



DfC

Department
for Communities
www.communities-ni.gov.uk

How We Regulate

Regulatory Judgements

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Introduction

- 1.1 The Department for Communities (DfC) is the Regulatory Authority for Registered Housing Associations (RHAs) in Northern Ireland. The Housing Regulation Branch within DfC undertakes this Regulation activity on behalf of the Department and we seek to protect the interests of tenants, homeless people and others who use the services provided by RHA's.
- 1.2 To ensure this is achieved, RHAs must provide us with the necessary information on a regular basis to demonstrate how the Regulatory Framework Standards are being achieved.
- 1.3 Through our risk-based and proportionate approach to RHAs we will:
 - focus our attention on the important risks and key aspects of the RHAs performance
 - have different levels of engagement depending on the RHA's risk and performance profile
 - use our discretion and knowledge to ensure we use the right level of scrutiny and analysis to get the level of assurance and type of improvement we need
 - publish accessible information to encourage better comparison, performance management, public accountability and drive improvement (this could be for example in the form of best practice advice from the sector, research papers, and statistics. List is not exhaustive)
 - highlight good innovation and best practice in achieving outcomes
 - give RHAs the opportunity to self-improve where we have identified problems, unless immediate regulatory action is needed
 - use our powers in a proportionate and fair way, to secure improvement and/or to protect the interests of tenants
 - help to ensure an orderly transition that protects tenants' interests if an RHA is failing.

Overall Approach

2.1 When we refer to risk, we are talking about the risk to the interests of tenants and other service users. This may not always be the same as a Registered Housing Association's (RHAs) own detailed assessment of the operational risks it faces. Risk based regulation is an approach for us to prioritise our use

of resources and plan how to engage with RHAs through further scrutiny, engagement and analysis. Our approach is based on regulated bodies giving us the right type and level of assurance – backed by appropriate evidence – that tenants' and others' interests are protected.

Identification and Assessment of Risk

3.1 We will identify the risks with the following most likely to impact on our objective:

- poor outcomes for tenants and other service users
- poor stock quality and investment failures
- poor financial performance and management
- poor elements of governance

3.2 We will consider the risks to our objective and assess/prioritise to determine what strategy to adopt on a sector wide basis or for each RHA. We use our knowledge and our risk assessment process to inform our assessment.

3.3 We achieve this by assessing the impact and probability of the risks materialising and also how risks will be managed. When we consider impact, we assess the scale and significance of the problem if that problem were to arise. When we consider probability we assess the likelihood of the event happening.

3.4 We will consider a range of factors which may include:

- the Registered Housing Association's (RHA's) stock size, quality and age
- the RHA's number of tenancies
- the RHA's turnover and the amount of public money it is receiving
- the level of private finance it is servicing or has committed by lenders

3.5 Further consideration will be given to a range of other factors. These include but are not restricted to:

- our confidence in the board and senior management team
- how the organisation is performing
- the track record of the organisation in handling challenging issues and making difficult decisions

- the financial profile and performance of the organisation and its ability to absorb volatility and change
- the level of expenditure on non-landlord services and activities
- the stability of the funding streams available to the organisation and its reliance on that funding
- the organisation's track record in dealing with the issues we have raised through our regulatory engagement

3.6 The type of RHA is also an important factor in our assessment of risk and our regulatory engagement. We consider each RHA's organisational complexity – including its use of subsidiaries and its dependencies on these – and its number of employees, legal status and governance arrangements.

Information required from RHAs

4.1 To obtain assurance we will use, wherever possible, the information provided by Registered Housing Association (RHA) and from our analysis of the broader environment which they operate in. For service outcomes we will use the information that will become available on the Regulatory Standard Annual Return (RSAR). The RSAR is an initial assessment to determine if RHAs are meeting the Regulatory Standards. It is anticipated the RSAR will be issued by the end of May each year with the return due by the end of September of that year.

4.2 In addition to this we may use information from:

- past or current engagements with RHA, including business plans, inspections and follow-up improvement work
- the RHA's tenants and other service users

- whistle-blowing
- patterns of notifiable events
- applications for consent to dispose
- RHA's auditors
- RHA's websites and published information
- complaints
- other regulator and partner scrutiny bodies , for example Regulation in Quality and Improvement Authority (RQIA), or the Northern Ireland Housing Executive (NIHE)

4.3 It should also be noted that failure to provide information and the submission of late, incomplete or inaccurate information could be indicative of a poor control environment and may result in us deciding that the RHA was not in compliance with the Standards.

