

Chapter 5

# Registered Housing Associations

## *Background: Special Characteristics*

266. There are over two and a half thousand registered Housing Associations. They are all voluntary bodies. A registered housing association is one which is registered with the Housing Corporation (England), Scottish Homes, or Tai Cymru (Housing for Wales). These are the non-departmental public bodies responsible both for regulating and for making grants to housing associations. Housing associations are only eligible to receive Housing Association Grant (HAG) if they are registered.

267. Some housing associations are of great antiquity, notably the almshouse charities. Some are the product of Victorian philanthropy, like the Peabody and Guinness Trusts. Many have emerged during the last thirty years, the product both of the availability of government grants and the need to provide subsidised housing for groups who did not have priority for local authority housing. The last decade has seen housing associations set up, often at the initiative of local authorities themselves, to take over the tenanted housing stock of individual local authorities. In 1938 housing association stock did not register as a percentage of the total housing stock in England. By 1984 housing associations had 2.4% of the total stock, and by 1994 they had 4.8%.

268. Housing associations vary greatly in size. The National Federation of Housing Associations (NFHA), which is the trade association for housing associations in England, lists 20 housing associations with over 10,000 homes in management, and 23 with over 500 staff. Some of these large associations have national coverage. Many others operate across one or more regions. The largest 200 associations own three-quarters of the stock.

269. At the other end of the scale the great majority of housing associations are small local bodies with less than 250 homes. Some have no full-time staff other than wardens, and others only one administrator. The distribution of registered housing associations in England by size in 1994 was as follows:

<i>Size of association (homes)</i>	<i>No of Housing Associations</i>	<i>%</i>
<i>0-5</i>	<i>684</i>	<i>31</i>
<i>6-25</i>	<i>605</i>	<i>28</i>
<i>26-100</i>	<i>451</i>	<i>21</i>
<i>101-250</i>	<i>135</i>	<i>6</i>
<i>251-1,000</i>	<i>118</i>	<i>5</i>
<i>1,001-2,500</i>	<i>105</i>	<i>5</i>
<i>2,501-10,000</i>	<i>68</i>	<i>3</i>
<i>over-10,000</i>	<i>13</i>	<i>1</i>
<b><i>TOTAL</i></b>	<b><i>2,179</i></b>	<b><i>100</i></b>

In Scotland and Wales there are many fewer housing associations, and proportionately more small ones. The total number of registered housing associations in Scotland is 273, and there are 98 in Wales. This compares with well over 2,000 in England. We have therefore tended to concentrate on the Housing Corporation's arrangements, while drawing comparisons where appropriate.

270. The legal structure of housing associations is not uniform. There is no legal protection for the term 'housing association', so any organisation can use the name. But bona fide housing associations are 'not for profit' bodies. Some of these are Charitable Trusts or Companies. Others are Industrial and Provident Societies, which in turn may be charitable or non-charitable. There are many unregistered housing associations, which are often very small, although one unregistered association has taken over a local authority's housing stock. However unregistered housing associations are not eligible for housing association grant and are outside the direct scope of this study.

271. Registered housing associations are subject to regulation by the Housing Corporation (or Scottish Homes or Tai Cymru as appropriate), but they must also comply with Charity, Industrial and Provident Society or Company law in accordance with the requirements of the relevant regulatory bodies, and indeed some must comply with all three.

### *The Public Role of Housing Associations*

272. We have limited our concern to the publicly funded activities of registered housing associations, and so the work and governance of a great many small associations fall outside our consideration. But housing associations, which used to play a peripheral role in social housing, have moved increasingly to the centre of the stage, as a result of government policies which they have embraced. As such, they play an important public role, both through the provision of public services and through the expenditure of public money.

### *The Provision of Public Services*

273. The majority (67%) of householders in Britain are homeowners. Of the remainder who are tenants, a sizeable proportion cannot afford to pay the full market rents for their homes. Following the rapid postwar decline of the private rented sector, rented housing, and in particular subsidised rented housing, was largely provided by local authorities, with government funding.

### *Financial Aspects*

274. A number of policy developments in recent years have substantially changed the relative position of housing associations. First, government made housing associations rather than local authorities the preferred provider of new social housing. In 1984 over 30,000 new houses were started by local authorities and new towns in the United Kingdom, compared with over 13,000 by housing associations. By 1994 that position had more than reversed. In that year local authorities began only 2,400 new dwellings, while

housing associations began almost 42,000. The comparable figures for private sector starts were 166,000 and 165,000. Over the same 10 year period total housing association stock rose from 525,000 dwellings to 944,000.

275. At the same time as housing associations were becoming the government's preferred vehicle for development of subsidised housing, the government introduced policy changes which had the effect of switching subsidy from buildings to tenants. This involved changes both to the capital financing and the revenue support arrangements for housing associations.

276. A completely new capital financing regime, designed to bring in private finance, was introduced. Under this the proportion of development costs funded by housing association grant and associated public funds in England has fallen from 100% to a current average of 58%, although the proportion for individual schemes can vary considerably. Reductions have also occurred in Scotland and Wales, although direct comparisons are difficult. In some cases the balance is met partly from the housing association's own resources or from the supply of cheap land by the local authority, but the principal source of the additional funds needed is private sector development loans.

277. Because housing association grant is a one-off capital grant, once a development is completed the housing association needs to meet its management costs, its maintenance and repair costs, and the cost of servicing its loans, from the rental stream. This has considerable implications for the governance of associations. In addition to increasing pressure for cost control during development, there is strong pressure to manage efficiently, to control running costs, to minimise the number of empty properties, and to secure prompt payment of rent.

