Homes & Communities Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Responses received

January 2015

a2dominion

14th August 2014

The Point
37 North Wharf Road
London
W2 1BD

T: 020 8825 1000
F: 020 8825 1963
E: info@a2dominion.co.uk
www.a2dominion.co.uk

Tim Sullivan, Regulatory Framework Manager
Homes and Communities Agency
Fry Building,
2 Marsham Street,
London SW1P 4DF

Dear Tim

Consultation on Proposed Changes to the Regulatory Framework

A2D is a member of the g15 group and a signatory to the separate g15 response. This letter focuses on specific areas of concern for A2D.

Broadly, we understand and support the HCA objectives as summarised in paragraph 2.8 of the consultation paper and we welcome some of the revisions following earlier consultation. We are now reviewing our current practices – including our approach to stress testing and asset registration - to help ensure compliance with the updated requirements and guidance if they are approved.

However in seeking to mitigate the risks identified in its consultation paper, it is important that the HCA does not lose sight of the government's objective for the sector to use its assets to deliver new affordable housing provision. If the HCA proposals tip too far in favour of risk limitation then the (already reduced) provision of affordable homes will diminish further.

To put this in context, A2D's 2013/14 development programme delivered just one third of the number of new affordable homes we were delivering five years ago. This residual programme is only made possible through the cross-subsidy from commercial activities: 80% of the Group's cash surpluses are reinvested in new homes (the remainder supports sustainment and improvement of existing homes and services).

Our specific areas of concern are:

Category 6 of the General Consent (Consultation questions 6.3 a-c)

1. If the HCA's aim is to minimise high-risk commercial activities then we question whether the proposal to restrict on-lending is the right approach. Restricting onlending will not prevent commercial activities taking place, as these can still be done through the RP's charitable body. However the tax liability would be considerably higher (circa 20%), increasing the risk and reducing new affordable housing provision.

a2dominion

2. We have been somewhat reassured by Matthew Bailes's statements at an HCA consultation workshop that on-lending will only be restricted in circumstances where there is an increasing risk of failure on the part of the RP, for example that the RP has been assessed at G3 or V3 in a regulatory judgement for example. It would be helpful if the wording in the framework could make this reassurance explicit.

Rent Standard (Consultation question 6.6)

3. We do not support the proposal to remove the flexibility to increase social rents by an extra £2 per week each year, which will:

i) Reduce our capacity to fund the provision of new homes; and

ii) Maintain current social rent level inconsistencies between households: at A2D, approximately 2700 eligible households (14%) still pay below the formula rent and we have been working to close this gap over time by applying the Rent Standard. If the HCA proposal is approved, however, these residents would continue to enjoy the benefit of lower rents in perpetuity.

4. We do not support the proposal for rent levels to be differentiated on the grounds of household income (Specific Expectation 1.5) as this will be impractical. Income data will be difficult to collect, will often be inaccurate, and the process will be costly to administer.

5. Measures that could help simplify the process – such as a protocol for sharing of DWP, HMRC and landlord data – have not been proposed.

6. The £60,000 proposed threshold is low for London and parts of the South East.

Governance and Financial Viability Standard (Consultation question 6.1e)

7. Boards should only be expected to provide assurance that they have taken 'reasonable steps' to comply with relevant law.

Clear and Succinct Expression (Consultation question 6.7b)

8. The Code could perhaps benefit from an edit to reduce the duplication and make it a little more succinct.

Yours sincerely

Darrell Mercer
Group Chief Executive

F.A.O Tim Sullivan
Regulatory Framework Manager
Homes & Communities Agency – The Social Housing Regulator

Changes to the Regulatory Framework – Consultation May 2014

Accent Group Ltds response to the consultation questions:

1 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?

We believe that the proposed standard will increase the protection of social housing assets and welcome the key changes and the emphasis on prudence within business planning.

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

Yes, the requirements around stress testing, risk management and skills are what we would expect any well run business to include in their governance and business planning arrangements.

We think that the shift from 'all relevant legislation' to 'all relevant law' unreasonably broadens the parameters for compliance as it extends statutory responsibilities to all law that is potentially relevant to us. It would be difficult and expensive to demonstrate assurance to the board with this proposed shift to all relevant law. We would therefore ask that this is revisited, or that the code of practice includes illustrative examples linked to some form of material threshold.

c) Do the requirements in paragraph 1.2 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 businesses?

We think that this is a welcome addition. We consider however that 'skills and capability' should be interpreted in its widest sense. By this we mean that it should include skills around constructive challenge and questioning, not just experience and knowledge of specific business activities. We undertake an externally facilitated annual governance review to challenge the rigour of our annual appraisal process and compliance with our code of governance. However we have a slight concern that this requirement could encourage a 'consultancy

culture', with Boards seeking external expertise for issues where it may not be warranted.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes. We are particularly pleased to see the explicit requirement to maintain a comprehensive record of assets and liabilities. This explicit requirement together with greater focus on active asset management and VFM assessments strengthens business planning decisions in the sector, so is welcomed.

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

Yes, we are pleased to see that the regulator has responded to the feedback from providers and replaced the initial ring fencing proposals with a distinct set of requirements for profit making providers.

2 Code of Practice

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

b) Is the role of a Code clear and is it reasonable?

Yes, the code is clear and provides some helpful illustrative examples. Whilst it would be easy to slip into an overly prescriptive code, we believe it strikes the right balance between guidance and prescription.

3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

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

c) Are they reasonable?

Yes to all. We would however like to see a "formality" introduced around "informal" discussions on "general" disposal consents. A "conditional consent" approach should be considered to allow for a general conditional consent being given by the HCA subject to a number of agreed steps being carried out by the relevant parties. This could avoid unnecessary work, speed up decision making and improve transparency on important asset management decisions.

4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

b) Are they reasonable?

Yes to all.

5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes. However, we feel that the issue of waivers on rent setting may need to be re-visited. Whilst this is not an issue for Accent, we are aware of other providers, particularly those who were granted waivers as a result of the impact of a merger, who remain concerned about the impact of a seeking a reissued waiver. Will this act as a trigger for viability concerns?

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively.

Yes. We particularly welcome the restricted access to category 6 and the extended restrictions for on-lending of loan facilities secured on social housing assets.

7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes. It is appropriate for the regulator to require compliance with the Governance and Financial viability standard at the point of registration.

CONCLUSION

In conclusion, we would like to reiterate our support for the proposed changes to the regulatory framework. In the light of the Cosmopolitan failure and rescue we feel that the revised standards address all the issues which are within the regulators current powers.

Although it would need a legislative change we do think that the Regulator should be able to appoint a board/ management team when it is clear that an organisation is no longer viable. The Cosmopolitan case highlighted the inequity when a board/management team responsible for taking poor decisions is then consulted on the rescue package.

Accord Group
178 Birmingham Road
West Bromwich
West Midlands B70 6QG
T: 0300 111 7000
F: 0300 111 7001
E: customerfirst@accordgroup.org.uk
accordgroup.org.uk

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Email: consultation@hca.gsi.gov.uk

15th August 2014

Dear Tim

Consultation on Changes to the Regulatory Framework

Response of the Accord Group ("Accord")

Background to the Accord Group Response

The Accord Group is made up of seven organisations and owns and manages over 12,500 homes and delivers over 70,000 hours of health, social care and support services each week. We are one of the largest housing associations operating within the West Midlands region with an extensive care service developed over the past 30 years.

Accord is the Lead Investment Partner for the Matrix Housing Partnership, comprising Rooftop Group, Trident Group, Trent & Dove Housing Association, Black Country Housing Group and WATMOS. Matrix was awarded £30m of Social Housing Grant to build 1,462 homes at an estimated cost of £179.3m as part of the 2011-15 Affordable Homes Programme and has received one of the top 10 allocations in the 2015-18 bid round totalling just over £20m to build almost 1,000 new affordable homes.

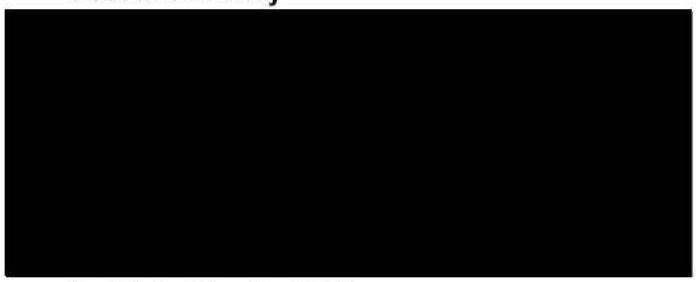
We believe in proving a rounded community offer which means the provision of housing, but also care and support so that people can lead independent lives in the community. As a PlaceShaper organisation we are committed to locality and as strategic community partners we have an important role to play to tackle unemployment, poor health and low educational achievement and make a huge difference to lives.

As an organisation part-funded by public finance we clearly understand and demonstrate our commitment to value for money and robust risk management. We believe the consultation is right to highlight the importance of risk management and how RPs measure, assess and stress-test their business. We already undertake a strong approach to this and are subject to regulatory rigour across the care part of the business from the Care Quality Commission.

We welcome an updated steer on how the regulator will assess effective governance and remain whole-heartedly supportive of a co-regulation approach. Our responses as follows support in general the revised proposals and accept them to be reasonable in an environment where risk, governance and effective business planning are vital to protect, and help to develop, social housing assets. We have some queries or reservations about some of the detail and have highlighted these below. We would welcome the opportunity for involvement in any further discussion on this consultation process as appropriate.

We would welcome the opportunity to discuss our response. Please contact Lakhbir Jaspal at the Accord Group (0121 500 2369) if this is desired.

Yours sincerely



Dr Chris Handy, OBE
Accord Group Chief Executive

Enc.

Accord Group response to the Homes & Communities Consultation on changes to the Regulatory Framework

Question 1:

1. 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?

We understand the requirement to develop a Standard to meet the Regulator's purpose around protecting social housing assets and agree that the draft Standard meets these objectives.

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

In general the Standard does express the requirements effectively. There is a question mark around the use of the requirement to comply with law and we would suggest that Boards and Officers should ensure they comply with law in any case.

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 businesses?

Yes we believe a right balance has been struck in this section and support a co-regulation approach. We also believe the sector can look wider at examples of good governance and there is a role for Boards to continue to develop skills and capability.

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?

As housing providers have moved to wider areas of business the need for more stringent risk assessment and stress-testing has become more necessary and the Accord group carries out multiple event scenario testing as part of the business planning process and the Board receives regular reports on this. We understand that the regulator wants assurance that Boards are carrying out these exercises as well as ensuring continued viability of the business. We also feel that this approach allows organisations the opportunities to continue to develop new homes and work in non-housing areas such as providing care services by balancing the risk and protecting the social housing assets from non-core business. There are of course other risks to be included such as the impact of welfare reforms on all providers and these are included in the risk mapping approach.

We agree with the requirement to ensure robust and up to date asset and liability registers and further consultation and discussion across the sector on best practice will be of use. Guidance on what the Regulator would wish to see at short notice as a minimum would also be useful.

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

Yes these are reasonable, particularly the approach for for-profit providers.

accord group

Question 2:
2. Code of practice

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

We are in agreement with the principles of the Code however we do not necessarily believe that the Code of Practice brings any additional benefit to the Standards. The consultation documentation states that the Code would "amplify" the requirements of the Standard but that it is not a set of guidance nor is it a set of rules. We are therefore unsure as to the purpose of the Code particularly as the Standard supersedes the Code in any case.

The Code of Practice might very well become the expectation of how RPs will be assessed by the HCA and therefore it becomes a prescriptive process. The Standard is quite clear of the Regulator's expectations and RP Boards should be left to best decide how they provide assurance and demonstrate how they meet the Standard.

An alternative might be to issue a revised Code as a set of best practice guidelines updated periodically – RPs would then be very clear that this was a document to assist and guide but not a further set of rules as such.

If the HCA does issue a Code of Practice, we would suggest it would be challenging for one document to give clear, all-inclusive guidance for all providers given the different scales and complexities of registered providers. More guidance on different expectations between large multi-faceted groups and smaller organisations would therefore be helpful however this would naturally pose more questions.

b) Is the role of a Code clear and reasonable?

Reiterating the response to question 2 (a) above, we do not believe the Code is clear in its current form as neither a good practice brief nor a set of rules.

We also believe that the Code varies between providing fairly broad guidance to more specific practice and it is possibly unclear at times as to whether strict adherence to the Code itself was necessary. For example, the Financial Reporting Counsel Code of Governance is referred to specifically (C1.2.2(2)) and this gives an example of the sort of things that "might be appropriate". Elsewhere in this section it is stated "plans ***should*** be in place to address any skills gaps." What elements are therefore directives and which are suggestion is unclear. RPs may assume the Code contains demands to comply and thus the danger already highlighted that the Code becomes the formal measure of regulation.

Notwithstanding comments above, we are in agreement with the principles highlighted in the Code of Practice and have already mapped out these against our current processes and assurance models.

3. Changes to Disposals Regime
Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
Fundamentally the changes provide more clarity and it is particularly helpful in relation to disposing of ex-local authority stock. It could be argued that the requirement for General Consent will result in the stock disposal process being more straightforward without reducing the value of the asset. The restrictions relating to tenanted stock protects the tenant's interests which is important.

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

The ability to dispose as required within a clearer framework is welcomed. However, this contradicts with the HCA AHP bidding requirements in which HA's are expected to dispose of stock – because this is a requirement it would appear that it does place a restriction on the freedom to run the business although this is not seen to be overly excessive.

c) Are they reasonable?

They are more reasonable than the previous disposals regime and we feel that they are generally reasonable.

4. Changes to Registration Criteria

Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?
b) Are they reasonable?

Whilst supportive of the intention we may wish to create an exemption in registration terms for potential Mutual Home Ownership Schemes that wish to offer a shared equity model of housing where the distribution of equity in the co-operative is the means of the resident gaining equity in their property.

5. Changes to the Rent Standard

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 focused as possible?

Yes the changes reflect the direction from DCLG.

In anticipation of the assumed changes, the Accord Group has already built in the increase of CPI+1% into the business planning process.

The removal of plus/minus £2 per week adjustment, we would suggest means achieving the target formula rent will take longer thus rent convergence is likely to require longer to achieve. We remain concerned about this and the potential impact on affordable rents

6 Changes to the General Consent

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We agree that proposals allow for greater protection of social housing assets however we have a concern regarding restricted on-lending within a group. Consideration could be given to providing consent for development programme within a certain timeframe and with a ceiling on financial impact. We would also suggest that on-lending for non-core business should be permitted where the lending is secured on non-housing assets such as offices and garages held in the parent body's stock.

Affinity Sutton Group
Level 6
6 More London Place
Tooley Street
London
SE1 2DA

19 August 2014

Dear Sir

RESPONSE TO THE CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Introduction and summary

The following paper sets out Affinity Sutton's views on the HCA's Consultation to Changes to the Regulator Framework (the "Consultation") which was published in May 2014. This paper focusses on the amendments to the consent requirements.

In response to the reduction in grant available for new development Affinity Sutton has developed a modest programme of building homes for sale on the open market. Due to the cross-subsidy generated from this we continue to develop a programme of affordable housing units, c750 per year. Without the sales activity this amount of new homes would be massively reduced.

We strongly believe that delivering additional new social housing is part of our social purpose, and indeed is required under our charitable objects.

We think that the current proposals in the Consultation could severely limit the profitability of this sales activity and therefore reduce the much needed delivery of new social housing.

Current requirements

The current guidance contained in the paper "*Disposing of Land*" dated 11 February 2014 includes the following condition:

> ***Condition 4***
> *"The Private Finance Facilities will be used by the provider itself; or if it is to be on-lent, will be on-lent by it only within its own group structure, and either:*
> *(a) to a non-profit private registered provider; or*
> ***(b) at arm's length and on normal commercial terms to a profit-making private registered provider or other group member that is not a private***

***registered provider. The provider will ensure that, where on-lending within the group is at arm's length and on reasonable commercial terms, it obtains professional advice confirming that the terms are reasonable commercial terms for parties at arm's length**."*

We operate under this condition in the following areas:

- Equity funding limited-recourse joint ventures. These are set-up with house builders to risk manage new build for sale activity. We invest 50% of the equity and receive 50% of the profits.
- Fund wholly owned property development subsidiaries. Profits from these subsidiaries are then gift-aided back to the registered provider.

We are aware that build for sale activity has a different risk profile to building social housing and we manage this through strong board oversight and risk management processes. A key feature is that scheme viability approval requires commercial returns for commercial risk.

Consultation

The effect of the new consultation is to change paragraph (b) of Condition 4 above:

Category 6 3.(b)(ii)
"It will only grant a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures or is given on terms that it may in future secure Private Finance Facilities in favour of a Group Member who:
(aa) is a non-profit Private Registered Provider; or
(bb) if not a non-profit Private Registered Provider, will apply the Private Finance Facilities solely in the acquisition, construction, conversion or refurbishment of Social Housing in England by or on behalf of that Group Member. "

Our concern with the proposal is that we do not feel that it is necessary or indeed practical. Receiving approval from the HCA for every individual build for sale scheme could potentially be a lengthy process and cause delays which would make us commercially uncompetitive. It's not clear how these schemes would be assessed. If the regulator intends to appraise schemes individually it risks being party to the transaction, and this is perhaps not the intended consequence of the change proposed. If the regulator intends instead for the landlord to carry out a proper risk assessment then it is unclear how the consideration of each scheme individually will assist this.

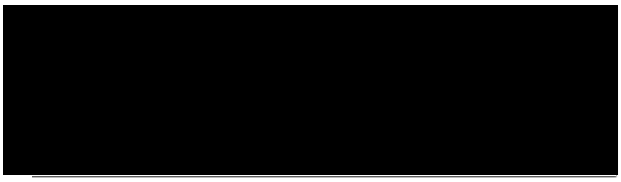
4. Proposal

We think that ensuring an association has strong risk management and experience would be much more beneficial. This could be done through the annual viability review. Our proposal is to change the drafting to insert the highlighted section below:

Category 6 3.(b)(ii)
"It will only grant a Security Interest over a Social Housing Dwelling to a Private Finance Provider which secures or is given on terms that it may in future secure Private Finance Facilities in favour of a Group Member who:
(aa) is a non-profit Private Registered Provider; or
(bb) at arm's length and on normal commercial terms to a group member that is not a private registered provider but whose ultimate parent is a non-profit Private Registered Provider with a governance and viability rating of G1/V1. The provider will ensure that, where on-lending within the group is at arm's length and on reasonable commercial terms, it obtains professional advice confirming that the terms are reasonable commercial terms for parties at arm's length."; or
(cc) if not a non-profit Private Registered Provider, will apply the Private Finance Facilities solely in the acquisition, construction, conversion or refurbishment of Social Housing in England by or on behalf of that Group Member. "

This will ensure that if a provider does not meet the highest levels of governance and viability then additional scrutiny will be applied. However, if the HCA is satisfied with overall governance and viability then the provider does not face undue delay in its development programme.

Yours faithfully



Mark Washer
Group Finance Director

Chief Executive's Department

[redacted]

Aldwyck HOUSING GROUP

8 August 2014

Mr Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Fry Building
2 Marsham Street
LONDON SW1P 4DF

Dear Tim

Consultation on changes to the Regulatory Framework

I am writing to you in response to the Homes and Communities Agency consultation on changes to the regulatory framework (May 2014).

Following on from our response to the HCA's earlier 'Protecting Social Housing Assets in a More Diverse Sector - Discussion Document' on 03 June 2014, I would like to confirm Aldwyck Housing Group's continued support for the principles of good and strong governance, appropriate high-level non-executive skills and commitment to the organisation, robust business planning and stress-testing, effective risk management, and mitigation, strong internal controls and the protection of social housing assets which are clear themes running through the existing regulatory framework and the proposed, more robustly applied, new framework and code of practice from April 2015.

In common with all prudent and reputable housing providers we are already committed to working within these parameters and continue to keep such matters high on our agenda.

Our Group Board has considered this response, and fully supports its contents.

Aldwyck, in common with many other providers, has in recent years, entered into a broader range of activities, including commercial activities which bring with them commercial risks. We are aware of the need for us to assess our 'appetite for risk' and to do all that is appropriate to manage, monitor and mitigate the broad spectrum of risks we face.

/continued .....

Customer Services Tel: 0300 500 6262
(Calls to all numbers may be recorded)

Chairman Greg Lomax
Chief Executive Harj Singh

Registered with the Tenant Services Authority No. LH1682
Industrial and Provident Society No. 21083R
VAT Reg. No 755 5467 00

Aldwyck Housing Group Limited
6 Houghton Hall Business Park
Porz Avenue, Houghton Regis
Bedfordshire, LU5 5UZ

Tel: 01582 869100 Fax: 01582 869200
Email: info@aldwyck.co.uk
www.aldwyck.co.uk

If you have any difficulty in understanding this letter or if English is not your first language, please contact Customer Services on 0300 500 6262.

Nëse keni ndonjë vështirësi në kuptimin e kësaj letre ose nëse anglishtja nuk është gjuha juaj e pare, ju lutemi kontaktoni Shërbimet për Klientin në 0300 500 6262.

Albanian

Nel caso in cui abbiate difficoltà nel comprendere questa lettera o se l'inglese non è la vostra lingua madre, contattate il Servizio Clienti al numero 0300 500 6262.

Italian

Jeżeli mają Państwo problem ze zrozumieniem tego pisma lub jeżeli angielski nie jest Państwa językiem ojczystym, prosimy o skontaktowanie się z działem Obsługi Klienta pod numerem telefonu 0300 500 6262.

Polish

Bu mektubu anlamakta güçlük çekiyorsanız ya da İngilizce asıl lisanınız değilse, lütfen 0300 500 6262 dan Müşteri Hizmetleri ile ilişki kurun.

Turkish

এই চিঠি বুঝতে যদি আপনার কোন সমস্যা হয় অথবা ইংরেজী ভাষা যদি আপনার মাতৃভাষা না হয় তাহলে কাস্টমার সার্ভিসেসকে অনুগ্রহ করে 0300 500 6262 নম্বর ফোনে যোগাযোগ করুন।

Bengali

જો તમને આ પત્ર સમજવામાં કોઇ મુશ્કેલી પડતી હોય અથવા જો ઈંગ્લિશ તમારી પ્રથમ ભાષા ન હોય તો, કૃપા કરી 0300 500 6262 ઉપર કસ્ટમર સર્વિસીસનો સંપર્ક કરો

Gujarati

यदि आपको यह पत्र समझने में कठिनाई होती है अथवा यदि आपकी पहली भाषा अंग्रेजी नहीं है, तो 0300 500 6262 पर ग्राहक सेवा से संपर्क करें।

Hindi

ਜੇ ਇਸ ਖ਼ਤ ਨੂੰ ਸਮਝਣ ਵਿਚ ਤੁਹਾਨੂੰ ਮੁਸ਼ਕਿਲ ਆਉਂਦੀ ਹੈ, ਜਾਂ ਅੰਗਰੇਜ਼ੀ ਤੁਹਾਡੀ ਪਹਿਲੀ ਬੋਲੀ ਨਹੀਂ ਹੈ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਕਸਟਮਰ ਸਰਵਿਸਿਜ਼ ਨਾਲ ਫ਼ੋਨ ਨੰਬਰ 0300 500 6262 'ਤੇ ਗੱਲ ਕਰੋ।

Punjabi

اگر آپ کو یہ خط سمجھنے میں کوئی مشکل پیش آتی ہے یا آپ کی پہلی زبان انگریزی نہیں ہے تو براہ کرم 0300 500 6262 پر کسٹمر سروسز سے رابطہ کریں۔

Urdu

And we are already robustly stress-testing our business plan against a wide range of different and multivariate scenarios.

We have in the past 12 months strengthened our Group Board with new members who bring a wealth of professional, commercial, financial and risk management/internal control/audit experience, and we are confident that the board has the capacity to act independently; to robustly challenge plans and manage complex business risks.

We believe that, ultimately, for more homes to be provided to house more people in housing need, that we have to diversify, and not rely on a single income stream. We welcome a regulatory framework and a regulator which encourages diversification, income generation from commercial activities, and an appropriate level of risk management and business assurance to ensure the long term protection of social housing assets.

Aldwyck also welcomes the acknowledgement by the HCA of the changing skill sets required by the regulator to regulate more complex organisations and we broadly support the strengthening of the regulatory functions of the HCA, to give the sector a regulator with the capacity and tools to do its job in an increasingly complex market.

Specifically, we support the new Governance and Financial Viability Standard and its associated Code of Practice which provides greater clarity around specific expectations on providers. We believe it provides a reasonable response to the challenges of regulation in a changing social housing sector.

We believe that the proposed changes to the disposals consents regime are reasonable (although we would, at the same time, welcome further simplification of what are a complex set of requirements for different types of disposal of different types of stock).

I hope this is useful feedback. If you would like to discuss this response further, or would like any additional information, please do not hesitate to contact me.

Yours sincerely

Vincent Marke
ACTING CHIEF EXECUTIVE

AmicusHorizon

HCA CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK – response from AmicusHorizon

General comments

AmicusHorizon understands and supports the HCA's desire to protect social housing assets, and ensure their social value is not lost.

We responded to the HCA's April 2013 discussion document and are pleased the proposals demonstrate that the Agency listened to the sector's concerns.

Our Board and residents are great supporters of the current Regulatory Framework, want it to remain fit for purpose, and recognise it requires regular review. As a co-regulatory champion, we're pleased to see the HCA has used this consultation to re-commit to a co-regulatory approach to regulation.

Specific response to HCA questions

A6.1 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?

Yes. We support the approach set out in the consultation document and think it will provide further protection of social housing assets. Strengthening the Governance and Viability standard is the correct mechanism to use as it will ensure consistency across the sector. It also provides for the optimum balance between independent business decision making, accountability and government regulation.

The proposed changes should provide additional benefits to Registered Providers (RP) beyond protecting assets and value. More attention to risk by a highly skilled executive and Board will benefit every Provider's business – it is simply 'good governance'.

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

Yes. Overall, our Board and Residents' Council welcome the changes and think the proposed, revised Standards are easy to understand and are expressed in a way which will make scrutiny and compliance monitoring straightforward.

There are three areas where we're looking for further detail and clarity:

- Section 1.8 of the proposed standard introduces a certification of compliance with the Governance and Viability Standard into the annual accounts. Clarity needs to be given as to where within the accounts the certification should be disclosed. We'd prefer it to be within the Operating & Financial Review / Board report to avoid the need for a full audit sign off of compliance. We anticipate the Accounting Direction will be updated in due course to give clarification on disclosure

- Section 2.2 of the proposed Standard requires the RP parent, where appropriate, to support their RP subsidiaries. In principle we support this and see it as a reflection of reality, but the form of wording is critical. The risk is in relation to bank covenants, many of which place restrictions on the ability of the RP borrower to support any other company. We are aware of covenants which prohibit 'financial assistance' and others which prohibit 'guarantees'. So this section of the Standard could inadvertently require (or at least be argued by a bank to require) the 'support' to be reflected in the covenant calculation, putting covenant compliance at risk. We suggest some clarification would be helpful here, to make it clear RP parents would not be required to support their RP subsidiaries if it put the RP parent's covenant compliance at risk.

- Section 3.15 and definition of 'undue risk'. We can't find a definition of undue risk in the document, so ask who is in control of setting the definition? We propose each RP should set their definition for their own business – this requirement could be added into the Standard.

  But the very specific measures in relation to treasury instruments, where specific consent will now be required, puts the regulator in the role of signing off many detailed business decisions for RPs. Presumably the regulator's sign off would need to be on the basis of the regulator's own definition of "undue risk", taking into account the specific circumstances of the RP in question.

  Too much direction from the regulator on 'undue' risk could have a freezing effect on considered and appropriate risk taking in the sector.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes. These requirements are all 'good governance' and Providers should be aiming for them without regulatory requirement. Paragraph 1.2 is drafted in a flexible way allowing each type and size of RP to find its own level of appropriateness. It provides optimum balance between RPs being free to run

their business and protecting social housing assets.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes. Most of these requirements are current good practice and we welcome the new requirement for robust stress testing. It places responsibility where it should be – with the Board.

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

Yes. In relation to registered group parents see our comments in (b) above.

A6.2 Code of Practice

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

Yes. The examples and detail provided are helpful and we support the emphasis on robust skills and competencies at both Board and Executive level.

b) Is the role of a Code clear and is it reasonable?

No, the role of the code is not clear. We are concerned about the status of the proposed code. RP boards will view meeting the code as a regulatory requirement which defeats the purpose of a separate guidance document. We'd prefer the proposed 'code' to be in the regulatory framework but clearly flagged as illustrative.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Yes, but the proposed changes to Category 6 re-introduce more HCA approval of disposals which we view as a retrograde step. We consider the other proposed changes to the Regulatory Framework together provide enough protection.

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

No. The proposed balance is not right – it does not encourage a skilled and competent Board to be fully responsible for its organisation. It implies the HCA has greater skill than our Board in judging the risk around a disposal.

If this proposal is introduced, RPs will need clarity about its implementation date

and whether the new regime only applies to arrangements made after the implementation date.

c) Are they reasonable?

No. See above.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Yes.

b) Are they reasonable?

Yes

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes the guidance provides clarity which we welcome.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

In general the requirements are clear and succinct. However we have two concerns:

- There is no reference to existing waivers previously agreed with the regulator. We would welcome clarity on whether those waivers will still remain in place without the need for negotiation with the regulator

- For fair rents, there remains the possibility that a Rent Officer could set a fair rent at a higher and more realistic rent, but because of the restriction on the maximum annual increase we have no opportunity to increase the rent to the target and will never be able to reach the target. Low registered rents in the past have meant the fair rent isn't at target but the new rent standard will continue to suppress the rent and compound the problem.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes. The changes tighten up procedures for private registered providers, disposing of assets. There is no change to the disposal process for registered providers on the whole. The aim is to rein back commercial/private arm of registered providers' businesses, ensuring, commercial decisions about disposals doesn't put the existing social housing stock in the business at risk.

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

Yes.

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes.

Response to the Homes and Communities Agency consultation paper on Changes to the Regulatory Framework

Introduction

We are grateful for the opportunity to submit our response to the consultation document on the proposed changes to the regulatory framework service. The implications of these changes have been discussed amongst colleagues at Anchor. These discussions underpin our response.

Background – Anchor

Anchor Trust is a not-for-profit organisation with more than 40 years' experience of helping older people. We are England's largest not-for-profit provider of sheltered housing for rent as well as England's largest not-for-profit care home provider. We provide great places to buy or rent as well as care and support services, including:

- Almost 700 retirement housing schemes for rent
- Property management services for leaseholders at 230 estates
- 90 care homes, including two specialist dementia homes
- Almost 1,000 integrated care and housing properties

Changes to the Governance and Financial Viability Standard

We would respond to the consultation questions as follows;

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

We are supportive of the new proposed standard. We are aware in the current economic and funding climate that social housing organisations are looking to support and sustain their social housing by diversifying into new profit making activities. These forays into new areas clearly bring new challenges and it is right that the regulator looks to strengthen the economic standards in this area.

We believe your response in light of the near bankruptcy of a social housing provider and the financial difficulties of others could have resulted in a push for greater regulatory prescription and oversight. We are therefore pleased that this has not happened and that the principles of co-regulation are still advanced as the model for continued engagement in this area. As such we believe your response to be both proportionate and sensible.

Your need for greater assurance and for providing additional direction through the standard and the associated Code of Practice are seen by us as a measured response.

We are also particularly pleased that in the drafting of the proposed standard you have responded to the feedback from the sector on the last consultation paper, *Protecting Social Housing Assets in a More Diverse Sector*.

The current focus on skills and the existence of a robust, planned and effective approach to risk management inherent in the new standard reflect our own comments to the previous consultation, see extracts below;

"The current proposals are likely to make it harder to develop new stock. Rather than the prescriptive approach of ring-fencing; providers should be encouraged to adopt a risk based approach to their respective organisational structures. Ring-fencing may or may not form part of that approach".

"Clearly providers should be required to plan for the possibility that a part of their business may fail and should ensure that in this event the social housing assets will not be put at risk. Provided this is done in a robust way (including external validation where necessary), it should give the regulator the level of assurance it needs".

"These proposals appear to be a major challenge to the independence of Registered Provider's. It appears that rather than helping to develop greater professionalism at Board level, there appears to be an intention by the HCA to "micro-manage" Registered Providers through what is likely to become a very prescriptive regime. Given the failures of the FSA in terms of Banking Regulation, it is difficult to see how further broad based restrictions on the activities of Registered Providers will work in a positive way.

In our view Registered Providers should generally be required to manage risk effectively and be seen to have a robust and effective framework in place to do so. The approach of individual Registered Providers will vary, and we believe the role of the Regulator should be to assess the adequacy of the overall framework. Additionally, it should not be assumed that housing activities are low risk and other activities high risk".

We are pleased to see the replacement of living wills with stress testing and an effective register of assets and liabilities. We are also glad that the need for ring fencing of non-social housing activities has been replaced, for non-profit making registered providers, by a focus on adequacy of the risk framework in place within an organisation.

Does the proposed standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes – however we continue to have the added complication based on the Housing and Regeneration Act's (2008) definition of social housing that many care homes are still seen as social housing. In this area there seems to have been no regard to the current implications of the Care Bill. It is proposed that from April 2015 the Care Quality Commission will take a more active role in

overseeing the financial 'health' of hard to replace providers. As part of this the CQC will collect detailed financial metrics, accounts and business plans from providers.

As one of a number of registered providers who provide care regulated activities through social housing we are concerned about the possible doubling up of regulation in this area and the unnecessary work caused for us in consequence. We would ideally like to see the Care Quality Commission and the Homes and Communities Agency working more closely in assessing and obtaining the assurance they require on the financial viability of a supported housing provider. A significant financial failure in one area would clearly impact on the organisation as a whole and as such would, by necessity, be covered by our approach to the Homes and Community Agency's standard as it relates to risk management, stress testing etc.

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?

The obligation to have the right skills and independence in place is self-evident – any right thinking organisation should have the mechanisms in place to ensure that this exists. This should not really be necessary to include within a regulatory standard. We accept however, with the events in the wider housing world, your rationale for its inclusion.

At Anchor we have long understood the importance of having, and knowing we have, the right skill set. Through the provision of care (domiciliary, residential and nursing), rented and leasehold retirement housing we have always operated in a diverse environment.

Business decisions in recent years about streamlining our service offer reflected an understanding of developments in the wider sector but also an appreciation of the complexities of managing such a wide and diverse portfolio. Even with a reduced portfolio ensuring we have the right skill set and independence on our board is an essential pre-requisite for us.

We can however see how organisations in a desire for growth may lose sight of this. We are therefore supportive of this part of the standard but less sure about what may appear as micro-management prescription within the Code of Practice (namely having a skills strategy, skills audit). In keeping with the principle of co-regulation it should be left to the Executive Management Team and the Board to determine how they secure their assurance in this area. The standard does after all state that an annual statement of compliance, through the annual accounts, is required from the Board of the organisation in relation to the whole standard.

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 business?
As stated before we are supportive of the regulator's focus on the risk framework within an organisation and we are in agreement with the stress testing and register of assets and liabilities. We are appreciative of the need for long term and cyclical assessment of risk and in identifying the combination of factors which could break an organisation.

We think the approach taken should be prudent and reasonable (based on remote but possible scenarios) but not excessive. There is little value in investing considerable staff time and resource in developing mitigating strategies for far-fetched scenarios.

