

Decision of the Appeal Panel of the Scottish Housing Regulator on 30 November 2018 in the appeal of Thistle Housing Association Ltd

Introduction

On 5th November 2018, Thistle Housing Association (THA) submitted an appeal to the Appeal Panel of the Scottish Housing Regulator (AP) in relation to the statutory intervention by the Scottish Housing Regulator (SHR), as set out in its decision letter of 21 August 2018. SHR advised in its decision letter that (a) a manager would be appointed under sections 57 and 58 of the Housing (Scotland) Act 2010 (2010 Act) and (b) that five members to the governing body would be appointed under section 65 of the 2010 Act.

The AP has considered THA's appeal submission of 5 November 2018, which consisted of three bundles, labeled parts 1, 2 and 3. SHR's response to the appeal submission dated 20 November 2018. And THA's final submission, dated 27 November 2018. The AP also had regard to sections 57, 58 and 65 of the 2010 Act, SHR's guidance in respect of an appeal, the Regulatory Standards and the Scottish Social Housing Charter.

Decision

The unanimous decision of the Appeal Panel is to uphold the original decision of the SHR dated 21 August 2018.

Reasons for the decision

Parties had been engaging from 24 November 2016 when a tenant's representative raised concerns with SHR about two gas leaks following the implementation of a contract with Eon. This engagement continued throughout 2016 and 2017. On 11 May 2017, THA advised SHR it would appoint a consultant to undertake a Governance Review.

The consultant was commissioned by THA in October 2017. The consultant produced a Governance Review report dated 28 March 2018, which contained a large number of findings in fact. THA did not take issue with these findings in fact.

SHR met with THA's management committee members on 4 July 2018 who confirmed that the management committee accepted the Governance Review findings and recommendations. The management committee further accepted that it needed support to implement the recommendations to achieve the significant improvement required in order to ensure acceptable levels of governance within THA.

SHR has relied upon the Governance Review's findings in fact, but has exercised its independent regulatory judgment in relation to those facts. In addition, SHR has considered that previous engagement with THA has not always delivered, or has been very slow to deliver, agreed actions. The extent of non-compliance with Regulatory Standards indicated to SHR that there were serious governance weaknesses in THA, and that THA had failed to recognise the scale of its non-compliance.

SHR recognised that THA had undertaken some remedial steps, but considered that they lacked the necessary skills, knowledge and experience to be effective in remedying its significant and serious non-compliance with the Regulatory Standards. In SHR's response to the appeal on 20 November 2018, SHR set out a Table headed "Indicators of non-compliance with the Regulatory Standards of Governance and Financial Management and failures to achieve Outcome 2 of the Scottish Social Housing Charter". The Table identifies multiple non-compliance across all six Standards, and eleven indicators of failure to achieve Outcome 2 of the Scottish Social Housing Charter.

In THA's final submission on 27 November 2018 at page 13, THA list a number of governance and regulatory actions which were still being considered in August 2018, but many of which remained outstanding as at the date of the SHR's statutory intervention. The AP recognises that whilst parties did not agree on the extent of regulatory non-compliance, the AP concluded that there was cogent evidence of material and significant regulatory non-compliance.

SHR must consider how it can most effectively meet its statutory objective in the 2010 Act, which is to safeguard and promote tenants' and service users' interests. From all of the information presented, the AP considered that THA did require support to deliver appropriate leadership and management control, direction and oversight to assure that the intended changes and culture, management and leadership were implemented and embedded in a sustainable manner, and without further delay.

The statutory framework in the 2010 Act gives SHR a wide discretion to appoint a manager and members to a governing body of a social landlord where it considers the social landlord is, or is at risk, of failing a Standard or Outcome in the Scottish Social Housing Charter. This is a matter of professional regulatory judgment based upon established fact.

The AP considers on the evidence presented that it was reasonable for SHR to determine that THA's proposals would not achieve the level of directed external support necessary in all the circumstances. The AP considered that it was reasonable and necessary for statutory intervention to be taken on 21 August 2018 in order to protect and safeguard the interest of THA's tenants and other service users. Having regard to THA's non-compliance across all six Standards, and eleven indicators of failure to achieve Outcome 2 of the Scottish Social Housing Charter, the AP concludes that SHR's decision to take statutory intervention was fair, reasonable, necessary and proportionate.

Mike Dailly, AP Chair, SHR Board Member
Lisa Peebles, SHR Board Member
Joseph Hughes, Independent Advisory Member

30 November 2018