

Competence and Conduct, the new standard for social housing

Introduction



Katherine Sinclair, *Legal Director in the Employment and Pensions Team at Anthony Collins LLP*

Katherine Sinclair, a Legal Director in the Employment and Pensions team at Anthony Collins attended to discuss the introduction of the new Competence and Conduct Regulatory Standard which introduces mandatory professional qualifications for housing managers. The talk focussed on what the new standard means, what to expect, and the strategic risks that Providers face because of the new standard and what can be done to mitigate against them.

On 06 February 2024, the Government published consultation on the draft regulations implementing this standard. This consultation closes on 2 April 2024. The regulations are expected to be implemented in April 2025. Housing associations are encouraged to respond. The Regulator will be required to set a standard

What is the standard?

relating to “the competence and conduct of relevant individuals”. Consultation is not about whether there should be a standard but more about the qualifications. It requires Registered Providers to ensure that staff comply with the relevant qualification requirements and to introduce a written policy outlining how they propose to meet the new standard.

This written policy will need to set out the Provider’s approach to appraising staff who are “relevant individuals” and to manage poor performance. This includes a requirement to adopt an appropriate code of conduct for the staff to whom the standard applies. Katherine’s view was that Non-Executive Directors should assure themselves that these policies are in place and embedded within the organisation. The intention behind this measure is the drive towards transparency, accountability, and greater control.

Who does the standard apply to?

The standard applies to “relevant persons” and “service providers”.

To be a relevant person, you must have a “substantive role” in managing the delivery of housing management services. For a role to be “substantive” it must take up more than half of that individuals’ working time.

There are two types of relevant persons:

1. Senior Housing Executives which will usually be heads of service and directors providing strategic direction and those who are accountable for housing management services.
2. Senior Housing Managers are classed as someone who manages the direct delivery of housing management services to tenants. Katherine gave the examples of those who work in the management of lettings, tenancy or income management, repairs, antisocial behaviours, or capital works but there is no exhaustive list.

The guidance is clear that the focus is going to be on the substance of a job role rather than the title. The guidance envisages that CEOs would be captured as senior housing executives but that it depends on the size of the organisation and whether the CEO has direct accountability for housing management services. The key consideration is whether the person has sole or joint responsibility for the delivery of day-to-day housing management functions. Katherine's view was that this was a rather broad-brush approach. It is not possible to give a list senior housing executives that it would apply to but it may apply to CEO, COOs, Assets and Customer Service Directors.

It should not be noted that is only designed to catch management roles, so whilst the person responsible for managing repairs and maintenance would be caught, there will not be a requirement on the persons actually carrying out the repairs/maintenance to get qualified.

The introduction of the requirement on service providers was a surprise in the consultation as this was not floated previously, but the requirement extends to any service providers that housing management services are outsourced to. For example, this will include TMOs or private companies. Katherine considers that this should not be a shock as the Grenfell inquiry highlighted some serious poor management at the TMO serving the building.

Even if a Provider delegates all housing management services, there is still potential that there will still be relevant persons at the Provider as they will be responsible for the quality of the outsourced housing management services.

What are the relevant qualifications?

If someone is a relevant person, they need to be enrolled in a course once they have been in their role for more than six months, or nine months if they have a probation period.

Qualifications must meet the prescribed type for their role and have relevant content:

- Senior housing managers are required to obtain (or be working towards) a level 4 certificate in housing management which is relevant to social housing.

- Senior housing executives are required to obtain (or be working towards) a level 5 diploma in housing management (or a foundation degree from the Chartered Institute of Housing). This has to include minimum areas of study which include ethical practices, professional practice skills in housing management, ensuring the needs of tenants are met, and strategic and business planning (and others).

What is the deadline for a relevant person to obtain a relevant qualification?

There is no precise time for when the qualifications need to be completed, the Government will be leaving this to training providers, but a time period of two years is proposed.

When do Providers have to comply with the new standard?

The standard is intended to come into force in April 2025. Providers will have a 24-month transition period (by March 2027) (or 48 months if they have less than 50 units – by March 2029) for their staff to be qualified or be working towards a relevant qualification.

This means that individuals who are within two years of retirement won't be required to obtain a qualification as they will have left their post before the transition period ends.

It is also likely that the standard will have a greater and negative impact on women who are more likely to have childcare commitments which limit their availability to commit to learning outside of working hours.

What are the costs implications?

It should be noted that there is a lack of information on financial assistance towards meeting these costs. The impact assessment states that the financial costs of obtaining the qualifications required to meet this standard is £63.6 million in nominal terms and £58.4 million in present value terms.