278. Equally, there is considerable risk if the initial assumptions about overheads are wrong, or if the projected rental stream cannot be sustained. In particular, housing association decisions about rent levels are constrained by their income needs, and there is a tension between this and their desire (sometimes their charitable objective) to provide housing for people in need at 'affordable' rents.

279. This tension poses considerable challenges for associations. On the one hand professional management, and high quality financial judgements, are of the essence. They have to operate as businesses. On the other hand, they have to be social businesses. They are not for profit organisations, and their rationale for existence is undermined if they cannot reconcile the financial pressures with their social objectives.

280. The parallel changes in the revenue financing arrangements derive partly from the change in the capital funding regime, and partly from wider government decisions about rent policy, associated with the deregulation of rents for new private sector tenancies. Former arrangements under which housing associations were subject to strict rent control, but received deficit subsidy (ie the difference between their rental income and their outgoings) have been phased out.

281. Instead the government has left housing associations free to fix their own rents so long as they are affordable, up to the ceiling set by the market. This change was accompanied by changes to the housing benefit regime, which enabled tenants entitled to housing benefit to receive their full rent from the state up to market level. The assumption is, however, that because of the initial subsidy, and their own objectives, housing associations will be able to fix rents below full market level. This remains an aim of government housing policy, which was restated in the June 1995 White Paper<sup>1</sup> on housing. The Housing Corporation's Tenants Guarantee, supported by its regulatory regime, emphasises the need for affordability in setting rent levels.

282. A combination of higher rents and an increasing proportion of lettings allocated to more disadvantaged households has meant that more tenants of housing associations are on housing benefit. The proportion of their rental income which housing associations receive from the state has grown. Some 40% of housing associations' tenants have all their rent met by the state. However, over 75% of new lettings are to tenants who are wholly or partly on state benefits. Well over half of associations' rental income (around £1bn a year) comes from the Exchequer via tenants who receive housing benefit.

283. This makes housing associations vulnerable to changes in the benefit regime. Given that the housing benefit bill has grown sharply since 1988, this is inevitably an area which any government must watch closely. Yet the nearer housing association rents come to market levels, the more likely they are to be affected by benefit changes even at the margin.

### *Policy Aspects*

284. Housing associations, and particularly those associations with major development programmes, have been placed in the position of being major suppliers of new social rented housing. This has formed part of a move to diminish the role of local authorities in the direct provision of housing, and to give them an enabling role, although nationally they still own substantially more dwellings than housing associations. Local authorities retain the statutory duty of providing homes for people in housing need, but are increasingly expected to make use of other landlords for this purpose. As housing associations are the main providers of new subsidised rented homes, and particularly of good quality permanent homes, local authorities are becoming more dependent on housing associations for the fulfilment of their statutory duties.

285. This dependence is carried to its furthest point in those local authority areas where the district or borough council has transferred its tenanted housing stock en bloc to a housing association — often one created specifically for the purpose. By the end of 1994 local authorities had transferred 158,000 dwellings to newly registered housing associations. These associations are usually referred to as LSVT (Large Scale Voluntary Transfer) associations. In those areas the council has no stock of its own, and must rely largely on housing associations for the provision of social rented homes, particularly on a permanent basis, to enable it to discharge its duties.

286. While the government has taken steps over recent years to secure a revival in the private rented sector, and has made proposals to extend this by making housing association grant available to commercial firms, this is necessarily a slow process. Housing associations are likely to remain major providers, and their share of social rented provision is likely to grow further. This means that both government and local housing authorities, as well as the regulators, must inevitably retain a close interest in the activities of associations.

287. As well as a concern for the welfare of tenants whose housing is in effect devolved to housing associations (and there is extensive statutory and regulator-imposed protection), government also has a continuing financial interest in associations' performance. Because so much of associations' rental income comes from the taxpayer, poor financial performance by associations will feed through to the taxpayer in the form of higher rents supported by housing benefit.

288. Although housing associations collectively are by no means the major ultimate recipients of housing benefit, government policy on housing benefit will nevertheless be constrained to some extent by the performance of the major associations. It would be difficult for the government to reduce housing benefit support for tenants to the point where a number of major housing associations were unable as a result to balance their accounts, unless it was to find other ways of financing associations.

289. A further consideration for government is that through the Housing Corporation it would inevitably become involved if a major association with 10,000 tenanted dwellings, largely occupied by people receiving state benefits, was unable to meet its liabilities. The Housing Corporation as statutory regulator in England would be involved in preventing or resolving such problems, and its powers in this respect are being increased in legislation currently before Parliament.

290. It is against this background, of independent voluntary bodies whose independence should not be compromised, but which provide a major public service largely underpinned by public funds, that the committee has examined the standards in and accountability of housing associations.

### *Internal Organisation and Governance*

291. In this section we consider the three elements of governance identified in our Issues paper:

- the appointment and accountability of board members
- the role of boards in relation to officers and staff, and
- the safeguards in respect of conflict of interest

292. Much of this ground has already been covered in the NFHA's recent review of governance, which resulted in the issue in September 1995 of a new NFHA Code of Governance (see Appendix 6). Similar developments are taking place in Scotland and Wales. We regard this code as a valuable statement of good practice, and except for the

question of membership we avoid rehearsing again discussions which have already taken place in the context of the NFHA review. We are pleased to note that the NFHA is also drawing up a code of conduct for housing association staff.