We agree the business plan should be closely linked to stress testing and show evidence of how the organisation has responded and evolved to its assessment of risk.

We agree Boards should keep under constant review the robustness and effectiveness of their risk framework. To assist our Board we have recently invested in strengthening the expertise within our business on risk management. We predict the current focus within the proposed standard will strengthen all organisations approach to risk management and as such is welcomed.

Are the requirements for specific types of registered provider in section 2 reasonable given the Regulator's aim of protecting social housing assets?

In light of our structure we feel others are better qualified to comment on this section of the standard. However we are supportive of the requirements on profit making registered providers to separate out their social housing activities unless it forms a very small part of the activities they undertake. We would advise the regulator that it needs to show some flexibility over how it makes this judgement. The current 5% of turnover figure may not be a constant for an organisation involved in the sale of property as the percentage could vary considerably from one year to the next based on the level or existence of any sales activity.

Code of practice
We would respond to the consultation questions as follows;

Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

We are keen that the current stance of the regulator to not repeat the extensive prescription of previous regulators is not repeated, having said that we can see the sense in a code of practice in this area.

Is the role of a code clear and reasonable?

Yes.

Changes to the disposals regime
We would respond as follows;

Do the proposed revisions to the disposals regime:

a) ***Meet the aim of protecting social housing assets and the value in it?***
b) ***Balance this aim of registered providers being free to run their own business?***
c) ***Are they reasonable?***

We understand part of the relevance of the General Consent was to limit the administrative burden on registered providers and the regulator. The removal of aspects of the General Consent will re-impose such a burden. It remains vital that, though the financial lending and transactional activities of a provider need to be overseen, this is done in a proportionate way. Too much intervention in scrutinising and agreeing such activities will be in no one's interest – especially when the transactional activity carries limited risk to the organisation and the social housing assets. Any decision as to what is now taken out of the General Consent should reflect this.

We agree with the changes set out for the setting up and use of a Disposals Proceeds Fund as we believe it safeguards existing investment in social housing.

Changes to the Registration Criteria
We would respond as follows;

Do the proposed changes to the registration criteria:

a) ***Reflect the proposed changes to the Governance and Viability Standard?***
b) ***Are they reasonable?***

We agree with you proposed change. It seems sensible that full compliance be demonstrated with this standard at the moment of entry.

Changes to the Rent Standard
We would respond as follows;

Do the proposed changes to the Rent Standard:

a) ***Reflect the direction from the DCLG***
b) ***Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?***

Yes – the requirements are adequately expressed and we can see no deviation from the DCLG's direction to the regulator.

Aspire Group
Responses to the HCA Consultation Paper on new Regulatory Framework

A6.1 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?

Generally speaking, yes it does. On balance the proposed Standard is considered to be a proportionate and reasonable response to the changing market conditions and noting events at Cosmopolitan.

There is just one point to mention - whereby the requirement to "adhere to all relevant law" is stated as a necessary outcome. As an organisation we would repeat the views already stated by the NHF in respect of this point. The NHF draw out that this is a particularly onerous requirement, noting the breadth and depth of legislation which is constantly evolving. It would be more reasonable if this requirement read "**to take reasonable steps** to ensure all relevant law is adhered to".

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

Yes

c) Do the requirements in paragraph 1.2 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 businesses?

Yes. For most organisations the requirements should not be onerous and will already reflect the way in which they manage succession planning to ensure that their Boards are equipped with the skills to successfully manage the organisation.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, again, for most organisations this will reflect current risk and control processes already.

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

Yes.

A6.2 Code of Practice

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

Yes. It is particularly welcome that the Code is not overly prescriptive in respect of the mechanisms required to deliver outcomes and recognises that one size will not fit all in a diverse sector.

b) Is the role of a Code clear and is it reasonable?

Yes

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Yes

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

Yes

c) Are they reasonable?

Yes

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Yes

b) Are they reasonable?

Yes

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Whilst the requirements are considered clear and succinct, they are not considered fair. Organisations such as our own have inherited stock on low rents, initially protected by rent guarantees and then applied maximum increases without reaching target rent yet. This has a considerable impact on our business plans, without making the organisation unviable currently.

Our concern relates to the fact that resilience has been removed from the business plan as well as capacity to deliver new units. The next shock to the sector could then place organisations such as our own in a position where they are not financially viable. By that point in time it will be too late to apply for a waiver. We would welcome clarity on this point in respect of how the HCA would respond in the event that such a situation arises and whether

providers should be seeking a waiver currently, even though their plans are viable pending the arrival of another shock.

It is further noted that the possibility of applying for judicial review on the grounds of "legitimate expectations" has been mooted as a potential option for organisations such as our own. This is an option which we are currently holding under review.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes, with the caveat of not agreeing with the removal of rent convergence as stated in answer to the previous question.

A6.7 Do the other proposed changes to the registration criteria:
a) Contribute to the Regulator better meeting its fundamental objectives?

Yes

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes

audit commission

11 August 2014

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN

Email [redacted]

Tel:

Email: statutoryconsultation@hca.gsi.gov.uk

Dear Mr Sullivan

Consultation on changes to the Regulatory Framework

Thank you for inviting the Audit Commission to comment on your proposals. We would like to make some general comments rather than respond to the specific questions set out in Annex 6.

Your proposals appear to us to be well considered, proportionate and appropriate. We support your proposal to issue the Governance and Financial Viability Standard Code of Practice. While we are aware that some stakeholders have expressed reservations about the need for the Code, we can see that sector learning and value for money could be well served by sharing information about good practice and clarifying the Regulator's interpretation of what meeting the standards may mean in practice. We note that the Code is not intended to be prescriptive and that registered providers are free to comply with the requirements of the Standard in a different manner.

When we responded to a previous consultation on the regulatory framework for social housing in England from April 2012, we suggested that the Regulator may wish to encourage registered providers to take action to prevent and tackle housing tenancy fraud. The Audit Commission's *Protecting the Public Purse 2012* report estimated that registered social housing providers may have lost control of the allocation of at least 78,000 social housing properties in England because of tenancy fraud.

Our National Fraud Initiative can help registered providers to identify tenancy fraud and other types of fraud by using and comparing information held by different organisations. The government recognises the value of this initiative and, following the Audit Commission's expected closure at the end of March next year, responsibility for it will transfer to the Cabinet Office.

We would welcome the opportunity to discuss with the Homes and Communities Agency whether there is any scope to promote the use of the National Fraud Initiative tools and other anti-fraud measures to registered providers.

Please get in touch if this is something you would like to pursue.

Yours sincerely

Marcine Waterman
Controller of Audit

B3 Living

Dear Sir / Madam,

With reference to the HCA's consultation on changes to the regulatory framework, I am pleased to submit comments from B3Living's members, as agreed at our July 2014 Board meeting.

1. We acknowledge that the draft framework reflects, substantially, what our sector asked for in 2013 following the initial consultation. We are grateful that the response from the HCA is largely as hoped.
2. We note that to deliver the new regime will require a different approach to HCA regulation and better quality engagement with associations through appropriately skilled staff. We are concerned as to how this will be achieved within the context of pending staff cuts of c33% within the HCA.
3. The removal (from the original consultation) of the strict ring fencing requirements of activity for non-profit providers is welcomed, although our sector will obviously need to liaise very closely with the HCA on, for example, the management of diversity and proposed new organisational structures. We consider this to be appropriate within the context of the protection of social housing assets and agree that this should remain a major focus for the regulator.
4. The proposals for business plan stress testing and asset registers are sound and represent what should be normal business practice.
5. There is a continuing emphasis on the use of the audited Financial Statements as a means of certifying compliance with the HCA's VFM standard and the wider governance and viability standards. This should not be a function of the Financial Statements and we question this increasingly common practice to 'lean on' the auditors of the Financial Statements for regulatory comfort.
6. In terms of the rents proposals, we remain concerned at the loss of the additional +£2 per week rent increase for the purposes of rents convergence. Tenants see differences in rent levels as unfair and the loss of the additional income also means less capacity for many associations to build new homes.
7. The proposals on seeking permission, in certain instances, to raise finance are seen by a number of larger associations as not being entirely within the spirit of co-regulation and, potentially, a step in the direction of micro managing the financial arrangements of associations. A further concern is that HCA backlogs in this area could cause problems if an association had time constraints in completing a particular transaction.
8. Overall, however, the proposals are sound within the context of better protecting social housing assets and it seems appropriate that the HCA maintains a strong focus on this. And certainly the proposals are seen as positive by Moody's.
9. The governance proposals on board skills and responsibilities seem entirely appropriate.

Yours faithfully,

Paul Williams | Director of Resources

B3Living
Scania House,
17 Amwell Street, Hoddesdon EN11 8TS
www.b3living.org.uk

I'm a B3 Straight Ally – coming out in support of LGB&T equality

Black Country Housing Group

134 High Street
Blackheath
West Midlands
B65 0EE

T: 0121 561 1969
F: 0121 561 5694
E: info@bchg.co.uk

www.bchg.co.uk

18 August 2014

Tim Sullivan
Regulatory Framework Manager
Homes & Communities Agency – The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Dear Tim,

HCA Consultation on Changes to the Regulatory Framework.

Black Country Housing Group (BCHG) welcomes the consultation on changes to the Regulatory Framework, understanding the concerns and responsibilities the Homes and Communities Agency has for protecting social housing assets.

In particular BCHG acknowledges and supports the move away from the approach of ring-fencing social housing assets as outlined in the previous discussion paper, to one which reinforces the board's role in effective governance and risk management.

This organisation has considered the contents of the proposed changes set out in the consultation paper and responds as follows:

1 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?

> Black Country Housing Group agrees that the Proposed Standard meets the Regulator's economic objectives which require the protection of social housing assets.

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

The proposed Standard is indeed clear and succinct and, supported by the Code of Practice, does give Registered Providers clarity on the required outcomes. It is positive that the Regulator has strengthened the section on risk management and the accountabilities on boards, further reinforcing the ethos of co-regulation.

c) Do the requirements in paragraph 1.2 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 businesses?

It is essential that boards regularly review skills, capability and independence in order to govern the organisation effectively, and the proposals within the Standard seem appropriate. It is important that the Regulator's response in assessing compliance with the Code is again proportionate to the scale, diversity and risk profile of the organisation. Boards should be free to determine the appropriate skills mix and experience of its membership, reflecting local and organisational context, whilst at the same time ensuring that the Standard's requirements are met.

d) Do the requirements in paragraph 1.4 and 1.5 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?

BCHG fully supports the proposals which enhance management of risk. It is important however that each organisation determines its own approach to asset registers and stress testing, again linked to local context and organisational scale.

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

The requirements would appear to be reasonable, although BCHG does not currently fall into this group of providers.

<u>2 Code of Practice</u>

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

The proposed Code sets out very specific expectations of the Regulator's requirements in relation to the standard. BCHG would agree that this does assist understanding of how the Standard can be achieved.

b) Is the role of a Code clear and is it reasonable?

There is a concern however that the Code goes beyond the original intent of being for "amplification" purposes, into very detailed and specific expectations, that would seem to indicate prescriptive requirements, and less of the "co-regulatory" approach that the Regulator has stated is still a priority. It is likely that all Registered Providers will approach compliance with the Standard in their own unique way, since the sector is so diverse, therefore a check list approach by the Regulator against the sections of the Code would lead to a "one size fits all" approach that isn't practical or helpful. It is proposed that the final Code acknowledges that the purpose of it remains as "amplification" rather than specific expectations.

<u>3 Do the proposed revisions to the disposals regime:</u>

a) Meet the aim of protecting social housing assets and the value in it? and
b) Balance this aim with registered providers being free to run their own businesses? and

c) Are they reasonable?

It is considered that the changes to the Disposals Regime support the aim of protecting social housing assets. The Regulator should ensure however that the process and application of the Disposal Proceeds Funds does not become so overtly bureaucratic that the aim of creating more housing supply is stifled. Regulatory resource is stretched and as such should be appropriately applied, avoiding a reversion back to former regimes.

4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard? and
b) Are they reasonable?

The proposed changes to the registration criteria do indeed appear reasonable, in particular the requirement to demonstrate compliance with the Governance and Financial Viability Standard at the time of registration.

5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG? and
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposed standard reflects the Direction from DCLG. The requirements of registered providers are clear and the additional guidance is useful. The potential waiver for registered providers experiencing financial pressures is to be welcomed although this would not be applicable to BCHG.

6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The General Consent was a positive move forwards in a climate of co-regulation, as well as reducing bureaucracy for Registered Providers and Regulator alike. This organisation has most concern with the proposal to restrict on-lending of facilities secured on social housing assets within groups. In most if not all loan agreements there are requirements incumbent upon Registered Providers with regard to on-lending in order to mitigate the risk to lenders; security such as de minimis levels. It is the view of BCHG that this mechanism in itself should provide sufficient management of risk and protection of social housing. As mentioned earlier in this letter it is important that the Regulator does not seek a “one size fits all” approach in relation to tightening this consent, which could require consent for all proposals irrespective of scale or risk.

It is proposed that this section is amended to set some threshold over which consent is required, such as 5% of turnover. It is considered that this level would give Registered Providers sufficient flexibility, which would still be ascertained during regulatory engagement but without the need for excessive administration for many transactions which could well be insignificant in scale.

As I stated at the start of this response, Black Country Housing Group welcomes the opportunity to respond to the proposals outlined in the consultation paper, BCHG supports the objectives of the Homes and Communities Agency in protecting social housing assets, and broadly agrees with the proposals as set out.

I look forward to hearing from the HCA in due course.

Yours Sincerely

Amanda Tomlinson
Chief Executive

BME NATIONAL RESPONSE TO HCA CONSULTATION "CHANGES TO THE REGULATORY FRAMEWORK"

INTRODUCTION

BMENational is is a collective of over 60 Black and Minority Ethnic housing associations operating within England managing circa 60,000 homes nationally. It acts under the auspices of the National Housing Federation (NHF) and, as well as collaborating with the Federation to influence national housing policy, it also provides a consultative and promotional platform for BME housing issues.

BMEN aims to highlight the contribution BME housing associations, who mainly work in inner city, socially deprived areas across the country, make to successful, vibrant and integrated communities while promoting equality and diversity in the delivery of housing and support services.

BME National welcomes the opportunity to comment on the consultation document "Changes to the Regulatory Framework."

Changes to the Governance and Financial Viability Standard

Within the group there is a general consensus that in-respect of good governance and financial viability a demonstration of compliance is required. Whilst we recognise Housing Associations Boards already have a duty to ensure compliance with the Law, there is a concern that under the proposed new requirement to have accounts certified, Housing Associations will have to divert resources from delivery of services to feed the bureaucracy that tends to follow the need for certification. It is anticipated that evidence will need to be provided to enable the accountants/auditors to sign off a compliance certificate. It is feared that despite best efforts, the unintended consequence is that the evidencing exercise becomes disproportionate with the size and complexity of the business and at great expense that could be put to better use.

Risk

We agree with the principle that providers should have a strong understanding of risks and business stress points. We agree and understand that Housing Associations should keep accurate records of their assets and liabilities and that an up to date asset register is important to any business. Sharing of information and good practice to ensure all HAs irrespective of size are adequately prepared for the

risks they may encounter in carrying out e.g. new activities, to ensure compliance would be welcomed.

Introduction of Code of Practice.

BMEN recognises that HCA, in light of co-regulation, do not want to start to go down the route of Good Practice Guides or regulation compliance turning into a tick box exercise. However, we must acknowledged that some of our members found good practice guides to be helpful. Some members of BMENational welcome the introduction of Code of Practice to gain more of an insight and greater clarification of what is expected of members by the HCA. The notion of illustrative examples is particularly welcomed.

Revision to Disposal Regime.

We agree with the proposal to ensure ring fencing of social housing assets and to protect any profit from disposal of such assets.

Changes to Registration Criteria.

We have no comment on these proposed changes.

Rent Standard

As many other Housing Associations we feel strongly about the loss of the ability to converge rents at target levels and we feel it appropriate to voice this concern here. The loss of this facility takes the ability of Housing Associations to fund new supply and leaves Registered Provides pursuing the only other alternative of converting more properties to much higher affordable rents when they become vacant, which leads to higher housing benefit claims.

Rent convergence should be allowed to run its full course. We agree with our peers that the Regulators ability to waive specific requirements of the new Rent standard for a period of time should be extended to cover any situation where there will be a demonstrable adverse impact on a landlords approved business plan.

Proposed Changes to the Registration criteria.

We have no comment on these proposed changes.

Tim Sullivan
Regulatory Framework Manager
Homes & Communities Agency -The Social Housing Regulator
By email: to Tim Sullivan Tim.Sullivan@hca.gsi.gov.uk

12 August 2014

Dear Tim,

Response to Consultation on Changes to the Regulatory Framework

Please see our attached submission in response to the consultation

Introduction

We feel that the proposed changes seek to address one of the underlying issues for the sector namely poor governance practices and failure to respond to changes in the operating environment despite the improvements that have been made in the last 8-10 years. The changes in standards (supported by the Code) should help boards understand better their role and responsibility.

In responding to this consultation we have had recourse to BDA's 10 year experience and knowledge of the sector and the following criteria suggested in the consultation:

1. Do The Regulator's revised proposals strike the right balance between strengthening the Regulatory Framework while minimising burdens on the sector? Is it proportionate, consistent, transparent and accountable?
2. Do they support the principle of co regulation?
3. Do they meet the economic objectives? [i]
4. Do the changes proposed on managing risks protect current risk to public assets against financial and governance failings in relation to:
   - Slow burn risks (lack of investment in publicly funded assets
   - Risks to assets on for example seeking new opportunities through diversification based on relevant case studies such as Cosmopolitan
   - Boards consideration of liabilities in the widest context- those that have direct recourse to the social housing assets, but also those that could have an indirect claim.
   - How these may crystallise and can be managed and mitigated.

5 Do the changes empower boards and staff and make sure registered providers

- Have the appropriate skills for the type of activities they undertake.
- Conduct their affairs with an appropriate degree of independence in order to ensure that they act in the best interests of the organisation to promote its success for the benefit of the organisations purposes and not those of another party.

Consultation questions

A6.1 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?

Response

Yes. The changes now make it much clearer what governance and viability mean and what boards need to do to gain assurance that they are meeting the standards.

The change from "all relevant legislation" to "all relevant law "is justified as the legal framework in this country is governed by both statute common law and statutory instruments and these differences are helpfully described in the proposed code. The code also explains what law includes such as following statutory guidance. But judge made law and decisions on the interpretation of statute are open to challenge all the way up to the Supreme Court and European Court and European Court of human rights level. So it may not always be easy for RPs to know what "all relevant law is" as it often in a state of flux so some caveat needs to be included to cover this and not become an unreasonable burden.

The specific inclusion of **protect social housing assets** is welcomed as many boards now seem to have a mission to make as much money as possible and this can lead them to lose sight of the historical contributions the taxpayer has made to developing social housing assets for the benefit of people who cannot afford to buy or live in market rented properties

The addition of **while ensuring that social housing assets are not put at undue risk** backs up this responsibility.

The proposed revisions reflect the lessons learned from Cosmopolitan

Re proposed 1.7 and Reporting requirements

There is still much hostility to the regulator on the one hand while on the other a tendency to complain that the regulators requirements are not clear enough as in the recent case of VfM self assessment. Many organisations still operate under a

veil of secrecy to protect alleged commercial confidentiality which is inappropriate in many instances. Any proposal that requires proportionate and timely communication with a key stakeholder like a regulator and residents is an important part of the co regulatory principles and is to be welcomed.

Re proposed 1.8 Registered providers shall assess their compliance with the Governance and Financial Viability Standard at least once a year. Registered providers' boards shall certify in their annual accounts their compliance with this Governance and Financial Viability Standard. It is good practice for all providers to assess their compliance with the Governance and Financial Viability Standard at least once a year.

This direction while it is process led is useful so that Bards are in no doubt about their responsibilities. It is a pity that registered providers need to be reminded of this.

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

Response

Yes subject to the comment made above

c) Do the requirements in paragraph 1.2 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 businesses?

Response

Skills and capability

1.2 Registered providers shall ensure that they manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight.

This is in some degree a statement of the common law and statute (Companies Act 2006) in relation to director's duties but presumably the standard is also intended to include staff as well. As well as the National Housing Federation Excellence in Governance code this reflects s the UK Code of Corporate Governance (also adopted by some RPs) which says that "the board and its committees should have the appropriate balance of skills experience independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively ".

In the commercial context the independence refers to the mix of executive and non executive directors or whether they have been an employee of the company within the last 5 years or has had a material business relationship with the company directly or as a partners of is a director or employee of a body that has a relationship with

the company or represents a significant shareholder and who has close family ties with directors or senior employees. Independence in the commercial sector means that for small companies at least 2 directors should be non executive directors whereas in this sector the norm is the reverse of this with usually at most has no more than 2 executive board members. It is not made clear in the code that the notion of independence is not intended to go as far as to exclude residents and nominees of local authorities, who have a shareholding or a joint venture partnership with the RP. Hence there could be a danger in losing board membership by residents as an important co regulatory principle.

It is agreed that as this change reflects current appropriate codes of governance it is reasonable that there is a formal requirement in the Standard in relation to independence skills and capabilities. Whilst consultation makes it clear that Independence does not mean that "the Regulator does not expect independence from other non-profit registered entities within the same group".

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Response

Risk and protecting social housing assets

Re the new proposals which requires

a) maintaining a thorough, accurate and up to date record of their assets and liabilities and particularly those liabilities that may have recourse to social housing assets
b) carrying out detailed and robust stress testing against identified risks and combinations of risks across a range of scenarios and putting appropriate mitigation strategies in place as a result
c) before taking on new liabilities, ensuring that they understand and manage the likely impact on current and future business and regulatory compliance

Recording assets and liabilities should be an integral part of risk management and the consequences of a failure to do so were highlighted in the Cosmopolitan review. It is also clear that boards are seldom aware of the link between individual social assets acquired with public funds and liabilities which attach to them. It is an important part of stress testing scenarios to understand the effect on particular assets.

Stress testing is a regulatory requirement of the FCA for the banking and financial sector borne out of the 2008 banking crisis. These proposals are welcome in view of the lessons learned from Cosmopolitan and will be an important contribution to informing effective and transparent board decision making. Stress testing scenarios

should help boards understand their business model better and this is to be welcomed.

We like the reference in the code at C1.4.3 to
"Boards should ensure that they effectively identify and manage any risks of re-financing whether this be planned or in reaction to changes in the operating environment. "

And

C1.4.4 Registered providers should also look at the relationship between operational and capital cash flows. The Regulator expects registered providers to meet non-discretionary expenses (including all major repairs (whether capitalised or not) and interest costs) from operating income. Where registered providers are using capital income (for example proceeds from disposals) to meet operating expenses, then boards should ensure that there is a trajectory that ensures that in due course operating cash flows fully cover operating expenses. In the meantime, a plan should be put in place to ensure that exposures can be managed.

The requirement to fully understanding liabilities aims "to focus on transactions which, for example, over-price a service received so that the contractor is paid more than market value or where services are given without an appropriate charge being levied." These presumably go beyond for instance sale and leaseback arrangements linked to inflation which require the regulator's consent and an example would be helpful in the code of practice.

This is welcome if it requires boards to be more aware (which they have not always been) of where cross subsidisation operates within services and across organisational structures or business deals. Where organisations lack experience of certain types of arrangements the aim of this is to prevent exploitation. It is noted that it is "not the Regulator's intention to restrict a registered provider's ability to benefit partners where doing so is in line with their objects (such as supporting a charity or community venture)." So it will not preclude community benefit purposes or investing in social value driven arrangements and this clarification is helpful.

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

Response

1 Legal entity – profit making registered providers

Agreed

2 Assistance – registered group parents

Agreed

3 Arrangements entered into - registered providers with unregistered parents.

Testing whether arrangements with a parent or another group member "that may have a material negative impact on the social housing assets of the registered provider." Should be part of stress testing but the regulator is right to make this clear with the addition of this.

A6.2 Code of Practice

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

Response

We have looked at this in relation to

1. Does it support the principle of co regulation?
2. Does it help organisation understand how to meet the economic objectives?
3. Does it help explain the new approach to managing risk?
4. Does it help to empower boards and staff?

It is a pity that a Code or practice is necessary but in our experience the sector seems finding too much freedom or liberalisation daunting. The code is a helpful contribution as for instance many organisations complained about what they saw as the lack of direction given on what was required to meet the VfM standard in relation to a VfM strategy and self assessment. A Code or practice is helpful as long as it does not become a micro-management tool or seen by boards (and staff) as a tick list. The code explains how it hopes to avoid this and achieve the aim of being helpful without being directive. For instance it says "Examples of how compliance might be achieved are not intended to be exhaustive neither are they intended to be prescriptive. If a registered provider can comply with the requirements of the Standard in a different manner then it is free to do so. If there are any conflicts between the Code and the Standard, the Standard takes precedence."

In relation to our 4 questions it helps co- regulation by describing to board members with clear examples how they should approach the economic standards. It is particularly cogent in relation to the new risks the sector now faces and builds on dealing with risks identified in recent governance and viability failures. I think it will empower boards and help staff to understand how to run a commercial business in a manner which protects assets built with public funds and understand the relationship between the commercial and the charitable by helping boards better understand their business models.

b) Is the role of a Code clear and is it reasonable?

Response

Yes mostly

Some of the language tends to lapse into jargon which is not always clear and often has different meanings such as

"A robust asset management strategy to 'churn' assets thus securing additional value for the provider and for the social housing sector is acceptable." (B3) This may not be understandable? Can we change to " to sell assets with a low of negative rate of return to secure additional use value by investing receipts in other assets to produce a better rate of return" ?

Can we find an alternative to C1.4.5?
"Registered providers' business plans need to be built on robust and prudent assumptions." To perhaps "relevant appropriate and tested assumptions "

And "with sufficient headroom to allow registered providers to take remedial action" change to perhaps "with sufficient spare capacity to allow registered providers to take remedial action"

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Response

Yes; it is clear that a lot of thought has gone into this

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

Response

Yes it is proportionate to the aim in a)

c) Are they reasonable?

Response

Yes

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Response

Yes

b) Are they reasonable?

Response

Yes

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Response

Yes as far as we can see

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Response

Yes

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Response

The proposed consents order is very clear and comprehensive and appears to be proportionate

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

Response

The new inclusion of possible registration by charitable incorporated organisations is helpful and plugs a gap in regulation and control over assets.

b) Express the requirements of registered providers in a way that is clear and succinct?

Response

Clear explanations are given by reference to the law and charity commission regulation for the changes which are very helpful in understanding the reasons for them

Also explanation to meet identifies gaps such as where constitutions enable an organisation to become or cease to be a subsidiary of another organisation without any change to the constitution. So that the regulator is advised of these changes in status in future

Yours sincerely

Yvonne Atkinson
Co Director

[i] Which is to ensure that registered providers of social housing are financially viable, properly managed, and perform their functions efficiently and economically

- to support the provision of social housing sufficient to meet reasonable demands (including by encouraging and promoting private investment in social housing)
- to ensure that value for money is obtained from public investment in social housing
- to ensure that an unreasonable burden is not imposed (directly or indirectly) on public funds
- to guard against the misuse of public funds

Bolton at Home's response to Regulatory Framework Consultation

A6.1 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?

Bolton at Home fully supports the HCA's desired aims of protecting our social housing assets and ensuring that any public sector investment is preserved for the purpose it was granted. These objectives are in our customers' best interests and we are agreed in putting their interests first. We recognise that the present difficult financial situation makes it very difficult to create a framework that allows social housing providers enough flexibility to develop a broader more financially secure base whilst, at the same time, minimising risk and preventing over-reach.

The proposed standard goes some way towards achieving this aim but, we feel, risks going too far in terms of its protective measures and not far enough in developing a model where the constructive use of regulatory powers can encourage and support the innovation and growth necessary to meet the challenges we face.

As the HCA is aware housing association income flows are seriously threatened by the consequences of welfare reforms and the overall impact of austerity on our financially vulnerable customers. Further, our expenditure has increased significantly as we try to manage a worsening situation; especially having to absorb the costs of higher void rates and take action against debt. So simply standing still is not an option, we have to grow to survive and to protect the social housing assets that we both see as an organisational imperative and social responsibility. The HCA has a key role to play in providing expertise, advice and to act as a critical friend creating a regulatory framework that is focused, streamlined, not too prescriptive or bureaucratic; but is sharp enough to ensure that the overall financial viability of social providers is never seriously at risk.

Further, we and others are exploring the merits of social value as a basis for increasing the return we get from our assets, drawing in more external investment, and creating new resources (through re-investment) that have a direct positive impact on our customers. Modernised relevant regulation processes need to reflect, support and encourage this approach whilst developing sufficient checks and balances to ensure that any potential problems are addressed at an early stage.

The best way to meet the HCA's economic objectives to protect and grow social housing assets is to significantly increase public sector investment in developing a viable, secure and sustained sector. Unfortunately, the national financial situation prevents this from happening and it is more likely that levels of public investment will reduce over a period. Does this mean that, as the public subsidy element reduces as a proportion of our overall asset base, the HCA's regulatory influence should reduce proportionate to this shrinkage? We think not. There is a

clear and continuing role for the HCA to provide a quality mix of regulation, support, and co-ordination as a fulcrum for growing and protecting the social housing market. This is especially so if the HCA remains largely publicly funded body representing and championing public interest.

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

Generally the proposed Standard is clear and outcome focused but potentially too detailed. It would benefit from a degree of pruning back to concentrate on some of the most important factors. The danger of not doing this is that it risks regulation appearing to be too constraining, not giving us enough reasonable space and independence to make key decisions on a range of issues of varying importance and impact. The Standard would really have impact if it concentrated more on the really big issues.

c) Do the requirements in paragraph 1.2 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 businesses?

It is sensible to concentrate on the importance of good governance as quality leadership is essential in securing the very best business decisions based upon balancing options and assessing risk. We would agree that our boards need to be stacked with the appropriate mix of skills and experience. But as recent massive failures in the banking, commercial, and financial markets have shown 'business acumen' is not always found in the most likely places.

We largely support the HCA's views on having a broad skills-based governance body. At Bolton at Home a third of our Board is made up of independent members as written into our constitution; they add expertise to an already rich pot. It is the bringing together of these with our tenant representatives (who provide a customer perspective), and our elected members (who provide, amongst other things, political insight) that makes our governance effective**.** Unless this mix is in place and working well the introduction alone of business-minded independents alone will not provide the solution to quality decision-making. Further, it should not be presumed that relevant business experience can only be found by bringing in independents, as many tenants and elected members may hold these skills.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

We would not take issue with anything included in the Standards and understand the reason why HCA are suggesting that they are necessary. Our concern is that

they could be seen as too prescriptive; they are a one size fits all approach to an issue that requires a more sensitive understanding of how different organisations have different levels of assets, commitments, skills, attributes, track records and capacities for growth. It is suggested that the HCA consider developing a modular process that provides levels of regulation that, whilst consistent, is much more bespoke and reflect all these differences.

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

There are a few things worth considering in relation to profit-making social housing providers:

Where in 2.1 (i) it mentions any activity not related to social housing should only form a small part of activities undertaken you could add 'and it should not be at odds with the principles of social housing'.

We would support the HCA in recognising that for-profit social providers present a problem in that there is a greater potential for conflict between their social responsibilities and their need to produce returns for shareholders. As this may happen unintentionally as much as intentionally; it supports the need for firmer regulatory control over the parts of their overall commercial activity the HCA has some control over.

A6.2 Code of Practice

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

Yes.

b) Is the role of a Code clear and is it reasonable?

Whilst it is comprehensive and helpful its clarity and focus could be improved by a little editing.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Yes this is an important and welcome inclusion into the regulatory armoury ensuring that for-profit social housing providers are not re-directing social assets out of the system. We note that the Regulator is aiming to issue a new General Determination regarding the uses of the Disposal Proceeds Fund to replace the existing one, which will include guidance on what profit making registered providers can use proceeds from the DPF on. We would suggest that this includes/strengthens the requirement for these proceeds to be invested in the

locality that they were generated from (be that city, town or actual neighbourhood) so that the social housing asset is not lost from that area. In addition we would argue that, where the social housing provider is saying they are unable to comply with using the resources in the locality, they are offered to a social housing provider who could. An alternative solution would be for the resources be returned to the HCA who could then re-distribute it to someone who can use them in the locality. It would be only once either or both of these options have been exhausted should consideration be made of using it elsewhere.

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

Yes as this ring-fences social housing assets but allows other business activity to be unhindered.

c) Are they reasonable?

Yes, fully supported.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Yes, especially as they tighten up the regulation affecting those for-profit social housing providers.

b) Are they reasonable?

The proposals to remove all clauses that are already explicitly covered by our status as a registered charity seems sensible as does those that allow more freedom in wording. Whilst it does seem unlikely that organisations would seek registration but want to be deliberately obtuse about whether or not they want to provide social housing, the HCA's insistence on stating this more clearly is reasonable.

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

They do deliver the government's change of direction on rent convergence. The problems that this has caused to some of us are well-rehearsed and, it is hoped, a sensible solution will emerge that benefits all.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

They are clear, succinct and outcome focused, and reflect what the government is expecting. It also accurately outlines the problems that has prompted the waiver discussions which have now been successfully concluded.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

They go a long way towards protecting assets from over-reach. We can understand the reasons for this cautious approach as there have been a couple of high profile examples of where ambition may have exceeded business sense. However the reality is that many of us owe it to our customers to develop new and improved services that are important to their changing needs and expectations. Also, that we are faced with a longer term funding gap that needs to be addressed by additional income generation. Of course this does not mean we adopt a cavalier approach to risk or abandon solid business practices. Rather we look to the HCA to provide sensitive proportionate regulation but also for support in growth and innovation.

A6.7 Do the other proposed changes to the regulatory criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

They are consistent with the overall approach taken.

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes.

Regulatory Framework Consultation Response

bpha August 2014

A6.1 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? Overall yes and we would agree with the Federation's response that its focus on risk management is a major step forward from the 2013 discussion paper, with its emphasis on ring-fencing. We would reiterate our point that the regulator should have the required resources and the expertise in order to enable them to monitor RPs undertakings.
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible? In the Governance standard one of the required outcomes is that there is a statement to "adhere to all relevant law". We can understand the outcome which the HCA seek, however it may be difficult to provide ongoing assurance on this outcome should a historic decision later be ruled to have not adhered to the law. The scope of legislation being considered here is so wide, it may be difficult to definitively know until it has been highlighted through review or challenge that we are not adhering to relevant legislation. We would suggest changing this to "landlords should take all reasonable steps to ensure that they have adhered to relevant legislation" We agree that the Standard is, on the whole, clear, succinct and outcome-focused and therefore there is no need for an explicatory Code.
c) Do the requirements in paragraph 1.2 on skills, capability and independence: *i) meet the Regulator's aim of protecting social housing assets?* *ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?* • We are in agreement that the greater diversity of the sector, combined with a more difficult operating environment, imposes increasing demands on associations' leadership. • A standard of governance that was acceptable ten years ago may well not be so today. • The regulator's interest in this issue is valid but it is difficult for a regulator to get to grips with. • Whilst "skills and experience" of Boards are important alongside this an equally important quality for boards is the ability for critical assessment and constructive challenge. • The decision to keep the regulatory requirement at a strategic and high-level puts the responsibility on associations to ensure that their governance arrangements are suitable, and remain suitable as their business evolves. • We agree that the regulator should refrain from making specific stipulations about the

composition of Boards.

d) Do the requirements in paragraph 1.4 and 1.5 on risk:

i) meet the Regulator's aim of protecting social housing assets

ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

We are in agreement with the HCA about the importance of strong risk management and the move away from the ring-fencing requirement is welcomed.

