

SHAPS – Pensions Time-bomb? The Perfect Storm?



Many Registered Social Landlords (RSLs) participate in the Scottish Housing Associations' Pension Scheme (SHAPS), administered by SHAPS Pensions Committee. Following recent letters issued by SHAPS Pensions Committee to each RSL participant of SHAPS, setting out the current pension deficit, RSLs are having to consider how to deal with the Pensions Committee's planned increase, spread over a set period of time.

The Pensions Committee has also suggested taking security over the RSL's properties, be they affordable housing stock, or offices. Ian Brennan, Director of Regulation, Finance & Risk at the Scottish Housing Regulator (**SHR**) spoke at the SFHA Finance Conference in November 2013. He stated that SHR will "consider" an application from an RSL to provide social housing assets as security for pension deficits, where that protects the interests of tenants.

Context is all of course and making the case for such an approach to pension deficits requires to take into account a number of relevant and important factors. For example:

- The powers of the Pensions Committee should be fully considered to assess how far the Pensions Committee can go, as well as the context within which those powers can be exercised. Even if the Pensions Committee is not seeking security, RSLs would be well advised to understand the Pensions Committee's powers.
- Over 90% of RSLs in Scotland are charities, registered with the Office of the Scottish Charity Regulator (**OSCR**). All the reports we have seen to date, including those provided by or for the Pensions Committee, have not factored this in. Clearly, this is an omission.
- Recognition of the powers the SHR (and for charitable RSLs, OSCR) have in relation to actions that a security holder might take if they sought to call up a security granted over pension deficits is a must. We have considered all aspects of that possibility and the option of taking security is not as attractive as it may seem.
- Even if the SHR were to grant a Section 107 consent, each RSL will need to consider whether it should grant security over its assets – and a number of factors (existing loans, future developments etc.) will be relevant.
- More importantly, given the keen interest the SHR has on governance, any decision made by an RSL will need to have been made in accordance with strict internal guidelines and with all the factors taken into account. Committee and Board members' resolve will be put to the test.
- Is this the perfect opportunity for the SHR to introduce "Living Wills" for RSLs? RSLs are fully versed as to what "Living Wills" are as a tool to implement a recovery plan, but how close are they to being able to put them in place?
- Forthcoming new financial reporting standards will be crucial with the treatment of liabilities in balance sheets to be factored in. Potential technical insolvency surely must not be ignored or dismissed.



The Pensions Committee is of course forced to deal with a very difficult situation – a situation which many have been aware of for some time, but which was not addressed head on sooner due to the complexities and sums involved.

Now that the issue is fully acknowledged and pressing, affected RSLs need to understand what lies ahead and how to deal with it.

The Way Forward

To guide you through these issues, **bto** has enhanced its offering and is able to provide legal advice on all issues that may arise for an RSL trying to address pension deficit issues with SHAPS.

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- Pension law expertise
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For an **initial free chat** regarding pension issues, please contact **Patrice Fabien** who will be your primary **bto** contact.

Patrice is praised for his *“thorough and commercial approach,”* and often advises RSLs on complex and innovative funding and security issues.

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