293. The NFHA code of governance, while not binding on NFHA members, includes a provision calling on associations to set out in their annual reports statements of whether or not they comply with the code and, if not, their reasons for non-compliance. We note that the Housing Corporation strongly supports the Code and has endorsed it as a 'best practice' guide, but has not included it in its performance standards for associations. We recognise that the Corporation has taken this position because its 'approach to regulation has moved away from the prescription of processes and now places emphasis on associations taking responsibility for, and being accountable to the Corporation for their own management and conduct'. We fully endorse this approach. We should add, to avoid doubt about our view, that while we believe that bodies like housing associations should draw up their own detailed codes, we consider it essential that the regulators should set the broad framework and that audit reports should cover the extent to which governance arrangements, in their widest sense, comply with best practice. We understand that the Housing Corporation's new arrangements are designed to achieve this.

### *Appointment and Accountability of Board Members*

294. Boards of housing associations are largely self-appointed. Some have tenant members, and others make provision for some members to be nominated by other bodies.

295. The NFHA code calls for search committees, job descriptions, and advertising where appropriate. It stresses the need to consider the balance of the board, and for the board to publish its policies for recruitment or election of new members, and the required qualities, skills and experience of members. We agree with all these proposals, and we do not consider that any further prescription is called for. We note that the NFHA has also launched a board member recruitment service, designed to put housing associations in touch with a wider range of potential board members.

296. In general, as we have indicated in earlier chapters, we do not believe that it is necessary for regulators to require, as a matter of principle, that the members of boards should be drawn from any particular background. The key requirement is to secure a range of experience and expertise. A particular issue for housing associations is representation of tenants. The Housing Corporation tells us that while it has safeguards intended to restrict the influence of any one interest group, every registration is considered on its merits, and that there are situations where such safeguards may not be about numbers of any one group on the board or, as in the case of community based associations, may not be appropriate.

297. We note that a number of other bodies take a different view. The Welsh Office have told us Tai Cymru 'neither encourage or discourage tenant majorities on housing association boards. As a rule of thumb they would prefer to see about one-third tenant representation'. The Department of the Environment have said that 'as a matter of public policy tenants should not be a majority on boards or management committees'. We have

been told that the Charity Commission approach is to restrict the number of tenants, or beneficiaries, on a board to one-third, and that the Registrar of Friendly Societies is considering a limit of one quarter.

298. We strongly endorse the case by case approach. We believe that it should be for associations in the first place to determine the composition of their boards, and for the regulators to intervene only to the extent necessary in particular cases. We can see little merit in the Charity Commission, the Registrar of Friendly Societies or the Department of the Environment second-guessing the Housing Corporation (or Tai Cymru or Scottish Homes) on this issue, and we should regard it as essential that any general principle which the other bodies felt obliged to enunciate should not inhibit the Corporation in exercising its discretion to permit tenant majorities where it judges them appropriate.

299. While we believe that there are many advantages to be gained from involving tenants in housing management, we also recognise the reasons why it may be felt that tenant majorities may be more susceptible than others to shorter term financial considerations. Where this is considered to be a problem, we believe there is a ready solution available to medium and larger associations. This is to tailor organisational structures, so as to achieve effective and meaningful tenant involvement. Such changes are best made in the context of an overall tenant involvement strategy, covering all levels of activity, from the operations of the board down to housing management activities at the regional or even neighbourhood level. In most cases, it will be possible to make suitable arrangements within existing governance and operational arrangements, without setting up a separate organisation. At board level, the charitable interest can be protected by adopting 'constituency' options for selection to the board. These involve the election or nomination of some or all board members by defined interest groups, and ensure that the tenants' interests cannot predominate over those of other stakeholders, (including those of potential tenants). We note that the NFHA is currently working on new model rules, with constituency options, designed to achieve this end. Tenant involvement at board level will not usually be enough on its own. Tenants can also be involved on committees or other bodies overseeing housing management arrangements, and on regional, area and neighbourhood committees. Accountability can also be increased by separating responsibility for the association's overall strategy objectives from day to day housing management, and in particular from the letting of contracts and the details of rental structures and maintenance spending.

300. With safeguards of this kind, we believe that there are advantages to be gained from ensuring tenant representation and involvement in the management of the housing association, and that all associations should have a coherent strategy for achieving this. Some consultation arrangements described to us appeared to have the effect of allowing tenants' voices to be heard without ensuring that they had practical influence. We have noted a recent study produced for the Department of the Environment by Price Waterhouse (Tenants in Control: An Evaluation of Tenant-Led Housing Management Organisations) which concludes that *'there are significant and worthwhile benefits associated with tenant management organisations. ... these take the form of not only more cost-effective services but also in terms of wider social and community benefits.'*

301. We recognise that many associations prefer to consult tenants through advisory panels and customer satisfaction surveys, and we commend this so long as the arrangements are such that tenant views genuinely influence the decision-making process, but a direct tenant perspective can still be useful. We note that the Tenants' Guarantee requires associations to consult tenants and receive feedback.

302. In urging that the Housing Corporation and other bodies should allow associations maximum flexibility to decide for themselves the composition of their boards we are not, of course suggesting that the Corporation should hesitate to intervene either to remove or appoint board members when problems arise.

**R36. Housing Associations receiving public funds should be expected to secure tenant involvement in housing management, and external restrictions on the composition of boards should be avoided wherever possible.**

303. The role of membership in housing associations is relevant to their accountability. We have a more positive view of the advantages of membership schemes than appeared to emerge from the NFHA review. We believe that membership does have a role to play, and we note that open membership is positively encouraged in Scotland.