However, the HCA's discussion of risk is currently based on general business issues affecting the wider economy (e.g. property values, the cost of credit). It might add further value if it were to also refer to risks that are more specific to the sector. The HCA could also be clearer around the management of risk applying to all parts of the organisation, including social housing as a primary function. It is important to avoid the view that social housing is inherently less risky than other types of activity.

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

Although this particular point is not applicable to **bpha** we support the Federations response to reiterate points here about treatment of for-profits.

There is a concern that the requirements might not deliver the regulator's stated aim of ensuring equality of treatment between for-profit and non-profit PRPs.

This is around profit RPs who are putting the whole of their net proceeds of sale in a disposal proceeds fund, whereas the corresponding obligation for non-profit RPs applies only to the grant element.

A6.2 Code of Practice

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

We feel that the addition of a code does not necessarily add value to the revised regulatory framework.

The key issue is not about content but more the source. The role of the regulator is to regulate; rather than to offer advice and guidance as set out in the draft Code. It is likely whether intended or not, that the Code will come to be regarded as regulation.

b) Is the role of a code clear and is it reasonable?

The role of the code is not clear and possibly not reasonable. The statement that the Code is not regulatory is compromised by the frequent use of regulatory language and tone within it. As suggested above the real difficulty is more related to the issue that a regulatory body is unsuitable to provide advice and support in this way.

A6.3 Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it? We support the aim of protecting social housing assets and the proposed revisions move further towards achieving this aim. We have some concerns and these are set out in more detail in the responses below.
b) Balance this aim with registered providers being free to run their own businesses? We support and are in agreement with the aim of preventing a loss of social housing assets from being diminished from the sector, or being put at risk of doing so. However, associations should not be blocked in carrying out business as usual activities that do not generate particular risk. We value HCA assurance that the aim is not to prohibit activities that will now fall outside the general consent, but only to ensure that they have an oversight. However, this approach will inevitably result in an increased flow of consent requests and it raises concerns about whether the HCA is resourced to manage this. The issue could be mitigated by allowing associations who wish to restructure or refinance their business to seek HCA consent to the whole process at the outset. This would allow disposals to be carried out in accordance with the process but without requiring separate HCA consent. This will allow associations to proceed with confidence once the HCA has consented to the whole process, and will also reduce the administrative burden and delay involved in consent requests.
c) Are they reasonable? There are some potential problems with this part of the HCA's proposals. The HCA seems, at some points, to have assumed that its power to regulate disposals amounts to a more general power to regulate financial transactions such as lending. This causes confusion and leads to a discrepancy between the consultation paper and the draft general consent. The changes to the general consent are likely, unless managed, to result in an additional administrative burden both for providers and for the regulator. The HCA could mitigate this burden by granting a single consent to a financial process so that individual disposals are part of that process do not require further consent.
A6.4 Do the proposed changes to the registration criteria:
a) Reflect the proposed changes to the governance and viability standard? We support this change proposed by the HCA. While it is important that new entrants should be able to gain admittance to the register, they should be expected, once admitted, to abide by the same standards as existing providers.

b) Are they reasonable?

We feel they are reasonable.

A6.5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG? The consultation sets out some major changes to the Rent Standard. Given that these changes merely reflect the Secretary of State's Rent Direction a response is not required (and a separate consultation exercise was run by CLG). Although we are not happy with the Rent Direction, particularly because of the removal of convergence provisions for rents below target, we recognise that HCA's only option was to comply with the Directive. We agree that the HCA's proposed changes to the Rent Standard, in essence, reflect DCLG's Direction on the Rent Standard 2014 - the rent increase formula to Consumer Price Index (CPI) +1% and the removal of rent convergence. The Standard clearly articulates the requirements of the Direction in a way that will help us to apply them. We support the ten-year CPI+1% rent rise, which provides certainty and allows us to plan with more confidence. However the abolition of rent convergence will have a negative effect on business plans. DCLG and the HCA have agreed to consider waivers to allow convergence but only in a very narrow set of circumstances. We would encourage DCLG and the HCA to widen the scope of waivers.
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible? We feel this could benefit from clearer wording for paragraph 1.5 in the Specific Expectations. This relates to high-income social tenants (households with an income of £60,000 or more), and states that the normal requirements of the rent standard will not apply to them. Section 5 of the Rent Standard Guidance explains that PRPs "may" have a policy for these tenants, and "where they do so" they should act in accordance with section 5. It would be preferable for it to be stated clearly in the Standard rather than the Guidance, that PRPs are not required to adopt a separate rent policy for high-income tenants, and that when a provider has elected not to adopt such a policy, these tenants are subject to the Rent Standard in the same way as any other tenant. This would represent the policy intent and it would be helpful to add that where there is no separate rent policy for high-income tenants, there is no necessity for the provider to collect

information with a view to identifying them.

A6.6: Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?
We support the aim of preventing social housing assets from diminishing from the sector, or being put at risk of doing so. However, providers should not be obstructed in the carrying out of day to day business operations that do not generate particular risk. We appreciate the regulator's assurance that the aim is not to prohibit activities that will now fall outside the general consent, but only to ensure that the regulator has oversight of them.

A6.7: Do the other proposed changes to the registration criteria:
a) Contribute to the Regulator better meeting its fundamental objectives? Yes
b) Express the requirements of registered providers in a way that is clear and succinct? Yes

via email: consultation@hca.gsi.gov.uk

19 August 2014

Bracknell
Forest Homes

Dear Sir/Madam,

Response to consultation on changes to the Regulatory Framework

Following our response, and that of the sector more broadly, to last year's initial discussion paper, Bracknell Forest Homes is pleased to note the HCA's movement in its proposals.

The Association acknowledges the importance of the protection of social housing assets and agrees with the regulator's proposed requirements for rigorous stress-testing of business plans and the maintenance of an up-to-date register of assets and liabilities.

However, there are a number of points of significance where we believe the current Consultation Document needs further review. These are as follows:

1. Code of Practice

   Bracknell Forest Homes agrees with the National Housing Federation's (NHF) view that a formal Code of Practice should not be adopted. There is a danger that, far from providing clarity, it will cause confusion as governance "requirements" proliferate in different documents produced by the HCA and NHF.

2. Governance Outcomes

   Also, in keeping with the NHF's views, we do not agree that statutory guidance by bodes such as the Charity Commission, should be regarded as "law". This will add further layers to the already complex task of governance registered providers.

I trust these comments will prove useful.

Yours sincerely

Caroline Titley
Chief Executive
Bracknell Forest Homes

Registered Office: Berkshire Court Western Road Bracknell Berkshire RG12 1RE
Tel 01344 382800 Customer Enquiries 0800 692 3000
Email bfh@bracknellforesthomes.org.uk Web www.bracknellforesthomes.org.uk
Bracknell Forest Homes Limited is a charitable registered society under the Co-operative and Community Benefit Societies Act 2014 registration number 30230R

Bromford.

SMH/sjp

1 Exchange Court
Brabourne Avenue
Wolverhampton
WV10 6AU

bromford.co.uk
@Bromford
/thisisbromford

18th August 2014

Mr Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
Maple House
149 Tottenham Court Road
London
W11 7BN

Dear Mr Sullivan

Please find herewith our response to the HCA consultation on changes to the regulatory framework:

A6.1

Q: a) Overall does the proposed Standard met the regulator's economic objectives which require the protection of social housing assets?

Generally, yes. We feel the HCA proposals in this consultation paper rightly focus on risk management, and that the prime responsibility for this sits with Boards.

Q:b) Does the proposed Standard express the requirements of registered providers in a way that is clear , succinct and as outcome focused as possible?

No we don't agree that it is clear and sufficiently outcome focussed. In particular:

1) The introduction of a Code of Practice risks taking us back to the tick box mentality that prevailed prior to the co-regulation approach and shifting the focus back from outcomes to inputs.
2) Under the "Governance required outcomes" the widening of the requirement from "adhere to all relevant legislation" to "adhere to all relevant law" reduces the clarity we had around our statutory compliance obligations, and may, in some cases, extend the compliance requirement beyond what may be necessary on a case by case basis. Added to the requirement in 1.8 for for Boards to "*certify on an annual basis that they continue to meet the Standards*", this very wide language may (i) bring added cost and bureaucracy as HA's try to provide the necessary

compliance assurance to Boards and (ii) deter potential NEDs from taking up posts in the sector.

We suggest that the wording is changed to "make all reasonable endeavours to adhere to relevant law".

Q:c) Do the requirements in paragraph 1.2 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 businesses?

1) The requirements under the "Specific expectations" at **1.2 i**n relation to "*skill, independence, diligence,* etc" (and expanded on in detail in the proposed Code of Practice) appear to be a duplication of what organisations are required to do under their existing adopted Codes of Governance. Adding this requirement into the standard does not appear to bring any specific benefit – and may, if there is a conflict with an adopted Code of Governance, simply cause confusion. It isn't clear whether these requirements are over and above the requirements of adopted governance codes.
2) Specific expectations **1.3** require HA's "*…to communicate in a timely manner with the Regulator on material issues*…..etc". We are happy to comply with this but feel it is important that HA's can have confidence that any dialogue should be with appropriately skilled HCA officers who understand the environment and risks that HAs are operating in and have the authority and expertise to make balanced judgement calls without a 'tick box' approach.

Q:d) Do the requirements in paragraph 1.4 and 1.5 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?

1) The requirements in **1.4** for a robust and prudent risk and control framework is relatively clear.
2) We agree with the principles set out in **1.5** around an asset & liability register, stress testing etc. However, we have some concerns, in light of the HCA's requirements and response to the Value for Money statements, about exactly what is required in terms of an asset and liability register, including any timescale for compliance. Also, particularly in relation to the asset & liability register, there seems to be some conflict between the wording/interpretation of the Standard and the Code, for example:
    i. **3.7 (page13) consultation document** says "*The aim of the Code is to amplify requirements in the standard…. Making it easier for RPs to understand what*

is expected of them. ….the Code is not intended to be a set of rules….It is for RPs to determine how best to meet the requirements in the Standard"

ii. **3.27 (page17) consultation document says "***The code articulates what is expected of an asset register.* **…"**

iii. **3.28 (page17) consultation document says "….***the Code makes clear that the Regulator expects RPs to consider***…."**

iv. **Annex 2 – Code of Practice** – point 5 says "*…the Code amplifies requirements in the Standard by explaining and elaborating on the conten*t…"

v. **Annex 2 – Code of Practice** – point 7 says "*Examples of how compliance might be achieved are not intended to be exhaustive neither are they intended to be prescriptive. If a registered provider can comply with the requirements of the Standard in a different manner then it is free to do so. If there are any conflicts between the Code and the Standard, the Standard takes precedence*"

A6.2 Code of Practice

Q:a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

Q:b) Is the role of the code clear and is it reasonable?

A) There seems to be a conflicting message from the Regulator in relation to (i) on the one hand issuing a detailed prescriptive Code and (ii) on the other hand saying that HAs have the freedom to work out how to comply with the Standard.

3.62 (p24) consultation document says "*In considering whether Standards have been met, the HCA may have regard to a code of practice. However it is the Standard rather than the code of practice that…would enforce against*". **3.66 (p25)** says "*…when assessing compliance with the Standard, the Regulator will* ***have regard to the Code***…". **3.68** says "*…proposing a Code* ***which sets out clearly what compliance with the standard looks like*** *whilst giving RPs the flexibility to innovate and develop their own approaches to achieve the outcome set out*…"

3.42 (p20) "..since the Code is not guidance, certification of compliance with the Code is not required".

In our view the confusion evidenced in drafting the new standard further confirms that any Code of Practice will cause confusion for both providers and regulators and undermine the co-regulatory approach. **We feel strongly that there should not be any Code of Practice.**

A6.3 Do the proposed revisions to the disposals regime

Q:a) Meet the aim of protecting social assets and the value in it?

Q:b) Balance this aim with registered providers being free to run their own businesses?

Q:c) Are they reasonable?

A) There could be occasions where 'social housing purpose' needs wider definition – for example an ExtraCare scheme which is part outright sale and part social housing.

How long could gaining specific consent take and would that hold us up? Is there sufficient resource at HCA to cope with potential high volume of requests? At what point could HCA withdraw category 6 – ie would a downgrade to G2 mean we lost category 6?

A6.4 Do the changes to the registration criteria

Q:a) Reflect the proposed changes to the governance and viability standard?

Q:b) Are they reasonable?

A) Yes

A6.5 Do the proposed changes to the Rent standard

Q:a) Reflect the Direction from DCLG?

Q:b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

A) Yes

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

A) We need clarity around 'profit making' and 'non profit making providers' – we take this to mean 'not for profit providers' and 'for profit providers' i.e. newly registered 'for profit' RPs.

A6.7 Do the other proposed changes to the registration criteria:

Q:a) Contribute to the Regulator better meeting its fundamental objectives?

Q:b) Express the requirements of registered providers in a way that is clear and succinct?

A) Yes

Kind regards

Sue Harrison

Director of Business Planning

[redacted]

Response to Consultation on Changes to the Regulatory Framework

Campbell Tickell

August 2014

1. Responses to consultation questions

A6.1 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?

1.1. Overall our view is that the revisions are largely positive and are an appropriate response to the change risks that the sector faces.

1.2. We think the proposed Standard could be enhanced by taking into account some of the recommendations from the 'Cosmopolitan Housing Group: Lessons Learnt' report published by Altair earlier this year (see paragraphs 1.11 and 1.12 below).

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

1.3. We note a few areas where wording is not clear. The phrases "appropriate degree of independence" (1.2) and "inappropriately advance the interests of third parties" (1.6) are not clear. The Standard needs to be more explicit, possibly using the Code to give examples of what the Regulator does not want to see.

c) Do the requirements in paragraph 1.2 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 businesses?

1.4. We think it would be helpful to place particular emphasis on finance and business skills as it in this area where we see many of the weaknesses in the Boards that we review, and is to be likely an important set of skills to have to deal with challenges in the future.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

1.5. We believe the provisions go some way to meeting the Regulator's aim of protecting social housing assets.

1.6. We consider the requirements regarding RPs' business planning and risk control frameworks in paragraphs 1.4 and 1.5, while sound and justified, may lead to RPs avoiding even minor risks. This may be because they lack the appropriate skills which should be dealt with as RPs comply with paragraph 1.2.

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

1.7. Our view is that the requirements set out in Section 2 are reasonable.

A6.2 Code of Practice

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

1.8. Overall we welcome the Code as it establishes, for providers, a response to the HCA's regulatory expectations. We think it will assist RPs to understand how to achieve compliance.

b) Is the role of a Code clear and is it reasonable?

1.9. While we recognise the legislative constraints on terminology used, we consider the term 'Code' to be misleading. A code is normally a document to which organisations sign up, however this document is more discursive in nature. The use of the term 'Code' for this document is confusing.

1.10. The consultation document states "the Code is not guidance and is not a tick list to ensure compliance" however we think, in practice, the Code will form guidance and we anticipate that the regulator will use the Code as a measure of compliance in some way. This will very quickly morph the Code's role into that of a check list. We would, as stated above, welcome greater clarity of language in this area.

1.11. Paragraph C1.4.3 could be strengthened by recognising the recommendation from the Altair report that the Board must be provided with accurate short-term and medium-term cash positions, have treasury strategies and report that recognises off-balance sheet forms of funding, and that organisations should have at least three months of available secured facilities and cash as well as complying with good practice (e.g. CIPFA guidelines). There could also be recommendations in the Code, corresponding to paragraph 8.2.9 of the Altair report, that Boards sign off financial reporting to the Regulator and inform the Regulator if free cash appears not to cover the organisation's activities for a period of less than three months.

1.12. We would also suggest the addition of a stipulation that organisations should call upon independent advice, conduct rigorous due diligence, and monitor compliance with covenants when entering into major transactions with other parties (as set out in 8.1.2 in the Altair report).

1.13. We are uncertain as to whether it is reasonable to limit non-social housing activity to 5% of capital or turnover (C2.1.2) in the case that an RP may be providing services to other RPs. If a cap is to be defined, it may be clearer to state "no more than 5% of capital or turnover, whichever is the larger of the two".

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

1.14. We have no particular comments on this section and see the changes as broadly meeting the aim of protecting social housing assets.

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

1.15. We consider the balance to have been achieved.

c) Are they reasonable?

1.16. Broadly yes.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

1.17. Yes, they do reflect the proposed changes, but there is work to be done in developing registration guidance that reflects the Code of Practice. The registration process should be a gateway to effective regulation that takes into account the nature, size and complexity of a registration applicant.

b) Are they reasonable?

1.18. Yes.

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

1.19. Yes, they reflect the Direction from the DCLG and do give consistency between local authority and housing association (RP) rents.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

1.20. The standard is as succinct as it can be given the way that rent regulation has grown since 2000 and the introduction of social/target rent.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

1.21. These provisions are consistent with our view of what the newly diversifying sector requires.

1.22. Regarding the extension of the conditions to category 6 of the General Consent, we would ask whether the provision for greater scrutiny of on-lending between bodies within a group would extend to decisions and transactions already in place – would RPs be subject to more scrutiny now as a result of the decisions they have made in the past when the extension to the conditions was not in place?

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

b) Express the requirements of registered providers in a way that is clear and succinct?

1.23. Yes, they do meet those fundamental objectives. The clarification of requirements for charitable and non-charitable registered providers is welcome.

1.24. There is the potential for confusion regarding compliance with the Rent Standard at registration. Is it the right interpretation that compliance with the Rent Standard is optional? If not, should the registration criteria state that compliance with the Rent Standard is compulsory?

Catalyst Housing Limited – Response to Consultation on changes to the Regulatory Framework

General

- We understand the value and importance of a strong regulatory framework and are supportive of the aims of the changes in protecting social housing assets and public value.
- We think the HCA is generally focussing in the correct areas by increasing the emphasis on risk management together with board skills, capabilities and independence. We agree that an improved asset register and business plan stress testing are prudent ways to monitor these.
- We have concerns that some of the requirements are too prescriptive and some of the terminology used is either too broad or unclear. It is also unclear in places what is a requirement under the Standard and what is guidance or recommended good practice.

Governance and Financial Viability Standard

- The focus on skills and capability is appropriate. However it should be acknowledged that it may be harder for some organisations to demonstrate compliance depending their size and location and especially where board members are reaching the end of their tenure.
- It is not clear in the document whether you expect board members of a non-profit provider to be 'independent' of its wholly owned subsidiary board members. If so, we do not think this is practical or desirable where the purpose of the subsidiary is to cross subsidise the provision of social housing.
- The proposal introduces a number of additional certifications for the board – for example an annual sign off of the effectiveness of the risk, business planning and control framework and certifying compliance with the Governance and Viability Standard within the accounts. Whilst we understand the aim of this in demonstrating that responsibility rests with the Board, this has the potential to create an immense amount of work in order to demonstrate compliance both to the board and the auditors. This is particularly the case with the statement that we 'have complied with all law', which includes common law and Charity Commission guidance. This will be vast and very difficult to monitor and certify in reality. We would suggest a materiality clause here, or wording to the effect of 'to the best of our belief and knowledge' to be added to the statement. We would not want this to evolve into a new version of the Self Assessment Compliance Statement or become a box ticking exercise.
- The references to third parties seem to include wholly owned subsidiaries of charitable parents. This may be a matter of terminology but we are concerned this could catch transactions between these parties which may take place below market value by virtue of them being in a tax group. There is no gain to the subsidiary here as they would gift aid any profits to the charitable parent.

Code of Practice

- We support the idea of a code which more clearly sets out our obligations under the Standard by stating clear guidelines on how to the Regulator's requirements.

- However the draft code repeats a lot of information given elsewhere, and although it provides some context and a few examples it is not really a code. A more concise code with further examples and less background would be more useful.
- We find the status of the code quite confused. The document states that the code has a status in law, but is not compulsory and nor is it guidance, but the Regulator may 'have regard to it'. Additionally sections of the code state that providers 'must' do something. If the code is not compulsory and it is not guidance, we are unclear what it is for! This additionally causes confusion as to which elements are regulated under the Standard and which are unregulated and advisory.

General Consent

- Whilst we can see the benefits of the proposals on disposals relating to for-profit providers, we don't agree that the changes to category 6 will protect social housing assets more effectively for non-profit providers. For these providers, funds are on-lent in order to cross subsidise social housing assets with profits being gift aided back to the provider. Requiring individual consent in these circumstances will cause delays and may result in the loss of development opportunities. Additionally, there are a number of practical issues here. For example, when lending to its subsidiaries it may not be possible for providers to determine from which facility funds are being on-lent, or whether the funds being lent are coming from reserves. Therefore it may be difficult to determine whether they have the correct approvals in place. Also, it is unlikely that providers will know every use for the facility at the outset and the intentions and requirements may well change over the life of a facility. This again would create problems in ensuring the correct consents were in place.
- Where a group of non-profit registered providers have a non-asset holding parent, this parent may be unregistered. We don't believe that this should prevent category 6 being used as it does not present the same risks to social housing assets and public value as for-profit providers with unregistered parents.
- The definition of Security Interest is currently drafted very widely and it is unclear whether exposures which are not secured with either a fixed or floating charge over social housing assets would fall under section 172 and thus need any consent (either individual consent or a self-certification under the General Consent). Clarity on this would be helpful.

Rent Standard

- We think the ability to increase rents to market levels, or near to this, for higher earners is unlikely to be used in practice given the challenges it will present in sourcing actual tenant earning levels and actively monitoring changes in these earning levels. This could also lead to planning challenges by introducing volatility in rent levels as these would adjust up and down as tenant earnings and circumstances change. This proposal could also present challenges in relation to our charitable status.

C&C
where inspiration lives

Matthew Bailes
Director, Regulation
HCA
Fry Building
2 Marsham Street
London SW1P 4DF

By email to: consultation@hca.gsi.gov.uk

1 August 2014

[redacted]

Dear Mr Bailes

Consultation on Changes to the Regulatory Framework

Please find attached C&C's response to the consultation.

C&C is a London based small-medium sized specialist housing provider for older people, providing approximately 2,500 homes predominantly in central and west London.

Consultation Questions

A6.1 – Governance & Financial Viability Standard

a) Yes – C&C agrees that social housing assets should be protected and that the proposed standard does meet the economic objectives

b) Yes

c) Paragraph 1.2 is short and to the point and provides RPs with the flexibility to 'design' their board around their Business Plan

d) Yes. It is important that Boards have their own framework within which to work rather than a pre designed sector framework as one design will not fit all RPs.
The requirement to maintain accurate records of assets and liabilities is agreed. Boards need to know this as part of their business planning. Stress testing is important for the safeguarding of the RP.

Central & Cecil Housing Trust
Registered Office Cecil House
266 Waterloo Road
London SE1 8RQ

Telephone: 020 7922 5300
Fax: 020 7922 5301
Email: enquiries@cchf.org.uk
Website: www.cchf.org.uk

Housing Corporation Registration No.H1528
Registered Friendly Society No. 27693R
Affiliated to the National Housing Federation
Central & Cecil Housing Trust is an exempt charity
VAT No. GB240346004

Likewise, whilst aiming to take on a new 'liability' as part of a growth plan, the impact on the business should be assessed.

With both c) and d) the question becomes how will the Regulator cope with understanding and assessing the business needs of the RP and the decisions that have been made by the Board (within the freedom to run their own business).

e) Yes

A6.2 – Code of Practice

a) and b) In one way it is useful to have a Code of Practice, however, despite HCA reassurance that it should not be used as a checklist the chances are that it will.
The Code is rather long and repetitive and for this reason may well not be used and relegated to the 'back shelf'.
If the Code were simplified it would be a useful tool.

A6.3 – Disposals Regime

C&C agrees that capital gains from disposals should be protected for the social housing sector and that the proposals are reasonable.

A6.4 – Registration Criteria

Yes.

A6.5 – Rent Standard

Yes the proposed changes do reflect the Direction from DCLG and set out clearly the requirements placed upon RPs and give certainty for a 10 year rent policy.

A6.6 General Consents

Yes.

A6.7 Other changes to the Registration Criteria

Yes.

Central & Cecil Housing Trust
Registered Office Cecil House
256 Waterloo Road
London SE1 8RQ

Telephone: 020 7922 5300
Fax: 020 7922 5301
Email: enquiries@cchl.org.uk
Website: www.cchl.org.uk

Housing Corporation Registration No.H1528
Registered Friendly Society No. 27603R
Affiliated to the National Housing Federation
Central & Cecil Housing Trust is an exempt charity
VAT No. GB240346004

For the purpose of completeness I attach a copy of C&C's response to the 'Protecting Social Housing Assets in a more diverse sector – A discussion paper' issued in May 2013. This reminds you of our initial views and comments.

Should you have any questions please do contact me.

Yours sincerely

Caroline Tiller
Chief Executive, C&C

Attachment: C&C's response to the 'Protecting Social Housing Assets in a more diverse sector – A discussion paper' issued in May 2013

Central & Cecil Housing Trust
Response to: Protecting Social Housing Assets in a more diverse sector: a discussion paper

C&C is very pleased to be responding to this document which has been issued at an appropriate time with the housing sector becoming more diverse due to the changing external pressures.

C&C continue to support and uphold the co-regulatory approach.

In very general terms C&C agrees with the broad principles of a review of the regulatory framework on the grounds of continuous improvement. It is clear that a one size fits all regime cannot be sustained at a time of great change nor, it is proposed, as a way forward in the future. Registered Providers have a variety of differing aims, objectives, missions and charitable facets which must be handled appropriately and according to their circumstances.

A framework should be just that; a framework within which an RP can operate and knows where the boundaries are.

Summary of C&C recommendations

- It is an appropriate time to review RP's and the elements identified
- C&C support the continued application of co-regulation

- Each RP to have its own externally audited Business Plan and Financial Plan and clearly identified risks and mitigation
- Private developers and for profit parents to have a separate regulation regime
- Public value should be retained and ploughed back into RP core business
- RP core business should be based upon charitable objectives and clearly defined

C&C do consider that the elements chosen are appropriate to review given that this is about managing risk in a diverse economic environment. Our concern regarding the review is that many mainstream non-developing RP's get washed up into an approach which is now required due to a previous 'relaxing' of regulation and encouragement to seek funding to provide homes, from other than LA/HCA grant i.e. diversification. From a smaller RP's perspective this could be extremely prohibitive financially, overly bureaucratic and potentially force through mergers i.e. smalls into bigs. We would not went to see this happen as there is sufficient evidence through Place-Shapers research and the G320 'London's Small Housing Associations' reseerch to demonstrate the incredible value, both social and financial, that these bring to society and the neighbourhoods.

A clear definition of 'core' activities needs to be established and we believe these should be as already established through charitable objectives as most RP's are charities.

C&C recognises that there is a need to ensure assets are not lost to the for profit sector however Right to Buy and other forms of home ownership facilitated through purchase discounts of social rented property have been in existence since 1980 (and before with local schemes) and so a great many assets have already been lost from the sector. The issue here is whether and how the value of the sale in the for profit sector (public value) is ploughed back into the social RP sector. In many cases this can be achieved by something akin to an overage clause should any MV resales take place after an EUV sale, or even more prescriptive, a distribution of the sales proceeds into the RP sector.

With regard to ring fencing, again, in general terms this makes business sense. C&C struggle to understand however, how comparisons can be made regarding the regulatory regime for commercial profit companies especially the utility companies and that of not for profit RP's where surpluses are put back in to the business rather than distributed to shareholders as in the commercial sector. A good example being new housing provision or improving old stock and additionally improving and delivering services designed around residents' needs and aspirations. We accept some basic principles should exist regardless of business type but this is currently already overseen by charitable law, the Financial Services

Authority and other institutions and so we question the need for further controls.

C&C believe that the issue in question here relates to private developers (and for profit parents) and would recommend that a separate form of regulation be established for such companies, rather than the broad brush approach to manage all businesses.

The key question remains that if RP's are required to be a vehicle for new property development of mixed tenure type then funding has to be drawn from somewhere and the diminishing grant and indeed access to that grant means funding has to come from 'private finance'. This will inevitably mean security on existing social assets or the development of potentially more 'risky' sales properties and different service provision. Some HA's have established business models that could not easily cope with a change to this model.

We have some concerns regarding additional scrutiny of financial plans, perhaps a misunderstanding on C&C's part? Boards should be reviewing financial forecasts and the financial wellbeing of the business as a standard part of the job. This begs the question, if this is not happening, about the quality of the sector and our ability to attract excellent Board members. However, taking Lehman Bank as an example, who had an impressive line up of governors, a collapse still occurred. We question how such risk can be eliminated.

Whilst we agree that the HCA should have a level of scrutiny regarding consents any consent arrangements should not be unreasonably withheld. Therefore the ability to provide evidence that loans will be used for affordable/ social housing should be a real consideration and if to be used for market properties, how the surplus will be reinvested in the social element or furthering the charitable aim/ objective of the business. Where this occurs with for-profit providers then clearly there needs to be a form of control mechanism such as that sat out above i.e. profit ploughed back into social/ affordable housing.

C&C questions the proposal to create separate legal entities due to the complexity and costs this would bring to some RP's. There will be a real need to ensure activities are clearly defined to enable any of this and an annual statement of activity produced for transparency purposes, including the reason for the activity and how funds will be reinvested for social purpose. This should be a fundamental part of the role of the governing Board.

Risk management is an inherent part of any business and C&C have concerns that introducing into regulation the size of a business i.e. 2.5% - 5% of turnover may just be a step too far in trying to manage risk. It begins to feel as though there is a desire to eliminate all elements of risk and we

feel generally that a risk avoidance approach will inevitably lead to a breakdown in the 'housing system' as RP's look only to sustain existing buildings and develop existing services.

C&C again consider that planning for the worst case scenario is implicit in the Board responsibilities. It is recognised that it is hard and sometimes impossible to plan for major financial failure or to understand when a combination of factors could cause that failure. This has been evidenced in many business failures. However C&C firmly believe that a robust risk management process should be in place and that it should be this process that is firmed up within the Regulatory regime rather than adding in another layer of bureaucracy and administration. The debate generally is evolving around 'non-core' activity i.e. sales, market rents. C&C would suggest that RP's core activities are in the current climate as risky as these others taking into consideration the Welfare Reforms, rent control and post 2015 grant regime, all of which impact significantly on the RP's cash flow.

C&C question the current role of the HCA/SHR in its regulatory role when it evaluates the financial returns as these should identify potential problems. There will need to be an evaluation of balance sheets – on or off – as part of the process. RP's should also be having open discussions with the Regulator as part of their Regulatory meetings. C&C propose that the SHR and individual RP's sign off individual financial/ business plans for a set period, which show clearly the boundaries within which that RP will work. This allows for management of identified risks (living wills) and gives the SHR the opportunity to keep an overview on the individual business. Clearly this approach will hava an impact on the HCA/SHR resources as it will require greater investment in professional and appropriately skilled staff to undertake this enhanced role. C&C suggest that RP's may well be willing to financial support from the HCA/SHG with this as allowed for in legislation not yet applied. Alternatively such documents could be externally audited and validated for assurance (bearing in mind that such assurances are only as good as the auditor in question).

There appears to be one key area not addressed within the discussion paper and that is in regard to resident scrutiny. What role can residents play in understanding the level of risk that an RP is undertaking? We recognise this could be a very sensitive area due to the need to balance commercial/ financial decisions that have to be made by Boards, with views of residents who may be more risk averse in fear of losing their home; leading to a short term view that would not benefit future tenants or provide for a sustainable business. Resident involvement in this area should not be 'consultation', rather it should be enabling residents to understand the business operatives and constraints.

Central &Cecil Housing Trust
June 2013

Cestria Community Housing Association

Response to Consultation on Changes to the Regulatory Framework

Cestria Community Housing Association is pleased to have this opportunity to respond to the Consultation on Changes to the Regulatory Framework, issued in May 2014.

We set out our responses to the Consultation Questions below:

1 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?

The proposed standard does appear to meet the Regulator's economic objectives.

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

We have no issues with the way in which the standard expresses the requirements of registered providers.

c) Do the requirements in paragraph 1.2 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 businesses?

The requirements on skills capability and independence replicate the requirements of company and charity law, and the provisions of most recognised Codes of Governance. In that sense, they add little to the debate on governance, and arguably encroach on terrain which is rightly the province of Boards in a co-regulatory system.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The requirements of paragraphs 1.4 and 1.5 are consistent with good practice and should not therefore place an additional burden on organisations in compliance. It could be argued that the mechanics of how a board discharges its obligations to manage its affairs and control its exposure to risk should be a matter for the board to determine, and therefore the requirements for the content of a framework could best be contained in the accompanying code. The requirement to maintain records of assets and liabilities is a companies act and accounting requirement, and adds little.

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

We agree that the requirements for specific types of provider are broadly reasonable. We are concerned that the requirements of paragraph 2.3 as currently drafted may have the unintended consequence of making certain types of business combination between not-for-profit RPs more difficult to achieve. It could, for example make it difficult for TUPE transfer to new unregistered parents to take place unless pension liabilities can be guaranteed. This may inhibit business combinations intended to deliver efficiencies.

2 Code of Practice

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

We agree that the proposed Code will assist providers to understand how compliance with the standard can be achieved.

b) Is the role of a Code clear and is it reasonable?

We support the intention of introducing a code to provide guidance and clarity in complying with the standard. We do note that some of the language of the Code appears prescriptive and could be reviewed to make clear its distinction from the Standard.

3 Do the proposed revisions to the disposals regime

a) Meet the aim of protecting social housing assets and the value in it?

We believe that the proposed revisions to the disposals regime will support the aim of protecting social housing assets by restricting potential areas of leakage through for-profit providers.

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

We wonder if the current restrictions on the use of proceeds from disposal are consistent with current good practice in asset management, and may in some circumstances act as a barrier to innovation.

c) Are they reasonable?

The proposals appear broadly reasonable, subject to the point raised at 3 (b) above.

4 Do the changes to the registration criteria

a) Reflect the proposed changes to the governance and viability standard? & b) Are they reasonable?

We consider the proposed changes to the registration criteria to be broadly reasonable, although we note that they have the potential to slow down the process of registering new providers.

5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

The proposed changes to the Rent Standard accurately reflect the Direction from DCLG.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

We consider the requirements to be adequately clear and succinct.

6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We agree that the proposed changes to the General Consent will assist the Regulator in achieving its objectives, although we note the potential for this to introduce delay into the process unless it is adequately resourced.

Cestria Community Housing Association

Response to Consultation on Changes to the Regulatory Framework

7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

We agree with the HCA that the registration criteria are not in need of significant revision. The requirement to be compliant at the point of registration should ensure that newly registered organisations are more robust.

b) Express the requirements of registered providers in a way that is clear and succinct?

The requirements are expressed with adequate clarity.

Should you wish to discuss any aspect of our submission, please contact our chief executive, Paul Fiddaman,[redacted]

Cestria Community Housing Association

Bowes Offices, Lambton Park, Chester-le-Street

Co Durham

DH3 4AN

Dear Mr Sullivan

Thank you for sending us your consultation on changes to the Regulatory Framework which we read with interest.

We are very grateful for the short extension you granted us in order to complete our consideration of this material.

We note the revised criteria which will apply to charitable providers seeking registration with HCA.

We assume that charities already on your Register won't be required to amend their constitutions to meet the new criteria. Please let us know if this is not the case.

