



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Local Government, Housing and Planning Committee

Tuesday 3 December 2024

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
33rd Meeting 2024, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Meghan Gallacher (Central Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Emma Roddick (Highlands and Islands) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lindsay Anderson (Link Group Tenant Scrutiny Panel)

David Bookbinder (Glasgow and West of Scotland Forum of Housing Associations)

Tony Cain (Association of Local Authority Chief Housing Officers)

James Calder (Minority Ethnic Carers of People Project)

Patrick Gilbride (Dalmuir Park Housing Association)

Shona Gorman (Tenants Together Scotland)

Robyn Kane (Edinburgh Tenants Federation)

Daryl McIntosh (Share Ltd)

Alan Stokes (Scottish Federation of Housing Associations)

Paul Sweeney (Glasgow) (Lab)

Evelyn Tweed (Stirling) (SNP)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 3 December 2024

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning and welcome to the 33rd meeting in 2024 of the Local Government, Housing and Planning Committee. Willie Coffey, Meghan Gallacher, Mark Griffin, Fulton MacGregor and Emma Roddick are all joining us online. I remind all members and witnesses to ensure that their devices are on silent.

The first item on our agenda is to decide whether to take items 3 and 4 in private. Are members agreed?

Members *indicated agreement.*

The Convener: I ask members who are online to indicate vigorously, so that I can see you.

Scottish Housing Regulator

09:00

The Convener: Our next item is to take evidence as part of our scrutiny of the Scottish Housing Regulator. For this item of business, I welcome Evelyn Tweed MSP, and Paul Sweeney MSP also hopes to join us at some point.

The committee will hear from the SHR at its meeting on 17 December.

To inform our evidence session, the committee issued a call for views. Drawing on the responses to that call, the committee will hear from two panels of witnesses. On our first panel, we are joined by David Bookbinder, director, Glasgow and West of Scotland Forum of Housing Associations; Tony Cain, policy manager, Association of Local Authority Chief Housing Officers, otherwise known as ALACHO; Patrick Gilbride, retired director, Dalmuir Park Housing Association; Daryl McIntosh, chief executive officer, Share Ltd; and Alan Stokes, policy lead at the Scottish Federation of Housing Associations.

I welcome all witnesses to the meeting. There is no need for you to turn your microphones on and off, as we will do that for you—that is one less thing to think about.

I will open our discussions with a couple of questions on your general views. My first question is about the statutory remit of the SHR and whether it is performing effectively. The SHR's statutory remit is

“to safeguard and promote the interests of current and future tenants, people who are (or may become) homeless, factored owners and Gypsy Travellers.”

I will start at one end, then work across. Tony Cain, will you comment on whether, in general, the SHR is performing its statutory remit effectively?

Tony Cain (Association of Local Authority Chief Housing Officers): I will start by declaring my interest and history: I worked for the previous version of the Scottish Housing Regulator—Communities Scotland—in the inspection and regulation division, with a number of current senior employees of the Scottish Housing Regulator. In particular, Michael Cameron was a colleague for a number of years.

The local authority sector is entirely comfortable with the way in which the regulator is performing, and we are certainly comfortable with its remit. If there is a gap—arguably—it is that the regulator regulates providers and but not the provider landscape. Nobody is looking at the range of housing association and local authority provision and taking a view about how appropriate that is,

relative to housing needs. However, that is a minor quibble on my part more than anything else.

Alan Stokes (Scottish Federation of Housing Associations): We represent housing associations from across the country. Our 133 members vary greatly in size and in the type of service that is provided. Linked to that, they vary greatly in their opinions on the regulator, which can be dictated largely by the type and level of the engagement that an organisation has.

Last year, we commissioned a research project to look at the regulatory framework in practice. That project gathered views from across the sector, and 86 member associations fed into it. It included interviews with statutory managers and those that were subject to statutory intervention. While the majority who fed into the project had a positive view of the regulator, overall, there were some concerns around approachability, consistency of approach and communication. Therefore, it is not so much that there are issues with the statutory remit or regulatory framework; it is more that there are concerns about the way that the framework is applied in practice.

As Tony Cain said, if there is a gap, it is on the need for an appeals process that is truly independent, but we may come on to that later in the session.

The Convener: Thank you very much for that. You talked about people bringing up consistency of approach to communication—can you give a little bit of detail on that point?

Alan Stokes: Yes. Each association is assigned a regulation manager. We found that there was a difference in opinion in how the regulatory framework would be applied depending on who the regulation manager was, so we are trying to find ways to ensure consistency on that.

The regulator has engaged with us on the recommendations that came out of the report that I mentioned, and it has made some changes off the back of it. However, there are still some outstanding points that we are working through.

The Convener: It is great that the work that you have done has brought about some change. Daryl McIntosh, what are your thoughts?

Daryl McIntosh (Share Ltd): I echo what Alan Stokes said about the lack of consistency—there is no standardised approach. Each organisation has a different approach when they get a regulation manager, and a point to consider is whether the regulation manager understands the remit and what they are requesting from each housing association. I have got notes and notes here of examples from member organisations and people that I have spoken to—they are all varied, and some of the approaches that they have

received are quite baffling. I am sure that we will dig into that as we go forward.

The Convener: If we do not cover that over the course of the questions, please make sure that we do.

What are your thoughts, David Bookbinder?

David Bookbinder (Glasgow and West of Scotland Forum of Housing Associations): The statutory remit focuses on tenants, who are the end users of services. We do not argue with that fact, and I do not have a problem with it. Robust regulation is really important because it provides credibility for tenants, lenders and politicians. We have a good relationship with the regulator; our members do, too, more importantly.

Housing regulation is very demanding, and it is mostly desk based. There is a relatively small number of regulated bodies, such as councils, which have council housing and homelessness functions, and housing associations. That might make the regulatory regime more intensive than in other sectors, where the number of regulated bodies is far greater.

The committee will know that for several years we have been particularly concerned about the regulator's approach to situations where an association has got into serious trouble, and there is a question of whether it can survive or whether it needs to consider being taken over by a larger association. We have long accepted that the regulator has no formal agenda in relation to that, but we have long thought that some of the regulator's actions—or inaction, in particular cases—suggest that there might be something in the culture that means that staff are sometimes nudging towards, or encouraging, transfers and takeovers. In the past two or three years, there was the example of Reidvale Housing Association, which probably demonstrates that point.

However, we think that there is a constructive way forward on that. We have already started discussions with the regulator on potentially making its actions in those cases more transparent. That relates to the strategic code of practice for all Scottish regulators.

Patrick Gilbride (Dalmuir Park Housing Association): The discussion has come around to me nicely. It is interesting that previous speakers have an active relationship with the regulator—I do not. I am a retired director, so my situation is a little bit different. I hope that committee members are okay with me being a little more candid.

David Bookbinder alluded to the relationship that associations have with the regulator. The word is “intervention.” If you come anywhere close to intervention, the chances are that you are going to have a problem with the regulator; it is almost

as if it has already made up its mind. I do not think that we were alone in experiencing that.

My association was the Dalmuir Park Housing Association. There was absolutely nothing wrong at DPHA—I stand by that statement. If I had an hour, I am sure that I could convince the committee that there was nothing wrong at DPHA. However, that is not the situation with regard to the regulator, and if you read the reports that were written on the association before I left, they would reflect something different.

The regulator has a wholly different approach and attitude. I do not think that the problem is so much the regulator's remit as it is the approach and attitude of some of the regulator's staff. Again, I do not mean all of them. I think that, very often, the teams who deal with the intervention process have some form of hidden or prior agenda. When they get involved, it is very often the case that they are looking for specific outcomes.

We had a bitter experience of regulation and I am sure that lots of other associations have had that experience as well. It tends to be smaller associations that have that experience. We were not too small or too large; we were medium sized, at about 800 units and a turnover of £3 million per annum. It was a painful, tortuous process, and, no matter what we did, there was no way out for us.

The Convener: Thank you very much for that answer. My next question is about awareness and understanding of the Scottish Housing Regulator's remit. Usually I try to change things up, but this time I will go down the line to make things easy. Tony Cain, what is your view of the awareness and understanding of tenants, homeless people, factored owners and Gypsy Travellers regarding the SHR's remit, and are there any improvements that can be made in that respect?

Tony Cain: I specifically asked that question of our members, and they all said the same thing, which was that those tenants who are engaged with their landlord and are involved in working to improve their service will be very aware of the regulator and its purpose. However, most tenants are unfamiliar with it and have no awareness of what it does or how it works.

The Convener: Did you pick up anything that we could do to improve that situation?

Tony Cain: I suppose the question is: does it need to be improved, and would you expect tenants to be aware of the work of the regulator if that work is effective and there are limited problems in the sector? It would be difficult to get to a place where 600,000 households are taking an active interest in the role of the regulator. In the same way, who takes an interest in the role of the financial regulator? You know that it is there but, beyond that, you rely on the assurance that it is

giving to everybody else. I am not overly concerned about that, and nor is the sector. The reality is that only a small proportion of tenants are engaged and familiar with the work of the regulator.