304. Where a housing association is firmly based in the local community a widely drawn membership can seem to be an irrelevance. But while a large national housing association may well be very efficiently run, in certain circumstances it is scarcely a voluntary body in the traditional sense of the term. It can have 1000 staff, a highly paid and professional management team and no volunteers or members other than a dozen or so on the management committee. These associations are better described as 'not for profit' bodies (they sometimes describe themselves as 'social businesses'), and their accountability can be rather narrow and limited.

305. The board of a housing association without a broad based membership is accountable, in the strict sense, only to itself and to the housing regulators, for these are the only bodies which can dismiss the board. Such housing associations may, and nearly always do, feel more widely accountable, and virtually all engage in extensive mechanisms designed to promote responsiveness. We touch on these later. But a membership scheme, particularly an open membership scheme where the board does not exercise the right of veto over membership, or a scheme which places some restrictions on eligible categories but is broadly based, can be a useful aid to accountability, while the rules can offer protection against all but the most determined shareholder action. As noted above, constituency based options, involving such bodies as tenants, partner local authorities and community organisations, can be very useful provided that the difficulty of defining the constituencies can be overcome. A tightly closed membership scheme, where membership is solely by invitation of the board, adds nothing to accountability.

306. The Housing Corporation has pointed out to us that 40% of registered housing associations are charitable trusts, where no provision for membership schemes is made in their trust deeds. We understand, however, that there is no bar to charitable trusts devising advisory membership schemes under a variety of routes. We recognise the weaknesses of



fully open membership schemes, which give authority over the Board to what might be described as a larger self-selecting body without direct responsibility. We do not regard them as a panacea. But we believe that the promotion of broadly based membership provides an attractive route for increasing the accountability of those housing associations which do not have a community base, but which engage in the provision of public services on a large scale. Such a membership scheme may be particularly useful where the organisation takes on the delivery of services on behalf of bodies which have statutory responsibilities.

**R37. Housing Associations should be encouraged to develop membership schemes as a means of increasing accountability**

307. As we have noted above, we believe that particular problems of accountability to local communities can arise with the larger housing associations whose senior executives may be based many miles away. While a great deal can be, and usually is, done in such an association to create regional committees and local representation, its customers and the communities it serves are likely to find some difficulty in acquiring a perspective on its overall strategy. They may, for example, have difficulty in getting the information to judge the impact on them of activities in another location. Given regional variations in rents, it may be particularly difficult for customers to judge how far rents in one area are subsidising development elsewhere, or genuinely to influence such items as maintenance policy or service charges. The advantages for associations of stability and freedom from the threat of takeover can encourage complacency on the part of boards and senior managers who are not in day to day contact with their customers. We do not suggest that the mere existence of large housing associations with limited voluntary input, and their growing importance, requires the Corporation to exercise a greater level of routine supervision, but we do believe it needs to be particularly aware that it may be the only external organisation in a good position to take an overview of the performance and governance of larger associations.

308. The Public Accounts Committee refers in its report on the Housing Corporation<sup>2</sup> to the need for the Corporation in its supervisory role to have regard to the “proper conduct of public business”. We are a little concerned that in its recent Review of the Corporation the Department of the Environment, in pursuing the entirely reasonable objective of getting the Housing Corporation to concentrate more on outcomes than on processes, may have stressed value for money to such an extent that too little weight might be given to proper conduct. Consideration of proper conduct inevitably involves the examination of process.

309. We recognise that in its general approach to regulation, the Housing Corporation currently gives due weight to issues of conduct and propriety. We are concerned therefore that the view should not gain ground that the powerful regulatory authority of the Housing Corporation and the other regulators should only be used where there is doubt about the financial conduct of an association. With PAC, we firmly believe that the Corporation’s role includes safeguarding proper standards of conduct. The Housing Corporation will often be the only body which can intervene effectively if the standards of conduct within an association, the propriety of its internal arrangements, or the overall quality and value for money of service provision, are not how they should be, even though the financial reports

may be satisfactory. Continued emphasis on issues of governance and propriety will be especially important if the Corporation's powers are extended in due course to cover a wider range of bodies.

310. In saying this we are not suggesting either that lapses are common, or that additional detailed monitoring of processes on a routine basis needs to be introduced. Our concern is that an effective long stop safeguard should continue, and that this should be clearly understood.

**R38. The housing regulators should continue to be concerned as much with proper conduct as with financial probity, and should not hesitate to intervene to secure this.**

311. At the Housing Corporation's request, we have considered whether existing restrictions on the staff of housing associations serving on their boards should be relaxed. The rules are generally more restrictive for housing associations than for the other bodies which we are considering.

312. The main argument against permitting the chief executive or other staff members to sit on boards is that, particularly where there is no membership, the voluntary board members may be the only volunteers in the whole organisation. A separation between their role and that of the paid executive staff may be essential to maintain the voluntary ethos of the organisation. In support of the argument that it is not necessary for the chief executive to serve on boards, it is also clear that non membership of the board in no way inhibits the chief executives in effective pursuit of their functions.