Whilst we have no objections to what is proposed for new applicants to join your Register, it would be useful to meet to discuss this aspect of the proposals so that we can work together on any revised protocols or guidance which are required for charities seeking registration with, or consents from, both our organisations.

Yours sincerely

Andrea Brolly

Senior Policy Adviser
Charity Commission

[redacted]

CHP Response to Changes to the Regulatory Framework

July 2014

Consultation questions and responses:

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?*

There is always likely to be a tension between allowing RPs the freedom to pursue their own business plans and run their businesses in the way they see best and minimising risk to social housing assets. Where regulation becomes more prescriptive in order to protect social housing assets, this will often limit the ability of boards to manage their businesses effectively and lead to missed opportunities and sub-optimal value being realised from historic investment. Therefore CHP recognise that regulating the sector can be a delicate balancing act and think that the regulator's co-regulatory approach manages this tension very well. CHP recognises that the increasing complexity and diversity of the sector (which now includes complex group structures and 'for profit' providers) may require a strengthening of the regulator's role in assessing governance and financial viability and these proposals do seem like a small shift away from co-regulation toward a more prescriptive approach to regulation. While such a shift may be necessary in an era of increasing financial risks and complexity, the regulator should be sensitive to the fact that by increasing the specific expectations in this area this will necessarily erode the principle of co-regulation, no matter how careful the regulator is to re-emphasise their commitment to a co-regulatory approach.

Like many other Registered Providers CHP is concerned about the implications of the generic requirement to "adhere to all relevant law". Legal advice received indicates that it is not possible for any Board to comply with this requirement. The HCA should reword this part of the required governance outcomes.

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

We have no issues with the wording of the specific requirements of the proposed regulatory standards.

c) *Do the requirements in paragraph 1.2 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 businesses?*

CHP supports the concept boards should be independent, diligent, prudent and effective and have the right skills to undertake the activities they are pursuing. Exactly how the regulator will expect RPs to evidence the 'appropriateness' of their skills, independence, diligence, prudence and foresight and what this should be measured against is unstated, and therefore problematic for both parties.

This could be of particular relevance to LSVT organisations who have historic contractual requirements to included residents on their Board. CHP and other LSVT organisations have radically amended how they recruit and appoint their resident Directors or Trustees, so that appointme ntis on merit not just democratic outcomes. However, any Board with a requirement for resident involvement will not necessarily be an "optimal" board in comparison with a Board who could recruit 100% independents. This is not to denigrate the skills, commitment and experience that residents are able to contribute, but rather to acknowldege a contractual requirement that made LSVT's possible, and indeed successful.

d) *Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?*

The requirements contained within paragraphs 1.4 and 1.5 requiring effective business planning and risk management are central to any good business. CHP considers that the regulator has achieved the correct balance between pursuing its statutory aims and allowing freedom to providers.

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

Yes. CHP has no issues with section 2 of the proposed revised Standards.

Code of Practice

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

The proposed Code does help to clarify the requirements of the Standard(s) but remains unclear as to evidencing to the regulator that the Standards are being met (over what is submitted via electronic returns). This therefore requires clarification about the sorts of documentation or other evidence the regulator would expect providers to be submitting routinely.Will there be any kind of inspections to assess compliance and how and in what circumstances these will be carried out (e.g. would explicit reference be made to the Code in any inspections?). In sum there is a need to understand the extent to which these proposed changes and especially the new Code may affect the overall approach to regulation and the assement of compliance with the Standards as outlined in the *Regulating the Standards* document.

The recent HCA clarification that "'we will always make a rounded judgement based on all of our knowledge about a provider and seek to act in a proportionate and transparent way" appears recognise the reasonable concerns of of RP's. However, the will need to evidence the reasonableness of responses made as compliance issues are identified. Unless the HCA publishes responses to and ouctomes of compliance investigations (as for example the Ombudsman does for complaints) the position for RP's will be unsatisfactory.

b) *Is the role of a Code clear and is it reasonable?*

Although it is stated that the code is for guidance only it reads as a prescriptive set of rules. There Regulator should state that that the code will not be used to extend the scope of regulation and regulatory intervention with respect to the minutiae of business planning and decision making.

Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

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

c) Are they reasonable?

Yes.

c) *Do the changes to the registration criteria:*
Reflect the proposed changes to the governance and viability standard?
Are they reasonable?

Yes

d) *Do the proposed changes to the Rent Standard:*
Reflect the Direction from DCLG?
Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposal is in alignment with DCLG directions and is clear.

e)Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes

f) *Do the other proposed changes to the registration criteria:*
Contribute to the Regulator better meeting its fundamental objectives?
Express the requirements of registered providers in a way that is clear and succinct?

Yes

Stuart Stackhouse
Chief Executive
CHP

August 2014.

Consultation on changes to regulatory framework

Cherwell District Council and South Northants District Council response

Cherwell District Council and South Northants District Council wish to respond as Strategic Housing Authorities in a shared services arrangement. Cherwell District Council is also a Registered Provider.

Consultation questions

1	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?.	We understand that the Financial Viability standard meets the Regulator's economic objectives, and support the aim of protecting social housing assets through the proposed new outcome.
b)	Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	yes
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 businesses?	We support the aims of requiring registered providers to have the skills and capacity to manage social housing effectively. We believe the principles of co-regulation require freedom for registered providers to have freedom to run their own businesses within the framework of required skills and that these requirements permit that.
d)	Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	We support the aim of protecting social housing assets through financial probity and viability. It is important to us to know that RP boards have the required financial skills to run their businesses without risk to social housing assets.
e)	Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	We believe the requirements to be fair and reasonable
2.	Code of practice:	
a)	Does the proposed Code assist registered providers to	The code assists registered providers in achieving compliance with the code, however

	understand how compliance with the Standard can be achieved?	we feel that for some registered providers more detailed guidance would be appreciated. As the strategic housing authority, it would assist us in our relationship with registered providers by giving clearer guidance on the standards which could be expected.
b)	Is the role of a code clear and reasonable?	We feel there is some conflict between the ideology of co-regulation and the production of standards for registered providers. We are supportive of the guidance for "for profit" registered providers and feel this fills a gap in the co-regulation regime.
3	Do the proposed revisions to the disposals regime:	
a)	Meet the aim of protecting social housing assets and the value in it?	We consider the proposed revisions to the disposals regime to be reasonable and to comply with the aim of protecting social housing assets
b)	Balance this aim with registered providers being free to run their own businesses?	We consider the aim of protecting social housing assets to be paramount and that the proposed revisions are reasonable in allowing registered providers freedom to run their businesses.
c)	Are they reasonable?	See above
4	Do the changes to the registration criteria:	
a)	Reflect the proposed changes to the governance and viability standard?	We believe that they do
b)	Are they reasonable?	yes
5	Do the proposed changes to the Rent Standard:	
a)	Reflect the Direction from DCLG?	We are concerned the proposals to charge market rent to tenants on high incomes will place an unnecessary burden on Registered Providers to establish the income of their tenants, and would decrease the likelihood of mixed communities.
b)	Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	We understand that the change from RPI to CPI and loss of ability to add £2 to the rent charge may have an effect on business planning for many RPs, and are concerned that this may lead to an increase in stock disposals in our area where there is high demand for social homes. However, we have not directly received this feedback from RPs operating in our area and will await the results of your consultation.
6	Do you agree that the proposed	We support the harmonisation and

	changes to the General Consent allow the Regulator to protect social housing assets more effectively?	simplification of regulation wherever possible. However, we are concerned that as a Local Authority in a high value area in the South East, where national providers hold stock in our area, it represents a more viable form of income than stock in lower value areas and is therefore more likely to be disposed of. We are concerned that the disposals regime, which supports development, may have a disproportionate effect in areas like ours.
7	Do the other proposed changes to the registration criteria:	
	a) Contribute to the Regulator better meeting its fundamental objectives?	We do not have any comment on this consultation question
	b) Express the requirements of registered providers in a way that is clear and succinct?	

.

christian action housing

Response to Homes and Communities Agency Consultation on

Changes to the Regulatory Framework

Christian Action (Enfield) Housing Association is a small medium sized housing association that owns and/or manages 1550 homes in four North London Boroughs.

This submission represents our individual response to the questions posed in your consultation paper. We also support the general comments submitted by the Placeshapers Group, of which we are a member.

Our response to the consultation questions is as follows:

1	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?

Yes - we agree that the final proposals represent an appropriate way forward for the Regulator and set out how the Regulator will fulfil its objective to protect social housing assets

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

Yes – with the exception of the new requirement to "adhere to all law," we believe the proposed Standard is clear, and the proposed bringing together of the governance and financial viability standards improves clarity and avoids duplication.

We question, along with other respondents, whether the new requirement to "adhere to all law" will provide a demonstrable benefit to the Regulator. We agree with the comment expressed recently in *Inside Housing* that "the HCA has to be careful that the wording of its rules doesn't leave housing associations in a position where they can't realistically provide assurance. The wording should be softened to allow for some wriggle room on following the law." An example of a situation where it might be difficult to realistically provide assurance could be in relation to minor breaches of the law in complex areas such as planning or procurement.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes – we believe both i) and ii) are achieved

Do the requirements in paragraph 1.4-1.5 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?

The revised approach to risk management seems to be proportionate and we

recognise that the need for RPs to keep accurate records of their assets and liabilities is essential both for good business and for situations when the Regulator has to step in and rescue an organisation in trouble.

Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Yes, we believe that these are reasonable. We particularly welcome the removal of the proposed ring-fencing requirements of activity for non-profit providers.

2	Code of Practice

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

The proposed code provides guidance that appears to be helpful and clarifies the Regulator's requirements.

Is the role of the Code clear and is it reasonable?

Yes we believe it is.

3	Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

We support the proposed additional controls to ensure ring-fencing of social housing assets within profit-making entities and to protect the profit from disposal of such assets.

4	Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?

These appear to be sensible.

5	Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposed changes appear to reflect the Direction from DCLG and they are clear.

However, there appears to be a significant change around the exemption for Temporary Social Housing. We are unclear whether this is a direction from DCLG or a change proposed by The Regulator. It does not appear to be included in the DCLG direction of May 2014. There is no reference to it in the main consultation document and it only

becomes clear on detailed reading of the proposed new Annex 3:

The Rent Standard Guidance published in March 2012 identifies "temporary social housing/short life leasing schemes for the homeless" as being exempt from Social Rent.

The proposed new Rent Standard Guidance introduces significant restrictions on this, which were not stated in March 2012:

"There is an exemption from the Standard where temporary social housing (TSH) is developed without public subsidy and in conjunction with LAs to provide housing for the homeless.
Where schemes involve the acquisition of the freehold or long lease by the PRP using private finance and the properties effectively form part of the provider's permanent stock, the exemption for TSH is extended where the following conditions apply:
 the acquisition of the property has not been funded with social housing assistance or other public funding, and
 there is a nominations agreement with a local authority for housing the statutory homeless, and
 the local authority retains responsibility for finding a permanent home, and
 the property is let on an assured shorthold basis.

If any of these conditions cease to apply, the exemption is no longer available and the normal Rent Standard requirements should be applied."

We have a residual Temporary Social Housing programme, mainly developed with grant under a previous Housing Corporation programme. In 2008, the Housing Corporation was clear that the:

"Housing Corporation rent re-structuring & Rent Influencing regime do not apply to TSH. The rent at letting, must be equal to or less than that Bid for."

There appears to have been a significant shift of policy here, and it is not covered by the consultation document that has been circulated. We are already capping rents on properties to maintain these below LHA thresholds and a move to Social rents for the remainder of the lease period, while not threatening our viability, will reduce the resources that we have to invest in future development. We would ask that consideration be given to exempting TSH properties that have been funded by previous grant programmes.

6	**Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**

We share the position expressed by the Placeshapers' Group and we support the Regulator's objectives in proposing to restrict the granting of category 6 consents and agree that changes would protect social housing assets more effectively.

We also agree with Placeshapers that, where RPs are sitting on significant funds raised on the bond market in particular and where these funds are costing the RP money, RPs should be encouraged to use these funds efficiently to generate an appropriate return provided this is in the context of a prudent and appropriate investment approach. The need for additional consents for use of these funds could impact adversely on this outcome.

We support the suggestion that consideration is given to providing consent for a general programme of activity over a defined period, perhaps with a maximum financial commitment involved.	
7	**Do the other proposed changes to the registration criteria**
a) Contribute to the Regulator better meeting its fundamental objectives? **b) Express the requirements of registered providers in a way that is clear and succinct?** Yes they do.	

HCA consultation on changes to the regulatory framework

CIH response

August 2014

By email to: consultation@hca.gsi.gov.uk

1. CIH welcomes this opportunity to respond to the consultation on changes to the regulatory framework. We are particularly pleased that the revised proposals reflect the concerns we raised in response to the initial discussion paper, and take an approach that is more in keeping with a co-regulatory and outcome focused approach. We have not responded to every question set in the consultation paper, but our views on the key areas are set out below.

Changes to the governance and financial viability standard

2. CIH agrees that the approach proposed - of robust risk management and effective stress testing across multiple scenarios - is the right one, which enables the regulator to balance its stated aim of protecting social housing assets with flexibility and freedom for providers to manage their businesses. This must address all aspects of the registered provider's business, both core and non-core activities.

3. The responsibility lies with providers' boards to ensure they know the nature and level of the risks, and to plan appropriately to mitigate these; the regulator will be concerned to satisfy itself that boards have the capacity and skills to do this. We agree with requirements in the standard that are designed to support this including the formal requirement for boards to adopt and demonstrate compliance with an appropriate code of governance annually.

4. The consultation proposes that providers' compliance with the standard is certified through their annual accounts, as well as through timely and appropriate communication with the regulator. Certifying compliance through the annual accounts offers a public and accessible mechanism for demonstrating compliance to all stakeholders including the regulator, although statements in annual accounts are normally expected to be auditable which may not easily be the case with regulatory compliance.

5. CIH suggests that the regulator adopts a more flexible approach similar to the requirement under the Value for Money standard (if not always its application in practice) where providers can choose to certify compliance on the face of their accounts or instead use their accounts to signpost where they have chosen to certify compliance, for example, on their website, in their annual report and so on.

6. The consultation suggests that providers should be required to comply with all relevant "law" rather than "legislation". CIH agrees with this proposed change as the law affecting providers clearly extends beyond just that expressed in legislation. The consultation suggests that law extends to statutory guidance. CIH understands that organisations must "have regard to" statutory guidance, but that compliance is not necessarily required and on that basis suggests the regulator review whether requiring compliance with statutory guidance is appropriate.

Register of assets

7. The standard requires providers to establish an up to date register of assets and liabilities, set out according to business streams, identifying social housing assets clearly and separately, in order to support internal management of risks and future business decisions, as well as to enable speedy and effective intervention if needed on the part of the regulator.

8. CIH believes this is an important and appropriate requirement. However, given the diversity in activities and scale across registered providers, we think some direction as to the timescales for providers to achieve this, and prioritisation of key data within those timescales would be helpful to enable providers to act immediately in presenting the most critical information, which can then be developed further in terms of detail and presentation.

Section 2 requirements

9. CIH supports the approach to for-profit providers, and the requirement that social housing assets are within a separate registered entity, to provide transparency to stakeholders and the regulator and to support any interventions that may be required. We also agree that other activities by that registered provider should be limited to enable a clear focus by the provider's board. This is consistent with the priority the regulator attaches to protecting social housing assets

10. Additional restrictions are put on registered providers within group structures with an unregistered parent company, to ensure that social housing assets are not used to support the activities of the parent or other group members to the detriment of the social housing assets. This is in keeping with the regulator's main aim.

11. There should be flexibility for non-stock holding parent companies that wish to register with the regulator to do so, in order to support more actively the aims of the stock-holding registered provider(s) in the group, and to enable effective engagement with the regulator.

Category 6 consents

12. The paper includes proposals on restrictions to category 6 consents for the charging and disposal of land and property in respect of unrelated registered providers, and to for-profit and non registered bodies within groups in certain circumstances. CIH understands that this is rather to enable active exploration of risks and management of risks rather than a refusal of these activities. We would expect that the regulator will assess each application for specific consent on merit rather than having a 'one size fits all' approach. We also think that more clarity would be useful about how this might apply to and impact on partnerships, joint ventures, consortia and other vehicles for wider activities. Arguably there is also some ambiguity over the terms 'for social housing purposes' which could

extend to activities that provide surpluses to reinvest into social housing – development, refurbishment and so on.

13. It would be useful for the regulator to be clear about how it will view any new activities funded through existing agreements where these would in future be restricted from general consent. What would be the level of regulatory engagement/ monitoring, if this should occur?

14. We are concerned that removal of these permissions in category 6 will lead to a rise in applications for specific consent that may be a significant extra burden for the regulator, with the risk that capacity to deal with these could cause delays and problems for funding arrangements. To address this there may be benefit in allowing a certain level of funding that can still be raised through these means, before a greater degree of scrutiny is applied, to balance flexibility and increased workload for the regulator.

15. We support the proposal to use withdrawal of category 6 consent as a first stage in regulatory intervention.

Changes to the registration criteria

16. The consultation proposes that providers wishing to register must comply with both the financial viability and the governance elements of the now single standard, whereas before compliance with the governance standard at registration could be in progress. Given that this is now one standard this seems reasonable.

Rent standard

17. The rent standard is set out clearly and adequately reflects the directive from DCLG. This was the subject of a previous consultation exercise which CIH responded to and in which we expressed concern about the removal of “conversion” arrangements for rents not currently at target.

18. CIH recognises that, where compliance with the standard will raise significant problems for business plans, a waiver can be sought, and guidance on the extent of that would be useful for the sector.

Code of practice

19. CIH acknowledges that a code of practice provides useful guidance for the sector to understand how it might comply with the provisions of the standard. Not all providers will regard such guidance as necessary, but others will appreciate the additional clarity a suitably drafted code can bring. The paper is clear that the code is not a requirement and compliance is with the detail of the standard, that only the standard has regulatory force, and that this must be clearly understood so that registered providers retain their freedom and flexibility to manage their business appropriately.

20. CIH recognises that this is difficult territory for the regulator. As the consultation notes, the regulator has no intention of “going back to previous eras of best practice guidance notes”. However, past experience shows that despite their guidance status they were in practice regularly treated as having regulatory force by both providers and regulatory staff despite their advisory status.

21. Ensuring this experience is not repeated will be a critical implementation challenge for the regulator. It will need to ensure that the formal status of the code is accurately reflected in the behaviour and approach of regulatory staff and in providers’ understanding of the difference between the standard and the code.

22. On occasion the code resorts to regulatory type language, for instance there are phrases such as “the regulator expects”. This has the potential to increase the risk that the code being regarded as being a document with regulatory force. A redrafting of the code to avoid the use of such language would help to retain the important distinction between the code and the standard.

23. In conclusion, CIH is supportive of the changed approach in the paper, which takes a more focused co-regulatory approach. We hope that our comments have helped to reinforce that positive approach, and would be happy to discuss these further with the regulator if any clarification is required.

Statutory Consultation on Changes to the Regulatory Framework

Circle Housing Response
19 August 2014

To: Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency: The Social Housing Regulator
By email only: statutoryconsultation@hca.gsi.gov.uk

About Circle Housing

Circle Housing is one of the UK's largest providers of affordable housing with 66,000 homes across the country. Our nine registered provider subsidiaries provide independent, affordable and secure living to around 200,000 customers. Our specialist provider subsidiary Centra offers a range of support services, including telecare and home care, as well as a choice of housing options including shared ownership and market rent.

We operate to a group structure, where Circle Anglia Ltd (a private registered provider) is the parent of our group partner subsidiaries, working together to Enhance the Life Chances of our customers. Our Management Board, made up of nine Non-Executive Directors and our Group Chief Executive is responsible for the Group's governance, working with the Boards of the subsidiaries and our three Governance Committees to ensure our business is well managed, financially viable and operating within a muscular risk management and controls framework.

Circle Housing Response

Executive Summary

Given the rapidly changing nature and diversity of sector activity and risk profile, we acknowledge the challenges faced by the Social Housing Regulator (SHR) in ensuring that regulation remains relevant and effective. We recognise and support the SHR's central aims of protecting social housing assets, of retaining the confidence of lenders and of safeguarding the reputation of the sector.

We welcome this opportunity to contribute our views to the consultation and we len[redacted]nt process of refining the regulatory framework. We commend the SHR for their responsive approach to significant issues raised last year around ring-fencing during pre-consultation discussion with the sector and we endorse the subsequent shift of emphasis away from ring-fencing to enhanced focus on forensic risk management instead.

In terms of the range of the changes now proposed, in a number of instances Circle Housing is already in keeping with proposals - as detailed within the body of this response. We welcome the new requirements set out within the Governance and Financial Viability Standard: namely, operation of multi-variate stress testing;

maintenance of a comprehensive register of assets and liabilities; annual certification of compliance with the Standard, and an insistence on highly mature and tailored skill sets at Executive and Non-Executive Director level. We note that many of the new directives bring the sector into alignment with both the intent and the language of ultra-sector financial regulation. We welcome this acknowledgement of the growing maturity both of regulation and of sector activity.

We likewise value the continued emphasis on co-regulation as the stanchion of good governance and as the central tenet governing the relationship between regulator and regulated entities. There are, however, a number of areas where the SHR's proposals would benefit from further consideration and additional clarity.

Our response highlights the negative impacts of changes to private finance consents, where we feel that the approach is not only impractical, but also undermines the regulatory principles of co-regulation and non-interference. We also challenge the proposed changes to consents in regard to on-lending arrangements within group structures and ask the SHR to re-evaluate their policy. We endorse both the g15 and the National Housing Federation submissions, with particular reference to consents issues, as well as to the points raised below.

We further urge clarity from the SHR in terms of defining the precise role and status of the Code of Practice. We point to its current ambiguity as being potentially unhelpful to both regulator and those being regulated.

Finally, we welcome the opportunity to reiterate our views on the significant impact of government policy in abandoning rent convergence from April 2015.

Our detailed submission below across the range of areas addressed within the consultation document itself and within Annexes 1-5, adds to and expands on the key points raised above. Our responses to the specific questions posed by the SHR in Annex 6 of the consultation are embedded within each section.

Governance and Financial Viability Standard Code of Practice

We acknowledge the challenges the SHR has faced in drafting a document which seeks to amplify the compliance requirements enshrined in the Standard, within a wider context where it has been stated that guidance notes will not be produced. While much of it seems sensible and helpful, we are at pains to point out the distinct unease with which it straddles the divide between regulatory advice and regulatory law [redacted]

While we appreciate the assurances that the SHR has already given, it is likely that the Code's status as statutory guidance will end up muddying the regulatory waters and that it will assume a regulatory heft beyond its original intention.

We suggest that all references to the Code acting solely as a guide are removed from the text and that it is directly acknowledged that its status in law means that it will be used to appraise providers, alongside the Standard. Alternatively we suggest that what is of substance is removed to form part of the Standard and that the sector itself uses the remainder to produce its own guide to good practice.

Governance and Financial Viability Standard

The redrafted Standard seems in general to strike a proportionate balance between being so general as to be open to wide interpretation, and so prescriptive that providers do not have scope to leverage their own strengths and specialisms.

Compliance with all Relevant Law

We acknowledge the new requirement to comply with 'all relevant law' rather than 'all relevant legislation', acceding that important areas of law such as common law or case law may need to be brought within an expanded definition. However, we note that statutory guidance by bodies such as the Charity Commission and presumably by the HCA itself form part of this requirement. This adds further weight to our plea for precision on the status of the Code of Practice.

Board and Executive Skills

In our view the specific requirements around expertise and capability reflect basic standards of good governance, as well as offering consistency with charity law. Our Board member selection and appraisal framework is already highly attuned to matching Board member skills to business activities and continues to be evaluated to ensure that we meet the demands of our business plan.

Stress Testing

We endorse the new requirement to make scenario analysis and multi-adverse impact testing and resultant mitigation plans mandatory. We endorse the non-prescriptive approach taken by the SHR as to how and when these should be conducted, as this will undoubtedly need to be tailored to fit the size, risk profile and complexity of the activities a provider undertakes. We already conduct extensive scenario analysis and multi-variate stress testing on our business plans and supplement this with Monte Carlo simulations. This forms part of our business planning, risk management and controls framework.

Register of Assets and Liabilities

Given stresses experienced by the SHR in relation to viability failures within the sector, we acknowledge and support the intention of the SHR to ensure they have access to comprehensive and reliable information on a provider's asset base in the event of an emergency.

Certification of Compliance with Standard

As we already assess compliance with the Standard, we are supportive of its being made [redacted]nt and welcome the opportunity to formalise this key piece of Board assurance via regulation.

Requirements for Group Parents: Support and Assistance to RP Subsidiaries

We acknowledge that the driver behind the requirement for a parent to give support and assistance to registered provider subsidiaries to comply with regulation, is the need to protect social housing assets. However, clarity is needed within the Code as to how that obligation is interpreted and whether it relates to provision of internal management, or extends in fact to provision of loans and guarantees so that the

subsidiary remains viable. While the wording of the wider consultation document suggests this is the case, it remains unclear within the Code and we raise the point that this may lead to private funders having an expectation that there are cross guarantees within a group.

We furthermore wish to highlight that where this support and assistance takes the form of instructions from the parent to the providers to how to comply with regulation, those instructions might constitute the parent as a shadow director, with all the resultant risks for the parent around wrongful trading and liability for failure to assume the key duties of the directors of the provider.

The General Consent

Category 6 of the General Consent

We wish to challenge the proposed pre-scrutiny requirements relating to on-lending within groups, as potentially causing unnecessary delays. This additional layer of regulatory oversight for providers who are otherwise considered financially viable and well governed represents an administrative burden both for regulator and regulated. In addition, we point to the need for further clarity as to which factors may cause the SHR to refuse approval.

We also wish to highlight a key discrepancy in wording between the main consultation document and the revised general consent. The consultation paper refers to funding which is *on-lent* to other group members, while the general consent refers to loans to group members *secured* on the registered parent's assets. These loans may not have been on-lent by the registered parent providing the security. For example, it is often the case that bond monies are lent from a special purpose company to registered parents. The special purpose vehicle's obligations are secured by guarantees and charges given by the registered parents. While this scenario is caught by the proviso in the general consent, we urge clarity and consistency on the issue across the piece.

Private Finance Consents

In relation to the proposed imposition of more laborious consent requirements for finance agreements that potentially involve index linked financing, our view is strongly that these are neither required, nor proportionate. For example, index linked instruments can often be entered into under loan agreements and ISDA agreements may have linked property security.

The [redacted] be difficult to operate in practice, where a provider may have charged security to a security trustee as security for general lending and the money is subsequently recycled for index linked borrowing.

We would query whether the SHR proposes to review all of these agreements before they are entered into, on the grounds that there is the capacity for index linked transactions to be entered into under them. In addition, we request clarity on whether it is the case that it will rely on providers not entering into index linked

transactions under agreements that are secured on social housing assets without a revised consent.

The types of private finance facilities for which the existing private finance general consent may be utilised currently includes not only conventional loans but also interest rate hedging, loan notes/stock, performance bonds, guarantees, indemnities and letters of credit. We note that the definition is to be narrowed and in particular would not include performance bonds, guarantees and letters of credit.

We suggest that clarity is required here as a number of bond issues across the sector include provision of joint security by group members, frequently securing obligations under guarantees of private finance as opposed to direct private finance. We ask whether it is the SHR's intention that those using guarantees in their group facilities must get consent to each charge. Given the complexity of the treasury arrangements of most large providers, we urge a detailed refinement of the wording in this area.

Disposals Regime

For Profit Providers: Proceeds from Sale

We are pleased to see that the concept of ring-fencing has been de-scoped, so as to now only apply to for-profit providers, who are required to insulate their social housing activities within a legally and operationally distinct entity. It is encouraging to see that the SHR will not be proposing further restrictions on the use of disposals profits by non-profit providers.

The use of Disposals Proceeds Funds to capture the public benefit represented in the property held by for-profit providers also seems a reasonable protection to prevent the leakage of social housing assets. However, we note that it is difficult to accurately define what part of the value of a property represents the benefit of public subsidy and we are not convinced that a satisfactory measure has been arrived at.

All Providers: Proceeds from Sale under Preserved Right to Buy

Likewise, we view the proposals to govern the use of proceeds from properties sold with the preserved right to buy in the future as relatively onerous. Our view is that this should not apply to non-profit providers for the same reasons that it is not proposed that such rules apply to this class of provider retrospectively.

Registration Criteria

We [redacted] the proposed strengthening of the registration criteria and concur that the changes outlined seem reasonable and sensible.

Rent Standard and Guidance

We recognise that the changes proposed are in response to formal Direction from the Secretary of State to the SHR and represent a shift in government policy. As we set out in our response to the CLG's prior consultation on rents, we welcome the ten-year rent policy in terms of providing an element of certainty and enabling longer term plans for investment in development. We also support the shift in basic

rent increases from RPI + 0.5% to CPI + 1% , introducing a more stable measure in line with other government policies.

End of Rent Convergence

However, we remain concerned that the end of rent convergence after 1 April 2015, represents a significant negative impact on our financial plan and by extension, on our development capacity, given that four of our subsidiaries are stock transfer associations post-2007. We anticipate a loss of £49m (undiscounted) or £30m (discounted) over the ten year period. We estimate that this could result in 200 fewer homes being developed during this time frame.

We note that in the Direction, the wording allowed for providers to apply for waivers only where financial viability was at stake. However, in the new Guidance and Standard, waivers will now also be considered where the ending of rent convergence prevents existing contractual commitments to tenants being met - for example, relating to investment resulting from stock transfer. While we acknowledge that this addition to the text may be a welcome response to the consultation feedback the sector gave to the CLG, in terms of actually highlighting an undermining of investment in regeneration of homes as part of transfer promises, we believe that it does not go far enough. There are plenty of LSVTs who have already complied with all their offer document promises to tenants but are going to face having to curtail other activities, including scaling back development, if convergence ends. We put forward the suggestion that these providers should have the opportunity to apply for waivers on the basis that the regulator approved their business plans, as well as any extended rent convergence period at the time of stock transfer.

Conclusion

At this two-year point following the inception of the SHR, we concur that refurbishment of the regulatory framework in order to better protect social housing assets is both timely and pertinent. We welcome the renewed focus on the centrality of risk management as the bedrock from which Boards can maximise opportunities for growth and diversification. We look forward to the further refinements to regulation which will arise both from the results of this consultation and from concurrent reviews of financial viability regulation taking place within the SHR.

To discuss further please contact

Deborah Upton
Group Director of Governance
Circle Housing
[redacted]

city west
housing trust

52 Regent Street
Eccles
Salford
M30 0BP
For all enquiries
T 0300 123 5522
E onenumber@citywest.org.uk

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency – The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Subject: HCA Regulatory Framework - Consultation

Dear Sir,

City West Housing Trust welcomes the opportunity to respond to the consultation on the HCA's proposals for changes to the regulatory framework. We welcome the general approach that is being taken and the continued commitment to the theme of co-regulation that has provided assurance to the sector since its inclusion in the current framework.

Our responses to the questions raised in the consultation paper are covered in the table below.

Section 1- Governance and Viability Standard	
Question	Commentary
1. Overall does the proposed standard meet the Regulators economic objectives which require the protection of social housing assets?	We welcome the reaffirmation and inclusion of future requirements which we would consider to be "good governance practice" e.g. annual certification of compliance, asset risk management, asset register and board management/performance. Whilst it is still welcome that Registered Providers are given some freedom to develop systems and processes that reflect their local circumstances it may be useful for the regulator to provide a standard format for the recording of assets and liabilities. This would support consistency across all Registered Providers. It would be beneficial if the regulator confirmed the definition of the term 'social housing' to ensure that those non-regulated activities of Registered Providers which may be classed as 'social housing' do not become subject
2. Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?	
3. Do the requirements in paragraph 1.2 on skills, capability and independence i) meet the regulators 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?	
4. Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the regulators 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?	
5. Are the requirements for specific types of registered provider in section 2 reasonable	

Section 1- Governance and Viability Standard	
Question	Commentary
given the regulators aim of protecting social housing assets?	to regulation e.g. mixed tenure developments where work is intrinsically linked.

Section 2 – Code of Practice	
Question	Commentary
1. Does the proposed code assist registered providers to understand how compliance with the standard can be achieved?	Yes, we believe that the code will further enhance understanding and compliance with the standard and that its role is clear.
2. Is the role of the Code clear and reasonable?	

Section 3 – Do the proposed revisions to the to the disposals regime:	
Question	Commentary
1. Meet the aim of protecting social housing assets and the value in it?	Yes, we believe that the rationale for greater public investment in social housing when stock is disposed is reasonable.
2. Balance the aim with registered providers being free to run their own businesses?	
3. Are they reasonable?	

Section 4 – Do the changes to the registration criteria:	
Question	Commentary
1. Reflect the proposed changes to the Governance and Viability Standard?	Yes.
2. Are they reasonable?	

Section 5 – Do the proposed changes to the Rent Standard:	
Question	Commentary
1. Reflect the direction from DCLG?	Yes, the requirements are clear in their expectations of providers and the move from RPI to CPI is in line with the DCLG spending review and direction.
2. Express the requirements of private registered providers in a way that is clear, succinct and as outcome focussed as possible?	

Section 6 – General Consent	
Question	Commentary
1. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?	Yes, and we would ask that the process for consent should be as streamlined as possible.

Section 7 – Do the other proposed changes to the registration criteria:	
Question	Commentary
1. Contribute to the Regulator better meeting its fundamental objectives?	Yes, we agree that the other changes to the registration criteria would

Section 7 – Do the other proposed changes to the registration criteria:	
Question	Commentary
2. Express the requirements of registered providers in a way that is clear and succinct?	contribute to the Regulator better meeting its fundamental objectives and the requirements are clear.

We hope that you find our comments useful. Should you have any further questions then please don't hesitate to contact me directly on the number outlined below.

Yours sincerely.

[redacted]

Paul Carhart
Director of Corporate Services
City West Housing Trust
[redacted]

Council of Mortgage Lenders

Changes to the regulatory framework for social housing in England

Response by the Council of Mortgage Lenders
to the Homes and Communities Agency consultation paper

Introduction

1. The CML is the representative trade body for the first charge residential mortgage lending industry, which includes banks, building societies and specialist lenders. Our 121 members currently hold around 95% of the assets of the UK mortgage market. In addition, in terms of commercial funding, CML members have invested over £60 billion in the housing association sector UK-wide for new build, repair and improvement of social and affordable housing.

2. We welcome the opportunity to respond to the HCA consultation on proposed changes to the Regulatory Framework. Our responses reflect the questions set out in Annex 6 of the documents.

Headline comments

3. Among the sector's key strengths to date are its "no loss" track record; the strength of the collateral security it provides, and the robustness of economic regulation. We see the proposed framework changes as safeguarding those strengths, particularly following the Cosmopolitan case. Provided the regulator is sufficiently resourced, the changes to the framework should allow the sector the flexibility it needs to adapt and move forward with confidence into value-adding business opportunities, where risk is fully understood and properly managed.

4. Overall, we welcome the proposals which are necessary to ensure the regulatory framework appropriately reflects and monitors changes in the activities and risks undertaken by Registered Providers at a time when public subsidy and availability of security become more constrained.

5. To date, funders have been able to take comfort from robust economic regulation of the sector in England, and this has been reflected in the competitive commercial terms available. It will be important for the regulator to ensure that funders' confidence is maintained and that the scope and operation of the framework develops and adapts in line with the sector's activities.