Regulatory Judgements

- 5.1 Each year we will assess and prioritise the risks each Registered Housing Association (RHA) presents and decide what our response should be. We keep the principles of good regulation in mind as we determine an appropriate response. Our regulatory response is based on the level of assurance we need. Regulatory Judgements are the Regulator's official view of RHA's performance against the Regulatory Standards.
- 5.2 Regulatory Judgements are issued to notify whether the RHA is meeting the Standards. A narrative will be given for each Standard which will also highlight if there are issues for concern that need to be addressed by the RHA and if further action will be required.
- 5.3 Once the Regulator has completed a full assessment of all three Standards, the Regulatory judgment will issue to RHA. This will be issued to the Board of RHA. This judgment will detail the decision made on compliance with the Standards and detail any action required to be taken by the RHA.

Our Regulatory Engagements

6.1 We use our risk assessment process to decide on the level of engagement required for each RHA which is dependent on the level of assurance we need.

6.2 Below is a table showing the different levels of engagement:

Level of Engagement	
Level 1	Where following submission of the Regulatory Standard Annual Return (RSAR) and Required Financial information we are content there is sufficient assurance and little additional contact is required unless other matters arise.
Level 2	Targeted engagement to be carried out where there is additional assurance required which is not covered in the standard information.
Level 3	Where we require comprehensive or regular engagement to understand the Registered Housing Association's (RHAs) approach to managing these risks.
Level 4	Intervention is required using Statutory Powers

See [Appendix A](#) for further details.

6.3 It is worth highlighting that if we decide to have engagement with an RHA, it does not necessarily mean that they have poor performance, governance or shortcomings in financial management. There are occasions when we need

to have a higher level of engagement because an RHA is newly registered or has decided to follow a new business strategy, for example, if an RHA decides to merge with another RHA.

6.4 We will complete Level 2 or Level 3 engagement if we require:

- greater assurance about the risk to tenants/service users than we can access through our analysis of the standard information submitted to meet the Regulatory Standards
- the RHA to take action or tackle certain issues

6.5 After each of the Standards has been assessed, each RHA will be given an overall rating and a Regulatory Judgement which will be published. The ratings will be:

Rating	Outcome
1	Meets the requirements
2	Meets the requirements but needs to improve in some areas in order to ensure continued compliance
3	Does not meet the requirements, but is working to improve their position
4	Does not meet the requirements due to issues of serious concern and is subject to further engagement.

6.6 If a 3 or 4 rating is given, we will engage with the RHA to put in place a Regulation Engagement plan to ensure improvements are made.

Governance Standard

- 7.1 We look for very clear assurance that Registered Housing Associations (RHAs) are achieving the Governance Standard. It is important to note that achievement of the Governance Standard will also depend on evidence of good governance in the other Standards.
- 7.2 The Regulatory Standards Annual Return (RSAR) will be used as a primary source of information for rating the Governance Standard. This will mainly be linked to how well the RHA is delivering its corporate strategy and managing the associated risks. This will help form a decision on how far the RHA has met the Standard.
- 7.3 The assessment of the Governance Standard is important as RHAs with poor governance can experience problems with achieving good tenant outcomes, and put at risk the viability of the RHA, stakeholders' confidence and the reputation of the sector.

Financial Standard

- 8.1 The expectation on financial viability can be summarised as follows:
- RHAs will manage their resources effectively in order to ensure that:
 - (i) their financial viability is maintained in the short, medium and long term
 - (ii) social housing assets are not put at undue risk
- 8.2 Specifically, RHAs must ensure, and should be able to demonstrate to the Regulator assurance that:
- the RHA has sufficient access to liquidity at all times
 - the RHAs financial forecasts are based on appropriate and reasonable assumptions
 - the RHA has effective systems in place to monitor and accurately report on delivery of the Association's plans

- the financial implications of risks to the RHAs plans have been fully considered
- the RHA monitors and reports on actual and future compliance with lender covenants and commitments

8.3 It is important that RHAs can also demonstrate how they are achieving value for money for their organisation. Initially, you will be asked to include your Board approved Value for Money Statement within the Regulatory Standards Annual Return (RSAR). This is to ensure a robust assessment has been carried out on the RHA's assets and resources being used to deliver the RHA's objectives.

8.4 The onus is on the RHA to provide assurance that these expectations are being met. An outline of the process has been included at Appendix B and the initial year's information which will be requested. Once an evidence base has been developed, consideration will be given to how the requirements can be tailored or reduced in response to the evidence gathered.

8.5 On an annual basis the Regulator will review the following information for all RHAs:

- Audited Financial statements
- Management Letter
- Long Term Financial Forecasts
- Annual Accounts Return
- Value for Money Statement

8.6 RHAs will also be asked to submit short Quarterly Financial Returns to provide the Regulator with a snapshot of key financial ratios such as liquidity and gearing between the annual detailed assessments.

8.7 Further information on the content of each item of information and the purpose of obtaining it is set out in the Regulatory Standards Annual Return (RSAR) Technical Advice Note. We will carry out a review of the information for each Association and based on this arrive at an opinion on Financial Viability.