The Convener: Your response made me realise that we do not necessarily need to go to every witness. Does anyone have anything new or different to add to what Tony Cain said?

Alan Stokes: What Tony Cain says is right. I know that you will be meeting with tenants' groups after this panel, who I think might be in a better position to comment specifically on tenant awareness of the regulator.

I am aware that there are some mechanisms in that regard. For example, once a year, social landlords have to provide a charter report to their tenants, which will give their tenants some awareness of the regulator. So, there are some mechanisms there. However, I would suspect that, as Tony says, the overall awareness among tenants is quite low.

Patrick Gilbride: I have a small point. Before coming to this meeting, I had a look through the Scottish Housing Regulator's "Annual Performance Report and Accounts 2023/24." We were encouraged, even as a smaller landlord, to produce something that engaged with tenants and residents. So, I could not believe the annual report. I do not know how you are supposed to monitor that; I felt that it was really detailed and confusing, at about 50 pages. That does not help the situation. You need to do more than that if you are trying to involve tenants or help them to understand what you do.

The Convener: Thank you very much. We will now go to questions about the Scottish Housing Regulator's regulatory functions and culture. Willie Coffey has a number of questions and joins us online.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning—I apologise for not being at the meeting in person. Can you share some examples of positive engagements that have taken place between social landlords and the regulator and that have benefited tenants and other social partners? I would be obliged if you can offer us some examples of positive engagements that you are aware of, to balance with the discussion that we have had so far.

09:15

David Bookbinder: It is fair to say that such engagements happen all the time. Every housing association has its own particular regulation manager that it will contact when day-to-day things happen.

From time to time, something specific happens that requires the regulator to be notified through the notifiable event mechanism. In the majority of cases, our members will say, "Something came up. It was a difficult situation, but we informed the regulator. The regulator understood where we were coming from and what we were doing about it, and was generally supportive." In a minority of cases, the situation may be slightly trickier. However, let us not underestimate the fact that, day to day, our members tell us that those kinds of contact are generally helpful and supportive.

Tony Cain: I echo that answer. I asked the same question to local authorities: they all said that their working relationships with regulator staff were positive, that the regulator staff were professional, polite and engaged, and that they worked hard to understand the context in which the local authorities work.

The standout intervention that the regulator made in the past 18 months—and it was a really important one—was the statement that it made at the start of last year about the emerging systemic failure in homelessness services. It followed the statement up by confirming that it could see systemic failure in a number of local authority areas in relation to the delivery of homelessness services. That was a really powerful statement—and quite a brave one, I thought—by the regulator. It set the context for us to start to understand the difficulties in delivering homelessness services. The level of failure that the regulator had started to see is now endemic across half of the local authority sector—or half of the homelessness sector.

Overall, the regulator's contribution has been extremely positive, certainly from the point of view of local authorities. We regard it as a very positive force in the conversations that we have about service delivery.

Daryl McIntosh: My answer will be quick. Not every housing association has an issue with the regulator. As Patrick Gilbride picked up on, when there is an intervention, it can snowball from something that might be minuscule to something that is unnecessarily large.

As an organisation, we have a great relationship with the regulator. It attends conferences and delivers speeches. It is fair to say that not everybody has a poor experience with the regulator.

Alan Stokes: As David Bookbinder mentioned, regulation is critical in giving tenants, service users and lenders confidence in the sector. That is crucial.

As I mentioned, the regulator has engaged constructively with us on the recommendations from the research that we conducted last year.

One example of the changes that have occurred following that research is that the regulator will now produce an annual report on notifiable events, which will give a bit more flavour on how it has approached them as well as including case-study examples. When it comes out, that report will be really helpful for the sector.

The regulator has also enhanced its landlord forums, which allow organisations to meet with regulator staff outside the context of day-to-day regulatory engagement. That is another real positive change.

The Convener: Out of curiosity, what kinds of things get discussed in those forums?

Alan Stokes: It varies, depending on the forum: there are forums for larger organisations, on systemic issues; there are ones for urban organisations and for rural organisations. So, the topics will vary depending on the specific forum.

The Convener: It is interesting that the forums focus on particular areas.

Willie Coffey: Thank you for your answers. The committee has received a few submissions that suggest that the regulatory framework is a wee bit bureaucratic and slanted towards self-assessment—marking your own report card, in a sense—and therefore possibly open to manipulation. Do the witnesses have any views on that to share with us?

David Bookbinder: Regulation has changed hugely in the last 10 to 15 years, and we can look back further to the days when cyclical inspections were carried out every three to five years or so. The regulator's staff team could spend a week within some of the larger associations, speaking to a lot of people—in particular, the staff and committee board.

You are right that the role is now very desk based. There are a lot of charter returns and financial returns to process, and the onus is very much on landlords now. The annual assurance statements that are submitted each autumn are perhaps the most recent example of that intensive, evidence-based self-assessment.

My worry is not so much that the process can be manipulated, because there are a lot of checks and balances internally within regulated bodies around the data, and landlords could equally find themselves on the receiving end of a validation visit from the regulator, so I would like to think that that side of things is fairly secure and robust. The issue is that it is now harder for the regulator to sniff out issues and problems on the basis of paper returns or digital returns. If there were to be an issue within the culture of an organisation, it would not come across in a financial return or even an annual charter return.

However, we are where we are: we have now moved so much towards a desk-based system that there is no clear path back to the more physically engaging approach of meetings between parties, which was once the main regulatory mechanism.

Tony Cain: The change in the way that the Scottish Housing Regulator does its business reflects the way in which many regulators have shifted. When I worked in the inspection division of Communities Scotland, regulation staff would not spend a week but, rather, four weeks—full-time, on-site and with a team of six people—conducting inspections on local authority landlords. In one case, it was five weeks with a team of eight individuals for a particularly large local authority landlord. It was very intensive and, I think, difficult for both sides. The process could become a conflict-driven activity, given that we were raking through people’s filing systems and digging out what sometimes might be regarded as relatively minor issues in service delivery.

It is about balance. There is some value in that more intensive level of scrutiny—where it is justified. However, if you look at the local authority annual assurance statements—I took the time to read through them all last night—they show a degree of candour and understanding of performance, which was certainly more difficult to evidence 20 years ago when I was involved in inspection. The local authority sector has come a long way; it understands its performance in a much better way, and it is much more open about those issues, as well. That is the product of long-term engagement with proportionate regulation. I think that that works, and the SHR has the powers that it needs in cases where it feels that further intervention is necessary.

The Convener: To clarify, although you mentioned a balance and that a more in-person, physical approach could be taken, do you feel that things are set up well now?

Tony Cain: Yes, in my view, which is heavily based on what I read in the self-assurance statements. Those statements were, for the most part, sufficiently detailed and certainly focused on the key areas. They have provided councillors in local authorities with a better level of assurance about the performance of their housing service than they might have had 20 years ago when I was involved in inspection.

Daryl McIntosh: I am not sure about manipulation of the framework; there is perhaps more interpretation of it, and it perhaps needs to be made more detailed—with more interpretation provided by regulation staff, the regulation manager, or the housing associations themselves. There are grey areas within the framework.

That might have come through in a lot of the responses—certainly, it has in the engagement that we have had with those who have not had a pleasant experience. For example, an RSL was in engagement with its regulation manager and was asked to provide more information or detail, which, several times, it had already done. The RSL queried, asking what relevant authority the information was requested under. The response from the regulator was, “We do not need to provide evidence. We are the regulator.” You would expect some level of authority—such as a reference to a section of the framework and why the item was needed—but perhaps that needs to be detailed a bit more, so that there is a full level of understanding, both internally at the regulator and externally.

The Convener: That comes back to communication, does it not?

Daryl McIntosh: Yes.

The Convener: Maybe there is also an assumption that everybody remembers the exact details of things. As you said, it is good to be reminded why a body exists.

Alan Stokes: It is crucial to retain a risk-based approach to ensure that resources are diverted to where they are needed most. Landlords submit comprehensive data as part of the annual return on the charter. At the moment, the SHR is conducting a review of that, which we have fed into.

One thing that came out of our research was about why the data is collected, in certain instances, and what the SHR will do with it. At some points, there have been calls for data, but why and what it will be used for have not been clear. More clarity around that would certainly be welcomed.

Willie Coffey: Thank you very much again, witnesses, for your answers.

My final question is about the regulator having statutory powers of intervention. David Bookbinder and Patrick Gilbride opened a little bit of a line on that when the convener opened her questioning, but will you share with us your views on how those powers are being used? Are they being used adequately, properly and so on? Does anything need to be reviewed or changed? This is an opportunity for you to expand a little on the use of the statutory powers of intervention.

Alan Stokes: It is important to note that the SHR has used its statutory intervention powers on only 12 occasions since its inception in 2012, which demonstrates that, overall, the sector is performing well. Of the 12 organisations that were involved, six are still independent and six were transferred to other organisations.