Governance and Financial Viability Standard (Annex 1 and question 1, a-e)

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

6. We welcome the clarity provided, and removal of duplication in the requirements for Governance and Financial Viability. The proposed Standard provides greater clarity on the requirement to protect social housing assets, and should meet the Regulator's economic objectives.

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

7. Yes, the Standard provides clarity on the requirements and the increased focus when new risks/ liabilities are undertaken. Funders see this as a key risk area, and will need to be confident that any new risks are fully understood, appropriately managed and undertaken within a structure that does not weaken the viability of the business or compromise the value of the security provided.

c) Do the requirements in paragraph 1.2 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 businesses?

8. Yes, we support this approach which should ensure that skills, capability and levels of independence are appropriate to the activities undertaken within specific organisations.

address North West Wing Bush House Aldwych London WC2B 4PJ
telephone 0845 373 6771 fax 0845 373 6778 website www.cml.org.uk

d) Do the requirements in paragraphs 1.4 and 1.5 on risk (i) meet the Regulator's aim of protecting social housing assets with registered providers being free to run their own businesses?

9. Yes, they should. Generally on risk there is much focus in the proposed framework changes on ensuring registered providers understand risk. Yet the only mentioned risk-reward measure is ensuring that funders' covenants are not breached. Although we welcome the importance placed on this, the reference to this measure only raises concerns.

10. Depending on when a business plan is stress-tested, associations might be indicated as running out of cash before their loan covenants are breached. We would like to see associations setting their own minimum levels of financial performance. These should be set significantly higher than funders' covenants which should be a floor against which stress testing should be judged.

11. There is no reference to risk-reward in the context of diversified activities. Taken alongside the decision not to purse ring fencing, there is a danger that this could provide the wrong message. To counter this, we would like to see a requirement on associations to identify capital at risk in these diversified activities, and the risk-adjusted return being achieved in these areas.

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

12. Yes, the requirements in Section 2 seem reasonable.

Code of Practice (Annex 2 and Question 2; a, b)

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

13. Yes, we believe that it should assist providers in this way.

b) Is the role of the Code clear and is it reasonable?

14. Yes, we believe that the role of the proposed Code is clear and that it is reasonable.

Disposals regime (Question 3; a-c)

Do the proposed revisions to the disposals regime (a) meet the aim of protecting social housing assets and the value in it? (b) Balance this aim with registered providers being free to run their own businesses? (c) Are they reasonable?

15. Yes. The proposed revisions to the disposals regime should be sufficient to protect social housing assets, and the value they contain, in a way which does not fetter provider freedom to run their businesses. The proposed revisions seem reasonable, in the circumstances.

Registration criteria (Annex 5 and question 4; a, b)

Do the changes to the registration criteria (a) reflect the proposed changes to the governance and viability standards; (b) are they reasonable?

16. Yes, these appear to be reasonable and support the required objectives.

Rent Standard (Annex 3 and question 5; a, b)

Do the proposed changes to the Rent Standard (a) reflect the Direction from DCLG; (b) express the requirements of registered providers in a way that is clear, succinct and as outcome-focussed as possible?

17. Yes, the proposed changes reflect the DCLG Direction. The associated rent standard guidance is helpful and provides useful clarity.

18. Constraining rent impacts on capacity in the sector. We welcome the acknowledgement that changes to the Rent Standard might adversely impact the ability of some providers to meet loan covenants, and would expect the dispensation arrangements to operate openly and consistently. We would not want the application of the Standard to have an adverse impact on the financial strength or capacity of a provider or indirectly to encourage higher-risk activities to offset the loss of rent.

General Consent to dispose (Annex 4 and question 6)

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

19. The proposed changes should protect social housing assets, although it is not clear at this stage how effective they might be in achieving this. The regulator should keep this under review.

20. Although we recognise that this is a very technical area, the language used in the draft revised general consent is cumbersome. We are concerned that this could cause confusion rather than provide clarity. On the face of it, the proposed changes appear to provide more comfort than they could actually deliver. We are concerned that areas such as exposure to RPI-linked debt could provide loopholes. Restrictions around on-lending are difficult to monitor and enforce. In this regard, most lenders to the sector now recognise that it is more important to have on-lending controls at a corporate level rather than loan level. This is because it cannot be established conclusively whether a £1 on-lent has come from operational cashflow, reserves or a new loan.

21. The issue here is whether the regulator has sufficient confidence in providing a general consent that associations will follow standards and not jeopardise social housing assets. The revisions are a half-way house which could, because of their cumbersome complexity, introduce risk through complacent assumption that a disposal is covered by the general consent.

22. We suggest that more effective monitoring by the regulator (e.g. of risks from on-lending) could be established through ongoing reporting requirements from associations in relation to new funding put in place.

Registration criteria, other changes (Annex 5 and question 7; a, b)

Do the other proposed changes to the registration criteria (a) contribute to the Regulator better meeting its fundamental objectives; (b) express the requirements of registered providers in a way that is clear and succinct?

23. We support the requirement to ensure all Governance and Viability standards are met at the point of registration. The proposed changes should help the Regulator to better meet its fundamental objectives. The requirements on providers are expressed clearly and succinctly, although requirement 2.1(i) on profit-making providers to ensure that their non-social housing activities "form only a very small part of the activities they undertake" needs further amplification and clarification about how such activities would be judged to be a "very small part".

24. Recently, the registration process has operated loosely. There have been occasions where for-profit organisations have been registered despite having no legitimate business model. As registration is often seen as an endorsement of a business model, it should be clear that the regulator has undertaken appropriate due diligence as part of its decision-making on the provider.

Contact

25. Please contact [redacted] if you would like to discuss this submission further.

7 August, 2014

Appendix A

Thank you for the opportunity to respond to the consultation on proposed changes to the regulatory framework.

The proposed changes will not affect **Colchester Borough Council** as a stock holding authority, however we will be impacted by the changes to regulation of our Registered Provider partners and the influence this may have on the local housing market. Therefore, we have responded on that basis. We have also included feedback from our Arms Length Management Organisation, Colchester Borough Homes.

1. Governance and viability standard

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

We support the aim to protect needed social housing assets. We also support the need for registered providers to have a robust business planning and risk framework.

b) Does the proposed standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

We will be interested in the thoughts of registered providers as future users of the standard.

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 businesses?

These requirements as set out would be expected of all businesses and as such are expected in the sector.

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

To protect needed social housing assets, we support the requirement for registered providers to ensure they have robust stress testing processes and that before RPs take on new liabilities they consider the impact on future business needs.

The need for proportionality for smaller RPs needs to be recognised. The consultation says that RPs "are expected to consider what stress testing is appropriate given the size, type and structure of the organisation", and it is hoped that this approach will be supported taken by the Regulator.

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

We support the inclusion of guidance on for-profit Registered Providers and the clarity provided by the inclusion of registered and unregistered parent companies.

2. Code of practice:

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

We share our RP partners' concerns that the development of a new Code of Practice is not the role of the Regulator. The Standard will have regulatory force, and hence this needs to be easily understood, rather than providing an explanatory code.

b) Is the role of a code clear and reasonable?

Please see above.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

We support the inclusion in the Standard of strict guidelines to ensure that the historical investment in social housing is not lost through disposals, and instead is ring-fenced into a disposals proceeds fund. It is understood that the fund is for the provision of social housing (either social or affordable rented) and that the regulator can then direct what the fund may be used for.

It is unclear how the disposals regime fits in with Local Authorities' Strategic Tenancy Strategies. Clear guidance to RPs on consultation with Local Authorities and a consideration of Local Authorities pressures and drivers would have been welcome. It is disappointing that when capital from disposals in a Local Authority's area is not reinvested in that area. We would have welcomed more direction to RPs that in areas of high housing need reinvestment in the area should be the first call on capital receipts rather than use elsewhere.

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

Although RPs need to be free to run their own business, as stated above, they need to consider the Local Authorities' Strategic Tenancy Strategies and take into account local pressures and needs when building up a disposals programme.

c) Are they reasonable?

Please see above.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?

The changes reflect the change to the Governance and Viability Standard by ensuring that applicants can demonstrate that they can meet both the governance and financial viability strands of the Standard at the point of registration.

b) Are they reasonable?

We support the Regulator's aim to support an increased supply of social housing by registered providers who are financially viable and properly managed.

We support the proposal that organisations applying for registration should demonstrate that they can meet the Governance and Financial Viability Standard with the provision that the Regulator will judge applicants according to the stage their business is at when it registers.

However it must be recognised that the increased requirements of the standards may affect decisions by prospective RPs whether to pursue the application or not. The additional burden in terms of detailed risk management, stress testing, annual assurances from the Board might outweigh the potential benefits of becoming an RP

5. Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?

The Standard reflects the guidance from DCLG.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

The Standard is clear and succinct.

CGA Response to HCA Consultation:

Changes to the Regulatory Framework

Background

Community Gateway Association owns just over 6100 properties, the vast majority of which are in our headquarters location of Preston, Lancashire. All our homes are for letting at social or affordable rents. We are currently developing or acquiring new housing supported by the HCA's Affordable Homes Programme (AHP) 2011-15 and the Affordable Homes Guarantees Programme 2013-16. We have also been awarded an allocation, equivalent to our full submission, of £3.12m in the AHP 2015-18 to support the building or acquisition of 110 new homes for rent.

This submission represents our response to the questions posed in your consultation paper. As a co-regulatory champion we are pleased that the HCA continues to promote this approach to its regulation of Registered Providers. However, as an organisation built on the Community Gateway Model and, therefore, a mutual where our customers, our tenant and leaseholders, ultimately own and direct the organisation, we note the emphasis on Boards taking responsibility for management of their companies and the requirements to be appropriately skilled. We believe this to be the correct approach but hope that this does not lead to a "presumption" that volunteering tenants are somehow to be discouraged from being full members at the Board table.

Our response to the consultation questions follows:

1	**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?** The proposed Standard is quite clear on the requirement to protect social housing assets.
b)	**Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?** It is a more succinct document than previously and is generally outcome focussed, although the sections on risk appear to be moving towards some more specific requirements.
c)	**Do the requirements in paragraph 1.2 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 businesses?

As we have noted in our introduction, we welcome the continued emphasis on co-regulation and feel that skills development is key to having customers playing a full part in the leadership of the Association. The lack of stipulation on membership of Boards will be generally welcomed but we note that this also means the role of tenants at this level is uncommented on by the Regulator. We hope that this trend does not continue towards an expectation that tenants feel unable to be involved at Board level.

d) Do the requirements in paragraph 1.4-1.5 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?

There is an element of greater prescription in this section with a number of inputs, as opposed to outcomes, being required. However, these are good practice issues that nearly all providers will be undertaking and they do not restrict providers' freedom to run their business.

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

CGA has no comment to make on this section.

2	Code of Practice

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

There appears to be a genuine desire to be clear that the Code is not intended as prescription on what Providers should be doing and therefore, as amplification, it can only help. However, it seems inevitable that Providers will over time approach it as something to base their policies and processes on. The Regulator appears to be expending great effort not to be caught in the contradiction of regulating on an outcome basis while giving detailed guidance on what they will expect Providers to be doing.

b) Is the role of the Code clear and is it reasonable?

Paragraph 5 in Annex 2 of the consultation documents helps us to understand the role.

3	**Do the proposed revisions to the disposals regime:**

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

We note the requirements on a Disposals Proceeds Fund and welcome this change.

4	**Do the changes to the registration criteria:**

a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?

CGA has no comment to make on this section.

5	**Do the proposed changes to the Rent Standard:**

a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The direct answers to these questions are obviously, yes. However, accepting that it is not the place of this consultation to ask about the impact of the DCLG Direction, the answer to that question would not be so positive. We are part of the PlaceShapers alliance of associations and refer you to their response to this section:

"As we said in our response to DCLG's own consultation on these matters, we do feel strongly about the loss of the ability to converge rents at "target" levels and we feel it only appropriate to restate the implications of this change here. Loss of this facility is taking capacity out of our members' business plans to fund new supply and the only way of recouping this is by converting more properties to much higher "affordable" rents when they become vacant which is likely to lead to higher housing benefit claims than would be the case otherwise.

The fairness principle underpinning rent convergence was and remains a good one and we still believe that it should be allowed to run its full course. In this context, at the very least we would ask that the ability for the Regulator to waive specific requirements of the new Rent standard for a period of time should be extended to cover any situation where there will be a demonstrable adverse impact on a landlord's approved business plan. Only in this way will development capacity and the provision of cost-effective community support be protected."

6	**Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**
We are slightly concerned about the tightening of the restrictions around on-lending. We wonder if it is possible that this could prevent us from supporting a subsidiary, which helps us to further our community and social value aims, in a way that might be extremely significant to the subsidiary but immaterial to the Association.	
7	**Do the other proposed changes to the registration criteria**
a) Contribute to the Regulator better meeting its fundamental objectives? **b) Express the requirements of registered providers in a way that is clear and succinct?** CGA has no comment to make on this section.	

Dear HCA

As a long-term tenant of public housing I would like to raise the following issue as part of your consultation process.

The related Consultation Question is

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

I am would answer 'no' for the reasons below:

In 2010 the Social Housing Regulator's policy was set out follows:

https://www.homesandcommunities.co.uk/sites/default/files/our-work/consent_to_disposals.pdf

"Providers are registered, and receive grant, to provide affordable housing to meet housing need. The Regulator wishes to see stock continuing to be used for the purpose intended and tenants remaining secure."

This policy commitment to social housing being regarded as a resource for people and not an asset to be sold off by housing associations already awash with vast unspent surpluses and highly paid officials has been seemingly dropped from the proposed new version of the General Consent.

Please inform the current regulator that the 2010 policy that social housing assets should continue to be used by housing associations for the purpose they were intended for and for their tenants to remain secure must be restored and reiterated if the proposed changes to the General Consent are to allow the Regulator to protect those assets effectively as it claims it seeks to.

Yours faithfully,

[redacted]

[redacted]

[redacted]

Thank you for inviting comments from HA customers .

Point I'd like the committee to consider:-
On the 13th August I rang your agency tel:- 0300 1234 500 spoke to someone called 'Simon.' I was querying the agency's policy on repairs. I explained the background , without declaring the HA, and almost got a flea in my ear. Simon suggested I put a formal complaint into my HA to the Customer Panel that addresses these concerns. He was told I'd gone to the managing director! I know the system - but having gone to the MD - reckon that route is pointless.
Apparently your organisation does not get involved repairs issues.

You see ladies & gentlemen, my issue on repairs with my landlord is **unheard of elsewhere in this industry**!

'[redacted]' decided last year to rip up the 'established' policy, on what repairs they do, and in effect decide customers, will hitherto do them. Bring in their own contractor, OR get a quote from [redacted]. As a result repairs are not being done, in time the properties will go down hill. Further also importantly, when a customer leaves either 'in a box' or to another place (on earth!) - the partner or tenant then gets a shock 'out of the blue' - A bill running into hundreds, if not thousands of pounds. That, the housing association claim are to pay for repairs, they, the tenants should have fixed.

The panel reading this missive, indeed as with 'Simon' could find this strange. However examining the policy of 30 HA's across the country including Scotland. I could not find any other HA , that has so dramatically cut back on repairs. Less staff more profit !!
If the Government is paying the rent for a full or part benefit - then it is being short changed.

Result:- Customers are not getting their repairs done.
Even the ones on 'What this HA says - They do!' DELAYS.
This means that if a [redacted] customer weighs up his rent deal - houses, services, repairs - In comparison - to other HA's , locally or in a wider region.
These other HA's are providing a superior deal for often the same market rents. In some cases far better than the average industry standards.
Easy to check on most HA's website - Compare what each do.

Suggestion:- **The new regulations include minimum standards**.

Warning:- If you do not, then this concept of cutting to make more money, will spread. As to what the extra profit will be spent on, whilst not an accountant, the mixing of other forms of development & rentals with HA, could encourage 'Robbing Peter to pay Paul!'

Housing Associations have been a fantastic development for communities plus the country providing decent housing. Obviously failings occur from time to time, but the investment & concept is top class. My own personal circumstances caused me in 1979 to have to pick myself out of a difficult tragedy. Social housing was a

godsend, lets make sure your new Framework ensures Housing Associations & the concept play their part in the next thirty years.
Fairness for the HA organisations, customers & your Agency monitoring.

NB:- A report published earlier this year highlighted the spending of housing associations for 2012 & 2013. It listed the amount spent on repairs etc. But a simple division of a company's send / number of properties indicates the truer picture. The extremely wide spread of the average cash per property, indicating not just the number of the properties played a part - in fact economy of scale was just a minor part.

HCA consultation document on changes to the regulatory framework for registered providers of social housing – response to the HCA

An discussion group was held at Croftons' offices with a number of North West RPs to consider a response to the HCA on the proposed changes to the regulatory framework.

Changes to the governance and viability standard – skills and capability (1.2)

The group spent considerable time discussing the implications for RPs in attracting and retaining board members with the skills that the HCA seems to require, to enable RPs to demonstrate that the boards have the necessary qualities and capabilities to understand and run the businesses, often in a more complex and diverse sector.

There was some concern about what would happen to boards; would RPs be expected to review the skills of current board members and then undertake training where skill gaps would be identified? Would this prove sufficient, or would RPs be expected to replace board members with more independent board members, with particular skills? In any case of replacement, how are RPs expected to attract 'skilled' board members? Payment of board members was a factor, with a mix of paying and non-paying RPs at the group, and whether the levels of payment would be sufficient to attract and retain the 'right' people. It was, however, acknowledged that payment levels must represent value for money and also be within the constraints of current sector norms. Whether a specific set of skills should be sought for chairs was also discussed.

There was significant discussion around tenant board members and what the HCA's expectations might be; would they expect to see less tenant representation on boards? Would tenant representation and input (noted as being invaluable) be more by the way of tenant groups and committees? It was noted that any change to board structure would require changes to constitutions in many cases and board members (including tenants) would have to agree the changes and they would have to best represent the requirements of the organisation.

A question was raised as to any transitional arrangements for ensuring a board structure which will meet the HCA's regulatory requirements. The RPs wanted to know what the HCA's expectations would be when the new framework comes in force on 1st April 2015; would it expect RPs to make changes to their board structures? Would there be sufficient time to allow RPs to try and recruit and/or train boards? This is not always a straightforward matter, as it can be difficult to recruit and would require reviewing board member recruitment policies and procedures, RPs' requirements for certain board members, with certain skills, and would also need to be considered in light of succession and board member service length in constitutions.

Changes to the governance and viability standard - risk and protecting social housing assets (1.4)

Stress testing and risk management also played a key part of the discussion, and whilst it was appreciated that stress testing is important, and that it should inform business decisions and risk, in terms of mitigation policies, the question was how far these need to go? It was debated whether the

HCA would accept that RPs have a list of possibilities in certain situations (i.e. disposing of assets to another RP, borrowing) or would it require further level of detail? It was felt that it would be almost impossible to consider all outcomes, such as named RPs that might be a good fit in the event of a merger being required, for example, or estimating what the value of stock would be in 5 or 10 years' time, should a disposal be required. The HCA's proposed code of practice sets out that "registered providers should also ensure they have appropriate mitigation strategies in place and should consider the potential aggregated impact of risks, as well as their impact at an individual level" and "registered providers should establish the conditions in which the entity will or could fail, even if planned mitigations and controls are successfully invoked. They should assure themselves that these scenarios are consistent with what they consider to be acceptable levels of risk and their obligations to the Regulator".

The mitigation strategies will invariably differ as between RPs, but the question remains as to what the HCA will expect in order to be satisfied as to the appropriateness of mitigation strategies. Whilst the HCA continues to work on the basis of co-regulation, allowing RP boards to satisfy themselves as to whether the risk management, stress testing and mitigation strategies comply with the standards, RPs want to know how far they are expected to go . There seems to be an expectation that boards will consider market conditions (in the operating environment) however, in terms of mitigation, the question remains how far the strategies need to delve into possible rectification in certain types of scenarios.

Changes to the governance and viability standard - assets and liabilities registers

As with mitigation, there was further discussion about the extent of asset and liabilities registers. It was generally accepted that this is not simply a social housing dwellings asset register, but also commercial properties, land holdings, office buildings and any other physical assets. There may be plant and machinery also, as either assets or liabilities, which would normally form part of the accounts. In terms of liabilities, the code of practice makes it clear from the examples given, that this is not simply a list of what could be considered 'usual' liabilities, but also loan issues, guarantees, cross default provisions, obligations between group members, leases etc,. Further discussion was had as to what may also constitute liabilities, such as pensions, overage provisions, contracts, dilapidation schedules, chief executive contractual provisions etc,. and it was felt that further clarity could be given as to how far the liabilities need to be drilled down on the register. There was some debate as how the consultation on the registers was to be interpreted, but it was agreed that the ultimate aim of the HCA was a register that could be used as a tool in a rescue situation, to allow a rescuing RP to quickly understand what assets and liabilities it would be taking on.

Rent standard

The rent standard was contemplated, primarily the HIST provision, although felt in the room that it was of little significance to the RPs in attendance. Whilst there do appear to be some issues with these provisions, such as monitoring and enforceability, it seems that the feeling is (at least around the table) to spend significant time and effort carrying out an exercise to establish the income of all

current tenants would not represent value for money, in comparison to the level of additional income likely to be achieved. Monitoring income levels for al tenants was also considered to be time consuming. In the case of new tenants it was noted that tenancy agreements could be amended to include provision as to declaring income and informing the RP when it reached the HIST threshold. Rent policies would also need to be reviewed to ensure that they do not contain any provisions which would prevent the RPs from enforcing the HIST provisions if required. The question is how the HCA expects RPs to obtain the information from current tenants as to earnings and also whether requesting this information presents a potential Data Protection breach or possible breach of employment contracts for disclosing the information? Would an employed have to provide authority for the information to be released? It was generally felt that HISTs could prove administratively burdensome.

Changes to the disposal regime

Changes to the consent regime were also covered, although not in detail, however, an issue was raised in relation to the general consent not being available to secure finance on an index linked basis. The question was whether this was too restrictive in that many lending arrangements are entered into on the basis of RPI, which is an index which is a measure of inflation. Was this the intended consequence of the amendment and if so, will this require an RP to seek specific consent each time such an arrangement is entered into? As one RP pointed out, often the terms of these deals are not known until the deal is 'struck' and as such consent could not be applied for in advance, making these deals more time consuming and complex than under the current regime.

General

Given the proposal that the new regulatory framework will be in force from April 2015, the group asked whether it was therefore intended that the initial compliance certification would be expected for the financial year end (March) 2016, to show in the September accounts in 2016? This is a fairly short timescale in which to have complied with the proposed changes and relates to the previous concerns raised about transitional arrangements.

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
Maple House
149 Tottenham Court Road
London
W1T 7BN

8th August 2014

Email: statutoryconsultation@hca.gsi.gov.uk

Dear Tim,

Consultation on changes to the regulatory framework.

Thank you for the opportunity to make a response to this consultation paper and to comment on the HCA's proposals.

As you will recall, Curo operates principally in the west sub-region (the four Unitary authorities that make up the former Avon area), where we own and manage over 12,000 homes.

Following the approval of our strategic plan in 2012, we began investing in an ambitious change programme which, amongst other things, would increase the number of new homes we deliver. Our programme has been discussed with our HCA regulatory lead and has resulted in Curo diversifying our business to include a limited amount of commercial house-building, market rented housing and, as yet, a small number of 'holiday lets' in the centre of Bath. These developments form part of a comprehensive programme of change designed to improve our core offer to existing social rented tenants and to cross-fund the construction of 250 new affordable homes each year as set out in our long term business plan.

For all these reasons, we have a particular interest in the proposed changes. While we go onto respond to the questions you set out in your consultation document, we also have one overarching point to make which is;

- Whilst we acknowledge, and can understand, your concerns in relation to protecting "social housing assets" we believe that more value would be created if you allowed Housing Associations to charge rent up to the full market value, rather than require the disposal of that stock. This is particularly important, in circumstances where an asset is no longer fit for purpose as social housing (either because of customer needs or financial viability) and where conversion to market rent or some other commercial alternative, would allow it to remain as an asset within the social housing sector. Converting these assets could generate yields of between 8% and 10% in Bath and could not only cross-subsidise the improvement of other poor quality social housing but could also help re-provide new homes elsewhere without the need for disposal.

- As it stands, the proposals miss an important opportunity to give Housing Associations, alongside the specific expectation of protecting assets, a

greater freedom to be more imaginative and flexible to ensure financial success and we would strongly recommend that this additional provision be allowed where the business case is clearly demonstrated.

Turning to the specific questions, our detailed response is as follows:

1. Governance and Financial Viability Standard:

1a) Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?

Yes. We welcome the emphasis on the protection of social housing assets and public investment. We also welcome the change of emphasis from the 'ring fencing' proposals contained in the earlier discussion paper to an approach which is much more in keeping with the principles of co-regulation.

1b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes.

1c) Do the requirements in paragraph 1.2 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 businesses?

In the context of the robust management of risk we consider this to be an important addition to the standard: at the same time it is right to recognise that a 'one size fits all' approach is not appropriate. For our part we have taken a conscious decision to retain and extend independence on our boards and committees which helps us deliver the balance of skills, independence and challenge required.

1d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, although we would like to see a move towards recognising the receipt of grant as a liability and a greater flexibility to use non-grant funded assets in different ways (within the constraints of our charitable objectives), not least to help mitigate further changes to the operating environment.

1e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Yes, and we welcome the specific focus on those types of provider.

2 Code of Practice

2a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

Yes.

2b) Is the role of a Code clear and is it reasonable?

The intended role of the code is made clear, and much of what it contains is reasonable. However, we are not convinced that it will be used only in the limited capacity of 'advice and guidance', as is anticipated. The fact that it comes from the regulator will mean that the regulated – and in all likelihood the regulator itself – will treat it as representing the rules which support the regulatory standard.

3 Do the proposed revisions to the disposals regime:

3a) Meet the aim of protecting social housing assets and the value in it?

The proposed revisions, focussing on 'for profit' providers, are understandable. The consultation document recognises the legitimacy of profit making, although we wonder whether there should be any distinction, in the longer term, between 'for profit' providers where the sole shareholder is charitable/not for profit and others.

3b) Balance this aim with registered providers being free to run their own businesses?

Yes.

3c) Are they reasonable?

Yes, with the exceptions and concerns noted above.

4 Do the changes to the registration criteria:

4a) Reflect the proposed changes to the governance and viability standard?
Yes.

4b) Are they reasonable?
Yes.

5 Do the proposed changes to the Rent Standard:
5a) Reflect the Direction from DCLG?
Yes.

5b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The standard has inherited, and retains, some complexity around the affordable rent regime which is contrary to the brevity and outcome focus of the standards more generally.

We would welcome greater clarity on the 'pay to stay' proposal in paragraph 1.5, in particular, explicit confirmation that it is discretionary. We currently anticipate that we will have few 'high earners' to whom this exception might apply and have concerns about whether it will be cost effective to implement the necessary arrangements for very limited additional income. In short, we are concerned that if the quantum of residents affected is too small, implementing "pay to stay" may cost more to administer than we recover.

6 General consent

6a) *Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?*

We have two concerns about this. Firstly, in the short term, it is unclear how the transition will be managed. We have assumed that the revisions will not apply retrospectively in circumstances where relevant consent has previously been given and the transaction is complete. However, where matters are currently in progress, particularly where agreements have been reached but charging has not been completed, we are concerned about whether we will be able to continue and that substantial irrecoverable costs may be incurred.

Secondly, we have concerns that the scrutiny of individual arrangements by the regulator will lead to delays, including cases where the proposed arrangements are straightforward.

7 Do the other proposed changes to the registration criteria:

7a) Contribute to the Regulator better meeting its fundamental objectives?
We have no comment on this section.

7b) Express the requirements of registered providers in a way that is clear and succinct?
Our response to Q4 above refers to all proposed changes to the registration criteria.

Thank you again for the opportunity to comment, and I hope you will find our response helpful.

Yours sincerely

Victor Da Cunha
CEO Curo-Group

Appendix 1
Derby Homes
Proposed response to HCA consultation on regulation of Registered Providers

1. 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?

Yes

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

Yes

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 businesses?

Yes (is it not paragraph 1.2?)

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

Yes

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 general, yes, although as an ALMO our asset base is very small compared to our core business of managing Council housing. As such the key variables for the business are more about the risks of that business rather than our own asset base. That is not to say that our asset base is insignificant or that requires no consideration of the form suggested, but rather that it is of relatively less financial importance in terms of stress testing. Any regulatory approach needs to consider the wider whole business rather than just the narrow asset base.

2. Code of practice:
a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
Yes
b) Is the role of a code clear and reasonable?
Yes

3. Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?
Yes
b) Balance this aim with registered providers being free to run their own businesses?
Yes
c) Are they reasonable?
Yes

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

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

Homes &
Communities
Agency

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Annex 6. Consultation questions

May 2014

Annex 6. Consultation questions

Summary: This section provides a summary of the consultation questions

Consultation questions:

A6.1 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?

Yes but it will demand regulatory resources and appropriate skills to understand our businesses. Though ring fencing has been abandoned by the regulator, Derwent Living effectively operates it by only risking commercial business against commercial assets.

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

Yes but there is a difficult balance to be struck between what the regulator expects to see and a sense that the regulator is prescribing how to run a business. The document is clearer on what's expected but individual regulator's need to focus on the outcomes rather than processes. Each provider will have its own unique means to the end. The Regulator may want to see a more uniform approach but that can't be the way forward if we are to remain an innovative sector when we most need to be.

b) Do the requirements in paragraph 1.2 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 businesses?

Yes, the focus on a code and proper process in terms of appraisals, self assessment and skills balance is spot on.

c) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, subject to the comment made under A6.1 b)

d) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Yes, as long as the regulator also gives due weight to the risks posed by failure to deal with loss of income from welfare changes and failure to maintain the stock. It is good that the latter is given prominence in the consultation paper.

A6.2 Code of Practice

a) Does the proposed Code assist registered providers to understand how

compliance with the standard can be achieved? ***Yes***

b) Is the role of a Code clear and is it reasonable? ***Yes***

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it? ***Yes***

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

No comment as we are not a for profit registered provider

c) Are they reasonable?

We are concerned about the argument that there is substantial taxpayer interest beyond the level of grant made. Derwent has only received £130m grant historically….just 26% of our total value. We have used commercial profit to cross subsidise from our own endeavours for almost 20 years. We do not agree that public funding and regulation should claim credit for all our success…..a proportion yes.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard? ***Yes***

b) Are they reasonable? ***Yes***

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG? *Yes*

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible*?*

Yes, we are happy with the CPI plus settlement.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We are worried by this proposal. We understand the need to control following recent events and certainly see why the HCA is proposing this but the requirement for HCA approvals will impede business efficiency. These controls are too tight and a return to the red tape of the bad old days. Can't the regulator abandon this and rely on an in depth look at those Associations with significant diversity? This is a return to heavy handedness and bureaucracy and is a backward step we fear. The only way it will work is if you beef up resources to speed up approvals.

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

No comments here.

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes

72 Paris Street, Exeter EX1 2JZ
[redacted]

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
Maple House
149 Tottenham Court Road
London, W1T 7BN

18 August 2014

Dear Tim

DCH response to consultation on changes to the regulatory framework

Thank you for the opportunity to contribute to this consultation process.

DCH manages over 20,000 homes in the south west of England. We have a substantial development pipeline of schemes incorporating cross-subsidy from development for sale. Up to 2017 our pipeline comprises 3,500 homes. 2,800 of these are affordable, together with 700 for open market sale. Our open market development company (Westco) has a five-year business plan that will return £13.7m in gift aid to DCH to fund new affordable homes.

Overall, we support the direct regulatory changes set out in the paper.

We do have some concerns that the proposed code of practice may weaken the co-regulatory approach previously taken. There is some ambiguity of language between on the one hand the code not being enforced against as part of regulation, but on the other hand the code containing specific expectations that the regulator will have regard to in assessing compliance. We feel that this ambiguity is unhelpful, and that it is essential for organisations to have compete clarity on what they will be judged against.

We also have a particular concern over the proposal to amend the general consent for granting security over social housing assets (paragraph 3.72 of the consultation paper). This proposal restricts on-lending of the facilities secured on social housing assets within groups.

This proposal would be extremely limiting for DCH in respect of on-lending to Westco for open-market development. If Westco instead raised funds privately, then this would reduce its profits, the gift aid to DCH, and ultimately the number of new affordable homes built.

DCH has a strong and effective track record of development for open market sale, in a focused geography where we have a clear understanding of local markets and risk.

Arguably our risks in this area of operation, and the risk to social housing assets, are less than for other associations undertaking conventional building for affordable rent and sale.

The proposal also has practical limitations. The HCA in its current form is unlikely to have the resources to analyse 'business as usual' on-lending such as DCH lending to Westco, and arguably its attention would be better focused on more complex deals.

We believe that it would be more practical for the HCA to agree on-lending parameters with individual organisations, based on their risk profile and existing diversified activities. In effect this would be an intermediate arrangement between a general and specific consent, allowing on-lending within defined boundaries and financial metrics for comparatively low risk subsidiaries such as Westco.

At the very least, we would suggest that any change to on-lending criteria should only apply to new activities, with a dispensation being applied to existing lending.

We would be very happy to work with the HCA on developing appropriate metrics that enable effective risk management and the protection of social housing assets, while still maximising the supply of affordable homes through on-lending that in turn generates cross-subsidy from open-market sale and maximises the number of affordable homes developed.

Yours sincerely

Paul Crawford
Group Chief Executive

Devonshires
business advisory services

Homes & Communities Agency

Consultation on Changes to the Regulatory Framework

DBAS Consultation Response

14 August 2014

Contents

1. Introduction

Devonshires Business Advisory Services Limited ("DBAS") has reviewed the documents issued for consultation by the Homes and Communities Agency ("HCA") in May of this year. We understand that the proposed changes to the Regulatory Framework respond to changes in the way that some Registered Providers ("RPs") manage their business and in particular in the way that they may introduce innovation in funding structures and participate in commercial opportunities.

The proposed changes also respond to the growing numbers of organisations considering or seeking to establish For Profit RPs, and considers how the Regulator needs to discharge its statutory objectives with regard to such organisations.

A substantial part of the proposed changes relate to the governance and financial viability standard, but the consultation documents also introduce a number of other changes including:

- Amendments to the registration criteria requiring applicants to meet the governance requirements of the standard at the time of registration;
- Strengthening of the disposal of land regime, aimed at limiting the extent to which non-profit RPs can rely on a general consent for security for private finance;
- A requirement on for-profit providers to ring-fence in their "disposal proceeds fund", for social housing use, the entire net proceeds of any disposal of social housing acquired from another RP or local authority; and
- A series of changes to the rent standard.

DBAS has considered the changes to the Regulatory Framework which have been proposed by the HCA, and have discussed elements of the proposed revised Framework and Code of Practice with a number of our clients, contacts and Associates. Where appropriate, these discussions have informed this consultation response.

DBAS' clients comprise largely RPs, but also include a number of Local Authorities, developers and lenders into the social housing sector.

For information, our current and recent clients include:

Thames Valley HA	Hyde Housing	Incommunities Group
Jephson HA	Midland Heart	Your Housing Group
Together Housing Group	Sadeh Lok	Housing&Care21
Asra Housing	Viridian	Hastoe
Spectrum HA	Orwell HA	Kent County Council
National Housing Federation	AIB	Eric Wright Group

Contact Details

The consultation response has been completed by the founding Directors of DBAS, Mark Davies and Coralie Foster, and we would be very happy to meet with the Regulator should it be helpful to discuss any aspect of this consultation response.

