

Mr Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency – The Social Housing Regulator
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Dear Mr Sullivan,

HCA: Consultation on changes to the regulatory framework

I am pleased to submit the Institute's response to the above consultation and hope the comments are useful for your deliberations on the Agency's development of the regulatory framework for registered social housing providers.

About ICSA

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body qualifying and supporting company secretaries and corporate administrators in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, and are thus able to add value to any organisation.

ICSA is a leading international voice on corporate governance and delivers a professional education that gains its strength in the breadth and depth of the syllabus which is designed to support boards and work with senior managers within the relevant legal and regulatory frameworks and established best practice guidelines.

Approximately 10% of UK members of the Institute are directly employed in the not-for-profit sector, with many more involved on a voluntary basis in capacities such as trustees and school governors. In formulating the Institute's response to the above consultation document, members working in the social housing sector were approached for their views. They have in-depth knowledge of the sector, including compliance with relevant legislation, and are aware of the importance of sound governance arrangements in effecting a positive change in the communities where they operate.



General comments

The ever-changing environment in which housing associations operate gives rise to the need for constant review of regulatory frameworks to meet the challenges facing the sector. While the proposals detailed in the consultation appear to be reasonable and in line with other regulatory frameworks covering a similar size, scale and complexity of activities, without an impact assessment it is unclear whether they will be proportionate, and how they might affect reasonable risk-taking and innovation.

Response to consultation questions

Q1. Governance and financial viability standard:

a) Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?

Successful co-regulation depends on the Standard and the regulator's ability to be flexible to enable social housing providers to deliver the desired outcomes in a manner that is proportionate and effective for each provider. The recognition that 'one size does not fit all' is welcomed and it is hoped that this recognition is applied in the regulatory framework.

Good decision-making, the careful recording of those decisions, and the arguments they are based upon, should offer registered providers and the regulator with a clear trail of the considered impact of non-social housing activity on social housing assets. Board discussions that cover public benefit and potential risks to social housing assets should be fully recorded and minuted to result in a robust audit trail of decisions taken, monitoring activity and remedial action, where applicable. Board dynamics, including appropriate and constructive challenge, will play an important role in ensuring that discussions and decisions are comprehensive and fit for purpose, in line with the registered provider's agreed risk appetite.

b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcomes focussed as possible?

The proposed governance outcomes appear to be congruent with existing codes of governance that operate across other sectors of the UK economy, bar one exception. In other sector codes, it is usual for a 'controlling body' to be identified and charged with ensuring the effective governance of an organisation and the application of appropriate codes and standards. This may be implied within the Standard's outcomes, but it would arguably be beneficial to make this explicit to avoid confusion or misunderstanding.

c) Do the requirements in paragraph 1.3 on skills, capability and independence i) meet the Regulator's aim of protecting social housing assets and ii) balance the aim of protecting social housing assets with registered providers being free to run their own business?

As complex organisations managing considerable social housing assets it will be essential that boards have a full suite of skills, expertise and experience to support strong and robust decision-making. Regular skills audits, along with a skills register, are accepted as an important way of aligning board competencies with the strategic aims of an organisation and for highlighting where co-option or professional advice is required to help with the realisation of organisational aims.

Diversity of backgrounds, expertise and competencies will strengthen decision-making. In addition, board members should be able to demonstrate the ability to think independently. Therefore, the code should extend its definition of non-executive independence beyond financial considerations, conflicts of loyalty and longevity aspects and consider the ability of each director to think independently and exercise objective judgment.

- d) Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator’s aim of protecting social housing assets and ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?**

Any benefits of a risk management framework are dependent on the board understanding each aspect of risk linked to each proposed action and activity, including the risk of not making a decision and the cumulative aspects of board decisions. Establishing a risk management process that ensures a balance between strategic and operational risks for board consideration will be essential for an effective system. A living risk assurance framework will therefore require senior managers to continually monitor and report on changes in the risk register and the associated framework.

Static, out-of-date information will present a risk in itself, along with the associated administrative costs incurred by investing in appropriate and proportionate risk management arrangements. This is equally applicable to maintaining records of the registered provider’s assets and liabilities, but should not present any undue burden as these are likely to already be in place in well-run and governed organisations. However, should a registered provider find itself in a situation where regulatory intervention is required; the regulator may decide to undertake its own due diligence regarding the assets and liabilities of a registered provider.

- e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator’s aim of protecting social housing assets?**

In effect, the proposals will require profit-making registered providers to establish a separate entity to manage their social housing activities. While establishing a separate entity may not prove overly burdensome and should promote greater transparency, this will attract additional governance and administrative costs. Formal arrangements between a for-profit registered provider and a non-profit subsidiary will mean boards regularly review the formal relationship especially in terms of ongoing financial support and the need for guarantors to loans and other financial assistance. Governance issues relating to subsidiary undertakings, along with the additional legal requirements covering charitable registered providers means that boards will need to be fully aware of all the issues impacting on a board level proposal and the final decisions taken.

It is understandable that ring-fencing social housing assets and activities makes life more straightforward for the regulator, but an impact assessment should establish the degree to which this diverts resources away from social housing delivery and whether that impact is acceptable.

Q2. Code of practice:

- a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?**

An annual review of a registered provider’s governance arrangements is recognised as good practice in other sectors, but that review should be proportionate and targeted. Some may deem a comprehensive annual governance review as unduly bureaucratic and may opt to adopt a rolling review programme that covers all aspects of governance in that time. Where that is the case, it would be prudent for the regulator to introduce some form of independent review to ensure that governance arrangements remain fit for purpose and continue to evolve with the organisation.

- b) Is the role of the Code clear and reasonable?**

Yes, the nature and standing of the code are clear, and it provides additional guidance for registered provider boards.

Q3. Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?

Embedding an approach that clearly identifies and ring-fences social housing assets and values is one way of providing a public asset lock on publicly funded housing. It is assumed that proceeds from the disposal of such assets will remain within a fund managed by the subsidiary entity of a profit-making registered provider.

b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

In effect, the proposals will mean that for-profit registered providers will be subject to a greater degree of administrative interference with the requirement for a separate entity to be in place to oversee the social housing assets, disposals and activities. It will be for each for-profit registered provider to decide whether that is acceptable or reasonable.

An impact assessment of the proposals would provide a better overview of the possible positive and adverse effects of the proposals on individual registered providers and the sector as a whole.

Q4. Do the changes to the registration criteria:
a) Reflect the proposed changes to the Governance and Viability Standard?
b) Are they reasonable?

It would appear sensible to ensure that new entrants meet the Governance and Viability Standard when applying to become a registered provider, thereby promoting consistency, an even playing field for social housing providers, and clarity for tenants and other stakeholders.

Q5. Do the proposed changes to the Rent Standard:
a) Reflect the direction from DCLG?
b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focussed as possible?

The Institute has no specific comments to make on the rent standard proposals.

It is hoped that the above comments are useful to you in your deliberations relating to the development of the HCA's regulatory framework. Should you wish to discuss any points in further detail, or how ICOSA may be able to assist you in your endeavours on this topic, please do not hesitate to contact me.

Yours sincerely,

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