A huge cost is involved in a statutory intervention, which can include the appointment of expensive statutory managers and has implications for organisations' loan covenants. That is why it is crucial that statutory intervention be very much the last resort—it is to be avoided. In recent years, I think, the SHR has worked to avoid statutory intervention in cases in which prolonged engagement has been the case with organisations. That can also mean using more informal routes, such as recommending internal governance reviews or recommending that an organisation co-opt members on to its board. Statutory intervention very much needs to be the last resort, so those kinds of methods are what the regulator has been using in recent times.

Patrick Gilbride: Intervention is a huge issue and we are right to look, as a priority, at costs, which are often hidden, ignored or not transparent. I apologise for going back to my personal experience, but I know that that is fairly common when it comes to costs. Our exercise in intervention cost the organisation—I am sorry; it cost the tenants—£0.5 million. That is astonishing. My personal view is that the organisation gained nothing. Even if it had gained something, it would have been absolutely minimal or marginal. Through inquiries to the regulator's chair, we know that one consultant cost £142,000 for part-time temporary work over a short period.

The question is whether an intervention is ever going to be value for money. It could be, if it is uncovering fraud or criminal activity. Was it value for money in our case, and is it in most cases? No, it is not anything like value for money, and our tenants will be paying for it for a long time.

09:30

The term “intervention” is incredibly misleading—it really means “control by the regulator”. It is almost direct control through the use of statutory appointees or co-options. Again, I could give you a lot of examples, but I appreciate that we do not have a lot of time. Such interventions definitely hinder the process of coming up with a fair result.

I go back to the point that there is always a hidden agenda, in particular with co-opted or statutory appointees on the committee. We know that they report back to the regulator, and that is probably okay, but a lot of the time they are actually directing the work of the organisation, which is not okay—there is almost a takeover for that period.

We have particular problems, as I know a lot of other associations do, with whistleblowing. If there is a whistleblowing issue and a complaint or whatever against the senior officer of an

organisation, that person is not allowed to engage with the regulator at all. You can probably imagine what that is like. As you will appreciate, it might have a much greater effect on smaller housing associations. In our case, we did not have a deputy director, so the regulator was dealing directly with committee members and expecting them almost to run the organisation on a daily basis because, as the director, I could not go anywhere near it.

That is farcical and it results in a spiral of decline. The committee members will try their best, but their abilities do not include running the organisation day to day. They are fantastically gifted, clever, committed and honest people, but running the organisation is not their strength. In our situation, the regulator absolutely maximised the damage that it could do, which contributed to the outcome for us. Intervention added to that—it is a painful and expensive process, and it does not achieve what it is supposed to achieve.

Tony Cain: I note the difference in the role of the regulator in relation to local government. It does not have a remit in respect of financial management or governance in local authorities, and those are principally the areas in which concerns are raised about housing associations. There has never been a situation in which the regulator has felt the need to use its intervention powers in relation to service delivery. We are unfamiliar with that area, and we would not expect to be comfortable with it any time soon.

David Bookbinder: I welcome the fact that, at present, there are not—touch wood—any statutory actions around. As Alan Stokes said, there has been a limited number of such actions under the auspices of the regulator.

However, even where it could be argued that statutory intervention in the past has been justified, the cost—as Pat Gilbride and others have said—is unbelievable: it is certainly into the £300,000 or £400,000 range, and Pat suggested that it was £0.5 million in his case. For those who are not clear on what happens, the regulator appoints, among others, a manager, and the association pays for that person at consultancy daily rates. When we start adding in other consultants, and potentially the financial penalty from covenants being broken and that type of thing, the costs are crippling.

However, things have moved on in a couple of ways that are really welcome. The regulator's intervention powers were slightly reduced, or amended, some years ago as a result of the issue whereby the UK's Office for National Statistics was going to—it did—reclassify housing associations as public bodies. It was decided that in order to get back to associations and their debt being deemed to be private and not on the

Government's books, which would certainly have been crippling for the Scottish Government, some of the intervention powers of the regulator would be changed, and that has had some impact.

The other change is a bit more subtle. The regulator is now more likely to suggest to a body that it has concerns about which it might look around more widely at ways of getting support. One of those ways might be to approach its membership body—which could be the forum, the SFHA or, in many cases, both—to seek informal support in terms of bolstering the committee or board. Both we and the SFHA now have a panel of volunteers from around the housing movement who would be willing to support an association that is in trouble. We welcome the fact that the regulator can set that ball rolling with an association and be part of an approach that avoids getting anywhere near statutory action. I am not saying that that will never happen again—that would be silly—but I think that an approach of slightly earlier intervention can be taken, where possible.

The Convener: Thanks very much. Willie, are you done?

Willie Coffey: I need to come back to Patrick Gilbride.

You mentioned figures of £500,000 and £142,000. Are those costs not capped in any way? Is the sky the limit in terms of the costs that can be racked up? Who does value-for-money assessments on that, and what was the outcome of the whole thing?

Patrick Gilbride: Those are great questions. There is no cap. Costs are limitless, basically—or so it seems to us.

I will give a couple other examples of consultants being used that added to the costs. Just the intervention investigation process takes something like nine months. At the outset, there will be co-options, statutory appointees or whatever. A consultant will also be selected.

Again, in our case—I will make this as brief as I can—our committee was a committed bunch of individuals who were very aware of the situation and very competent. They stood up to the regulator as much as they could at every opportunity, for the right reasons. They did not want to spend a fortune. There were whistleblowing allegations that were absolutely preposterous, and the outcome at the end was that nothing was done and they were all dropped.

In the meantime, the committee wanted to appoint a local consultant to investigate the allegations quickly, thoroughly, properly and professionally, but also fairly cost-effectively. That was not acceptable to the regulator: at the end of

the day, the consultant had to be its choice. Again, there is the pretence that everything is selected and decided by the management committee, when everyone knows that it is not. Everything is forced through by the regulator.

We ended up appointing a London-based consultant who had just finished a major fraud investigation in Northern Ireland. He came up from London at £1,000 a day plus expenses. It was a complete farce—there was no need for it. The investigation should have been finished very quickly. The chairman met the senior consultant from the investigation consultant's business and said that there was no case to answer—everything was absolutely fine, they had finished all the interviews and it was okay. The chairman should not have done it. He came and told me, "That's you. Everything is absolutely fine—there is no problem." I was thinking, "Yeah, that's the way it should be," but this was six months in, and the regulator never spoke to me once. They did not speak to me at any point until I left the organisation. In nine months, they never spoke to me. The chairman went again to see the consultant, who had phoned the regulator, which came back with another five allegations against me and the chairman—so there was a change of plan.

That was conducted over the telephone, and the outcome was exactly what the regulator wanted, which was that further allegations were made. I ended up being disciplined, but—as I said—all the charges and allegations ended up being dropped completely. There was all that expense for absolutely no outcome that helped the organisation. You asked a good question, Mr Coffey.

Willie Coffey: Thank you for that, Patrick.

Convener, I know that other members want to come in, so I will hand back to you.

The Convener: I bring in Alexander Stewart.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning.

This morning, you have expressed some concerns about the culture and the robust approach of the regulator. The committee has received suggestions that bullying and intimidating behaviour by the regulator have occurred on occasion, especially when it was involved in the intervention process. Patrick Gilbride has given us a flavour of that. The regulator has come back to say that it has a robust attitude towards all that, and that it does not engage in intimidation and that that is not tolerated.

However, I am getting the feeling from some of you that that is perhaps not quite the case, and that you might have experienced some of that

behaviour and culture. Do you agree that that kind of culture exists? If it does, how can that be improved?

Daryl McIntosh: I have been in my current role for just over two years; I was in the private sector before that. As I went out to engage with members and other people in the sector, I kept hearing about the regulator, and there was fear—it was as if it was some mythical beast. I thought that there was an element of paranoia, until I started hearing more and more stories at first hand.

Pat Gilbride has alluded to some more stories, and another organisation that presented at one of our events told a very similar story, along the same lines as Pat described. I thought that there might have been legacy issues, and that perhaps the culture was now being improved. Maybe it is, but—as I said earlier—I have some examples of the differences in how regulation managers are approaching housing associations.

At David Bookbinder's conference on Friday, we heard one example in which a regulation manager had got involved in recruitment and had asked whether a person was up to the role. They should not be involved in that—there is no such remit under the framework. There is just constant fear. I know that of the 40-odd applications that went in, one was not made in the name of the organisation because of the fear of retribution.

Pat Gilbride alluded to the role of the committee members. They are volunteers—everybody on the committees is a volunteer who has given up their time. We said in our submission that those people are supporting the organisations. Yes, organisations like the element of regulation, and nobody is taking that away, but pretty much most of them would flourish without a regulator because of the support from and passion of committee members.

Two committee members who were employees of another housing association were at an association's board meeting with the regulator. At the end of it, they said that they wished that they had taken their passes off because of their fear of retribution as a result of the regulator picking up on which organisation they had come from. We cannot have that.

The question about how to improve the culture is for the regulation board—it is a strategic matter, and how it deals with that is down to it.

Alexander Stewart: It is a real and massive concern that individuals who are giving up their time and their talent to support an organisation are fearful that the culture of intimidation by and the behaviour of the regulator would stop them from continuing in their role or from wanting to stand up and be counted. They would prefer not to be counted—they are happy to stand up, but they do

not want to be put in a position where they could be identified.