Should the HCA have any questions about this response or its contents then please contact either Mark or Coralie at:

Telephone: [redacted]

Email: [redacted]

Mobile (MD): [redacted]

Email: [redacted]

Mobile (CF): [redacted]

Devonshires Business Advisory Services Limited

August 2014

2. Governance and Financial Viability Standard

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

The proposed changes to the Governance and Viability Standard aim to improve the protection offered to social housing assets (and tenants) in an environment where the risks faced by the owners of those assets are necessarily increasingly complex in order to respond to their customers' housing needs.

The changes which are proposed do enable the Regulator to better monitor the extent to which RPs are actively protecting social housing assets. The proposed changes focus specifically on driving RPs to both understand the risks that are relevant to their business and social housing assets, and to manage those risks effectively.

In principle, more effective risk management is an appropriate way for a business to protect its assets – including social housing assets – and so the proposed changes should enable the Regulator to meet its objective of protecting these assets.

In particular, the Required Outcomes for both Governance and Financial Viability make specific reference to RPs protecting their social housing assets, and 'ensuring that social housing assets are not put at undue risk'.

While we support the Regulator's intention not to revert to the previous era of best practice guidance notes, we would suggest that it may be helpful for the Standard to offer RPs some clarity as to how they are expected to provide evidence to the Regulator that their social housing assets are being protected.

The introduction of a Code of Practice ("the Code") is therefore likely to be helpful to RPs, and the proposed Code which has been published by the HCA offers examples of what may be deemed to be undue risk.

We would suggest that where RPs seek to provide evidence to the Regulator that social housing assets are indeed protected they will in part rely on the Code. Further examples of what may be deemed to be unacceptable risks might therefore be introduced into the Code.

DBAS does also recognise the importance of preserving the existing co-regulatory regime, and so we would suggest that any further development of the Code should explicitly recognise this. The Regulator may therefore consider ways in which the Code could offer further guidance to RPs on compliance with the Standard without eroding the principles of co-regulation.

Given the Standard's clear direction that the responsibility for meeting the Standard rests with the Boards of RPs, it may also be helpful to require RPs to demonstrate how the protection of social housing assets is taken into account where Boards take key business decisions, particularly those decisions which may be regarded as innovative, or relate to the participation in non-social housing ventures.

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

The Standard does offer RPs a welcome degree of clarity with regard to the Regulator's requirements through the specific Required Outcomes in relation to both Governance and Financial Viability. The proposed Code offers further guidance to RPs with regard to this.

As we have suggested above, it is likely that RPs would welcome any amendments to the proposed Standard which clarify how best they might offer evidence to the Regulator that they have adequately discharged their obligations, and in particular how effectively their social housing assets are protected.

In terms of the specific contents of the Required Outcomes, we would also comment as follows:

- The requirement to 'adhere to all relevant law' has been the subject of some discussion, and will no doubt be commented on in the consultation responses from a number of legal advisers which are active in the sector. From a practical, and value for money perspective, Boards will need to consider how they can be satisfied that their orgainsations are at all times compliant with all relevant law – exhaustive legal compliance reviews on a regular basis would be expensive and may not be an effective use of RPs resources. As currently drafted the consequence of any breach of law, however minor and quickly remedied, may be a breach of the Standard and consequent regulatory downgrade.
- The reference to RPs being required to 'safeguard…the reputation of the sector' might be considered to be rather subjective. As an example, an RP which delivers high levels of surplus through ensuring effective value for money may well be regarded by many observers as a high performing organisation which manages its risks well, while others may take the view that high levels of surplus are damaging to reputation, insofar as lower levels of surplus might be a result of higher spending on wider services to tenants or greater investment in housing stock.

Do the requirements in paragraph 1.2 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 businesses?

Where RPs comply with the requirements of paragraph 1.2 they are likely to create the conditions whereby social housing assets are protected. The Standard concludes that where an organisation meets the Regulator's requirements with regard to skills, capability and independence then it will be 'better able to protect social housing assets'.

The Regulator may wish to consider introducing into the Standard a more specific obligation on Boards to both:

- Demonstrate that Board Members have an understanding of the social housing assets which are owned by the RP; and
- Demonstrate that Board Members recognise the risks to these social housing assets and take account of how these risks are affected by key decisions of the Board.

We would support the Regulator's contention that it is inappropriate to stipulate the conditions for independence of Board Members, and also welcome the reference to the Financial Reporting Council's UK Code of Governance. This Code is largely designed to relate to the requirements of listed companies, and we would argue that it is therefore appropriate for (many) RPs to reflect the good governance which complex private sector organisations are required to both implement and demonstrate. The governance expectations of the Regulator, tenants and other stakeholders should be at least on a par with the expectations of investors in private sector organisations, and so compliance with similar codes of governance would seem to be appropriate.

Similarly, nothing in the FRC's Code would be deemed to restrict private sector organisations from 'being free to run their own businesses' and so a good balance would appear to have been achieved by the HCA in the contents of paragraph 1.2.

DBAS also welcomes the Regulator's recognition that co-terminous boards are common practice in the sector; we would argue that such an approach is consistent with the HCA's wider interest in delivering value for money, and the specific reference to co-terminous boards is therefore a positive development in the Standard.

Do the requirements in paragraph 1.4 and 1.5 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?

Paragraph 1.4 requires RPs to have 'an appropriate and robust, prudent business planning, risk and control framework'. The proposed Standard is largely consistent with the existing Standard and the main change relates to the introduction of a requirement for the Board to approve the framework and its effectiveness on an annual basis.

RPs ability to meet this aspect of the Standard is therefore linked to Paragraph 1.2, which requires them to have a Board which demonstrates an appropriate level of skill and capability – effectively the Board will need to have the skills and capability to make a judgement on the planning, risk and control framework. In certain circumstances – for example smaller RPs, or larger RPs which are engaged in higher risk ventures – it may be appropriate for the planning framework to be the subject of external independent verification. There may be some merit in incorporating some drafting into the standard which encourages a Board to seek external verification it deems this to be appropriate.

Paragraph 1.5 strengthens the extent to which this part of the standard meets the aim of protecting social housing assets by specifically requiring risk to be managed in such a way as to ensure 'that social housing assets are protected'. This would seem to be an effective addition to the existing Standard, making it absolutely clear that the purpose of effective risk management is to protect social housing assets.

The Standard goes on to require RPs to manage risk by:

- Maintaining an accurate register of assets and liabilities;

- Undertaking robust stress testing; and
- Assessing the impact of new liabilities on regulatory compliance.

It may be appropriate to add to this a requirement for RPs to also undertake such additional risk management as it feels to be appropriate. As drafted, there could be a risk that an RP does as the Regulator has instructed (i.e. it undertakes the actions identified in 1.5, and summarised in the bullets above), and social housing assets remain at risk. Where the RP could have applied additional, reasonable, risk management procedures to protect these assets it might argue that it has complied with the Standard, as it has complied with the Regulators instruction 'RPs shall do so by:….'.

As regards the issue of asset registers, it seems likely that most RPs will have such registers in place, but that they may not currently be sufficiently up to date and comprehensive as is required by the Standard.

The Regulator may therefore consider whether it would be appropriate for the Standard to require such registers to be in place within a set number of months following the adoption of the Standard. Such an approach may reduce the risk that a substantial number of RPs would find themselves in non-compliance with the Standard upon its adoption.

Further, the level of information contained in the asset registers should be sufficiently comprehensive and accurate as to enable uncharged assets to be pledged as security for new borrowing. The information available to Boards in the asset register should therefore clearly identify to Board Members what assets the RP has available to support new borrowing.

Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing?

Section 2 of the proposed Governance and Financial Viability Standard sets out the Regulator's requirements for three specific type of RP, where the Regulator considers that additional control measures are appropriate to ensure that social housing assets are protected.

The three types of RP addressed in Section 2 are:

- Profit making RPs;
- Registered group parents; and
- RPs with unregistered parents.

The requirement for profit making RPs to ensure that social housing assets are not placed at risk seems reasonable, as does the requirement for them to undertake their social housing activity through an entity which is legally and operationally separate. In the context of the wider value for money objective, however, the Regulator may wish to consider introducing drafting to clarify the how exactly operational separability would be defined – sharing of appropriate management resource, and fixed assets would not necessarily place social housing assets at risk, could deliver better VFM for the social housing business.

The requirement for profit making RPs to undertake only a limited amount of non-social housing activity may be considered to be unnecessary; if an appropriate legal and financial ring fence is in place which the Regulator is satisfied protects social housing assets, then would the volume of non-social housing activity have any impact on the Regulator's aim of protecting social housing assets?

Those elements of the Standard which relate to registered group parents and RPs with unregistered parents would appear to be wholly reasonable, given the Regulator's aim of protecting social housing.

3. Code of Practice

Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

The introduction of the Code of Practice is likely to assist RPs in understanding what it means to comply with the Governance and Financial Viability Standard. A number of RPs have questioned whether the Code harks back to previous regulatory practices, though the guidance which the HCA has incorporated into the consultation documents ought to offer some comfort that this is not the case.

We would suggest that the Code is potentially most valuable in helping RPs to understand whether they are compliant with the requirement to ensure that social housing assets are protected; the Code recognises that different approaches will be required for different RPs and scenarios, and RPs are therefore likely to refer to the Code where they are uncertain as to whether certain risks are deemed to be acceptable. We would suggest that it might therefore be beneficial to expand this element of the Code to incorporate further examples not just of which risks might be unacceptable, but also some commentary on how an RP might assess its risks.

Is the role of a Code clear and is it Reasonable?

We would repeat our comment above, to the extent that the role of a Code is clear and reasonable when taken alongside the Regulator's guidance with regard to how it will be used.
The contents of the Code are largely reasonable, though we would make a small number of specific comments as follows:

- Mergers – no reference is made to the way in which independence issues are addressed in a scenario where Executive teams (and Boards) are considering mergers; given the move towards mergers by a number of RPs it may be appropriate to consider introducing some guidance on mergers into the Code;
- Use of external advisers – the Code makes reference to use of 'internal/external expertise or advice' for 'all material decisions'. It may be appropriate to expand on the Regulator's thinking with regard to materiality, particularly where RPs are considering using its resources on external advice – reliance on external advisers is necessary in certain circumstances, but in some cases resources can be wasted on unnecessary external support;
- The Code indicates that up to date and accurate asset registers must be available to the HCA at short notice; it may be appropriate to incorporate a 'grace period' following the adoption of the Standard during which RPs are able to update their registers of assets and liabilities and not find themselves to be non-compliant during the period in which this exercise is undertaken; and
- The Code may be expanded to incorporate commentary on how the contents of the updated asset registers are communicated to the Boards of RPs; while extensive registers are beneficial to the Regulator, co-regulation can only be effective where the Board has a full

understanding of the nature of the RPs assets, and the liabilities which attach to them. This detailed understanding will then better enable strategic decision-making by the Board.

4. Disposals Regime

Do the proposed revisions to the disposals regime meet the aim of protecting social housing assets and the value in it?

The proposed changes to the disposals regime are aimed at profit making RPs which dispose of housing assets where the original capital base came from social housing assets owned either by a non-profit or local authority RP. The revised disposals regime will require that profit making RP to apply the proceeds of the disposal to a Disposal Proceeds Fund ("DPF").

The Regulator has the power to direct how sums held in the DPF are used, and proposes to permit profit making RPs to use these sums to invest in 'social formula' rented housing or Affordable Rent housing.

These proposed changes would seem to strongly support the protection of social housing assets, and actively prevent the leakage of historic value from the sector.

Do the proposed revisions to the disposals regime balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The proposed revisions to achieve an appropriate balance between protecting social housing assets and leaving RPs free to run their businesses, insofar as the proposed restrictions only apply where assets have transferred from a non profit RP (or local authority RP) to a profit making RP.

The restrictions apply only to proceeds which are generated from the transfer of assets, and not from achieving management efficiencies or delivering profit on stock developed by the for profit RP, and hence the only proceeds which are applied to the proposed Disposal Proceeds Fund would be those which arise from the latent value which is a product of stock having an existing use value which is less than an open market value.

Are the proposed revisions to the disposals regime reasonable?

The revisions which are proposed to be made to the disposals regime would seem to be reasonable given the Regulator's objective of protecting social housing assets and the public value which is vested in it.

DBAS would, however make a number of comments for consideration by the Regulator:

- Is it appropriate for the entire proceeds of an asset disposal to be applied to the DPF, or should the DPF only be credited with the profit on disposal (i.e. the profit making RP can retain its original investment in the stock)?
- Should the requirement to apply sale proceeds to the DPF continue to apply where the 'latent value' in the stock has been released? For example, if social housing stock is acquired by a for profit RP at full market value, and is subsequently sold, would it be appropriate for the subsequent sale proceeds to be applied to the DPF? It could be argued that this imposes an unreasonable disincentive on for profit RPs to acquire stock from non profit RPs at sale values which allow the non profit RP to make surpluses which can then be reinvested in social housing.

- How is social housing stock defined? Does this apply to housing units only, or potentially to land or other assets?
- Would a wider use of sums applied to the DPF be reasonable? For example would it be appropriate for the DPF to be used to invest in community regeneration or other socially beneficial uses other than simply social housing assets?

5. Registration Criteria

Do the changes to the registration criteria reflect the changes to the governance and viability standard?

The principle changes to the registration criteria appear to reflect the fact that the Governance and Financial Viability Standards are to be brought together into a single standard, albeit we understand that the Regulator will continue to issue Judgements separately.

The previous registration criteria required the Financial Viability Standard to be met at the point of registration, whilst the applicants were required only to offer a 'reasonable path' to meeting the requirements of the Governance Standard.

The new registration criteria would therefore appear to reflect the changes to the Governance and Financial Viability Standard, insofar as full compliance will be required of an applicant at the date of registration.

Are the changes to the registration criteria reasonable?

The effect of the principle change to the registration criteria would appear reasonable – applicants for registration need to meet the requirements of the Governance and Financial Viability Standard from the date of (application for) registration.

6. Rent Standard

Do the proposed changes to the Rent Standard reflect the Direction from DCLG?

The proposed changes to the Rent Standard have been made by the Regulator in response to the Direction given to the HCA by the Secretary of State in May 2014. The proposed changes would appear to accurately reflect this Direction.

Do the proposed changes to Rent Standard express the requirements of registered providers in a way which is clear, succinct and as outcome focussed as possible?

We would support the argument that the changes to the Rent Standard are clear and succinct, such that RPs are able to deliver the outcomes which the secretary of State's Direction sought to achieve.

7. Protecting Social Housing Assets

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The proposed changes to Category 6 of the General Consent introduces a number of restrictions on the way in which RPs access category 6, and therefore extends the circumstances in which an RP may be required to seek a specific consent from the Regulator.

By potentially extending the scenarios in which a specific consent is required for an RP to grant a security interest to a private finance the provider it seems reasonable to conclude that these changes will increase the extent to which the Regulator is able to protect social housing assets – those circumstances which the Regulator believes present the greatest risk to social housing assets will be the subject of greater scrutiny by the Regulator, prior to the grant of a specific consent.

Notwithstanding the fact that we agree that social housing assets are better protected by the proposed changes, DBAS would comment on a number of the proposed changes to the General Consent as follows:

- The restriction on access to category 6 where an RP whose parent is not registered may be unnecessarily inflexible; while it is reasonable to require a specific consent where the parent is a purely commercial entity which distributes profits to its shareholders, it may be unnecessary to deny reliance on the General Consent where the RP's parent is a non-profit making entity such as a charity, or an organisation which while not registered, comprises only RPs in a group structure;
- By requiring that on-lending of facilities secured against social housing must be used for social housing purposes, the Regulator certainly meets its objective of protecting social housing assets. This may prove to be counter-productive, and to unecessarily restrict innovation within the sector. In circumstances, for example, where a RP owns a non registered commercial subsidiary which is profitable and gifts those profits back to the (registered) parent, the restriction on access to category 6 may discourage successful commercial activity which ultimately increases the supply of social housing;
- The removal of reliance on the General Consent where finance is provided on an index-linked basis does help to protect social housing assets but may be deemed to be a rather 'blunt instrument'. Some index-linked financing arrangements would appear to be more risky than others, for example it may arguably be reasonable to rely on the General Consent where index-linked finance is raised on a 'cap and collar' basis, although we would agree that a specific consent may be appropriate where the RPs exposure to indexation is uncapped. Similarly, the level of risk to social housing assets may be deemed to be greater where a larger proportion of an RP's overall facilities are index linked, and in circumstances where only a small proportion of the finance raised by an RP is index linked then it may be reasonable to rely on the General Consent.
- More generally, problems which have been encountered by RPs in the past have often related to the way in which funding arrangements have been treated in the RPs accounts, rather than simply in relation to the level of risk which an arrangement brings. The Regulator might therefore consider that it is inappropriate for RPs to rely on the General Consent for innovative funding arrangements (including 'off balance sheet' transactions) more generally.

- Notwithstanding the comments above, we would also note that the Regulator's duty to protect social housing assets is also balanced by the need to 'improve the supply and quality of housing', and restrictions on the sector's ability to introduce innovative funding structures would have a detrimental impact on the delivery of this objective. While DBAS would therefore support the use of a specific consent where assets are charged in connection with innovative funding structures we would also encourage the Regulator to commit to effective resourcing of the teams which will consider these consent applications, such that innovation in housing supply is not stifled by drawn-out approval processes.

8. Other Changes

Do the other proposed changes to the registration criteria contribute to the Regulator better meeting its fundamental objectives?

DBAS would agree that the changes to the registration criteria, in particular requiring applicants for registration to meet the Governance elements of the Standard from the date of registration, rather than being on a 'reasonable path' to compliance, would help the Regulator to better meet its findamental objectives.

The Regulator's objectives are set out in the 2008 Housing and Regeneration Act and are to:

- improve the supply and quality of housing in England;
- secure the regeneration or development of land or infrastructure in England;
- support in other ways the creation, regeneration or development of communities in England or their continued well-being; and
- contribute to the achievement of sustainable development and good design in England, with a view to meeting the needs of people living in England.

By requiring RPs to meet the Governance Standard from the date of registration rather than at some subsequent date the proposed registration criteria better enables the Regulator to meet these objectives.

Do the other proposed changes to the registration criteria express the requirements of registered providers in a way which is clear and succinct?

DBAS would agree that the proposed changes to the registration criteria are quite clear and succinct, making it clear that all elements of the Governance and Financial Viability Standard must be met at the date of registration.

Devonshires solicitors

Devonshires' Response to the HCA Consultation on Regulatory Reforms

30 Finsbury Circus, London, EC2M 7DT

1. Introduction and Executive Summary

1.1 We set out in this section some general comments (including an executive summary, which cross refers our main text in [brackets]), and then we set out below comments on each section of the consultation documents. We believe this is the most helpful way to present our response, as the questions set out in Annex 6 to the consultation paper only cover part of the paper and our comments go wider.

1.2 Overall, we welcome the consultation paper as reflecting a measured approach to regulation of registered providers (RPs) and protection of social housing. We believe the HCA was right to move away from rigid ringfencing of social housing risks within non-profit registered providers (NPRPs). We understand why ringfencing has been retained for for-profit registered providers (FPRPs) but envisage that FPRPs will argue strongly for a consistent regime for all RPs. A further definition of what the HCA understands to be social housing would be beneficial [9].

1.3 In several places the precise scope of the HCA's requirements remains unclear. This gives flexibility to the regulator but causes considerable uncertainty for RPs. An example is the HCA's expectations for avoiding "undue risk" to social housing [3].

1.4 The "required outcome (governance)" of compliance with "laws" is understandable. Given the relative breadth of regulatory guidance, we suggest RPs should only be required to certify compliance to the best of their knowledge [2.2].

1.5 It would be useful to have a degree of clarity as to the HCA's expectation regarding independence on the board and we would look to avoid a return to the "schedule 1" regime [5].

1.6 The requirements as to business planning and stress testing are core to the HCA's mission to ensure that RPs understand and plan for risk. We suggest that the frequency of testing and validation of these aspects should reflect the size of the RP. We wonder to what extent the HCA has the resource to assess the risks associated with non-social housing parts of RPs' businesses [7].

1.7 The obligation on group parents to "support and assist" RP subsidiaries needs to be clarified: are we talking about management resource or financial support [10, 11]?

1.8 The provisions on RPs with a non-RP parent may have the unintended consequence of preventing intra-group guarantees anywhere within such a group. This could rule out, for example, certain group wide bond structures which have been used in the market [11.3].

1.9 Looking at the changes to the general consent category 6 (mortgages by RPs), NPRPs are concerned in particular at the requirements of specific consent for security for an intra-group loan which is not for social housing purposes or for security for guarantees even within a group. This will necessitate specific consent on many bond issues guaranteed by group members [13].

1.10 The proposals for FPRPs are particularly restrictive and it remains to be seen whether they will discourage for-profit bodies from seeking registration. In particular, they may be willing to obtain approval for <u>all</u> charging of social housing property but will the HCA provide fast track approval [13.1]? And the proposal to "capture" the entire net proceeds of sale in a disposal proceeds fund (DPF) may discourage investment by FPRPs or their groups in refurbishment and maintenance of social housing [14].

1.11 In relation to the revised Rent Standard Guidance, we consider that the Regulator should expressly recognise the existence and continuation of existing waivers – without private registered providers (PRPs) having to apply again (as the Rent Direction Consultation did) and also the existence and continuation of existing extensions, whether expressly or impliedly agreed by the Regulator, for

example where the Regulator previously approved business plans at the point of stock transfer which included extensions to rent convergence beyond 2015. We consider it inequitable that the Regulator should now require affected PRPs to seek waivers [16].

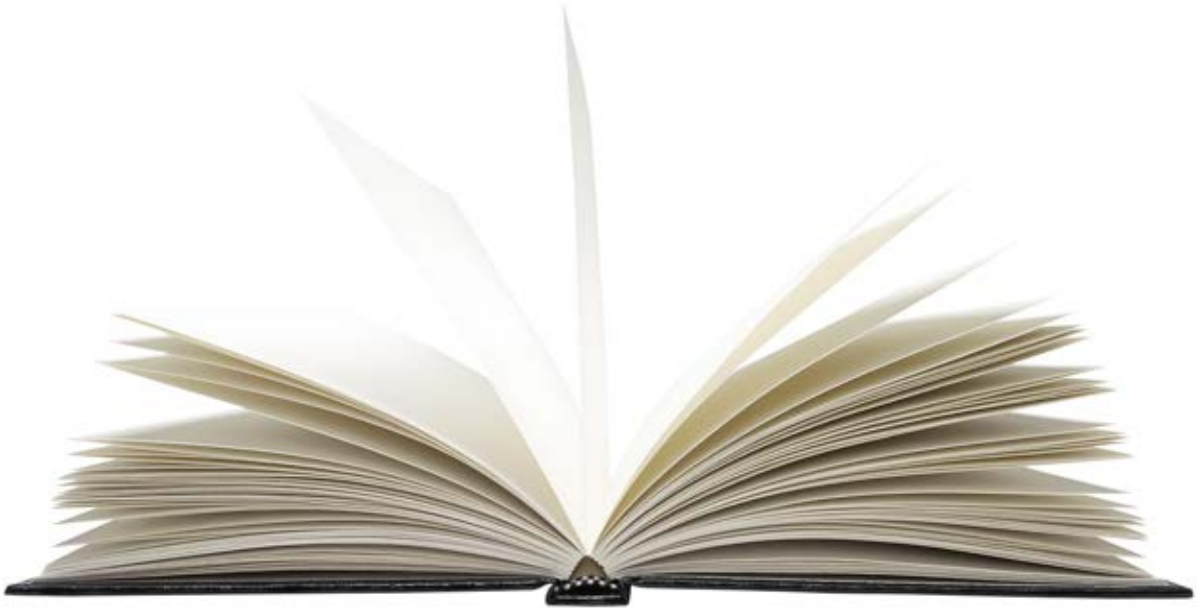
Keep in touch

Andrew Cowan

[redacted]

Gareth Hall

[redacted]



2. Required Outcomes: Governance

2.1 The Code of Practice (Code or CoP) refers to the (existing) need to safeguard the sector's reputation. It refers (at A2) to the need for the sector to conserve its historic low interest rates and public investment. In the current market, a cynic might ask whether these are of diminishing significance, in particular for FPRPs and other newer RPs which are no longer able to access these benefits.

2.2 The HCA has added an obligation to adhere to "relevant law" (rather than, previously, "legislation") as a means to bring in such matters as common law and statutory guidance. Perhaps an express reference to guidance would be useful here? The CoP refers here to Charity Commission guidance but many other regulators have an impact on RPs including the FCA (community benefit societies; money laundering; consumer credit); Care Quality Commission etc. Some RPs are concerned about making declarations to the HCA as to such compliance. We suggest this should be given to the best of the RP's belief having made reasonable enquiries.

3. Required Outcomes: Financial Viability

3.1 We can understand the added requirements to "protect social housing assets" and "ensure that social housing assets are not put at undue risk". The CoP at B makes it clear that the "undue risk" test is subjective i.e. depends on the condition of the RP in question. The examples given in B2 of the CoP are relatively extreme. If the HCA would regard lesser cases of risk to social housing as a breach, then perhaps such examples should be given as well?

3.2 We also wonder whether the distinction between "managed risk" and "uncontrolled loss" in B3 is realistic. Our experience is that where a loss occurs, the HCA will presume that this was attributable to poor governance, even where it can be shown that a full business case was prepared and considered by the board. It seems to us also that "churn" and managed risk are different issues. "Churn" might be entirely planned and, as such, not a risk. Whilst this may belong more in the "disposals of land" guidance, it would be useful to know to what extent churn is permitted and does it extend to social housing as well as rented?

3. Specific Expectation 1.1: Effectiveness of Governance Arrangements

4.1 CoP, C1.1 explains the need to "comply or explain". It would be helpful to have an indication of when (and by reference to what criteria) the HCA decides whether to let RPs "explain". For example the nine year limit on non-executive board members' terms of office is one on which attempts to "explain" have not always been accepted.

4.2 Specific Expectation (SE) 1.1 and code C1.1 require RPs to review their governance arrangements annually. The HCA recognises that not every aspect can be included in every annual review (CoP, C1.1.2). It says that the degree of review should be sufficient for the RP to comply with the standard. This seems somewhat circular. It might be better to require RPs to review their governance as a whole on a rolling basis over (say) 3 years or identify items which should be reviewed annually. SE1.8 requires RPs to assess their compliance with the governance and financial viability standard at least annually and certify their compliance in their annual accounts. Under the CoP [C1.8.1], it is clear that RPs are required to certify compliance with the standard annually but SE1.1 does not expressly extend to the CoP.

5. Independence (SE1.2)

5.1 Particular emphasis is placed in the CoP on the need for independent, non-executive board members. The HCA does not prescribe what "independent" means but refers to the Financial Reporting Council's UK Corporate Governance Code (UKCC – CoP 1.2.2(2)). UKCC includes:

5.1.1 Family ties with any of the company's advisers, directors or senior employees. Note: this risks a return to the previous "schedule 1" restrictions on payments and benefits to board members and officers and close relatives, which in itself had a large number of checks and balances. It is fair to say, though, that HCA is only suggesting that <u>part</u> of the board is "independent".

5.1.2 Cross-directorships or significant links with other directors through involvement in other companies or bodies. Note: it would be useful here to recognise that RPs need to be able to appoint members to JV or SPV boards.

5.1.3 Service on the board for more than nine years from first election. We suggest this is more a matter of good governance than independence.

5.1.4 Some items which are really more appropriate to a FPRP than a NPRP such as participation in a share option scheme or a significant shareholding in the RP. On the other hand, it omits interests listed in the NHF Code of Conduct guidance for NPRPs (B8) such as equity interest in a supplier of RPs; member of residents'/community body, positions of public responsibility.

5.2 The CoP (C1.2.2(5)) then expects RPs to avoid being subject to a level of undue influence which could lead to non-compliance with standards (C1.2.2(5)). The CoP makes reference to family members and, more generally, "those who … influence … the business". The NHF Code of Conduct has a wider list of "influencing" bodies such as local authorities, political parties and secret societies and it might be useful to cross-refer.

5.3 The HCA specifically leaves the way open (paper 3.20) for a "common board" as between non-profit RPs within a group. This is a useful clarification and it would be helpful to include it in the CoP or Standard. If the HCA still has any expectation of independent board members within a group, it would be useful to have some indication what this is. (Our understanding is that the Charity Commission does have such an expectation.)

6 6. Communication with the HCA (SE1.3 and 1.7)

6.1 SE1.3 is that RPs must communicate "in a timely manner" with the regulator on material issues relating to actual or potential non-compliance. Also, SE1.7 requires RPs to communicate in an "accurate and timely manner" including returns (which in turn include an annual report on losses from fraud). We suggest the HCA considers merging SE1.3 and SE1.7.

7. Planning and Stress Testing (SE1.4 and 1.5)

7.1 SE1.4 requires RPs to have an appropriate, robust, prudent business planning, risk and control framework. This framework should be approved by the board and its effectiveness reviewed annually. For larger risks it may be appropriate to consider independent validation. On the other hand, for smaller RPs this level of planning and review seems excessive and we suggest the regulator considers a derogation.

7.2 Under SE1.5 RPs need to maintain accurate records of assets and liabilities – particularly liabilities having recourse to social housing assets – and do robust stress testing against risks over a range of scenarios, with appropriate mitigation strategies. The records will therefore cover both social housing and non-social housing. One question here is whether the HCA is fully equipped to assess risks which arise from non-social housing business.

7.3 "Stress testing" should go beyond "sensitivity testing" and include "multi-variate analysis" by reference to "serious downside economic and business risks" i.e. to identify the "break point" for the RP. Guide 3.28 refers to liabilities in the "widest context": perhaps it could be clarified whether this is just referring to the SE1.5.5 list or goes wider and again this should be reflected in the CoP (or in the Standard). We suggest it would be preferable to have a full list of the types of assets and liabilities to be covered. Cosmopolitan has shown that the greatest risk may arise at a cash flow level rather than in relation to negative asset value. It would be useful to be clear at what frequency RPs are expected to do risk analysis, stress testing etc. and in particular whether this is expected before entering into new projects as well as on a periodic basis.

8. Undue Influence

8.1 SE1.6 is that RPs' arrangements should not "inappropriately advance the interests of third parties". The regulator explains that such arrangements should be on arm's length terms. A carve-out is made so that RPs may support charitable or social objectives as well as "appropriate" dividend payments by for-profit RPs [C1.6.2]. There are parallels here with the "public versus private benefit" test applied by the Charity Commission. Consider making clear that this exception extends to s106 agreements with local authorities etc, which might not appear to have a direct commercial benefit to the RP but which enable it to carry on business and further its objects.

8.2 RPs are expected to set out how conflicts will be managed. Parents and bodies having "control or influence… due to some… less formal relationship" cannot detrimentally influence the RP [C1.6.3]. Such third parties could even include directors and board members [C1.6.4]. We would suggest language to make it easier for common board members etc. to vote on intra-group deals.

9. Profit-making RPs (SE2.1)

9.1 Under the proposed revised Governance and Financial Viability Standard, Specific Expectation (SE) 2.1, FPRPs are required to ensure that their social housing activities are undertaken in an entity which is legally and operationally separated from any other activities they undertake. By way of exception, they may carry out non-social housing activities to the extent that these only form a "very small part" of their total activities and do not place social housing assets, social housing provision activities or financial viability at "undue risk".

9.2 It is unclear what is meant by the requirement that the FPRP "is to be operationally separated" from the rest of its group. You make clear that the requirement of a separate entity "does not stop a profit-making provider implementing cost saving measures such as using shared functions under formal arrangements". We suggest a possible clarification is that any shared function agreements etc. do not materially expose the FPRP to non-social housing risks from the rest of the group.

9.3 "Very small part" is interpreted in CoP C1.2.1.2 as "no more than 5% of capital or turnover". The non-social element includes any of the RP's agreements relating to non-social housing activity by others and which could have a negative material impact on social housing assets. Again it would be useful to know what the HCA has in mind – is this for example management or finance contracts?

9.4 Some of our FPRP clients have voiced concern that this limit on non-social housing activity could stifle innovation. It may well be more straight forward and cost effective to carry on a mixed development in a single entity than have to put in place a separation of tenures between an FPRP and the rest of its group, particularly where the social housing is "pepper-potted".

9.5 The CoP says that the boards of profit-making RPs need to consider carefully which of their activities are social housing activities. The RP is expected to keep under review and amend as applicable the designation of the RP's activities as social housing or otherwise. The CoP and the regulatory framework do not offer guidance on this. The 2008 Act defines social housing by reference to low cost rent and low cost home ownership (ss68 to 70). The HCA regards such activities as student housing as not social housing though this is not apparent from the Act. Moreover the Act empowers the HCA to clarify what activities are incidental to or connected with social housing, but so far it has not done so. It would be useful if the HCA can provide such guidance, not only for FPRPs but more generally.

10. Assistance: Registered Group Parent (SE2.2)

10.1 RPs which are parents should "support or assist" subsidiaries which are RPs with a view to ensuring compliance with regulation. This applies regardless of whether the RP parent and/or RP subsidiaries are for-profit or non-profit.

10.2 The obligation to "support or assist" RP subsidiaries will need to be interpreted carefully. At its broadest, it could be seen as a guarantee (where an RP subsidiary requires financial support in order to remain financially viable).

10.3 So, does the requirement to "support and assist" just relate to provision of internal management to help the subsidiary to comply? Or could it extend to financial support including provision of loans, guarantees etc. so the subsidiary remains viable? Paragraph 3.53 of the main consultation document explains "there may be circumstances where it is not appropriate to provide financial assistance [if] it would put the financial viability of the registered parent or other registered parts of the group at risk, or where there is a charitable parent and a non-charitable subsidiary". But the parent is expected to look at all appropriate forms of assistance and how best to ensure regulatory compliance for the whole group.

10.4 This leaves RP parents with something of a balancing act. It suggests that the group should provide financial support to an RP group member in difficulty, to the extent that the other RP group members' financial viability is not prejudiced. The existence of this statement in itself may lead to private funders having an expectation that there are (at least informal) cross-guarantees within the group. Paragraph 3.55 is in the consultation paper, which will be forgotten once the Standard is published in final form. This clarification should be repeated in the Standard and/or the CoP so it is clear what level of support is expected.

11. Registered Providers with Unregistered Parents (SE2.3)

11.1 An RP with a non-RP parent should not enter agreements supporting the parent's or other group members' activities, if these could materially negatively impact on the RP's social housing assets.

11.2 When SE2.3 refers to an "other group member" presumably this should be a non-RP other group member?

11.3 We note that SE2.3 relates to the relationship between an RP and its non-RP parent. The definition of "non-regulated element" in the existing standard, SE1.4 was broad enough to refer to non-RP subsidiaries though there was always some doubt whether it was intended to extend to them. There is now no specific expectation relating directly to a non-RP subsidiary. Having said this, if an RP is in a group headed by a non-RP, SE2.3 effectively prevents it supporting other group members' activities so as to risk the RP's social housing assets. It would, for example, prevent an RP giving guarantees or loans to non-RPs whether these are a parent or fellow subsidiaries. If however, the RP doesn't have a parent and establishes its own subsidiary, the provision does not prevent it providing assistance to that body. Is this intended?