313. On the other hand, housing associations, especially the largest housing associations, are increasingly operating in an environment similar to that of private companies where it is normal to have executive directors on the board. It can be argued, as was successfully done in the past with regard to companies in the commercial sector, that the chief executive is responsible for most of what is done, right or wrong, and that lines of accountability are therefore clearer if the chief executive is on the board. As we have noted, the chief executive (whatever title is used) is normally on the board of all the other bodies we are examining. There is also a case, as in other sectors, for making it possible to have staff representation on the board, in shape of staff directors.

314. We note that under the Industrial and Provident Society Legislation the secretary to the board, who is often the chief executive, is given the statutory duty to advise the board on matters of propriety. This is a more extensive statutory requirement than exists in some other sectors, although in practice the board secretary often has this role even where no statutory requirement exists.

315. Our conclusion is that, while there is a case in logic for a general relaxation of restrictions on staff membership of housing association boards, the pressure for such a change is not strong enough, or the case compelling enough, to justify a general change to an existing situation which appears to work satisfactorily. However we believe that this rule need not be absolute. Associations should be able to make a case to the Housing Corporation seeking its permission for a rule change to permit the chief executive, or

other staff members, to be appointed to the board. The Housing Corporation and the other regulators may wish in due course to devise criteria against which such rule changes could be approved. These criteria should include safeguards to ensure that non executive board members are in the clear majority, that they form a majority for a quorum, that when the chief executive is on the board, the role of secretary or clerk to the trust or society is undertaken by another person and that the rules provide for the remuneration of members of staff who are on the board to be determined by a remuneration committee comprising entirely non executive board members. We should also expect the regulators to be particularly alert to ensure that the chief executive in such cases does not achieve an unduly dominant position and that the board collectively remains firmly in control of the organisation. In the case of a charitable trust, the association would need to devise a structure which separated the role of the trustees from that of the Board of Management.

316. As a general comment, we do not consider it appropriate, except in small bodies, for the chief executive to be the Trust Secretary. The Secretary's role involves advising the board on its legal rights and duties. This role should be quite separate from that of the chief executive, and should fall to another person who may be a member of the paid staff.

**R39. No general change in the practice that chief executives of housing associations are not board members is necessary, but regulators should be prepared to approve rule changes which permit this in individual cases.**

#### *Payment of Committee Members*

317. The issue of payment of board or committee members has been raised specifically in relation to housing associations, although the question arises across the whole range of local public spending bodies. As we note in Chapter 6 we are clear in our view that board members should continue to be unpaid, that the principle of voluntary service by board members should remain firmly in place, and that no discretion should be given to individual organisations in this matter.

318. We recommend in Chapter 6 that reimbursement of out-of-pocket expenses should be fully acceptable, and that these should be widely interpreted to include among other things child-care expenses. It seems possible that board members of housing associations may have an especially wide range of incomes and personal circumstances so this might be particularly relevant to this sector.

#### *Role of Boards in Relation to Officers and Staff*

319. We believe the NFHA code is entirely satisfactory in respect of the role of boards in relation to officers and staff. The code recommends that there should be formal letters of appointment for board members, which specify their obligations and which should be signed to indicate acceptance. These letters include commitments to the aims of the organisations, to the code of governance, and to training. The code also requires the role of the chair to be formally recorded, sets out minimum requirements for this, and requires clear standing orders to be drawn up setting out rules for conduct of board business, the role of the chief executive, and the roles of committees. We regard this code as a good statement of the best current practice.

### *Safeguards in Respect of Conflict of Interest*

320. The NFHA code sets out rules on declaration of interests and on avoiding conflicts of interest. The regime described is again compatible with best current practice. However it should be noted that the housing association sector is also constrained by Section 15 of the Housing Associations Act 1985 which contains some of the strictest rules in existence on avoiding conflicts of interest.

321. Under Section 15, in addition to being unpaid, housing association committee members can receive no benefit of any kind through their connection with the housing association, even indirectly. The staff can only receive benefits or awards as set out in their contract of employment, and any other payment, such as a bonus not provided for in the contract, is unlawful. Subject to exemptions as set out by the Housing Corporation, Scottish Homes and Tai Cymru, committee members and their close relatives cannot be housed by the association in question and staff members of associations cannot serve on the committee.

322. We have commented above on payment and on staff members of boards. We have considered carefully whether to recommend further changes in Section 15. We note, however, that the housing regulators have the power to issue exemptions for classes of case under Section 15, and that they have used this power to remove some of the most difficult problems. For example, particularly in a small community if relatives of committee members could not be housed this would inhibit existing tenants from joining the committee. Exemptions now provide for this. We believe that the procedure for issuing exemptions should be simplified, and that there should be no need for the relevant Secretary of State to approve the housing regulator's decisions in this area. We believe that it might also be appropriate to give the housing regulators power to issue specific exemptions in individual cases as can be done by the Secretary of State in certain situations with regard to local councillors. Beyond this, however, we believe that Section 15 offers an important safeguard which is beneficial to the reputation of housing associations, and should not be discarded.

**R40. Section 15 of the Housing Associations Act 1985 should be retained, but responsibility for granting exemptions should be fully devolved to the regulators.**

### *Accountability and Regulation*

323. The NFHA told us that "a Housing Association with a high standard of accountability would have most or all of the following:

- (1) Local authority member representation on the Management Committee of the association.
- (2) Tenant representation on the Management Committee and/or regional committees of the association.
- (3) Similar representation of other community groups and those representing the interests of the homeless and poorly housed (ie the association's potential tenants).

