Regulator of
Social Housing

Regulatory Notice
November 2018

Registered Provider

Kinsman Housing Limited (4769) is a not-for-profit registered provider whose objects include the provision and management of housing and social housing. Kinsman Housing Limited (Kinsman) has set out as a specific objective the housing of Ministry of Defence ex-serving personnel. Kinsman was registered in June 2013 and was previously known as Sustain Housing Limited.

The provider manages 35 units of social housing in London including 11 shared ownership properties. These were acquired either directly through section 106 planning agreements or transferred from another registered provider.

Regulatory Finding

The regulator has concluded that:

a) Kinsman is non-compliant with the governance element of the Governance and Financial Viability Standard. Kinsman has not ensured effective governance arrangements that deliver its aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner.

b) Kinsman has not been able to demonstrate that it has managed its affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight.

c) Kinsman has failed to ensure that it operates an appropriate strategic planning, risk and control framework that identifies and manages risks to the delivery of its objectives.

d) Kinsman has not provided compelling evidence that the arrangements it has entered into do not inappropriately advance the interests of third parties, or are arrangements which the regulator could reasonably assume were for such purposes.

The Case

The regulator received a number of referrals from London boroughs raising concerns relating to Kinsman's governance and compliance with consumer standards.

The regulator's investigations into the referrals have revealed that Kinsman failed to act with due diligence in entering into its property acquisitions and activities.

Kinsman has acquired all of its assets using the same arrangements and with the same investor. The arrangements involve the registered provider, Kinsman, acquiring the legal interest in a social housing property but holding the beneficial interest on behalf of a third party, the investor, who funds the purchase. A deed of trust between the investor and Kinsman enables this to happen with the investor legally entitled to all capital and income arising from the property. The investor, through a property management agreement, appoints a registered provider to manage the properties on its behalf and for a management fee. Some of Kinsman's properties were transferred from a registered provider operating the same arrangements with the same investor, others directly through section 106 planning agreements and two properties, including one tenanted unit, were acquired from large registered providers.

In line with our regulatory standards we would expect Kinsman's board to have sought to assure itself on the detail, appropriateness and risks to Kinsman of the arrangements before entering into them, including any impact on the role of a not for profit registered provider and its ability to deliver its objectives. Kinsman has not been able to provide evidence that the board commissioned appropriate advice or that relevant information was made available to the board in its decision making.

The homes acquired from large registered providers were done so on the basis of continued social housing use. However, apart from the tenanted unit, these were sold on the open market shortly after acquisition with all proceeds from the sale, including any capital uplift, going directly to the investor. Kinsman's failure to consider the implications, potential outcomes and risks of the acquisitions it has entered into demonstrates a lack of skill, diligence and effectiveness.

The arrangements Kinsman has chosen to use means that there is reliance on the relationship with the investor to ensure that the registered provider can comply with its own objectives and meet regulatory requirements. The documents underpinning the arrangements make clear that Kinsman must act on the instructions of and in the interests of the investor, a third party. In the situation where issues arise that need to be addressed in order for Kinsman to comply with legal and regulatory expectations, consent for, and funding of, the necessary remedial action rests with the beneficial owner. There is no evidence that the beneficial owner recognises and will take into account the organisation's objectives and regulatory responsibilities in issuing instructions under the deed of trust and the management agreement.

The regulator's investigation has identified that the way in which Kinsman operates does not align with its stated purpose as a not for profit registered provider. Kinsman cannot provide evidence that it has complied with its own allocation policy or that this policy is in line with its purpose or compliant with regulatory expectations. Kinsman issues two year assured shorthold tenancies to its tenants with no rationale given for this and with the stated aim that their accommodation is not permanent, not available for those on housing benefit, and that tenants should demonstrate that they can move on to home ownership or another rented property.

The Governance & Financial Viability standard requires that providers shall ensure that any arrangements they enter into do not inappropriately advance the interests of third parties, or are arrangements which the regulator could reasonably assume were for such purposes. Kinsman has been unable to provide compelling evidence that it has met these requirements for the arrangements it entered into.

Our investigation found that Kinsman could not demonstrate that it had adequately managed conflicts of interest as a result of connections between the registered provider's chair and the third party entities providing the monies for the purchase of social housing assets and held for them on trust. Kinsman's chair declared a conflict of interest due to his relationship with Kinsman's investor and Kinsman's board agreed he would not vote on projects where the investor was directly or indirectly connected. However it is clear from the information provided by Kinsman that in practice the chair has influenced and been actively involved in all aspects of these acquisitions.

The Governance & Financial Viability standard also requires registered providers to have an effective risk management framework in place. When entering into the arrangements described above Kinsman has not been able to provide evidence that it had identified the associated risks or has in place mitigation strategies to manage these risks.

The outcomes for Kinsman are that assets it acquired to deliver its objective of providing affordable housing have been disposed of on the open market with proceeds going to a third party. Kinsman has entered into transactions to acquire properties it has no control over and where it is reliant on a third party in order to ensure that it can comply with its own objectives and meet legal and regulatory requirements.

Based on the most recent statistical data return, Kinsman had fewer than 1,000 units and is classed as a small provider. The regulator does not publish regulatory judgements for providers who fall into this category. Instead, in the interests of transparency, the regulator publishes a Regulatory Notice where it has evidence that a small registered provider is not meeting the regulatory standards. This notice is published under those arrangements.

Section 220 of the Housing and Regeneration Act 2008 states that the regulator’s regulatory and enforcement powers may be used if a registered provider has failed to meet a standard under section 194 of the Act. The regulator is considering what further action should be taken, including whether to exercise any of its powers.