11.4 CoP paragraph C2.3 discourages "common directorship" which, in the events of insolvency, "might allow recourse to the social housing assets". Our FPRP clients point out that in the for-profit sector, a high "commonality" of board membership is usual. We assume that the concern alluded to here is of shadow directorship. If so, this should be explicit. Paragraph C2.3 relates to an RP subsidiary of a non-RP. If the parent is a shadow director, does this not protect the RP? It is unlikely the RP would be found to be a "reverse parent" of its holding non-RP.

11.5 Under paragraph 2.4, the non-RP parent is required to give a commitment to give appropriate support or assistance as necessary to the RP (with a corresponding right in favour of the RP). Again this could be construed as a commitment by the (non RP) parent to give financial assistance. Since the assistance is non-RP to RP, the HCA does not qualify this so as to ensure the non-RP parent remains financially viable. In the CoP the emphasis is all on the need to preserve the group's social housing assets. But in fact it might be in the better interests of the social assets for a non RP parent to limit the degree of help it gives, so as to ensure it itself remains viable and can steer the RP out of a financial crisis over time.

12. Parents: General Points

12.1 If either an RP or a non-RP parent is required to give "support and assistance" and this takes the form of instructions from the parent to the RP as to how to comply with the standards, those instructions might constitute the parent as a "shadow director". The shadow director is a body in accordance with various directions or instructions a body (here the RP) is accustomed to act. A key duty here is to avoid "wrongful trading" if it becomes apparent that the RP could not reasonably be expected to avoid insolvent liquidation. If the parent is found to be a shadow director it would then owe a number of key duties owed by actual directors of the RP and action could be taken against the parent if it fails to comply with those duties. It may be worth drawing attention to this risk in the CoP.

12.2 The CoP at C2.4.2 contains a table of "arrangements" including corporate groupings; governance as in board relationships and inter-dependencies; executive independence and internal control arrangements; then contractual arrangements including intra-group agreements, policies and transfer pricing. It then refers to financial arrangements including loan agreements, cross guarantees/negative default clauses; security; deficits in group members and impairment. It appears the HCA considers these to be intra-group arrangements which could bring risk to RPs. It might be useful to have a corresponding list of the type of risk and mitigating measures the HCA expects groups to consider. It would also be useful to have clarity as to what action is required in relation to these agreements.

13. General Consent to Private Finance: Changes

13.1 Specific consent will be required for all charges created by a RP where its parent is not registered. This is because the regulator does not have direct regulatory oversight of such a parent and so wishes to retain additional scrutiny of secured loans to RP subsidiaries of a non-RP. We can see the concern where an RP is controlled by a for-profit company which is not an RP. We suggest the position is different in the case of NPRPs controlled by a non-RP, non-profit body, such as a charity, and it may be somewhat harsh to impose a universal requirement for consent.

13.2 Where an RP provides security for private finance which is lent to either profit making RPs or non-RP group members, the HCA now requires that such on-lending must be used for social housing purposes and the group members concerned must operate in England. A practical issue here is that once money has been lent to a group member it is very difficult to "trace" how that money is utilised by the group member. So we believe this restriction needs clarification, perhaps by reference to reserves. Similarly if a group member operates both inside and outside England, the guidance does not require that the money on-lent must be utilised in England. A number of our NPRP clients consider in any event that to require specific consent for any use for non-social purposes is overly onerous.

13.3 There is a discrepancy here: the main consultation paper refers to funding which is on-lent to other group members. The draft revised general consent in Annex 4 refers to loans to group members secured on the RP's assets. These loans may not have been on-lent by the RP providing the security.

13.4 A specific requirement of consent is imposed for finance raised on an index-linked basis. Over the years there have been a number of loans and bond issues on index-linked terms within the sector (including from the Housing Finance Corporation) as well as (potentially) more risky products such as finance leases. The effect of this change is that the RPs raising such finance would now always need to obtain consent to giving security for it. It seems to us that some index-linked products are more risky than others and the HCA might want to differentiate. This restriction may be difficult to operate in practice where an RP may have charged security to a security trustee as security for general lending and the money is subsequently "recycled" for index linked borrowing.

13.5 The types of "private finance facilities" for which the existing private finance general consent may be utilised currently includes not only conventional loans but also interest rate hedging, loan notes/stock, performance bonds, guarantees, indemnities and letters of credit. The definition is to be narrowed and in particular would not include performance bonds, guarantees and letters of credit. This is because the HCA sees guarantees as a particular risk. We suggest that clarity is required here as a number of bond issues by RP groups include provision of joint security by group members, frequently securing obligations under guarantees of private finance as opposed to direct private finance. Does the HCA intend that RPs using guarantees in their group facilities must get consent to each charge?

13.6 We can understand the HCA insisting on consent to all charges by FPRPs in the current market but hope the HCA will keep this under review as the FPRP market matures.

14. For-profit Providers and Proceeds of Sale

14.1 Our comments on HCA's proposals on application of proceeds of sale by FPRPs are:

14.1.1 The intention is to "capture" the "public benefit" represented in the value of property held by RPs. This includes a number of intangible benefits, e.g. the benefit of the regulatory regime, tax breaks, grants and "cheap land" which have been enjoyed by RPs. It was always going to be difficult to define what part of the value of a property represents the benefit of public subsidy. The original proposal involved looking at the difference between the value of property when used as social housing and its value when no longer restricted to this use. In truth this was not a measure of the impact of past subsidies and other benefits of registered housing provider status; it was a measure of the cost of using the property as social housing. So it did not meet its objective and this objective has been abandoned.

14.1.2 Requiring the entire net sale proceeds of former social sector property to be captured is draconian. What about the amount the FPRP has paid to purchase the property? What is its incentive to make improvements and/or incur capital expenditure on the property if, at the end, the sale proceeds which represent that expenditure must be captured and used for social housing?

14.1.3 The requirement only applies to "stock". Is this completed social housing? This needs to be clarified.

14.1.4 The distinction between social housing bought in the social sector and new build housing, or housing bought outside the social sector, could prove artificial. If an FPRP is offered free or cheap land by an authority and builds on it, is this so different from buying housing in poor condition and extensively refurbishing it? And yet capture only appears to apply in the second scenario. What if an FPRP takes over a half-completed development from an NPRP or local authority and builds it out?

14.1.5 Defining "net sale proceeds" in itself may well be a challenge. FPRPs will want to load as much expenditure as possible into this category so as to minimise the "captured" amount.

14.1.6 The requirements to put proceeds of second and subsequent sales deriving from social sector property into DPF (including obligations on second and subsequent transferee FPRPs) may prove impracticable. It would seem sensible to apply a time limit to the recycling obligation.

14.1.7 Some bodies may only register as FPRPs after having acquired land from a local authority or RP. Is the capture of net proceeds into DPF intended to trigger here or only if the social housing is acquired after the body has registered as a FPRP? It only applies on a transfer of property previously held in the social sector to FPRP.

14.1.8 The sums which can be netted off gross proceeds include legal and valuation fees but not any private finance break costs. What about the FPRP's original acquisition cost?

14.1.9 How about flexibility to use DPF for a more flexible range of affordable tenures such as intermediate rent? In view of the limited reach of the Affordable Housing Programme (AHP) it does not seem fair to limit use of DPF to its requirements when many FPRPs will not in any event be able to access AHP.

15. Registration Criteria

15.1 In general we welcome the proposed changes to registration criteria (chapter 5 and Annex 5). The "reasonable path" test for the governance standard has been a difficult test to explain or comply with. The new approach is preferable i.e. that an RP must demonstrate compliance with the governance standard in a way which is commensurate with its size and set-up. We suggest though that the need (or otherwise) to comply with remaining standards (rent, value for money, consumer) remains unclear under the new proposals.

15.2 The requirement for a subsidiary RP to name its parent in its constitution needs to allow for the possibility that the parent will itself transfer engagements to or amalgamate or merge with another entity. We question the need for it, as the Housing and Regeneration Act 2008 already requires consent for a change of "grouping" provision.

15.3 We welcome the proposals for the constitution of an NPRP which is a Charity Incorporated Organisation to contain provisions equivalent to those of an NPRP which is a company or CBS/Co-op. Clearly, longer term it will be preferable to address these requirements in revised legislation.

16. Rents: the Revised Rent Standard Guidance

16.1 With regard to the proposed changes to the Rent Standard Guidance, we recognise that the Regulator has had to give effect to the Minister's Rent Direction which is already in place. However, the Guidance is an opportunity for the Regulator to expand on and clarify areas of uncertainty. In particular we consider that the sector would welcome clarity on the following issues:

16.1.1 A specific statement (as contained in CLGs Consultation on the Rent Direction (paragraph 52)) that PRPs benefiting from existing waivers allowing them to continue to converge beyond 2015, will continue to benefit from those waivers.

16.1.2 That existing extensions to rent convergence agreed by the Regulator when approving the business plans of stock transfer associations at the time of transfer will not be overidden by the new Guidance (we know of a small number of LSVTs who are in this position).

16.1.3 In relation to the new requirements relating to temporary social housing (TSH), that the restriction on tenure to assured shorthold tenancies be amended to allow the continuing use of licences in TSH cases where appropriate as a matter of law [3.2.4].

16.1.4 A clearer statement that rents for social housing tenants with high incomes (HIST) is entirely optional for PRPs (at present section 5 states that "PRPs may implement rent policies for such tenants…" without making it clear whether there is an expectation that PRPs will do so).

16.1.5 In relation to market rent, we consider it would be helpful to the sector to remind PRPs of the restrictions on converting social rented properties to market rent. The Rent Standard seems to us to be an ideal place to insert a warning to this effect, given that a number of RPs have fallen foul of this issue.

16.1.6 Some reference to the Mayor of London's discounted and capped rents if only to differentiate them from (or alternatively align them with) social and affordable rent.

Edited by: Andrew Cowan and Gareth Hall
Head Office: 30 Finsbury Circus, London EC2M 7DT
Further copies: Marketing Department on t: 020 7628 7576, or email info@devonshires.co.uk or via our website at www.devonshires.com

Consultation on Changes to the Regulatory Framework
Response from Dimensions (UK) Ltd
Submitted by Jackie Fletcher
19th August 2014

Government and Financial Viability Standard:

Q1 (a) Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?

Our response: We welcome a change of approach that is outlined following last year's discussion paper, however we don't agree with the HCA that statutory guidance, by bodies such as the Charity Commission & the HCA itself, should be regarded as "law". It is possible that this will bring about a greater risk of regulatory downgrades for unintended or minor breaches of the law (due to the change of 'adhere to all relevant legislation' to 'adhere to all relevant law'.

We think the wording needs to be changed to acknowledge that 'all reasonable steps' have been taken to follow the law.

Additionally we do not think that the financial accounts are the place to make a compliance statement as suggested.

Q1 (b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Our response: Yes. We don't believe the proposal adds large numbers of specific restrictions on non-social housing activity.

Q1 (c) Do the requirements in paragraph 1.3 on skills, capability and independence i) meet the Regulator's aims 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?

Our response: Yes. Clarity around independent Board members might be useful for **both** profit and non-profit RPs.

Q1 (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?

Our response: It is right for the HCA to focus on risk and how it's managed, and to be clear about where responsibility sits. Risk management should apply to all parts of the organisation though and the HCA must ensure they are fully equipped to assess any risks which might apply to non-social housing activities.

Q1 (e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Our response: N/A

Code of Practice:

Q2 (a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?

Our response: It is intended that the code will explain and elaborate on the content of the Standard and not be a tick list or set of rules to ensure compliance. This sounds good in theory but needs to be understandable in practice.

Q2 (b) Is the role of a code clear and reasonable?

Our response: Yes. The content of the code, is reasonable and sensible. The code mentions the Charity Commission guidance but there are other regulators with an impact on RPs, for example CQC, FCA.

There needs to be clarity around where the code mentions law rather than legislation.

Changes to disposals regime:

Q3 (a) Do the proposed revisions to the disposal regime meet the aim of protecting social housing assets and the value in it?

Our response: No comment

Q3 (b) Do the proposed revisions to the disposal regime balance this aim with registered providers being free to run their own businesses?

Our response: No comment

Q3 (c) Are the proposed revisions to the disposal regime reasonable?

Our response: No comment

Changes to the registration criteria:

Q4 (a) Do the changes to the registration criteria reflect the proposed changes to the Governance and Viability Standard?

Our response: Yes.

Q4 (b) Are the changes to the registration criteria reasonable?

Our response: The changes to the registration criteria 'do not establish a barrier to entry to new providers'; however they do make it difficult.

Changes to the Rent Standard:

Q5 (a) Do the proposed changes to the Rent Standard reflect the direction from DCLG?

Our response: No comment

Q5 (b) Do the proposed changes to the Rent Standard express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

Our response: No comment

east THAMES

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

18 August 2014

Dear Mr Sullivan

Consultation on changes to the Regulatory Framework

I am writing on behalf of East Thames Group and East Homes in relation to the above consultation and specifically to endorse the submissions by the G15 and National Housing Federation.

The consultation is a significant change in direction from the original discussion paper and this overall change in approach focussing on risk and financial impact, is welcomed. We do however have a number of concerns which, although covered by the G15 and NHF, we feel are worthy of emphasising.

Compliance with 'all relevant law': We have concerns that statutory guidance, e.g. that issued by the Charity Commission, is encompassed within the definition of 'law'. As pointed out by the NHF statutory guidance is not law and it is the duty of charities such as East Thames to have regard to Charity Commission guidance and not to comply with it. We also agree that it would be very difficult for any board to give categorical assurance around compliance with 'all relevant law'. Equally we feel it would be difficult for any board to provide an overall categorical statement around compliance with the Regulatory Framework in its entirety.

Fit for purpose boards: Skills and experience on any board are important but there is a dilemma in between having all the skills or experience to cover the diverse range of activities being undertaken in Groups, and the need for smaller, more effective, boards which improve decision making. Whilst skills and experience are important we agree with the NHF view that the faculty for critical assessment and constructive challenge are equally, if not more, important.

Asset registers: We fully accept the need for comprehensive asset registers and have ourselves already moved to such a position, however for those providers with older stock this may be onerous.

Registered office: 29-35 West Ham Lane, Stratford, London E15 4PH
Tel: 020 8522 2000 Email: info@east-thames.co.uk Web: www.east-thames.co.uk

business for neighbourhoods

This should be taken into account in terms of implementation dates and perhaps a phased introduction.

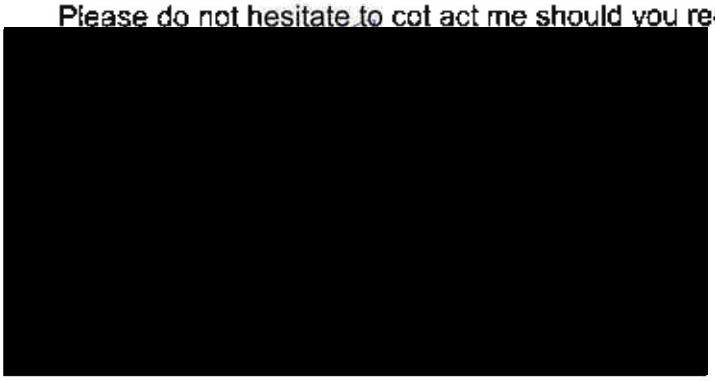
Code of Practice: In principle a code of practice could be useful where this expands on potential approaches that could be adopted by organisations. However we agree with the NHF that the new framework should be clear enough for providers to understand and not require amplification. We also share their concerns that whilst it is your stated intention that this has no regulatory force, 'regulatory creep' could lead to future confusion.

It is also essential that any guidance does not cut across, or conflict with, adopted Codes of Governance. Those of us who have adopted the UK Corporate Governance Code in particular have frequent refreshes to ensure these remain at the forefront of best practice.

Changes to the general consent: We obviously support the aim of preventing social housing assets from leaking outside the sector, or being put at risk. We have concerns however, as echoed by the G15 and others, that as written the proposals may place restrictions upon on-lending within groups to profit making entities. Any cumbersome mechanisms will not be in the spirit of co-regulation and will potentially damage the work of open market sales operations. Such operations often gift aid their profits back to charitable parents to enable cross subsidy of rental housing to take place and that may well reduce the number of homes built going forward. Any measures put in place may also be impracticable in terms of deadlines required for approvals and the sheer number of applications may lead to simple rubber stamping of proposals,

Whilst we recognise the reasons behind these proposals we feel they need refinement so as to avoid potential unintended consequences and would emphasise that boards are better placed to consider commercial decisions rather than the HCA have to second guess these.

Please do not hesitate to cot act me should you require any further explanation.



emh group

Memorial House
Whitwick Business Park
Stenson Road
Coalville
Leicestershire
LE67 4JP
DX Coalville 23663

T 01530 276000
F 01530 276006
E enquiries@emhgroup.org.uk
www.emhgroup.org.uk

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

And via email: statutoryconsultation@hca.gsi.gov.uk

18 August 2014

Dear Tim

Consultation on Changes to Regulatory Framework

I would like to make a formal response to the above consultation document on behalf of *emh group*. The comments below follow the sequence of questions posed in your consultation paper.

1. *Governance and Financial Viability Standard:*

(a) Overall, the proposed Standard meets the economic objectives of the Regulator, including the protection of social housing assets.

(b) The proposed Standard is generally outcome focused. It is not entirely clear why adherence to relevant 'law' as opposed to 'legislation' is necessary. There is a requirement on associations to comply with a whole range of requirements relating to different stakeholders (for instance, charities, companies act and financial conduct). The wording could just as well require associations to adhere to best practice. The additional requirement to protect social housing assets is welcome.

(c) The requirements set out in paragraph 1.2 are generally valid and relevant. However, the emphasis on independence on Boards may lead to some confusion. For instance, does it undermine those stock transfer organisations that have a largely constituency based composition on their Boards, albeit with a degree of input from independent Board members?

The notes to the proposed Standard state there should be no undue influence from parent organisations in the case of unregistered Group parent bodies. However, it does not then balance this up by making it clear that registered non-profit parent bodies should have relevant controls over registered subsidiaries and that they are ultimately accountable and responsible for the whole Group. In such cases, the requirement for parent bodies to 'assist and support' somehow seems to be understating the role of those bodies.

(d) The requirements in 1.4-1.5 meet the Regulator's aim of protecting social housing assets in a diversified and more complex environment. The focus on key issues such as robust risk and control framework, financial viability, and greater understanding of assets and liabilities is crucial.

(e) The requirements for for-profit registered providers set out in paragraph 2.1 are reasonable. The problem, however, with setting an arbitrary threshold (5%) as an allowable proportion for non-social housing activities is that it can become a target in itself.

2. *Code of Practice*

(a) The adoption of formal Code of Practice to amplify the standard has benefits, but can be misconstrued and can become a Standard in itself. It is also at odds with the wider objective of regulation that is non-prescriptive and outcome-based. It could be seen as contradictory to the requirement for associations to adopt a separate code of governance.

(b) The proposed Code is generally clear.

3. *Disposals regime:*

(a) Proposals concerning the use of Disposals Proceeds Fund (DPF), to ensure that net proceeds from disposals by for-profit organisations are retained for social housing investment, are sound and necessary. The paper also states that provisions for for-profit organisations should be broadly consistent with those for non-profit providers. However, it is the case that at present, the application of DPF applies to non-profit providers in relation to only a limited number of circumstances (i.e. properties built in a certain period). Most of the net proceeds from disposals by non-profit bodies are utilised in the Recycled Capital Grant Fund (RCGF). It is unclear as to whether in future the use of RCFG will be limited or that the use DPF will be extended for non-profit organisations.

(b) If the existing arrangements for non-profit providers are allowed to continue, then this will allow registered providers free to run their businesses.

(c) The use of proceeds from preserved Right to Buy sales for re-investment in housing is sensible. However, there should be recognition that in many cases the use of these funds is restricted by long-term income sharing arrangements with local authorities.

4. *Registration criteria:*

(a) The expectation that all new applicants will need to demonstrate compliance with governance and financial viability requirements at the point of registration is to be welcomed.

(b) Yes, the criteria are reasonable.

5. *Rent Standard:*

(a) The proposed rent standard clearly reflects the direction from the DCLG.

(b) The Rent Standard is clear, succinct and outcome focused. However, this is a good opportunity to remind the Regulator that the movement away from the £2 per week rent flexibility to achieve convergence rents will affect the capacity of many in the sector to invest in new homes. This point has already been made in previous consultations. However, it would be a lost opportunity not to highlight the adverse impact of this measure, particularly given the Regulator's objective to promote investment in affordable housing.

6. *General Consent*

(a) We have no specific comments on this.

7. *Registrations*

(a) We have no specific comments on this.

The consultation paper states that the overall principles of co-regulation will continue. We would urge you to maintain this basic principle and avoid any measures that are likely to lead away from this.

Yours sincerely

Chan Kataria
Group Chief Executive

Estuary
HOUSING ASSOCIATION LTD

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Tuesday 19th August 2014

Dear Mr Sullivan,

Estuary Housing Association's Response to HCA Consultation on Changes to the Regulatory Framework

1. 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?

Yes, we believe the proposal will adequately protect social housing assets.

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

The proposed standards are succinct, however they encompass requirements for a large additional volume of governance-related documentation and the burden on RPs' resources will not be insignificant, to support the additional regulatory requirements. We are not convinced that this ultimately offers value for money to the taxpayer or will change how RPs already approach important matters such as risk and stress-testing within operations, for example.

Much of this additional paperwork will be required at an executive level and is not 'administrative'. For example, developing a paper-based framework to be approved by the Board, under 1.4, which may duplicate other systems and processes used by RPs for monitoring, assessing and reporting the items contained in B.1.4.1(a)-(e). In addition, certifying compliance with the standard will require Boards to certify all component parts, such as every conceivable component of law including common law and statutory guidance such as the Charity Commission Guidance (should this be amended from legislation, as proposed) and this will clearly require extensive executive reporting, in order for the Annual Accounts certification to be signed. Determining and documenting how best to meet the regulatory requirements on independence, and evidencing this in a manner suitable for regulatory compliance assessment will also require additional resource.

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 businesses?

i) Yes, we believe this adds to the protection of Social Housing assets, however in Annex 1 this is paragraph 1.2, rather than 1.3.

ii) There is a clear reference to RPs maintaining their independence and we are pleased to see this within the proposal. We also agree with the implications upon Board and executive skills and foresight. We fully agree with the reference to prudence, but would however like to note that External Audit practices do at present lean towards scepticism rather than prudence and would suggest that the concept of prudence needs to be underlined for the wider professional audience outside of the sector.

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

i) Yes, we believe this adds to the protection of Social Housing assets.

ii) Yes we believe the balance of independence is acceptable and that these activities are already undertaken by most RPs as part of their operational processes.

However as before, maintaining evidence for regulatory purposes will require an increase in resources. For example, there is no indication of the type of evidence which will be acceptable to demonstrate that RPs understand and manage the likely impact of new liabilities (1.5.c). Will business and financial planning stress-testing documents suffice? Or scheme appraisal documentation? Should this be included in the new framework required under 1.4 (d)? Will minutes of Board discussions and decisions be sufficient? It is unclear whether an entirely new approach to evidencing 'understanding and management' will be required for regulatory purposes.

The reference in 1.6 in relation to 'inappropriately advancing the interests of third parties' comes with the specific exception in the consultation document and Code, for supporting a charity or community venture/ to promote charitable or social objectives. This does however appear to be inconsistent with the approach set out in the consultation text (para 3.25. page 17), regarding 1.5, whereby investments in activities should be priced at such a level and with a rate of return which is commensurate to the level of risk presented. In the scenarios set out above, the rate of return may be one of social value, rather than financial return. There does not appear to be much reference to this type of value generated by public funds, whereby communities may benefit without a direct financial benefit to the RP and the risk of that particular activity may be evaluated in different ways. That the code makes allowance for supporting a charity or community venture suggests this is acceptable, but greater clarity could be provided within the code (re. 1.5 & 1.6).

We believe that the increased risk to social housing assets across the sector has been overstated, due to the incompetency of a couple of registered providers whose activities have triggered such concerns. This has led to proposed changes to the framework that may be very suitable for large diversified organisations, but less so for the majority of RPs.

Although all well managed businesses will undertake the types of risk management set out in the framework, this proposal will create an additional layer of work to present the evidence in a manner acceptable to the Regulator. In the absence of specific guidance on the types of evidence required, we believe that most RPs will be forced to create complex additional governance reporting processes, to reduce any risk of governance ratings being affected.

As some diversification of activities has been necessitated across the sector by the reduction in capital grant and welfare benefit income, in order to generate additional income to enable the provision of new homes, creating an additional burden of expense for such organisations appears counter-intuitive. We agree that risks need to be limited and that businesses need to fully understand the implications of new activities, however the additional costs required for this weight of compliance evidence does not help the sector to meet its aims, when resources are being optimised to provide value for money.

Greater consideration ought to be given to the value for money implications of introducing such onerous and recurring compliance evidence requirements. There should be further guidance on the evidence required, within the Code, so that RPs are not perceived to be either cutting corners or creating layers of unnecessary bureaucracy, but rather to be making the correct and adequate provision of compliance evidence. A major risk for all RPs being, of course, the risk of a downgraded governance or viability rating.

The proposals create a further mismatch between the HCA's regulatory and investment sections' objectives, in that the investment team continue to encourage RPs to diversify, to be able to fund new development.

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

Yes, we believe the requirements are reasonable and that it is important to monitor the activities of profit making RPs. In particular the potential disposal of social housing stock, but also the proposed charging of market rents to households with a total income of over £60,000 p.a. and how they maintain dynamic records of tenants' earnings.

2. Code of practice:

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

We believe that the code is an excellent proposal and that such examples are informative and assist in the interpretation of the framework's intentions. However, it might be useful to break each category into specific and non specific examples, as compliance is not confined to the specific expectations within the standard.

In addition, as existing Codes within the sector are generally 'rules' that are adopted (e.g. NHF Code of Governance, Code of Conduct, etc) we would suggest that there should be a clear indication of whether all statements in the Code are to form part of regulatory compliance assessment and, if not, the code should be renamed as Guidance, or Further Information perhaps. The consultation document notes that it

‘sets out clearly what compliance with the Standard looks like’. The semantics may not appear important, however the sector is used to working with Codes and a little more clarity in this area would be appreciated.

b) Is the role of a code clear and reasonable?

The content is clear and reasonable; however please see the comments above regarding the role.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

The proposal does meet this aim.

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

It leaves RPs free to run their businesses in the manner specified by the regulatory framework only.

c) Are they reasonable?

The proposals relating to disposals are reasonable.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?

Yes.

b) Are they reasonable?

Yes, although we believe the dual-compliance criteria from day one may make it very difficult for non-profit RPs to start up. It may narrow the field of new entrants and favour subsidiaries of large profit making parent companies. We understood that the introduction of profit-making RPs was intended to enhance competitiveness and VFM across the sector, rather than shifting the long-term future of social housing into a private sector dominated environment.

5. Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?

We believe the proposals do reflect direction from DCLG, to some extent. Please see further comments below.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposals are clear and succinct. However, they do not state a committed timeframe for formula rents to consistently be increased by CPI+1%.
As part of the 2013 Spending Round the Government announced that "from 2015-16 social rents will rise by CPI plus 1 per cent each year for 10 years."
As the ten-year commitment is significant, in relation to RPs' financial planning, it would be preferable for the rent standard to make reference to this commitment.

In addition, it would be useful to publish the power RPs hold, to make households declare their income and to validate the accuracy of this, under the High Income Social Tenants exemption.

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The changes to category 6 do, in our opinion, allow the Regulator to protect social housing assets more effectively.

7. Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

This is not apparent.

b) Express the requirements of registered providers in a way that is clear and succinct?

This is not apparent from the text either.

Please do not hesitate to contact me on the number below, or Amanda Ashley-Smith, Executive Director of Corporate Resources on 01702 445202, should you wish to discuss any of these points further.

Yours sincerely

Paul Durkin
Chief Executive
ddi: [redacted]
e-mail: [redacted]
office: Maitland House

Title:	**HCA: Changes to the Regulatory Framework**
Contact:	**Trish Hardy** **Governance and Compliance Manager** **First Ark Group including Knowsley Housing Trust (KHT)**
Telephone	[redacted]
Email	[redacted]
Closing Date	**19th August 2014**
Submission Date	**18th August 2014**

First Ark Group

The First Ark Group has a unique social business model which consists of five companies all working together to create success and generate life changing opportunities. Each company contributes to the success in a different way but collectively create fantastic conditions for generating social impact and making a difference to the lives of the people who live and work in our communities. We are:

First Ark Ltd is the parent company which sets and oversees the vision and direction of the Group.

Knowsley Housing Trust (KHT) - our housing association provides fantastic houses and services to over 27,000 people living in its 14,000 homes in Knowsley, Merseyside.

Oriel - our housing development brand, is building homes in the North West for sale and shared ownership.

Vivark - is our award winning social enterprise which delivers Facilities Management and Refurbishment services both internally within the Group and externally to a range of businesses.

One Ark – our investment charity will secure funding and investment and work with partners to deliver services which provide life changing opportunities to people in Knowsley and surrounding communities.

First Ark and KHT are happy to contribute to the consultation paper and in the main are supportive of the proposed amendments to the regulatory framework.

1. Governance and Viability Standard	
1a) Overall does the proposed standard meet the Regulator's objectives which require the protection of social housing assets?	Yes, we consider the proposed standard meets the regulatory objective to protect social housing. We feel that the paper reflects recent discussion papers and that the revised standard has clearly taken into account feedback following the discussion paper in June 2013 and the Sector Risk Profile. Overall we consider the proposals to be sensible and well balanced. We support the requirements to comply with law rather than regulation. We understand the HCA's desire to ensure that Boards properly consider any decisions regarding on-lending, but consider that this should be managed via the appointment of the right skills to Board and ensuring that Boards receive the right advice to take any decisions. We consider that the requirement for consent in the consultation paper is an additional and unnecessary regulatory burden. We also consider that the requirement reflected in the consultation works against co-regulation principles and the legal as well as regulatory requirements for Boards to be in control. We would argue that the consent in Section 3.74 should be a requirement to inform the regulator rather than seek consent. We would propose that the inform principle would also encapsulate a requirement to demonstrate that the risk framework ensures any on-lending decisions are subject to a robust assessment process that both evaluates the proposal and the potential impact on the RP of both making the investment and of losing the investment. If after the responses to the consultation are considered the requirement for HCA consent remains then there is the necessary requirement that any consents required must be able to be given quickly. The nature of the commercial world we operate within requires the ability when necessary to respond quickly to opportunities within a robust

	but effective decision making process and any hold up due to HCA decision 'process requirements' may well damage the sectors credibility with potential partners in future, thereby damaging the RP sectors ability to bring in returns from other sources to further its social housing aims.
1b) Does the proposed Standard express the requirements of the registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes
1c) Do the requirements in 1.3 on skills, capacity and independence i) meet the Regulators 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?	We agree with the proposal to strengthen the requirements for Board members in relation to skills capacity and independence. We consider it essential that the Board have the appropriate skills, knowledge and experience to effectively fulfil their roles and understand any potential risks to the social housing asset base. We consider it essential that Boards are in control of identifying the skills needs for the organisation based on their own range of activities and diversity of structure. Recruitment on the basis of skill and experience is a critical aspect of the First Ark Board member recruitment process. We welcome the requirement for independent board members. However we believe that co-terminus Board membership at both the registered provider level and the unregistered parent provides additional safeguarding opportunities for the social housing asset base.
1d) Do the requirements in paragraph 1.5 and 1.6 on risk	Overall we consider the requirement in 1.5 to be appropriate, that they meet the regulators aim of protecting social housing assets. The introduction of requirements of

i) meet the regulator's aim of protecting social housing assets? And **ii) balance the aim of protecting social housing assets with registered provider being free to run their own business**	asset registers and effective stress testing represent the characteristics of well-run organisations. It is critical that Boards can understand risk, and subsequently balance risk appetite against future liabilities in their decision making processes. We support the expectations relating to third party arrangements highlighted in Section 1.6 and welcome that the focus is upon restricting inappropriate transactions. However we are concerned that the requirement could be burdensome in relation to documenting all third party arrangements that are of a benefit to the Registered Provider and their tenants particularly in the context of Group arrangements and the wider benefits group arrangements provide to the RP. The effective management of conflict of interest is critical to ensure transparency and is already a feature of well governed organisations and therefore we think it is critical that all conflicts of interest continue to be recorded and managed appropriately by the Board as a core feature of co-regulation.
1e) Are the requirements for specific types of registered housing provider in Section 2 reasonable given the Regulators aims of protecting social housing assets?	KHT is a registered provider with a non-registered Parent, First Ark. We welcome the specific guidance on the role of the parent to support the RP in section 2.4 and these requirements reflect the First Ark Group operating environment and formal inter group arrangements to ensure that support and assistance is provided to KHT. We consider these sensible requirements. We support the requirements in section 2.3 that requires the RP not to enter agreements with the Parent or other group member that could have a material negative impact on the social housing assets of the provider. However we do consider that the requirements are written in a way that does not reflect the advantages the RP, and in our case, KHT, has within a Group structure with a non-registered parent. KHT has outsourced repairs to Vivark, Community activities to One Ark and corporate activities to First Ark. This has allowed greater focus, has realised efficiencies whilst retaining tax

	efficiency and reduced risk.
2. Code of Practice	
2a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?	Yes the code is a very helpful resource to assist with the compliance with the revised regulatory framework. We consider the code well laid out and provides clarity about what compliance could look like. However it is critical that the Regulator is open to alternative considerations of compliance that may not always look identical to the Code. We consider it important however that this Code does not become a set or rules were failure to comply with all aspects results in regulatory force. Therefore the regulator must only regulate against the standards and not the code as we feel this would unbalance the principles of co-regulation.
2b) Is the code clear and reasonable?	Yes
3. Do the proposed revisions to the disposal regime:	
3a) Meet the aim of protecting social housing assets and the value in it?	Yes, KHT supports the changes proposed to PRTB receipts for the development of new homes. We have taken the approach to utilise these receipts for development opportunities to date.
3b) Balance this aim with registered providers being free to run their own businesses?	Yes

3c) Are they reasonable?	Yes
4. Do the changes to the Registration Criteria:	
4a) Reflect the proposed changes to the Governance and Viability Standard?	Yes
4b) Are they reasonable?	Yes
5. Do the proposed changes to the Rent Standard:	
5a) Reflect the Direction from DCLG?	Yes the Rent Standard reflects the Direction from DCLG. KHT anticipated the change from RPI to CPI and has already adjusted its business plan to take account of the change. However we consider the specific interpretations of the Direction from DCLG to be a barrier to local rent policies that could be used to reflect market conditions and help to redress local market variances. We consider that the HCA could introduce an alternative proposal that required RP's to set an overall rent policy (rather than applied to all households) that required rent increases of no more that CPI +1% across its total number of homes but that would enable differences to be applied, reflecting local markets. We consider this would negate the disincentive of charging lower than the maximum to all properties even when local markets are clear that there is a case for reductions in rent to stimulate the market or indeed the recognition that some areas are high demand. We also consider that rather than an annual restriction the HCA could consider the introduction of the rent policy over a 5 year period i.e. you could have flexibility to

	increase rent or offer no rent increase for one year but have ability to re-introduce the rent rise as part of a 5 year option to comply with maximum rent increases– this would provide greater flexibility about rent policy to the RP to react to local housing markets without being financially disadvantaged and enable innovative remedies to local issues.
5b) Express the requirements of private rented providers in a way that is clear, succinct and as outcome focused as possible?	yes

First Choice Homes Oldham Response to the HCA Consultation on the Proposed Changes to the Regulatory Framework.