- (4) Well resourced arrangements for tenant participation and consultation, probably with funding for local tenant groups and a (typically quarterly) tenant newsletter.
- (5) Other arrangements for consulting with and informing community interests in the main areas of operation.
- (6) A shareholding membership of people representing the various stakeholder interests, which would elect a balanced and reasonably representative committee on an annual basis.
- (7) Detailed agreements and working arrangements with local authorities, covering such subjects as nominations from the authority to housing association vacancies, and other ways for the association to help the authority in meeting its strategic responsibilities.”

324. We welcome these high aspirations on the part of housing associations and encourage them to pursue them. We have noted above that housing associations are accountable in the strict sense of the term only to their regulators and to the membership where they have one. It is apparent, however, that many individual housing associations have arrangements in place to make themselves accountable, or at least responsive, to the needs of the various groups which are often described in the housing association movement as stakeholders.

325. The Housing Corporation lays down and monitors standards in respect of accountability to tenants through the Tenants Guarantee and through its performance standards. In general housing associations not only fulfil these requirements but try to go beyond them. In particular, housing associations appear to go to great lengths to consult tenants, through various mechanisms including tenant advisory committees, local meetings and often tenant representation on boards. Many associations take active steps to encourage the formation of tenant associations, and have officers with this specific responsibility. We commend all these types of arrangement, subject to our earlier comment that consultation is only effective if the results influence subsequent decisions.

326. We particularly commend the practice of having newsletters which inform tenants of proposed changes, and of such newsletters having correspondence sections so that discussion of the issues is promoted, preferably before final decisions are taken. One association which we visited (Taff Housing Association) enters into a written contract with its tenants' association, which gives rights and obligations to both sides. Harewood Housing Association among others undertakes a tenants satisfaction survey which is independently analysed. Basildon Community Housing Association has a Tenant Consultative Committee appointed through direct election by tenants. Swale Housing Association encourages tenant membership of the association and has held a tenants conference. Moat Housing Association has tenant forums at regular intervals in all its estates. One housing association runs a prize draw to encourage tenants to return customer assessment forms for its services. These are only a few examples from associations which we visited of very widespread practices in the housing association movement.

327. Accountability to the wider community is partly achieved through the relationships with local authorities. We note that not only do housing associations have few inhibitions about working closely with local authorities, but that the Housing Corporation now requires associations to work within the housing priorities of local authorities if they are to be considered for development funding. Many housing associations attempt to attract interest in their annual meetings by inviting guest speakers, and often open these to the public. Such approaches are very much good practice, though we recognise that they can be dispiriting when the public interest is not great. One particular and welcome innovation in the housing association sector is the existence of a competition, sponsored by Voluntary Housing magazine and by Touche Ross (now Deloitte Touche) with awards for the best annual reports by large, medium and small housing associations. Initiatives such as this, designed to improve the quality and standard of annual reporting, are much to be welcomed, and could usefully be tried in other sectors.

### *The Regulators*

328. We turn now briefly to on the role of the Housing Corporation, and of Scottish Homes and Tai Cymru, as regulators.

329. The housing regulators are executive non departmental public bodies whose members are appointed by the Secretaries of State for the Environment, Scotland and Wales. They are explicitly responsible both for funding and regulating registered Housing Associations, and in this they differ from the education bodies.

330. The legislative framework is such that the Secretaries of State have little or no direct role in regulating Housing Associations. There are certain statutory requirements, for example in terms of Tenants' Guarantee and exemptions to Section 15 restrictions, when the approval of the Secretary of State is formally required. The Departments receive regular reports on serious supervision cases and are consulted in the development of regulatory policy.

331. In England, the Housing Corporation has three main responsibilities. These are to regulate the activities of Housing Associations, to protect the position of past and future investment and to safeguard the interests of tenants; to provide resources for the provision and management of social housing; and to promote and assist the performance of housing associations. It provides very substantial public funding for housing development, but over the last few years the percentage of the cost of new developments met by grant has been falling.

332. The Housing Corporation's regulatory powers flow from registration of housing associations, which they must do to obtain grant. Registration criteria include a requirement for the board to have appropriate skills, experience and organisation, satisfactory financial arrangements, and various requirements for good practice. A registered housing association may not change its objects or rules without the Housing Corporation's consent.

333. The Housing Corporation has developed a regulatory regime based on performance standards. The first 'key standard' relates to Committee and Management Control. The requirements under this standard are extensive. They include requirements to notify changes of committee membership to the Housing Corporation; to have a policy, where constitutionally permissible, which encourages open and broadly representative membership; to conduct their affairs in an open and accountable way; and to conduct affairs to the highest standards of probity.

334. The Housing Corporation undertakes reviews of the performance of housing associations. All associations complete annual returns based on performance standards, but less information is sought from smaller and non-developing associations. Annual accounts, together with management letters, must also be submitted.

335. Where the Housing Corporation considers that performance is unsatisfactory against any one of its key or functional standards it aims to agree a plan to overcome the identified failings. Where necessary, the Housing Corporation has powers to appoint additional board members, to instigate an inquiry, or to commission an extraordinary audit.

336. There are no housing associations in Scotland and Wales which approach in size the largest English housing associations and this, together with smaller numbers, creates a different relationship between the regulators there, Scottish Homes and Tai Cymru (Housing for Wales) and the housing associations. Scottish Homes also differs from the others in that it directly owns and manages a substantial housing stock, although its policy is to dispose of this to suitable alternative landlords, including housing associations.