8.8 Boards will also be required to confirm within their report contained in the published annual financial statements that they are content that they have complied with the Regulatory Standards during the year.

Consumer Standard

- 9.1 The Consumer Standard will be assessed mainly through the Regulatory Standards Annual Return (RSAR).
- 9.2 If, after assessing the RSAR, it is felt additional information is required, we will engage with the Registered Housing Association (RHA) to request the additional information and decide if any further engagement is required.
- 9.3 We will decide on the level of engagement with an RHA if we think there has been a failure to meet a consumer standard and there are
- reasonable grounds to suspect that: the failure has resulted in a serious detriment to the RHAs tenants (or potential tenants)
 - there is a significant risk that, if no action is taken by us, and failure could result in a serious detriment to the RHAs tenants (or potential tenants)
- 9.4 Where we identify that an RHA has breached the consumer standard and as a result there is actual or potential serious harm to tenants, we will make the appropriate interventions.

An Informed Regulator

10.1 As a Regulator we are proactive in identifying and managing the risks. We seek to protect the interests of tenants, homeless people and others who use the RHA's services. We may also react to other events that happen from time to time. The five main types of events we will react to are:

- concerns raised with us by tenants about significant performance failures
- concerns raised with us by others about an organisation (for example, whistleblowing and serious allegations)

- notifiable events – material events where an organisation itself is required to inform us
- concerns raised by another Regulator, for example, the Charity Commission for NI
- concerns raised by other organisations, for example, the Northern Ireland Housing Executive (NIHE)

This list is not exhaustive nor restricted and we may intervene on foot of other events.

Whistleblowing and Allegations

11.1 When a person such as an RHA member of staff or a Board member of an RHA believes there has been improper conduct within the RHA they should be able to report this to someone who is in a position to deal with it within their organisation. It should be possible to raise concerns of improper conduct in confidence with an appropriate person within the RHA. It is also possible to raise concerns directly with us - see:

[DfC Raising Concerns \(Whistleblowing\) Guidance](#)

deal with an individual's service-related complaint about the RHA. This is the role of the RHA in the first place, and then the Northern Ireland Ombudsman (www.nipso.org.uk). The Ombudsman can raise with us any concerns they may have that an RHA, or the sector as a whole, has systemic problems and we will consider what action we need to take in response.

11.2 It is important to stress that we do not

Auditors

12.1 A Registered Housing Association's (RHA's) auditor or reporting accountant is obliged to disclose information to us where they have reasonable cause to believe that the information is likely to be of material significance in relation to the performance of our function to monitor, assess and report regularly on, and if appropriate undertake further analysis, relating to the RHAs

performance of housing activities and RHAs financial well-being and standards of governance.

12.2 In addition, an auditor may disclose information to us (and express an opinion on it) where they have reasonable cause to believe that the information is likely to be relevant to the performance of any of our functions.

Appendix A

Appendix A

Levels of Engagement

Level of Engagement	What does this mean?	Why do this?	What can you expect?
Level 1	Minimum level of engagement required by all Registered Housing Associations (RHAs)	<ul style="list-style-type: none"> level of assurance needed to provide a basic assessment of compliance with the standards 	<ul style="list-style-type: none"> completion of the Regulatory Standards Annual Return (RSAR) provision of agreed documentation to meet financial standard minimal further interaction with regulator
Level 2	<p>Further targeted engagement based on individual risk factors identified through either:</p> <ul style="list-style-type: none"> regulators risk assessment information provided in annual returns 	<ul style="list-style-type: none"> specific risks identified through our risk assessment that require further evidence provided to the Regulator to assess how these risks are being managed by the board high level of development activity that requires further supporting evidence recent changes that can impact on the governance arrangements e.g. mergers; use of subsidiary companies follow up on previous recommendations 	<ul style="list-style-type: none"> provision of further documentation as specified by the regulator provision of board minutes and board papers where required potential interviews with staff/board

Level of Engagement	What does this mean?	Why do this?	What can you expect?
Level 3	Detailed engagement to examine all aspects of finance, governance & risk management	<ul style="list-style-type: none"> • serious concerns of non-compliance that has the potential to greatly impact tenants or assets • concerns that development has the potential to affect viability of the RHA • failure to make necessary improvements identified following Level 2 engagement • self-referral – where RHA has concerns over its own governance • receipt of whistle blowing allegations 	<ul style="list-style-type: none"> • provision of wide range of policies/procedures and formal planning documents • interviews with staff/ board members • attendance at board meeting
Level 4	Intervention is required using Statutory Powers	<ul style="list-style-type: none"> • failure to make necessary improvements identified following Level 3 engagement • receipt of whistle blowing allegations 	<ul style="list-style-type: none"> • change of Board/Management • merge with another RHA • Inquiry

Appendix B

The Financial Standard – Outline Process