Patrick Gilbride gave us a clear description of the kind of behaviour that he has experienced in his role at director level in an organisation. The culture of fear is evident and requires to be addressed.

Does anyone else want to come in?

Alan Stokes: We had some concerns—as, I think, I mentioned earlier—about the approachability of the SHR. Some of those were noted when we did the research, and some were received anecdotally from conversations with members.

09:45

It has been said many times that there are members who are afraid to pick up the phone to the regulator and ask for advice because they feel that it might lead to the regulator investigating other things. We are keen to play a role in building mutual understanding between the regulator and the sector. We need to have methods of doing that in order that we can try to reduce the fear of approaching the regulator.

Tony Cain: Nobody to whom I have spoken has expressed a view that is anything like what the committee has heard from the housing associations. I read through the local authority responses to the committee's call for evidence, and they were universally positive about their involvement with the regulator and about the professionalism of the managers whom they spoke to and of the teams around them.

Nobody has said to me that they had ever experienced anything that they thought was bullying or intimidation, and they said that relationships had been entirely professional from start to finish. There is no sign of any of those issues in the engagement—and it is the same people who are engaging with local authorities. As far as the local authority sector is concerned, there is no sign of any of those behaviours.

David Bookbinder: There will sometimes be a definite perception in that regard. I am thinking about lay committee members and, in particular, the chairs of associations. Chairs can come from a variety of backgrounds, professional or otherwise, and may or may not be tenants, owners or whatever. The regulator will sometimes wish to speak directly with a chair, other office bearers or, indeed, the whole committee. When the regulator wants to engage with the chair in particular, that can certainly feel intimidating. I will not use another term for it. We sometimes get feedback that, for lay board members, there can be challenges.

We are more likely to hear, from day to day, suggestions not of harassment or bullying but of overzealousness, and of the regulator wanting to micromanage an association in certain cases. Daryl McIntosh gave one example of an association that was recruiting. That is more common.

Where we have had a sense, or a perception, of intimidation in the past, it will sometimes have been not so much from senior staff, but from committee or board members who are in a challenging position.

Patrick Gilbride: Again, to go back to personal experience, I will give one more example.

When the regulator was insisting on the management committee taking on board two co-opted committee members, the first meeting that the co-opted members attended was minuted. Again, that should not come anywhere near me, but the absurdity of the situation is clear. The regulator was meeting my management committee and I was not meant to know about it, but the meeting was held in my room. Okay—it was in the evening, but I had to go away. However, they left all their paperwork there, including the minutes from the previous meeting.

I am sorry—I will be brief, convener. I will read out an extract from the meeting on 17 August 2017, which reports what was said by a co-opted member. It states:

“It was confirmed a tight process would give a more substantiated decision, ensure less union involvement and prevent any appeals process. It was noted that organisations such as EVH or SFHA could assist with recommending consultants or assist with a template brief. There were also numerous legal advisors with this type of experience to choose from.”

That was about preparing to discipline me before the investigation had even started. They had not even selected a consultant, and the co-opted member from the regulator was offering that advice to the management committee. The committee wanted to reject that and it tried to—believe me—but, at the end of the day, that is exactly what happened. It took another four months, but it happened. That is bullying of the management committee and I suppose that you could argue that it was bullying of me. Fair enough—I was not supposed to see those minutes, but can you imagine how it feels to read that? You think, “Hold on a wee minute. This is supposed to be a fair and transparent process.” It is not, though, is it?

Alexander Stewart: We have heard evidence about a reduction in the number of community-based housing associations in Scotland and there is a suggestion that the regulator has been instrumental in that change. The regulator has indicated that that is not the case. What is your

view on that? Is there a need to strengthen protections for community-controlled housing in Scotland?

David Bookbinder: Our member community-based associations are not necessarily looking to be regulated in a different way or for a separate framework for them. They are simply looking for it to be acknowledged that, if a smaller community association is in some trouble, greater attention should be paid to what the consequence would be for the association and the community of losing that association to a larger national or UK-based association.

In the past, there will have been losses of community-based associations and other types of association that might have been inevitable and that had to happen for a variety of reasons, although there are some where that did not happen. There are some examples of that within the sector, such as the well-known example of Reidvale Housing Association in Dennistoun in Glasgow, where such a loss was just avoided and the association is now working really well with the regulator to forge what I hope will be a good future.

I will give a couple of examples, because it all sounds a bit abstract sometimes. Two years ago, when Reidvale was considering a transfer, two or three things happened that would make anyone think that the regulator would have been happy for things to be nudged in the direction of such a transfer. One was about the recommendation of co-optees, which has been alluded to this morning. It can be helpful for the regulator to recommend co-optees to a board, but in Reidvale’s case, there was a strong perception that all the co-optees that came to the board through those recommendations had a particular axe to grind or a particular agenda of pushing transfer to larger associations, and those co-optees were very influential on the committee’s workings from the point at which they were co-opted.

The prime example that I always want to give is that an association that is facing difficulties and looking at its options will usually conduct a formal options appraisal exercise. It is a regulatory standard that, if an options appraisal could result in constitutional change—or, as in the Reidvale case, disappearance—tenants and other stakeholders must be consulted. The people who were running the decision-making process at Reidvale did not even inform tenants during the options appraisal process, let alone consult them. The regulator knew about that and simply let it go, and it is not often that the regulator lets someone breach an important regulatory standard. You cannot therefore blame us for coming to the

conclusion that, if the regulator was happy to overlook that breach, there was an agenda there.

To get back to the present, because the “Scottish Regulators’ Strategic Code of Practice” helpfully directs all regulators to take relevant community interests into account, we are working with the regulator—we have had an initial conversation with them and we want to work with them further—to develop some guidance on what that should mean for the regulator. We would be looking at areas such as the loss of the assets from the community, the loss of decision making from the community, and the potential loss of the wider community regeneration role if a large UK body were to take over a small local association. We have got in there to improve how the sense of what might be lost is taken into account by the regulator in its oversight of potential transfer activity.

Alan Stokes: It is crucial that a transfer of stock to any organisation is the absolute last resort, and the SHR should always be mindful of that when engaging with a landlord. It is important to note the diverse nature of the sector—housing associations vary greatly in size, geographic location and services offered. It is definitely not a case of one size fits all. Many years ago, when the SHR in a previous guise was known as the housing corporation, it had a statutory objective to promote and support housing associations. The SFHA would support reinstating something along those lines.

Patrick Gilbride: I will come in briefly on the numbers. Again, that is a great question. Sometimes, it is quite hard to get the stats. I am sure that my colleagues here will be well aware of them, but none of them appear on the SHR’s website any more, although they used to. The start of its annual report also used to include information on how many associations it was looking after. That number was 183 in 2012, and it is 158 today. That is a substantial drop, so something is going on.

Alexander Stewart: Thank you.

The Convener: David, I will come to you with a question, although I think that you have already started to address the point. We are interested in getting a bit more detail on the points that you made in your submission about work to review the SHR’s approach to taking account of community interests in the light of the requirements in the “Scottish Regulators’ Strategic Code of Practice” and the Scottish Government’s national outcomes. You mentioned the loss of assets, the loss of decision making and the loss of community input into regeneration. Are those the examples of community interests that you were thinking about? I would also be interested to hear more about what you are proposing, what the benefits of that

approach might be, and what discussions you have had with the SHR on that. You said that you have started discussions with the SHR.

David Bookbinder: I would add that it is also a sense of what goes if localness—if I can use that word—goes. I have talked about some of the wider community issues and the way in which a community-based association would know and understand its community and therefore have a sense of its wider needs. I know that that can sound a little bit wishy-washy sometimes, but Covid was a great example of what I am talking about. When Covid hit, Scottish Government money became available impressively quickly, and it was community-based associations that really came to the fore on getting the money out to communities, because they knew their area and the local voluntary organisations that they could pass some of the emergency funding to, to help people with food, fuel, isolation and so on. That was a great example of the benefit. If you are a national association with housing in 25 areas, and a crisis such as the pandemic hits, what and where your priority is is not as obvious. It is much easier for a community anchor body such as the local association.

I will bring it back to basic housing management as well. The regulator’s excellent charter data enables us to demonstrate each year, perhaps not surprisingly, that local community-based associations do repairs, for instance, a lot quicker. If you lose localness, you can lose that.

10:00

The potential takeover of Reidvale was interesting. The preferred bidder that would have taken over the stock published literature promoting the transfer that made basic comparisons of things such as repair times, looking at what Reidvale did and at the preferred bidder’s performance. At that time, Reidvale’s average time to do emergency repairs was three hours and the preferred bidder’s average was 17 hours, but that comparison never featured. I know that the regulator was not running the process, but it was keeping a close eye on it, and if the regulator’s remit involves promoting tenants’ interests, you would think that someone at the regulator would have said that that information really should have been put out there.

That is exactly the sort of thing that I have in mind regarding the broader idea of the regulator taking community interests into account. If you lose localness, you are going to lose some key local services—for maintenance or care for the environment—that really matter to tenants.