337. As a result the relationships between the regulating/funding bodies and the housing associations are much closer than in England, and it appeared to us that the funding bodies are sometimes seen as over-directive by the housing associations concerned. Two distinct differences were apparent. First, as we have noted, the Scottish and Welsh non departmental public bodies placed much greater stress on the need for locally based housing associations, as did the housing associations themselves. Tenant management — as opposed to tenant representation — was more widespread. Second the non departmental public bodies did not encourage housing associations and local authorities to work in partnership to the same extent as in England. It appears that the non departmental public bodies see part of their role as to have local strategies for housing association development, dealing directly with the local authority on one hand and their selected housing associations on the other.

338. The combined role as funder and regulator has many attractions. We are aware of the disadvantages in such a combined role. There is a need for careful action to separate the management of the regulatory and funding activities within the organisation, and the Housing Corporation in recent years has increased the safeguards in line with developing views about separation of functions. There is a danger that, as in Scotland and Wales, the regulated bodies themselves might perceive the non departmental public bodies as being too dominant, using its powers and funding to impose its own views far beyond what they think desirable.

339. On the other hand, the combined role leads to more effective regulation. The monitoring and review procedures inherent in funding and regulatory roles are complementary. If they are in the hands of a single organisation several potential advantages are offered. The amount of material in total which is sought from the individual institution is likely to be less in total, more compatible and so more easily provided, and more powerful as an analytical tool. There is more scope for reducing the present excessive collection of data by the regulators and funders, and for relying much more on data collected and analysed by auditors. The level of knowledge of the institution available to the regulator is likely to be greater, and the prospect of identifying problems in time to head them off much improved. The possession of the funding mechanism provides a powerful tool enabling the regulator to secure compliance without cumbersome enforcement procedures. And the institution concerned has a one stop shop to handle its relations with government.

340. In general, given the successful move of housing associations from being low-risk bodies into a new framework where substantial financial management skills are required, we believe that the smoothness of this transition is a tribute to the regulators as well as to the associations themselves. The following points should therefore be seen against the background that we regard the overall regulation of housing associations as very good.

341. We note that there is a considerable movement of staff between the regulators and the housing associations, and we welcome this. We also note, however, that in common with other regulatory and funding bodies, the Housing Corporation, Scottish Homes and Tai Cymru have no business appointment rules comparable with those which apply in the Civil Service. We can understand that up to 1988 these were not necessary, as housing associations were not essentially in competition, and the relationship of the regulator with them needed to be less distant.

342. In the course of our first report we erroneously assumed that the civil service business appointment rules applied generally to non departmental public bodies. It has emerged during this study that this is not the case. We view this with some concern. In many cases, non departmental public bodies which are regulators or funders have more need than the central departments to have rules designed to avoid conflicts of interest when staff leave the public service. We believe that this should be generally remedied, that these bodies should be asked to introduce conditions of employment requiring staff to seek clearance from senior management or the board when leaving for posts where conflicts of interest might arise, and enabling the board to impose conditions similar to those used in the civil service.

**R41. Safeguards designed to prevent conflicts of interest when staff leave should now be introduced not only by the Housing Corporation, but by all executive and other non departmental public bodies which are regulatory or funding bodies. It should be clearly understood that such rules are not designed to prevent movement between bodies.**



343. We have come to the view that there would be benefits in greater openness on the part of the Housing Corporation about its regulatory role. We believe that there is a very strong case for the publication of as much information as possible about the Housing Corporation's regulatory action not just in general, but also in individual cases where serious mismanagement or fraud has occurred. These will often but not always, be cases where Section 28 inquiries have taken place.

344. We note that Tai Cymru, in its evidence to us, said that it had had no difficulty in publishing an edited version of a recent report of an inquiry under Section 28 of the Housing Associations Act. Reports for publication should take due account of the need for commercial confidentiality and the protection of individuals. We do not believe that the concern that private funding of an individual housing association might be jeopardised by publication of an adverse report is in itself a justification for confidentiality, provided that due process is observed and the association has been given an opportunity to comment on the draft before publication. We also believe that the problems that arise within individual associations are generally well known through the housing association movement, but not necessarily by the outside world, and that confidentiality promotes rumour and exaggeration.

345. We should not wish to be dogmatic about the way in which greater openness should be achieved, or to insist that all routine regulatory reports, which may be of very limited interest, should be published. We welcome the undertaking by the Housing Corporation to publish an annual Stewardship Report which can be expected to cover much of the ground. But we do believe moves in this direction need to be made, and we would point to the substantial impact in the FE and HE sectors of the publication by the funding councils and others of reports about what had gone wrong in individual institutions. We recognise the need for advice to be issued in the form of circulars on general findings from supervisory cases, but we believe that publication of case details is particularly effective in bringing home to other bodies just what can go wrong if care is not taken.

**R42. The Housing Corporation, Scottish Homes and Tai Cymru should publish more information on their regulatory activities, and in particular they should publish reports on regulatory interventions in individual cases where serious mismanagement or fraud has occurred.**

346. It is not clear from the evidence whether the Housing Corporation has yet introduced annual open meetings, as recommended in our first report and accepted by the Government. We welcome the Corporation's existing practice of involving board members holding regional consultation meetings and of making these as open as possible, but we would also urge it to introduce an open annual meeting. We feel that it is very important that the boards of regulatory and funding bodies, as well as their executives, are exposed directly to the views of customers and others with relevant interests.

347. We note that the Housing Corporation is working with the Audit Commission on producing and publishing comparative performance measures, and that it is also working towards improvement of internal financial control and financial reports in line with the Cadbury principles.

