) 720 paragraph 12-1 states that "the auditor shall obtain an understanding of (a) The legal and regulatory requirements applicable to the statutory other information; and (b) How the entity is complying with those legal and regulatory requirements."}]

### **Question 17: Do you have any feedback on the draft Assurance Statement guidance?**

The Statutory Guidance for the Annual Assurance Statement in paragraphs 3.1 to 3.3 highlights that you are only looking for material non-compliance to be disclosed, with the governing body reaching a judgement on what matters should be disclosed.

To that extent we believe the template Annual Assurance Statement should only ask the governing body to make statements such as (emphasis added):

- a) Statement of compliance: Based on the sources of assurance which we have relied upon during the year, we comply in all material respects with the regulatory requirements set out in Chapter 3 of the Scottish Housing Regulator's Framework.
- b) And for areas of non-material compliance: "We achieve material compliance in all but the following standards and outcomes in the Scottish Social Housing Charter for tenants, people who are homeless and others who use our services."

### **Question 20: Do you have any feedback on the draft group structures guidance?**

Paragraph 2.4 – the first sentence is not specific to an RSL being a group and is essentially already covered by the Constitutional Requirements for RSLs guidance, paragraph 2.

Paragraph 2.5 – is this requirement only intended to relate to any FCA guidance relevant to group structures or general requirements?

Paragraph 5.16 – duplicate wording `...that that not all...'

## Question 21: Do you have any feedback on this guidance?

### Section 72: Reporting Information of Material Significance Statutory Guidance – draft for consultation

The charity sector regulators published revised guidance in November 2017 on Matters of Material Significance reportable to UK charity regulators.

(<https://www.oscr.org.uk/guidance-and-forms/accounts-and-finance-guidance/reporting-by-auditors-and-independent-examiners-to-oscr>)

We recognise that as the charity sector is more diverse and includes independent examiners as well as established audit firms, there is perhaps a greater need for the detailed guidance which the UK charity regulators have provided. There are, however, aspects of this guidance which we believe could be used to enhance the draft for consultation:

1. A statement on interpretation of material significance, and that this may have a different meaning to materiality in accounting terms.
2. “When in doubt, report it” – the UK charity regulators have taken a default position to encourage reporting, recognising that there is some judgement to be applied around what constitutes material significance.
3. Examples of reportable matters – the UK charity regulators separate their examples into nine overall areas which helps, in our view, to clarify the thinking process as to what could constitute a reportable matter. There is significant parallel with the examples included in paragraph 3.6 of your Draft for Consultation. While the full detail of the additional information included in the charity guidance does not need to be repeated, we believe there is some merit in a tabular format of areas to consider reporting and examples of what is meant by that area which would enhance the clarity of the guidance.
4. Paragraph 5.4 could be enhanced by a clearer flowchart of the types of action which may be taken by you as the regulator on receipt of reports, depending on the other information you have available.

### Determination of Accounting Requirements – Statutory Guidance: Draft for consultation

Part 2, paragraphs 2.1-2.3 Administrative Information: it is not common for this information to be included in the notes to the financial statements i.e. following the primary statements. It is more common to include within the narrative statements at the start of the Annual Report and financial statements and we believe this may be the intention of this requirement. To this end, it would be clearer to move this requirement into the general requirements at the start.

## Get in touch:

If you would like to discuss this response in more detail, or need any further clarification on the content, please don't hesitate to get in touch:



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