The Convener: Scotland is also looking at how to bring forward the community wealth-building agenda. I imagine that having a community-based

anchor organisation creates a lot of potential for the wider regeneration that you mentioned earlier.

David Bookbinder: We are often asked what community empowerment and community wealth building are and we think that community-based housing associations are prime examples.

The Convener: My next question is for Alan Stokes. You already began talking about your research and have supplied us with recommendations relating to the SHR's review of the regulatory framework and progress on those recommendations. Which are the most important recommendations and to what extent have they been, or will they be, taken forward?

Alan Stokes: I will touch on a few recommendations that have been taken forward. The regulator has engaged constructively with the report since we produced it, as is shown by the fact that it will now produce an annual report of notifiable events, and by some of the action to form landlord groups.

The recommendations that are still outstanding are those about more clearly defining the role of regulation managers and about the consistency of approach across different regulation managers.

The Convener: Do you have any suggestions about training or capacity building?

Alan Stokes: Those things would be welcome. It would be helpful to see regulation managers engaging more with the sector through landlord groups and things of that nature. It tends to be senior staff or chief executives who take part in those groups, with regulation managers engaging with individual organisations only when that is part of the regulatory engagement process.

The Convener: Having more regular contact and actually being in touch with the people you are working with creates a more connected interrelationship.

Alan Stokes: That more informal contact helps to break down barriers and build relationships.

The Convener: Emma Roddick is joining us online for the next area of questioning on appeals and oversight.

Emma Roddick (Highlands and Islands) (SNP): My question is for Alan Stokes. The committee has heard some evidence suggesting that there is no effective appeals process for regulatory decisions. Your submission recommends having an independent appeals mechanism. How does the current appeals process work and how could it be made more independent?

Alan Stokes: At the moment, any appeal that goes to the regulator is considered by a panel of three, which is made up of two members of the

SHR board and one independent member of what was the Scottish Charity Appeals Panel. That independent member has only an advisory role and has no role in any decision that is made, so the panel is not truly independent. We would be keen to see an approach that is more akin to that for the Office of the Scottish Charity Regulator, whereby appeals are considered by a panel that has no connection to OSCR.

Daryl McIntosh: I will be brief. As I said, I have a private sector background. The introduction of the First-tier Tribunal for Scotland housing and property chamber, which is for landlords, tenants and letting agents, is a great mechanism. It is free. The forms can be a little bit fiddly, but that opportunity is available to everybody. The housing and property chamber has a couple of legal members and a lay member on it. That is a good avenue to look at.

The Convener: I went to see a First-tier Tribunal session last week, which was very illuminating.

Would anyone else like to comment?

David Bookbinder: It is hard to argue against the notion of an independent appeals process. You will find that that is also an expectation of the "Scottish Regulators' Strategic Code of Practice".

I have a couple of points to make from a practical point of view. We support there being an independent mechanism, but it is true to say that if a housing association gets all the way through to the end of that process of dispute, there will probably be some very entrenched issues on both sides and a pretty awful relationship. In the vast majority of cases, you would hope that you would never get anywhere near an independent appeals mechanism, simply because that would show a lack of any ability to find other ways of dealing with the issue.

There is also an issue of timing. Occasionally—this happens only very occasionally—any regulator may have to act extremely quickly in the most dire of circumstances. I am not talking about some of the issues that Pat Gilbride described that he has experience of. I am talking about insolvency or other desperate situations in which a regulator may simply have to act and the appeal may have to follow. I think that that is simply an inevitability, but that would be the case for any regulator.

Emma Roddick: Patrick, is there anything else that you want to say to expand on your concerns about having accusations against the regulator investigated and how that situation could be improved?

Patrick Gilbride: Yes. This committee is probably the first stage. I have been here before.

The issue comes up every now and again, as you are probably aware. I think that it came up in 2014, when the SFHA and the Glasgow and West of Scotland Forum of Housing Associations made a joint submission. I made a submission in 2019.

I think that the equivalent parliamentary committees have always been well intentioned but, for different reasons, have not been able to find their way through and robustly challenge the regulator. It looks as though this committee is treating the remit a bit differently. I am sure that we can add to that. Arguably, it should not be only this committee that deals with the regulator, but it is clear that more regulation of the regulator is required. It certainly sounds as though that is the case. The committee's work seems like a great attempt to do that.

Putting out the call for views was a really brave move. That was a fantastic idea, although there is a slight danger, for all the reasons that have been mentioned, that a lot of people will still be put off contributing to it. In particular, some of the people who still work in the movement will be a bit wary of doing that. Again, it is to the committee's credit that it has treated confidential and anonymous submissions separately, which I think makes sense. I would really like those views to be incorporated into the outcome of this process, because they may well have quite a lot to say, given their nature—the fact that people have seen fit to keep them confidential and anonymous. I hope that that moves forward.

Again, I may be a little different to others, who have to work with the regulator. That is where I started off. I think and hope that we will move on to an even more robust investigation. A wider public inquiry is needed, given the submissions that you have received even so far.

The sector is very varied, as we have said, and it looks as though the issue is not the same for local authorities as for large associations or small associations. It is a very varied sector and it is very different. However, I think that the small associations are in greatest need of support and of additional regulation of the Scottish Housing Regulator.

The Convener: Thanks very much for that, Patrick. Certainly, we will draw on the anonymous and confidential submissions as we consider our views at the end of this process.

I now open up time for Evelyn Tweed and then Paul Sweeney to come in with questions. We aim to finish at around 25 past, which gives a little less than 10 minutes each.

Evelyn Tweed (Stirling) (SNP): Thank you, convener. I declare an interest as a member of Loreburn Housing Association and a former housing professional.

Good morning, witnesses. Thank you for all the information so far, and for your answers.

Convener, if you will allow, I would like to make a short statement before I ask a question.

The Convener: Okay.

Evelyn Tweed: David Bookbinder and Alan Stokes appeared before a similar committee almost exactly 10 years ago to raise serious concerns about the Scottish Housing Regulator. Patrick just alluded to that.

The current GWSF submission highlights disproportionate Scottish Housing Regulator interventions, affecting in particular smaller associations and potential takeovers. Share's submission points to sector-wide fear and distrust of the regulator. Meanwhile, the SFHA calls for a truly independent appeals mechanism for RSLs, akin to what charities have through the Office of the Scottish Charity Regulator.

It seems to me that little has changed over the past decade. As has been touched on, the Scottish Housing Regulator introduced a complaints policy that is neither independent nor trusted, leaving it rarely used. As a result, various committees and MSPs—myself included—have continued to hear the same criticism about the Scottish Housing Regulator: that there is no effective scrutiny of its exercise of its statutory functions.

Do the witnesses agree that the best way forward is to amend the current Housing (Scotland) Bill to establish an independent appeals process for RSLs, equivalent to the process that is open to charities to appeal the decisions of OSCR?

Alan Stokes: The short answer is yes, definitely, as we have already talked about. The devil is in the detail of how such a process would work. David Bookbinder has pointed out some of the issues around slowing things down, and we would need to make sure that that did not happen. It is just a case of how the process would work in practice and which regulatory decisions would be subject to appeal.

The devil is in the detail, but we would definitely support an independent appeals mechanism and the addition of that as an amendment to the Housing (Scotland) Bill.

Daryl McIntosh: The question that is regularly asked is, who regulates the regulator?

The short answer is yes, we would support an independent appeals process. However, it should probably not stop there. As I mentioned, there are many grey areas in the framework such as those that relate to interpretation by the RSLs or internally, or whether an additional level of training

and qualification is required for regulation staff. That should be part of the process.

10:15

David Bookbinder: We have not changed our position. It is simply the right thing to have an independent appeals mechanism for this or any other regulator, and Ms Tweed is right that our position on that has not changed for the past 10 years.

Call me naive if you will, but, on the broader issue of the regulator's approach to smaller, often community-based, associations, I have a sense that we are getting to a position where some lessons have been learned from the past two or three years. We might be making some headway towards getting something transparent down around how the regulator looks at potential takeovers of local associations.

Although we would very much hope that things could be resolved in all sorts of other ways, it is certainly an important principle to have an independent appeals mechanism.

Patrick Gilbride: I absolutely agree—that makes sense. We have been to the regulator, and it was incredibly defensive. The current system is unworkable, so that sounds like a great move forward.

Evelyn Tweed: Pat, I will go back to an earlier question, when you read out a bit from the minute of the meeting with the regulator. Did you say that the conclusion was already being discussed before the process had actually started? Did the minute say that the regulator was already trying to avoid any future appeal?

Patrick Gilbride: Yes, that was precisely it. That was in August 2017. At the following meeting, work started on the selection of the investigation consultant before the investigation had started. At that point, the management committee members did not even know what the regulator was investigating; they knew only that it was something to do with a whistleblowing complaint. I happened to know what it was about, but, again, I probably should not have known. The management committee members would have been a bit mystified by that because the regulator would not tell them. It just said, "We want you to set up an investigation panel, and these co-opted members are going to be involved in it. Then we want you to meet and select a consultant." It was in that order. You are quite right, Ms Tweed, that that was the information that was given before the process had even started.