348. We welcome these initiatives by the Housing Corporation, and similar moves in Scotland and Wales and we urge the housing regulators to continue down this route, which coincides with the provisional recommendations in the government's consultation paper '*Spending Public Money: Governance and Audit Issues*'<sup>3</sup>. In particular, we have noted a certain concern among associations that while the amount of detailed monitoring of processes, and collection of figures, has diminished in recent years, it is still felt to be somewhat excessive. Even making due allowance for the understandable over reaction of bodies which are asked to provide figures, we still feel we should ask the housing regulators to take advantage of the development of performance audit to reduce further their own collection of information, and to rely more extensively on audit reports. In this context we commend the Corporation's existing work on reducing the burden of scrutiny for small associations.

### *Responsiveness to the Community*

349. To some extent we have dealt with this above under accountability. We note that the NFHA has agreed with the local authority associations' social housing agreements and standard service agreements for use between housing associations and local authorities and we commend these. We also note in particular that the housing regulators require housing associations to have procedures in respect to tenants' complaints which meet certain standards, and that tenants' complaints which are not resolved by mutual agreement can be referred to the housing association ombudsman. The housing association ombudsman has been set up by the Housing Corporation in England on a non statutory basis in such a way that his operation is entirely independent of the Corporation. It is now proposed that the ombudsman should be statutory. While complaints procedures currently apply to tenants and prospective tenants, it is important that they should be open to people in the community. This would allow, for example, a complaint on the part of a neighbour to be considered by a housing association through a formal and clearly identified procedure. In our view an outsider's complaint, other than a prospective tenant's complaint, would not need to go through to the ombudsman, although we understand that the housing association ombudsman is consulting on this issue.

350. We believe that, in common with all the other bodies we are considering, housing associations, especially smaller and medium size associations, would benefit from having access to mediators to provide an independent view on internal disputes, and especially on disputes between boards and senior staff members. We note that several associations have provision in their rules for appointment of a mediator by the NFHA in the event of a dispute involving ordinary members of the association. We would urge the NFHA and associations to consider ways of providing such arrangements in their rules for cases involving staff. We should not wish in any way to undermine the responsibilities of the board, but we believe that provision for early external mediation can help to resolve disputes constructively. In this context we note that the housing association ombudsman provides a mediation service.

351. We have some specific concerns in respect of Large Scale Voluntary Transfer (LSVT) housing associations, which can have near monopolies of social rented housing in their areas. Local authorities in those areas retain the statutory responsibilities for securing housing provision but have no stock of their own. They rely, therefore, on the contractual relationship established with the LSVT association at the time of stock transfer. Such contracts are intended to establish a framework for the ongoing relationship between the local authority and the housing association. They normally contain provisions relating to rent setting for five years after the date of transfer, and continuing provisions in respect of housing allocations and nominations.

352. However there is an inherent problem in a relationship where the local authority retains statutory duties which may alter over time, and in respect of which its needs may alter, yet to fulfil those duties relies on a contract, signed at a given point of time with a monopolistic supplier, which can only be changed at the supplier's discretion. The detail of contracts varies considerably, and while much effort has gone into improving these the basic problem remains. Bringing alternative housing suppliers into play takes time and can require capital investment, for which funds may not be readily available. The local authority has strong levers over a housing association which is seeking funds for development from the Housing Corporation, because the association needs the authority's support for this. However if the association is not seeking development funds the levers are relatively weak. Normally relationships between an authority and an LSVT association can be expected to be good, because the two bodies have broadly common objectives, but there is clearly scope for differences to arise over how the local authority's statutory duties can best be met, while the housing association may have priorities of its own which differ from those of the authority.

353. Where a contract does not contain in-built review mechanisms there is therefore a particular responsibility on the housing regulators to satisfy themselves that the stewardship of an LSVT association (or indeed of any other association which achieves a monopolistic position) is satisfactory in all respects. The Secretaries of State also need to be alert, in their housing investment discussions with the local authorities concerned, to ensure that needs arising from statutory duties, which are not being met by the LSVT association, are being addressed.

354. A related issue, which applies to all housing associations and not just to LSVT associations, needs to be mentioned. As noted earlier, housing associations' rent income is increasingly coming from tenants who receive housing benefit. This is paid by the local authority, which is very substantially supported with Exchequer funds. In other circumstances, where a public body is paying for services to be provided by the private sector, the relationship might be characterised as a purchaser/provider split. But in the case of housing the public body which places tenants, and pays for them, has no control over the rent.

355. When tenants are placed in the private rented sector, the rent officer assesses a market rent above which benefit will not necessarily be paid, and this system has recently been strengthened. But because the provision of housing association dwellings has been subsidised, and indeed as part of government policy on affordable rents, housing

association rents will normally be below market level. There is therefore no locally sensitive means of ensuring that housing association rents met by housing benefit are kept to the lowest level which is strictly necessary, that management and maintenance costs are tightly controlled, and that excess profit from rents is not being used to fund development elsewhere. This responsibility lies with the Housing Corporation and the other regulators, and we note that in recent years, as well as publishing comparative performance information on rents and costs they have been exercising pressure on rents through their grant bidding rounds. We would simply comment firstly that it is always more difficult to exercise control over expenditure when the body responsible for exercising control is not the budget holder, and secondly that even for the Housing Corporation the levers are weaker in respect of associations which are not seeking grants for development.

**R43. The Housing Regulators should pay especially close attention to the stewardship of LSVT housing associations, and of others which are monopolistic suppliers in specific localities.**