Boards should also consider the opportunity cost of having relevant persons required to commit eight hours per week to learning which may impact the provision of services.

What are the strategic risks and how do Providers mitigate these risks?

Katherine began this section by highlighting that the role of NEDs in relation to this standard is oversee and hold management to account on the implementation of the strategy to ensure this standard is met.

Katherine highlighted 8 key ways to prepare:

1. Assess the impact on your organisation. This is likely to involve doing an audit so that you can be aware how many people will be affected by the change.
2. Consider how you will fund the qualifications, this may impact an already stretched budget. One route to consider is the apprenticeship levy as the level 4 qualification can be taken as part of an apprenticeship which will considerably reduce the cost. However, consider that relying on the levy may reduce funding for other priority apprenticeships in the sector.
3. Can you reduce the number of people in scope? Katherine suggested that restructuring may assist as by revising job descriptions and reporting lines you could limit the amount of people responsible for housing managing functions. You can also consider giving preference to those already qualified in upcoming recruitment to avoid the expense and opportunity cost of undertaking the qualification.

4. How can you protect your return on investment? Katherine suggested you could consider including post termination restrictive covenants like non-poaching of staff or non-compete obligations in employment contracts. Another consideration would be including clauses allowing staggered recovery of training costs if employees leave within one to three years after undertaking the training.
5. What impact will this have on services and tenant satisfaction? Consider the risk that relevant persons potentially being out for 8 hours may impact your ability to provide a continuous service.
6. Considering using third party providers as they will cover the costs of ensuring their relevant persons are qualified and not your organisation.
7. Seeking assurance as to how the general policy requirement and strategy will be implemented in your organisation. Katherine stressed that this not a piece of paper that you write and put away, there needs to be an ongoing implementation at appraisals, recruitment, and promotion. How will the new code of conduct requirement dovetail with other policies /codes of conduct in place?
8. Finally, make sure your organisation responds to the consultation to ensure that any issues you have are considered at this stage.

Discussion

There were a number of concerns raised that there is a risk that implementing the standard focussing on exam-based qualifications may lead to an adverse impact on people who have been promoted through the organisation but would not necessarily thrive in that type of learning environment. Katherine suggested that looking at what training providers offer and establishing whether they provide sufficient adjustments and support to such people will be key. It was also suggested that alternatives such as qualification by experience should be considered and therefore raised in consultation responses.

There was also concern that the transition period and reluctance to gain qualifications would potentially lead to a brain drain in the sector where those at senior levels may leave in high numbers and lead to a gap in organisations. There was a question about whether years' service would impact the need to qualify but it was clarified that at present there is currently no proposal a qualification through service equivalent but that past recognised learning covering course content may reduce the amount learning required to get qualified.

A comparison to the NHS was made which introduced a requirement for all nurses to have degrees which was felt to be a mistake. A comparison was also drawn with the new legislation on the fit and proper persons test which the NHS is implementing. It is not focused on a qualifications test and has a much better understanding of what makes good professionalisation of their sector. There was a feeling that there should be a focus on outcomes rather than on paper qualifications and that there is no guarantee that being good at exams makes you better placed to improve tenant outcomes.

Questions were raised about what happens when a relevant person does not pass their relevant qualification and what the outcomes would be for them but also the organisation. Katherine's view was that ultimately this could result in dismissal but redeployment and/or demotion should be considered first, and, if relevant, whether any reasonable adjustments have been made. Any dismissal would need to be decided on a case by case basis. Whilst it is not clear how exactly the regulator will approach regulating this standard, it is clear that there will be some degree of scrutiny on organisations to ensure that they are complying with the new standard and that their staff are becoming qualified.

Register for our April session

2024 – what's on your mind as a Board Member in Housing?

2024 marks a significant year in social housing. With an election due in the coming months, an ongoing housing and homelessness crisis, and daily (often negative) stories about poor housing and experiences, social and affordable housing is clearly on the agenda.

In England new Consumer Regulation has started and the Housing Ombudsmen is ramping up their activity to drive up standards in complaints. Across the UK housing associations continue to face challenges around repairs and maintenance, financing, building and fire safety, decarbonisation, and recruiting and retaining the best people. This is all happening at a time when residents and communities continue to be under significant stress, poverty is increasing with the impacts on this on health and wellbeing. Given this, what is the impact on managing expectations, the ability to prioritise and do board members have the skills they need to respond?

The role of Board Members of organisations in this storm has never been more important. We want to hear from you about what is on your mind, on your agendas and how we can help you in the Board room. This session is a space for us to explore these issues, how we could face them, and will help us to curate the NED Network programme over the coming year.

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