The Convener: I am concerned about time. Tony Cain indicated that he wanted to come in, and I want to make sure that Paul Sweeney has

time to speak. We had already heard what Patrick has just said, so we will move on.

Tony Cain: Briefly, I think that there could be no objection to the principle of an independent appeals process, but my local authority colleagues have been clear that they have never experienced any of the issues that are being described in relation to the behaviour of people who work at the Scottish Housing Regulator at any point over the 12 years since it was put in place. It is not a factor in our engagement, and the universal view has been that they are professional, well-trained and competent individuals who focus on the issues at hand. The experiences that have been described are completely alien to our experience of working with the regulator.

The Convener: There is something in there that maybe needs to be taken forward, so that we can look at why the experience in one place is different from the experience in another. Unfortunately, we do not have time to get into that at the moment, but we will make a note of that.

Paul Sweeney (Glasgow) (Lab): I thank the witnesses for their helpful contributions so far. I will turn to the particular concerns that have been raised around community-based housing associations that are subject to statutory intervention. Concerns have been raised about the rigour of the process for the appointment of a statutory manager.

Usually, an options appraisal is carried out, which tends to conclude that a transfer of engagements to another housing association should take place; even before that process happens, there is the appointment of a so-called transfer specialist. Does the relationship between statutory managers and transfer specialists raise concerns? That could be particularly the case when all those people are on the statutory managers list and no clear declaration of interests is required, which perhaps suggests an inherent bias in favour of transfers of community-based housing associations.

The Convener: Okay, who would like to start with that one?

David Bookbinder: It is quite a complex picture. A recent example is Reidvale, which was not actually under statutory measures but in which there were players, if you like, who would have been acting as statutory managers elsewhere, in other cases. Reidvale had an interim director who—obviously working closely with the committee—brought in a transfer adviser. You will also see that transfer adviser on the regulator's list of statutory managers who could be brought in if any statutory actions were instigated.

Some of those people have, indeed, worked together previously in other associations that have

been closed down—although, in one or two cases, that has been avoided. There is a real need in all those relationships for probity and transparency, whether there is a statutory action or not, because there are people who have worked together, almost tag-team style, in other associations and you have to be very careful about how those relationships might materialise—people might appear in different roles in troubled associations. I hope that we—and the regulator—have got to a point where we have learned some lessons from how that has played out in a few recent cases. Everyone will be more careful in the future.

Paul Sweeney: Thank you. If no other witnesses wish to comment on that question, I will move on to ask my final one.

I want to talk about the nature of the bidding process for a preferred transfer partner. It is clear that larger RSLs are inherently better resourced and able to devote greater time to providing a highly—although perhaps superficially so—attractive offer. In the case of Reidvale, for example, we saw the offer of a rent freeze, the takeover of a local community centre and the offer of very intensive engagement prior to the undertaking of any formal ballot process. The regulator is insistent that it is neutral about structures—that is, whether the RSLs are larger ones or smaller community-based ones—but will the process inherently favour larger housing associations that are able to offer a loss-leading bid, if you like, to attract tenants to a transfer, even though that will ultimately lead to the loss of asset wealth in that community?

The Convener: Okay. Who wants to pick that up?

David Bookbinder: I agree. It is inevitable that the majority of cases of forced transfer are more likely to favour a larger national or UK association—that is what the statistics show—although it is important to say that there have been some completely voluntary and very local mergers of two small associations that have not come out of engagement with the regulator.

One of the things that that throws up is that there is no guidance on what a preferred bidder does in the period of a year or so, or however long it might be, before the ballot—first of tenants and then of shareholding members—takes place, which the bidder is the subject of. The regulator has been very open and said that we are right about that. A preferred bidder could enter into a financial transaction in the local area before the ballot takes place—in the Reidvale case, it was a transaction to reopen the neighbourhood centre. On the face of it, that was a helpful thing to do, but is it right that a bidding organisation should enter into financial transactions locally before a ballot takes place?

That just does not feel quite right, and the regulator said that it would be happy to work with us on some guidance on what a bidding organisation should do in that process. Although you cannot stop those organisations making a promise on things such as rent freezes—which I think are their prerogative—it does not feel right that they should do financial transactions.

The Convener: Does anyone else have anything to add?

Tony Cain: Forgive the observation, but it is a dog-eat-dog world in the private sector.

The Convener: Okay. We have had some good catch phrases this morning. [*Laughter.*]

I thank Paul Sweeney and Evelyn Tweed for joining us this morning and for their questions. I also thank the witnesses. It has been a really interesting and illuminating discussion and I really appreciate your coming in and giving your views this morning.

With that, I will briefly suspend the meeting to allow for a changeover of witnesses.

10:26

Meeting suspended.

10:33

On resuming—

The Convener: We are joined on our second panel by Lindsay Anderson, chair of the Link Group tenant scrutiny panel; James Calder, national policy and engagement officer at the Minority Ethnic Carers of People Project; Shona Gorman, vice-chair at Tenants Together Scotland; and Robyn Kane, secretary of Edinburgh Tenants Federation.

There is no need for you to turn your microphones on and off—we will do that for you. We will be directing our questions as much as possible to specific witnesses, but you are all welcome to contribute. Please signal clearly so that I catch your intention to come in.

I understand that Robyn Kane would like to declare an interest that is relevant to the session.

Robyn Kane (Edinburgh Tenants Federation): You should know that I am a tenant adviser for the Scottish Housing Regulator.

The Convener: Thanks very much. I begin with a general question about how well the Scottish Housing Regulator is performing in its statutory remit. I remind us all that that remit is to safeguard and promote the interests of current and future tenants, people who are or may become homeless, factored owners and Gypsy Travellers.

This question is for all of you. Do you have a sense of whether the SHR is performing that statutory remit effectively?

James Calder (Minority Ethnic Carers of People Project): MECOPP works primarily with Scotland's unpaid carers from minority ethnic communities, but a large part of our work has been with the Gypsy Traveller community over recent years. It is evident that accommodation is one of the main issues that the Gypsy Traveller community has expressed concerns about.

A number of members of the community live on social landlord-run sites across Scotland and, to be blunt, the standards of the sites are extremely variable. Many of them are just not hitting the Scottish Government's minimum site standards. There has been some progress in recent years. The £20 million fund has helped some sites, but others are in extremely poor condition. We have sites that are built next to landfills, which raise significant environmental concerns about a direct health impact, including an impact on children. The conditions are poor on some sites, and we are finding that the capacity of sites has been reducing. Recently, a site in Dundee was closed without any provision being made for its tenants.

To answer the question, I do not think that the members of the Gypsy Traveller community have been properly served by the Scottish Housing Regulator. So many members of the community are finding that their voices are not being heard. They are living in accommodation that is not up to standard, and many are in effect becoming homeless because local authorities and housing associations have reduced the capacity on their sites in recent years. It is just not good enough right now.

Robyn Kane: I can really speak only about Edinburgh, because that is our main focus. Social housing in Edinburgh is not up to standard, and we feel that the Housing Regulator should be doing more to push the council to update the standards. We also have something like 5,000 homeless people, and there is not really any push from the Government or the Housing Regulator to fix that. That is a big concern for us. We also get the same talk about Gypsy Travellers, because the sites are not great. I think that we are failing on that aspect.

Lindsay Anderson (Link Group Tenant Scrutiny Panel): I think that the Scottish Housing Regulator carries out its duties in a limited fashion because of limited resources. Given the expansion of care and other factors in social housing, a tremendous variety exists in the sector. It would be impossible for one individual to cope with the variety with any level of knowledge. I am concerned about the resources that are available

to the Housing Regulator, because it cannot facilitate its roles effectively at the moment.

Shona Gorman (Tenants Together Scotland): First, I declare an interest, in that I am a tenant board member of Link Housing Association.

In Tenants Together, which is a national tenant organisation, mixed views were expressed. We feel that the effectiveness of the regulator's performance of its duty is variable. For instance, members are keen for the SHR to take a stronger approach to the safety of tenants and service users, particularly when it comes to dampness and mould, the quality of temporary accommodation and breaches of the unsuitable accommodation order. Members noted that they are keen for the SHR to take a stronger role in regulating the quality of Gypsy Traveller sites, with a particular emphasis on health and safety.

Tenants Together's liaison group meets the SHR regularly. When we spoke to it at the end of October, one of the points that we put was whether it had sufficient funding. We had a concern that, in these strained financial times, funding might be an issue. However, as far as the SHR was concerned, it had sufficient funding to carry out its regulatory role.

The Convener: Willie Coffey joins us online.

Willie Coffey: Good morning. [*Inaudible.*]—tenants, homeless people, Gypsy Travellers and so on are fully aware of and understand what the regulator's role is? It would be unusual to see a procession of complaints to the regulator from, say, homeless people or even Gypsy Travellers. Do we need to do something to close that gap a wee bit? Will you share your views with the committee, please?

The Convener: That was a general question. We missed a bit of it, so I will fill that in—it was about the awareness and understanding of the SHR's role and functions.

James Calder: That is a really good point. The awareness levels among many members of the community that we work with are limited. If the SHR is to be effective, there needs to be a more proactive approach to engaging with communities such as the Gypsy Traveller community.

Fundamentally, we are keen to ensure that members of the community know their rights. Working with the community and with other organisations that work in that community would have a significant beneficial impact.

Robyn Kane: The illiteracy rate is really high in Edinburgh, which means that, even if the SHR were advertised—I do not see much of that—people would not understand it.

I have brought something that we have been doing. We started a comic book to show what we do. Being able to engage more with more people is really important. You are right in saying that the average Joe would not even know to go to the SHR. A lot of gaps need to be filled.

Shona Gorman: I cannot be specific, but I imagine that there is not a great knowledge of the regulator among Gypsy Travellers; certainly, among ordinary tenants, there is not. Interested tenants who are involved in participation, scrutiny panels and so on may know, but not the majority of tenants.

Willie Coffey: That was quite an illuminating set of answers. It is about bridging a gap. If a service can be carried out specifically for certain people, but those people are singularly unaware that it is available, there is an issue to solve.

As we understand it, the regulator works with a panel of 400-odd tenants and service users. I wonder whether any homeless or formerly homeless people, or even Travellers, are part of such a panel, to push into that panel their views and experiences. Are our witnesses aware of such a thing, and are there any examples of the benefits that the convening of a tenants panel brings?

10:45

Shona Gorman: I am a member of the tenants panel but, to be honest with you, it is a one-way system. Every year, a survey is sent out, which asks about tenants' experiences of their costs, their rent, their fuel bills and so on. However, that process involves the SHR creating and sending out a survey and panel members sending back their replies. It is not a two-way process; it is not a dialogue or a conversation. It simply involves answering a survey.

The Convener: If it was a two-way system, what do you imagine would happen?

Shona Gorman: The same questions are asked every year, and they are quite prescriptive. They include questions such as, "How are you coping with your ability to pay your rent?", and "How are you coping with your ability to heat your home?" Of course, those are interesting questions and it is necessary to ask them, to give the SHR an idea of what is happening, but there is no means by which panel members can give their thoughts on other matters in relation to the SHR that they might wish to discuss.

Who knows about the panel? The people who know about it are probably tenants who are already engaged or involved in one way or another.

The Convener: You would like to have a process that is a bit more of a dialogue.

Shona Gorman: That would certainly be better.

The Convener: Does anyone else have anything to add?

James Calder: What Shona Gorman said is absolutely right. We find that proper engagement and proper dialogue with members of the Gypsy Traveller community is much more likely to yield results than simply shoving a survey through to members of the community. With all tenants, regardless of whether they are members of the Gypsy Traveller community, it will be the case that different tenants will have different issues, and there will be variation around the country. I do not think that we can have a one-size-fits-all approach.

The Convener: Willie, do you want to follow up on that?

Willie Coffey: In relation to the point that Shona Gorman and James Calder made, are you aware of any former homeless people or Gypsy Travellers who contribute to the work of the panel? Have former homeless people or Gypsy Travellers ever been able to have their views put forward and acted on as part of the panel? That seems to be a huge omission from the process that we are supposed to be delivering for people.

Shona Gorman: I am not aware of that having happened, but that does not mean that it has not happened.

James Calder: I am not aware of that, either.

The Convener: That is an issue to address.

I now bring in Mark Griffin, who also joins us online.

Mark Griffin (Central Scotland) (Lab): I have a question for James Calder and a broader question for the whole panel.

James, your submission highlights issues to do with the adequacy of the regulator's role in relation to Gypsy Travellers. You touched on that in your response to the convener's question, but I want to give you the chance to say more about it, if you would like to, and about how the situation could be improved.

James Calder: I will tell you about some of the responses that we have had from the community. With regard to the sites, we have residents who are living on sites that have substandard facilities. Gypsy Traveller sites tend to have amenity blocks that include things such as the kitchen and toilets. Often, there are mould issues that are out of control. The facilities are often in really poor nick—in effect, they have been left in a state for years. Although the minimum site standards have been

brought in, the facilities are in such a bad condition in too many places.

On the environmental issues, we have been doing some work on sites, and we have found issues with gases on sites that are built next to landfills, which is potentially quite hazardous to members of the community who live there.

On homelessness, there is just not adequate provision in Scotland for the community. In recent years, capacity has decreased significantly across Scotland, which is leading to greater levels of homelessness for the community. It is not a case of saying to people that they can go and live in normal bricks-and-mortar housing, as that is not culturally appropriate. It would be like saying to someone who lives in bricks-and-mortar housing, "We want you to live in a caravan." Some members of the community live in bricks-and-mortar housing and are happy with that, but some members do not want to do that. It is not their cultural heritage, so it can lead to mental health issues as well.

There are lots of different failings. Many members of the community feel that they are not being listened to. Elements of discrimination are taking place, and many members feel that they are not treated with great levels of respect by anyone in authorities. I am not saying that discrimination is coming from the Scottish Housing Regulator, but it is coming from different aspects of the landlords. There is no universal experience here, but it feels as though the community is an afterthought. We want to see stronger levels of support for the community from the Scottish Housing Regulator.

The Convener: Before Mark Griffin comes in with his next question, I want to clarify that you are saying that there is a lack of provision of sites in the first place.

James Calder: Yes. We have seen a reduction in the number of pitches. Each pitch will potentially contain an extended family. One pitch could have 10 people living on it, for instance. Between 2009 and 2019, the number of sites reduced from 31 to 29—two sites closed. We have also seen the number of pitches reduce over that period. Significantly less capacity is available for members of the community, which has led to problems of not being able to get a pitch, and there are waiting lists.

The Convener: When people do not get a pitch, what do they do?

James Calder: It depends. Some people might move to bricks-and-mortar housing. That will work for some people, but it does not work for every member of the community. Some members are going from one unauthorised encampment to another, which leads to various tensions in communities. The ideal situation would be that

every member of the community is able to live in accommodation that is culturally appropriate for them.

The Convener: I can imagine that not being able to get an official pitch would lead to a precarious situation.

James Calder: Absolutely. We are talking about families—children and adults, including elderly people. Many members of the community are more likely to suffer from various long-term health conditions, so not having ready access to water or to normal fuel methods, which can lead to fuel poverty, does not help either. Many different issues come into play, which have a generally negative impact on members of the community who do not have accommodation.

Mark Griffin: I have a broader question. Can any of the witnesses highlight any positive experiences that they are aware of where the regulator's work or engagement with a social landlord has ended up benefiting tenants or service users? I will start with Shona Gorman.

Shona Gorman: That is not a question that I was expecting, to be honest. Yes, the regulator definitely does positive work. I do not personally have any specific examples of direct association between the regulator's work and tenants. I am with a landlord who took over a smaller housing association and, in a transfer of the terms of engagement in that way, most of the safeguarding is for the tenants who will be taken over by another landlord. In that case, a tenant board was set up to make sure that everything that had been promised happened.

However, existing tenants of the landlord who is taking over do not get involved at all. It would be good if they did, to an extent, because, if a landlord is taking over a large number of houses—a housing association of perhaps 2,000 to 3,000 houses—that will have an impact on existing tenants. At the moment, however, the regulator has no provision for that.

Lindsay Anderson: What Shona Gorman said is quite accurate. Existing tenants have no option but to accept the outcome of negotiations that are taking place in the background and which the tenants do not know about. The biggest problem that has been experienced as a result of such circumstances is existing tenants having to pay increased rents because of the work that needs to be done to renovate and improve the properties that have been taken over. That impacts on every tenant who needs a repair in the time since the takeover.

Some existing tenants ask, "They've got their own tenant board—why can't we have that?" Sauce for the goose is not sauce for the gander in that circumstance. It is difficult for tenants to

understand and it is difficult to rationalise to tenants, who are just looking at the pennies.

The Convener: Robyn, do you have any positive experiences of the SHR?

Robyn Kane: I do not have any personally, and I have not heard any stories from tenants, but Betty Stone, our convener, probably has. We really struggle to get a bit more push with the City of Edinburgh Council. The regulator regulates the council and it comes back with all the data, so if the council is failing, the regulator will tell us where. However, we do not see the benefit of that at all. It has taken more than six years to get some benefit. The stock condition survey has now come into play, so capital investment can be made, but six years is too long for people to have to deal with cold winters and mould and this, that and the next thing.

I cannot honestly say that the regulator has done much to push the social landlord to do much.

James Calder: We probably have quite similar experiences to Robyn Kane. Because members of the community generally lack awareness of what the regulator does, it is difficult to say that there have been any positive experiences. In recent years, we have seen some positive developments on some sites across Scotland where work has been done to improve them, but it is difficult for members of the community to say what the direct influence of the regulator is.

11:00

Lindsay Anderson: The regulator is not always able to act in the best interests of tenants, because it does not have the authority to act, which is with the local authority. It cannot or will not—I am not sure which it is, but it is more likely that it cannot—go in and try to sort out a problem in a local authority. Local authorities do not really have any incentive to adhere to the regulations. I know of one council that is blatantly ignoring damp and mould to the physical detriment of tenants, but the regulator is not doing anything about that. What can it do?

Shona Gorman: I want to come in, but not on the issue that I mentioned earlier, when I was giving my view and feeling as a tenant.

The Tenants Together liaison group, of which I am the co-ordinator, meets the SHR regularly and has a very good relationship with it. We bring tenants' views and thoughts to the regulator, and we have a good, open and friendly relationship, which, I think, is helpful for both sides.

For instance, we were aware that there had been a great reduction in tenant participation since Covid, so we went on and on about that to the regulator until it agreed to do a thematic review of

tenant participation. If there is a lack of tenant participation, there is the danger that people will not have what the Housing (Scotland) Act 2010 says that they should have. If landlords are not providing tenants with the means for decent participation, the law is not being adhered to.

Alexander Stewart: We have heard evidence about the adequacy of the regulatory framework, with suggestions that the focus on self-assessment can be perceived as bureaucratic and could lead to some manipulation. Do you have any views on that?

The Convener: The silence might say it all. [*Laughter.*] It is hard to have a view if the system is overly bureaucratic.

Lindsay Anderson: Our interactions with the regulator are few and far between. Ordinary tenants do not really have any interaction with it. If the regulator is taking steps to do something about something that it does not like in an organisation, tenants do not really get to know about that, because it happens at a different level. It is difficult to describe. It is not that organisations deliberately keep tenants in the dark; it is just that they have never had the need to do it.

Shona Gorman: When Tenants Together completed our submission, although we recognised that a risk-based approach to regulation is important, we wanted to highlight that we would like the SHR to carry out more regular checks on landlords that are categorised as being a low risk in order to verify the accuracy of the reported performance data. Regulations can be interpreted by different landlords in different ways, and that can make quite a difference. We would definitely like the SHR to get out and about a bit more.

Alexander Stewart: As I said, there are concerns that the regulator's self-assessment process could lead to some form of manipulation. You have already identified that you are not in the loop all the time, and that is an element of the process, but, if you were included, you would be able to have a view on some of that. It is important that you have the opportunity to understand and to be consulted or comment on what might be the case. I think that that needs to be looked at.

Shona Gorman: As a tenant, you do not interact with the regulator—although obviously, as a board member, I do. I am one of only two tenants on the Link Housing board, so that is not a general thing.

Alexander Stewart: My second question is on something that we discussed with the earlier witness panel, which is the statutory powers of intervention. We heard concerns about the SRH having those powers and about cases where those powers were used. There is a need to bring

some of that to mind. Have you have experienced anything in relation to the statutory powers of intervention that has caused concerns in your organisations?

Shona Gorman: No.

Robyn Kane: No.

James Calder: No.

Lindsay Anderson: No. [*Inaudible.*]—bullying or intimidation, but maybe our organisation is large enough to stand against the regulator, given the opportunity or necessity.

Alexander Stewart: In some respects it is good that we do not have a comeback from any of you on that. Maybe it opens up other questions for the committee in the future. Thank you for that.

The Convener: Emma Roddick, who is joining us online, has a couple of questions.

Emma Roddick: The committee has received some evidence about the reduction in the number of community-based housing associations in Scotland, and some are suggesting that the regulator has been instrumental in that change. The regulator has denied that, arguing that it regulates individual landlords and has no remit to “effect sectoral change or restructuring or consolidation”.

What are the witnesses' views on that matter? Is there a need to strengthen protections for community-controlled housing in Scotland?

Shona Gorman: That is quite a difficult area. I do not have specific personal knowledge, but, over the past few years, there have been difficulties with dampness and mould, and, in some cases, RAAC—reinforced autoclaved aerated concrete. I think that the regulator has found—rightly or wrongly—that financial governance in a smaller housing organisation might not be as strong as it needs to be for the association to be able to take care of emergency situations such as those and other matters of stock condition. Smaller organisations might not be able to provide the forward thinking to set aside enough money to deal with those circumstances. That might well lead to the possibility of smaller organisations becoming fewer and the possibility that, if some of them group together, their governance, financial background and so on will be stronger.

Even matters such as gas servicing and electrical safety checks are a great cost to housing associations, especially small ones, but they are absolutely a legislative requirement. Keeping stock maintained to a good level is also a legislative requirement. I can understand that some smaller organisations are finding it difficult to cope with all that and perhaps feel the need to become part of a bigger organisation, but I am not aware of the regulator pushing that. I think that, if it did, it would

be in the best interests of the tenant in terms of governance and financial prudence.

Emma Roddick: Does anyone have any other comments to make about any aspects of the regulator's functions, or how the regulator carries them out, that might help it to meet its statutory objectives?

Lindsay Anderson: In some respects, the SHR carries out its duties remarkably well, in that landlord performance information is available on the net. If people are interested and are looking for it, they will find a fantastic amount of information about the work that the regulator has done on the businesses involved, and the outcome of the investigations is there for all to see. From that point of view, the SHR is excellent, and would get 10 out of 10, but it does not produce quite the same performance on a practical, day-to-day basis, because of the difficulties of staff resources, apart from anything else, as I mentioned earlier, and given the amount of companies and organisations that it is dealing with. It is a relatively small body.

Perhaps the SHR needs a bit of help.

James Calder: Ideally, we would like there to be more engagement with the communities that we are supporting. From our perspective, that is the Gypsy Traveller community. It is a matter of having proper engagement and providing real support. I have a quote from one member of the community:

“Listen to us, to our communities. Listen to our voices. It is our lived experiences. But don't just listen: act on what we say, not just ticking boxes that you've listened.”

When it comes to some of the accommodation issues concerning members of the Gypsy Traveller community, it is about having that better engagement and better communications between the Scottish Housing Regulator and other agencies, involving third sector organisations that work with the community and have built trusting relationships. Ideally, if the Scottish Housing Regulator could help to build that level of trust, that could go a long way.

Shona Gorman: There is sometimes a feeling that the regulator is in one place and everyone else—all the tenants—are somewhere else. Is there a way round that? I am not sure. More engagement will always be a good thing. I have been to conferences recently, and they tend to involve tenants who are already engaged. If the regulator is there and he is doing a workshop, it will be fully booked. People have plenty of good questions, and they are really interested. They are very knowledgeable, and they want to speak with the regulator. If more people knew about the regulator, that would be terrific, and it would be

good to have more communication between the regulator and tenants.

This morning's discussion has highlighted the question of who regulates the regulator, or who scrutinises them. I was taken by surprise this morning, and I feel from what I heard that they cannot just do their own thing. They very much have to be scrutinised, too.

The Convener: I hope this does not feel like it is putting you on the spot, Robyn, but earlier in the meeting you held up a comic book, I think. Is that what it was?

Robyn Kane: Yes.

The Convener: That was quite interesting. Could you talk us through the point and the purpose of that?

Robyn Kane: There is a really high illiteracy rate in Edinburgh, and we were trying to find different ways to communicate with people to let them know about their rights for housing. One of the ways that we have done that is through a comic book that we have designed, which I have here. As you can see, it uses only a little text—you follow the story mostly through the figures in the drawings—but it includes our contact information.

We have two members of staff who are more than happy to help people to sort out their own business, start a residents association or a tenants group or whatever. We find that, because of the way that we approach things—making videos, doing things online and so on—tenant participation is really good. The SHR lacks that, so regular tenants do not know their rights. Do they know, for example, that they should not have mould in their houses and that their landlord is accountable for removing it? I do not think that they do. At the moment, I think that they think, "Well, it's better the devil I know. At least I know I've got a roof over my head," rather than thinking that they will complain to the landlord or the council.

What has been said today about the SHR doing an all-right job but needing more resources to do better is true. However, I also feel that, although it does a good job with regard to collecting data and so on, it is less good when it comes to actually doing work on the ground to push landlords to make changes for tenants who might be paying for services that they are not getting. That is lacking.

The Convener: There is clearly a need for things such as the comic book that you showed us. Earlier, with the previous panel, we discussed communication and the ways in which we can ensure that tenants understand their rights. The approach that you are talking about is something that we should think about in that regard.

James Calder: That comic looks excellent—it is a really good piece of work. Our project likes to

look at different forms of communication, too. Some members of the community that we work with have lower literacy rates, too, so things such as audiovisual resources are useful. Using different media could go a long way towards helping with communication, and that comic is an excellent example of that. I am really impressed with it.

The Convener: Yes, thanks for bringing that in, Emma.

I will give the final word to Shona Gorman.

Shona Gorman: The comic looks brilliant. It would be good if the regulator had more of that kind of short, snappy visual communication rather than being a distant body that produces wordy documents.

The Convener: Yes, I agree with what you are saying about those documents with lots of long paragraphs that you cannot fathom. Sometimes committee papers feel like that—even though the Scottish Parliament information centre and the clerks work hard to ensure that we have clear information—so I know how it can be. I also agree that diagrams can be helpful.

Thank you for joining us this morning. That concludes our questions. It has been useful to hear your perspectives.

As previously agreed, we will take the next item in private.

11:17

Meeting continued in private until 11:31.

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