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?**

Yes – the standards and the specific expectation have not been subjected to an unreasonable amount of change. The standards and expectations have been strengthened and have additional clarity.

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

Yes – the proposed changes add further clarity to the requirements.

c) **Do the requirements in paragraph 1.2 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 businesses**?

i) We agree that the requirements in 1.2 meet the Regulators aim of protecting social housing assets.

ii) We agree that there is a balance against protecting the housing assets and providers being free to run their own business.

However we are unclear how this aspect will be regulated and what the required evidence (if any) in submission to the regulator in confirmation of compliance.

Is this a "fall back" position that the HCA can take if something goes wrong?

d) **Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?**

i) Yes, we agree that the requirements outlines in section 1.4 and 1.5 meet the regulators ain of protecting social housing assets.

ii) Yes, we agree that there is a balance against protecting those assets and being free to run our own business.

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

This section is not currently relevant to FCHO at this current time.

Code of Practice

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

Yes the code provides clarity in relation to the Governance and Viability Standard.

b) **Is the role of a Code clear and is it reasonable?**

Yes the Code is reasonable and clear in setting out the expectations.

Do the proposed revisions to the disposals regime:

a) **Meet the aim of protecting social housing assets and the value in it?**

b) **Balance this aim with registered providers being free to run their own businesses?**

c) **Are they reasonable?**

We agree with the proposed revisions above, however currently as a charitable not-for-profit housing association the proposed changes to the disposals regime does not impact on First Choice Homes Oldham.

As part of the LSVT transfer agreement we do not benefit from any sales under RTB for a period of 25 years from point of transfer in Feb 11.

Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Yes, the proposed requirements reflect the proposed changes to the governance and viability standard.

b) Are they reasonable?

Yes, the proposed changes seem reasonable and fair.

Following the discussion paper earlier this year, Charging Fees for Social Housing Regulation, it is surprising that this has not been included within this consultation. Can the HCA provide clarification on this point?

Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes, the proposal is a direct lift from the direction given by DCLG as part of the Rent Standard consultation and outcome. Within the consultation ~~However~~ we have expressed our concerns to the DCLG regarding the implementation of market rents for social housing tenants with high incomes (over £60k per annum per household). This is unlikely to be an issue in the North West where current average weekly earnings are £307 per week and the issue seems to relate the South of England. ~~that w~~We feel that to implement this policy will ~~the~~ increase ~~to~~ the number of checks at the sign up stage and increased administration burden ~~, and requirements~~ to confirm income for customers prior to allocating a property could prove costly for our organisation, with a potential to increase to the time it takes to relet empty properties and resulting in increased rent loss.

The impact of removing the £2 per week additional flexibility on FCHO's business plan is a reduction in rent income over the life of the plan and this also impacts the peak debt levels agreed in line with our funding agreement and if rent convergence ends early this effectively means FCHO will breach the agreed £55.0m loan facility it has in place. If the policy ends in March 2015 then FCHO will have over 2,800 customers who have not achieved target rent levels and FCHO does not consider this reasonable or fair given the business plan transfer. It is also important to note that any reduction income could impact upon FCHO's ability to deliver the stock transfer agreement offer document promises to our customers.

The proposal outlines that the policy change is intended to assist social housing tenants so that all their rents increase on the same basis, however the policy does not appear to consider or address the issues of stock-transfer organisations such as First Choice Homes Oldham who now have 3 different rent levels applied to the same properties in the same streets/estates, there are protected rents (for tenants pre stock transfer), target rents and then affordable rents so whilst the increases may be consistent it does not mean the rents are aligned. Customers on a protected rent who were not due to achieve rent convergence until post March 2015 will now not achieve parity with other customers already at target rent levels and this raises fairness and equitable issues.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes, the requirements are clear within the document.

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes we agree that the changes to the general consent are clear and allow the regulator to protect the social housing assets.

Do the other proposed changes to the registration criteria:

a) **Contribute to the Regulator better meeting its fundamental objectives?**

Yes, the proposed changes to the registration criteria meet the fundamental objectives of the regulator.

b) **Express the requirements of registered providers in a way that is clear and succinct?**

The requirements are clear.

First Wessex Response to
HCA Consultation on Changes to the Regulatory Framework (May 2014)

A6.1 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?

Yes, broadly positive in meeting these objectives

b) Does the proposed Standard express the requirements of registered providers in a way this is clear, succinct and as outcome focused as possible?

Clear and outcome focused – yes
Succinct - reasonably, although some repetition

c) Do the requirements in paragraph 1.2 on skills, capability and independence
i) Meet the Regulator's aim of protecting social housing assets and

Yes, helps contribute to these objectives

ii) Balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, by itself paragraph 1.2 leaves RPs free to run their own businesses. However, in practise this will depend on how the Regulator goes about its business of regulation.

d) Do the requirements in paragraph 1.4 and 1.5 on risk
i) Meet the Regulator's aim of protecting social housing assets

Yes, helps contribute to these objectives

ii) Balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, by themselves the paragraphs 1.4 leaves RPs free to run their own businesses. However, in practise this will depend on how the Regulator goes about its business of regulation.

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

No comment

A6.2 Code of Practice

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

Yes

b) Is the role of a Code clear and is it reasonable?

The role as stated in the introduction is clear, to 'help RPS to understand what the Regulator is looking for'

However, some of the language in the Code makes it sound like additional regulatory requirements, rather than guidance e.g. paragraph C1.4.4 'the Regulator expects RPs to meet non-discretionary expenses from operating income'. The latter is too specific, and appears to depart from the principle of a high level regulatory requirement with the responsibility for complying left to RP Boards.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

No comment – does not apply to First Wessex

b) Balance the aim with registered providers being free to run their own businesses?

No comment – does not apply to First Wessex

c) Are they reasonable?

No comment – does not apply to First Wessex

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

No comment – not relevant for First Wessex

b) Are they reasonable?

No comment – not relevant for First Wessex

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Regarding paragraph 1.5, the proposed standard simply says that paragraph 1.2 shall not apply to High Income Social Tenants. We would like it clarified that charging higher rents to such tenants would be left to the discretion of the RP.

Otherwise requirements are clear

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We are concerned that for 'normal' asset disposals the current General Consent arrangements should be retained and not involve any additional administrative burden for RPs. Also, where specific consent is required, that the HCA is adequately resourced to deal with requests promptly

Subject to the above, we agree

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

No comment

b) Express the requirements of registered providers in a way that is clear and succinct?

No comment

Ref: RCA
Tel: [redacted]
E-mail: [redacted]

flagship

26 June 2014

By e-mail

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN

Dear Tim,

Flagship Housing Group Ltd. (Reg. no. 4651) – Response to 'consultation on changes to the regulatory framework'

Thank you for providing the opportunity to comment on the proposed changes to the regulatory framework.

Rather than answering each consultation question, we have structured our response around the proposed changes to the Governance and Financial Viability Standard as this is the only area that directly impacts on Flagship and is open to consultation.

1. Assets and liabilities

We are appreciative of the HCA accommodating sector feedback last year, removing the requirement for ring-fencing.

Due to the increase in diversification within the sector, new forms of finance and the inherent increase in risk these bring if not managed well, we understand the HCA's motivation behind ensuring that social housing assets are protected. We therefore understand the need for a thorough, accurate and up to date asset register

2. Skills and capabilities

As the sector becomes more diverse and complex, we recognise and support the need for Management and Board to have the appropriate skills and capabilities to reflect the risk profile of the organisation.

3. Stress testing

We would be interested to understand further how the HCA will monitor registered providers' application of stress testing, and how they will satisfy themselves that Boards' annual certification of meeting the Regulator's Standards are accurate and reliable.

4. Code of practice

In such a diverse sector, we are pleased with the continued co-regulatory approach of the HCA; we believe it is important that regulatory changes do not unnecessarily impede us in the running of our business.

As a result we are grateful for the 'explanation and elaboration' approach provided by the code of practice, rather than a prescriptive approach.

I hope you find our response helpful and if you require any further information, please do not hesitate to contact me.

Yours sincerely,

Rod Ayden

Executive Director

Please find below the comments of Fortis Living on the HCA's consultation on the changes to the Regulatory Framework.

We are broadly supportive of the proposed changes to the Regulatory Framework and the only specific comment that we wish to make relates to the proposed changes to the Rent Standard.

Consultation Question on the changes to the Rent Standard:
5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Whilst we agree that the proposed changes to the Rent Standard do reflect the direction from the DCLG and provides a stable formula for the next ten years, which is to be welcomed, we have a reservation about ending the upward convergence of rents.

For most RP's rents will have achieved target rent. However, there will be RP's where the convergence of rents for all properties will not have been achieved. This will be the case particularly where:

i) The RP is a recent LSVT
ii) The RP is an LSVT with a historically low rent compared to average rent
iii) Where service charges have been recently disaggregated from rents and the underlying rent has not achieved convergence.

It is anticipated that this will only cause serious concern to relatively few RPs, but there will be many that still have not achieved 100% convergence and it would be helpful if this flexibility could be extended.

The Fortis Living Group includes two stock transfer RP's who have been committed to keeping rents at affordable levels and we have yet to fully converge all rents even after applying the £2 uplift.

The ending of the upward convergence of rents will, therefore, have a negative impact on our business plan and ultimately reduce the level of funds available for investment in our existing housing stock, or in providing new homes.

Since a key target for the new group is to deliver more affordable housing over and above our allocation within the Affordable Homes Programme, we would wish to make the case for extending the period of rent convergence for a limited period of, say, 5 years, or based on the individual business cases of RP's.

Guy Weston
Group Chief Executive

Guy Weston
Chief Executive

Fortis Living
Festival House
Grovewood Road
Malvern WR14 1GD
United Kingdom
[redacted] Work
[redacted] Mobile

FOR PROFIT REGISTERED PROVIDERS AND NEW ENTRANTS RESPONSE TO THE HCAs CONSULTATION ON THE REGULATORY STANDARDS (MAY 2014)

Question	FPRP/ New Entrants Response
1. 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?	We recognise the objective and consider that the proposed standard is consistent with it.
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	In general yes, but note our comments and concerns below on clarifications needed for FPRPs/ new entrants and in ensuring that the standard are not open to different interpretations by HCA officers.
c) Do the requirements in paragraph 1.2 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 businesses?	We accept the need for Boards to have the necessary skills, capability and independence. To enforce this standard the Regulator will need to exercise judgement about these factors, and we wonder how it will do this. We assume that the HCA's publication on "How we regulate" will be updated and would welcome the opportunity to discuss the proposed arrangements.
d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	We consider that these arrangements are what we would expect of a well-managed business.
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	<u>5% of business non-social housing</u> Firstly, we would wish to seek clarification of the definition for this proposal so that it is clear that it is able to handle the different ownership/ management models that FPRPs are developing – especially the managing agent role where an RP is needed, but the ownership may be with a non-RP body. Depending on the clarification, a solution may be to stipulate that this relates to non-residential housing. Secondly we would wish to understand why a separate governance standard for the FPRP is being

	proposed where there is currently no limit on other RPs – notwithstanding this we understand their charitable status achieves an element of control here. Part of the rationale of FPRPs is to bring in innovation and competition to the affordable housing sector and any cap seems to potentially stifle this. For example, it does not seem to take account of 'greater good deals' e.g. PRS through an RP to ensure there is decent housing and asset management, which is regulated and has benefits of reassuring the DCLG around their loan guarantee scheme. Such a cap may also stifle other potential deals e.g. the New Economics Foundation's Flex Scheme model, which may help provide additional funding streams through institutional investors via a mechanism that partially manages the risks by being able to flip homes from/to PRS/ affordable tenures to deliver the returns agreed and therefore makes such non-grant funded projects viable. It is important to acknowledge that FPRPs are there to make a profit for their parents and the more successful they can be, the greater the future investment will be in supporting additional affordable housing. Setting arbitrary targets of what proportion of the business is non-social housing makes no sense in supporting FPRPs to be successful. This is something each organisation should determiner and the HCA as the regular should use the general consents mechanism to control FPRPs activities, along with the stress testing that will be required under the new regulations. Our suggestion is that like other RPs there is no formal 'cap' on non-social housing business. However, it is probably also worth pointing out that most FPRPs form part of a group where non-social housing activities will be undertaken in other parts of the group, so our response is about the ability to be innovative and the HCA regulating fairly in protecting social housing assets. Notwithstanding our comments above, any cap would need a "ramp-up" element to avoid a perverse situation whereby early deals automatically put a FPRP in breach. <u>Intra-group agreement clarifications</u> The clarification of the requirement of an Intra-Group Agreement is welcome – our view is that this is already covered in the ring-fence and so we are happy with this as a principle of FPRP, but we would wish to clarify and ensure that the 'mechanisms in place' by the unregistered parent does not include financial covenants or effectively the parent having to 'bail out' their FPRP subsidiary?
2. Code of Practice	
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?	The Code provides a more transparent way to understand how compliance is achieved and is welcomed as a tool that can be further refined and amended to clearly set out what all RPs need to do to achieve compliance.
b) Is the role of a Code	Generally yes – but note the FRPRs questions/ concerns around

clear and is it reasonable?	'common directorships' below. <u>Code of practice – 'common directorships'</u> Here we seek clarification around C2.3 of the code which states "…common directorships which, in the event of insolvency, might allow recourse to the social housing assets", with our concern being linked to governance and the HCA not understanding how the FPRP sector needs to operate. This also ties in with concerns about how much independence the HCA expects a new FPRP to have from its parent, where the closeness of a FPRP to the parent and the decision making processes about what and how much is invested, needs to be better understood and catered for. The real issue is about viability and to some extent how the parent takes profit from its RP. For instance, a FPRP may decide to see profits taken out of the RP though the pricing of services provided by the parent rather than through dividends to shareholders and surely this is up the FPRP and its parent – as long as this does not in itself put the FPRP, and therefore its social housing assets at risk. Concerns are that the thinking here is too open to interpretation by various parts of the regulator and potential meddling by the regulator in FPRPs businesses. Our expectation is for the HCA to focus on how to manage the proceeds on sale of grant funded assets, not other elements of the way the business is run. The Boards of most FPRPs **already do** or **will** include executives and Board Directors of the parent company(ies). This is essential to their good governance, giving the parent confidence to invest. Is this to be prohibited? We would draw your attention here to the Regulator taking account and comfort from Company Law provisions more broadly and fiduciary duties (Sections 171 to 177 of the Companies Act 2006) in particular.
3. Do the proposed revisions to the disposals regime:	
a) Meet the aim of protecting social housing assets and the value in it?	We acknowledge and support the HCAs legal obligation to protect social housing assets and the value in social housing assets. However, we question whether the extension to the existing requirements unfairly penalises FPRPs from being able to make a reasonable profit from purchasing existing stock in the non-profit sector. The effect of the proposals would be to reduce the incentives for FPRPs from generating additional value from existing stock, which could then be re-invested in affordable housing, by allowing some reward to the FPRP for their ability to generate more value from existing stock than the traditional RP sector does. This misses the point of introducing private sector organisations into the affordable housing sector to provide greater competition and improve the sectors commercial approach in managing existing stock and delivering new affordable housing.
b) Balance this aim with registered providers being free to run their own businesses?	No we do not think that the proposed revisions balance the HCAs aims with those of allowing FPRPs to be free to run their own businesses, where the purchase of existing social housing assets by a FPRP takes place. We set out our arguments for this below.

	<u>Disposals regime/ Disposal Proceeds Fund (DPF)</u> If our reading of the proposals outlined is correct, then FPRPs are concerned about the HCA creating a dangerous precedent around the standard requirements and the detail of what needs to be put into the PDF. We appreciate the HCAs need to protect social housing assets and ensure that they are not lost through disposal. However, FPRPs want to make profit so have to be free to use their expertise to sweat assets and make best use of them, achieving value that a traditional RP might not be able to realise. It is important that there is a clear and fair view of the 'latent value' of existing social housing as a result of previous public investment, so that anything achieved above the grant and any additional 'latent value' (if there is any) level, can be taken as profit by a FPRP. The requirement to place **all** 'net proceeds' into the DPF, outside of any formula or other mechanism, precludes any additional value that a FPRP may have been able to generate. In essence the proposed regime will unduly restrict FPRP's to a process that denies the opportunity for any capital return. This will be counterproductive in that it will serve as a significant deterrent to future FPRP activity. For example, a FPRP acquires or creates a portfolio for, say, £10 million, which after a 5 year period rises in value to £15 million, for a host of reasons including revenue enhancement. It is then sold to an RP buyer, who effectively replaces the capital originally provided by the first FPRP, so there is no loss of social stock and therefore should not be prohibited. Our argument is that this is surely the desired position, in that it enables the FPRP to both generate a capital return and/or reinvest in further affordable housing stock. Although the above is a major issue for FPRPs, in general we are relaxed about having to go to HCA to get consent to dispose of stock, as this was as expected. However, we would highlight the importance of the HCA having a very clear process that is quick and not overly burdensome, so that (a) our competitive advantage of being able to act quickly in deals is not affected and (b) appreciating the fact that the majority of FPRPs are subsidiaries of unregistered parents - often with the benefit of equity and loan funding from the parent, as well as borrowing in their own right – so that where intra-group borrowing is secured FPRPs have an efficient and simple system for applying for consent to dispose.
c) Are they reasonable?	We acknowledge and support the HCAs legal obligation to protect social housing assets and the value in social housing assets; but do not think it is reasonable to introduce proposals that preclude FPRPs from being able to make any return on investment in existing affordable housing, where they have a role to play in bringing their expertise to bear in sweating assets and creating additional value.
4. Do the changes to the registration criteria:	

a) Reflect the proposed changes to the governance and viability standard?	Yes, but as set out below we do not think the additional requirements for new entrants registering is fair or practical for new FPRPs.
b) Are they reasonable?	<u>Registration process</u> We are concerned that the changes and indeed current practice, create an unreasonable barrier to entry. Most FP applicants will be start-up enterprises with no track record or housing stock. It is reasonable to expect that they have a sound business case, including a business plan. It is unreasonable to expect that they will fully meet the governance and service standards – this will only be demonstrable once they are fully operational. To put the arrangements in place before registration will significantly increase start-up costs and deter new entrants, thus reducing the potential delivery of new social housing. We therefore consider that the criteria should remain unchanged and not add in more barriers to entry. We believe that future entrants should have no more than the first new entrants had to go through and that the extensions to the registration process proposed would be disproportionate. We appreciate the need to have strong governance and viability, but to expect new entrants to have everything in place at registration is unrealistic for a start-up business. We would be happy to discuss with the HCA when further governance discussions would be are needed for a new entrant and could reasonably be expected based on the scale of business achieved and nature of the opportunities they are looking at. We would be happy to help the HCA better understand how FPRPs are running their businesses and therefore what Governance expectations would be reasonable at what stage and how the HCA can build in additional dialogues, post registration, with new FPRPs to satisfy themselves around their Governance/ Viability. Our view is that there is some lack of understanding of how FPRPs have to operate; for example, a subsidiary which is wholly owned by its parent, where control and strategic direction is likely to be determined by the non-registered parent as much as by the FPRP Board. Again we would welcome an opportunity to work with the HCA to help improve understanding from both sides. We understand the importance around protecting existing social housing assets, and support the HCA in their work to ensure this is the case, but do not think that more new rules about how Boards are structure is the answer. We believe more could be achieved by voluntary undertakings by new FPRPs/ new entrants, with sanctions for not sticking to these, would better minimise the regulatory burden for new FPRPs/ entrants while protecting social housing assets.
5. Do the proposed changes to the Rent Standard:	
FPRPs and new entrants have nothing to add in response to the changes proposed to the Rent Standard.	

This consultation response is provided by the following FPRP and new entrant organisations:

Grainger Trust Limited – Bill Flood

Heyford Regeneration Limited (part of the Dorchester Group) – Gavin Angell

Major Housing Association - Sandeep Singh

Mears Group – John Taylor

Oak Housing Limited – Lanek Banga

Pinnacle Spaces Limited - Jim Saunders

G15 Response to the Consultation on the changes to the Regulatory Framework

1.0 Introduction

1.1 g15 recognises that the risk profile of our sector has increased, as public funding has reduced and providers undertake new, profit making, activities to cross subsidise the important work we do in producing homes for every range of income and the unwaged.

1.2 We also understand that recent regulatory experience has highlighted avoidable problems in a small number of providers that have ramifications for the governance of the sector.

1.3 Within this context we welcome the substance of this consultation paper, which we will elaborate upon in this response.

2.0 Changes to the Governance and Financial Viability Standard.

2.1 We would agree that emphasis needs to be placed upon the skills and expertise within Board and Executive Teams, and the independence of the decision making process.

2.2 Similarly, enhancing risk management and scenario planning is recognised as a pragmatic recommendation that should offer reassurance to the regulator. Whether yet another certification from the Boards of providers provides any additional assurance is questionable; reducing this vital area of work to box ticking will not encourage the behaviours you wish to see.

3.0 Requirements for profit making providers

3.1 Our sole observation here is that the pursuit of consistency between 'for-profit' providers and not for profits detrimentally affects the work and capacity of the non-for profit sector (see Category 6 consents at 4.2 below).

4.0 Requirements for registered group parents

4.1 g15 appreciates why the regulator is minded to issue its first Code of Practice in respect of Governance and Financial Viability, and we welcome the emphasis placed upon flexibility and the freedom for providers to develop their own approach to achieving the standard. However, our experience suggests that strategic 'advice' has a habit of becoming rulebook compliance in the hands of frontline regulatory staff. What assurances can the regulator provide that reinforces the status of the Code as 'advisory'?

4.2 We recognise removing the blanket nature of Category 6 general consents gives the regulator more control over individual decisions within providers around asset management and the granting of security interest. However, the selected approach will have some very undesirable by products:

- Restrictions upon on-lending within groups to profit making entities will damage the work of Open Market Sales subsidiaries, who covenant their profits back into charitable parents to enable cross subsidy of rental housing to take place.

- The measures relating to financing instruments border upon micro-management, may not be practically feasible in complex treasury situations, and raises the unwelcome prospect of shadow direction by the regulator.

4.3 g15 recognises the challenges facing the regulator in regulating a plural sector and protecting social housing asset, but the proposals in respect of Category 6 consent contradict the objective of co-regulation as presently suggested, and need detailed refinement if we are to avoid collateral damage on the work of the sector. We would particularly welcome the clarification of the term "onlending a facility" which appears unhelpfully vague as presently drafted. We suggest the proposals in respect of Market Rent have not been thought through as the present proposal will make it harder to operate in a ring-fenced subsidiary than it would on the balance sheet of an RP itself.

5.0 Changes to the disposals regime

5.1 g15 recognises the regulator's concerns around leakage of social housing assets via profit-making providers, and we are encouraged by the statement that "the regulator is not proposing to place any further restrictions on use of disposal proceeds by non-profit registered providers".

5.2 However, there are highly questionable assumptions around the nature of social housing assets (para 4.3) which would be of great concern to those providers of philanthropic origin, or indeed the Charity Commissioners. We would contest that you cannot convert charitable assets to public assets merely because some residents receive housing benefit to assist with rent payment.

6.0 Changes to the registration criteria

6.1 We consider the proposed changes to the registration criteria to be reasonable.

7.0 Changes to the Rent Standard

7.1 There has been detailed coverage of the impact of abandoning rent convergence to date, and although this has limited relevance for g15 as an entity, we must reiterate that this measure washes through to a reduction of capacity to provide new homes in the sector.

7.2 The proposal to permit providers to charge up to market rent levels to higher income social tenants (HIST) may well prove impossible to implement. At a time when we are encouraging residents of long standing to be open about their income levels, in order to provide valid benefits advice, this proposal will drive away transparency around income levels underground. In any event, it is our contention that the relevant government departments should be obliged to tell us what the income of our tenants is if they wish us to pursue this new policy.

7.3 Pitching the threshold at the sum of the two highest incomes in the household means a high proportion of our long standing residents may be caught as earning over £60k p.a. Average joint income of £60k p.a. is not a high income, even for social housing, in London and many parts of the South East. Furthermore, it is incongruous that this limit is lower than the Mayor's limits for Intermediate Housing. What is lacking in this proposal, inter alia, is 'how' this might be implemented.

7.4 The Consultation Paper is silent on the GLA's introduction of two sub categories of Affordable Rent – 'Discounted Rent' for working households, and 'Capped Rents' for the benefit dependent. Where does this fit in the Rent Standard Guidance for those providers who work in London?

8.0 Summary

8.1 g15 acknowledge and understand the context wherein this consultation is necessary. There is much in there that we have no issue with, and in numerous instances we are already in keeping with the proposals.

8.2 However, we are very concerned that the changes to the consents regime, made with the best of intentions, will lead to damaging unforeseen consequences for the sector's capacity to fund development through cross-subsidy.

8.3 HIST seems to come from the same government stable of un-implementable ideas that spawned Right to Repair, and we fear valuable resources will be spent on a nil sum game when those resources could be put too much better use elsewhere.

8.4 Finally, we question whether the concept of co-regulation can survive the level of prescription embedded within this consultation exercise.

gentoo
It's how you live

Consultation on changes to the regulatory framework

RESPONSE FROM GENTOO GROUP
August 2014

1.0 INTRODUCTION

1.1 Gentoo welcomes the opportunity to respond to the HCA consultation paper on changes to the regulatory framework. The response represents the views of Gentoo Group and will firstly set out some general comments in relation to the discussion paper, followed by specific responses to the discussion questions.

2.0 GENERAL RESPONSE

2.1 The Group has consistently argued that the approach to regulation should be risk based and proportionate. The overall thrust of the regulatory changes are largely in line with this approach with a particular emphasis on risk and we agree with the broad principles around economic regulation. We would also welcome the approach from the regulator to further scrutinise any activity that may be for non-social housing purposes that is secured against social housing assets.

2.2 We would still wish to see within the proposed framework some room for innovation and flexibility to enable providers to explore new product and service offers, particularly in addressing the ongoing issue of housing supply. As long as such initiatives are managed within an adequate risk framework and social assets are not put at risk we think there is a case to retain an element of non-social housing activity within a Group portfolio particularly where this is for the purpose of securing additional resource for reinvestment.

2.3 There is a clear move within the proposals to introduce more prescriptive regulation. This does appear to introduce a contradiction between emphasis on the role of boards and senior management to assume responsibility for risk and financial viability whilst setting out much more prescriptive regulation including a degree of detail in the code of practice not previously seen. We would emphasise that the sector remains a highly effective vehicle

for developing and maintaining affordable housing. We are therefore concerned that the proposed increase in regulatory guidance will detract from the flexibility and innovation of a sector that provides highly effective public to private sector leverage and remains a largely not for profit sector.

3.0 SPECIFIC RESPONSES

3.1 A6.1 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?

We broadly agree that the proposed standard meets the economic objectives for protection of social housing assets. Much of the requirements within the standard are already in place and the continued emphasis on viability, risk and stress testing of business plans and their assumptions should ensure that social housing assets remain protected. Social housing assets within traditional registered provider models are facing increased risk from the likes welfare reform. It is our view that this level of increased risk can be mitigated through recycling of profit from non-social housing activity. We accept that there is a degree of balance of risk needed but we also expect that this should remain a key consideration of boards of registered providers and that a degree of freedom around assessment of competing risk should remain with them.

b) Does the proposed standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The requirements of registered providers appear to be clear in terms of the series of outcomes referred to in Section A. The outcome on adherence to relevant law has generated some debate. At first reading this is obvious, however given that the law, and particularly case law continually develops, we would question the necessity for this to be highlighted as a specific outcome. It could alternatively be covered within the reputation of the sector outcome. The headline viability outcome of maintaining viability whilst ensuring that social housing assets are not put at undue risk is also clear. There must be a balance of these headline outcomes however to enable

freedom for registered providers to set their own aims and objectives and the outcomes for tenants that this will bring.

c) Do the requirements in paragraph 1.2 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 businesses?

The proposed requirements in relation to skills, independence, diligence, effectiveness, prudence and foresight are a range of skills that we would expect from boards and senior management of an organisation. Within our own Corporate Governance Code of Practice we identify key principles around leadership, effectiveness, accountability and remuneration. Within these principles there are further requirements to ensure that boards have the skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.

There are additional requirements to ensure that there is due regard to risk and access to timely and accurate performance information. From this perspective there is sufficient clarity to both address the protection of social housing assets whilst enabling providers to be free to run their own businesses.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The requirements in sections 1.4 and 1.5 make a series of key points around risk and business planning. We think that it is reasonable to be able to demonstrate a robust approach to risk including financial forecasts, reporting systems, maintenance of records on assets and liabilities, stress testing against key risks and transparency of reporting to boards. This approach to risk and controls assurance is already embedded as good business discipline and is overseen within our Group by both the Group Board and the Risk and Audit Committee. We would continue to emphasise the point that the Group's board has the primary duty to set the overall direction for the organisation within the risk

parameters that it sees as appropriate. Different organisations will have different approaches according to their aims and objectives and we would not wish to see any fettering of those aims where robust appraisal, risk and financial management can be demonstrated.

e) Are the requirements for specific types of registered provider in Section 2 reasonable given the regulator's aim of protecting social housing assets?

Within our own context we would agree that a registered parent should support and assist subsidiaries who are registered providers with a view to ensuring compliance with regulatory requirements. In our own case this is set out clearly within intra group agreements which have stood the test of time in terms of maintaining regulatory compliance. We also agree with the clarity around expectations of profit making registered providers particularly in terms of limiting activity that may have a material negative impact on the social housing assets of the registered provider.

3.2 A6.2 Code of Practice

a) Does the proposed code assist registered providers to understand how compliance with the standard can be achieved?

In responding to the proposed code we would first of all emphasise the importance of the co-regulatory approach to regulation. Many registered providers, including Gentoo already have a code of practice which informs their governance and viability arrangements. In our own case we have a corporate governance code of practice which sets out the key principles within which the Group will operate particularly at Group Board level. Our own code is based on the Financial Reporting Council's UK Corporate Governance Code and as such many of the principles contained within the proposed code are similar to those already set out.

It should also be noted that many Group structures will be subject to several forms of regulation that make up the broader approach to co-regulation. This includes in our case, regulations set out by the Financial Conduct Authority and the Scottish Housing Regulator. We would therefore prefer that future compliance with the code should make *reference* to the requirements of the code but that this

should be sufficiently flexible to enable us to operate within the broader framework of regulation. We are particularly concerned over the level of detail referred to in paragraph C2.4.2 and Figure 1. We would wish to see further clarification on the nature of the regulator being party to these arrangements. We would otherwise see this as an unnecessary fettering of the Board's duties given that wider regulatory engagement would already be available to query or explore particular arrangements.

b) Is the role of a code clear and is it reasonable?

The role of a code is unclear and needs to recognise that detailed codes are already in place and adhere to industry good practice. We would prefer to see further guidance issued in the form that is set out in 'Regulating the Standards'. This provides a much more pragmatic approach in reviewing the appropriateness of the chosen code of governance with an annual review of compliance with a chosen code where necessary. To introduce a standard code would be to add a further tier of regulation which in our view would be unnecessary.

3.3 A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

The consultation first of all makes it clear that within non–profit registered providers, the status of this group means that surpluses must be reinvested in activities which are compatible with their constitutions. We have held the view within our own business model that it is legitimate to use the principle of cross subsidy of surplus to reinvest into activities that are compatible with our wider objectives. We would therefore welcome the regulator's view not to propose any further restrictions on use of disposal proceeds by non-profit registered providers.

In terms of the implications for profit making registered providers we think it is reasonable for the proceeds of sales of social housing assets to be ring fenced within a disposals proceeds fund. We would otherwise have had significant concerns if, for example, a profit making registered provider acquired social housing stock for the purpose of benefiting from capital value uplifts and subsequent sale

for profit on the open market with no ring fence for re-provision of social housing.

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

We agree that this should leave organisations free to run their own businesses. This is particularly the case within the principle of not placing any further restrictions on non-profit registered providers provided that surpluses must be reinvested in activities that are compatible with their objectives. The freedom for providers to set their own objectives is absolutely critical and consistent with organisations being able to retain their independence.

c) Are they reasonable?

As long as non-profit registered providers remain free to run their own businesses and set out their own objectives we think the proposed revisions are reasonable.

3.4 A6.4 Do the changes to the registration criteria:

a) reflect the proposed changes to the governance and viability standard?

The proposed changes to the criteria tighten up the definition of activity to specifically refer to the provision of social housing in some form. Whilst this clarifies the particular aspect of activity around the provision of social housing and non-profit activity, it does not go so far as to clarify the definition of what the HCA will regard as social housing activity or its provision. At present, definition is set out in sections 69 and 70 of the Housing and Regeneration Act 2008 and refers to low cost rental and low cost home ownership. Given that there are a range of categories of activity that can constitute social housing then clearer definition should be given in order that some test can be applied at registration. For example, there are already a range of tenure options that can be classed as affordable or social including social rent, affordable rent, shared ownership, shared equity and that is before more innovative access products such as our own Genie product are considered.

The criteria may also not capture the wider charitable or not for profit activity that many providers undertake around the fields of social investment or managing property on behalf of others particularly in the realm of supported housing and supported housing services. Some further clarity on the broader definition of social housing activity and purpose would therefore be welcome.

b) are they reasonable?

We have concerns subject to the points made in a) above that on the one hand a more prescriptive criteria is being proposed yet there is insufficient definition within the proposal in order to establish precisely what is or isn't social housing. This becomes a much more prominent issue when also considering the use of assets as security and the purposes for which those assets can be used to fund wider activity. The definition issues therefore needs to be addressed in order to inform both registration criteria and future direction of travel for sector activity.

3.5 A6.5 Do the proposed changes to the rent standard:

a) Reflect the direction from DCLG?

We agree that the proposed changes reflect the direction of travel from DCLG and as with most other registered providers the Group has already made accommodation for the change from RPI + 0.5% to CPI + 1%. As with many developing registered providers, we have also introduced affordable rents as part of our contribution to the delivery of the Affordable Homes programme and will continue to do so for new build affordable rent as well as considering flipping of properties from target rent to affordable rent as part of our development funding strategy.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The guidance is clear and it is helpful to summarise the consolidated guidance into a single document. There have been some concerns expressed in the sector where later transferring LSVTs have not yet reached target rent. The ability to use the waiver from specific requirements of the rent standard does stipulate that this may be used to assist in specific instances where ending of rent

convergence may prevent the delivery of commitments to tenants. In regards to the principles around HIST (High income social housing tenants), whilst we do request income data from incoming tenants, we would question the extent to which income levels can be policed unless there were to be some link to HMRC data.

One minor point is to ensure consistent use of terminology. Elsewhere in the consultation documents the term non-profit or profit making registered providers is used. The rent standard refers to private registered providers which we realise is to differentiate from local authority social housing but consistent use of terminology would be welcome.

3.6 A6.6 Do you agree that the proposed changes to the General Consent allow the regulator to protect social housing assets more effectively?

In our view the proposed changes to the general consent and in particular category 6 will bring further assurance to the sector particularly when considering more diverse activity. We accept the principle that the regulator should have the ability to scrutinise future activity where it is secured against social housing assets.

There has to be an acknowledgement however that in the current period of austerity there have been severe cuts to capital investment in housing and housing supply generally has reached historically low levels. The recent bid round has seen grant rates at between £15-£20k per unit meaning there is a significant shortfall that has to be met by registered providers in terms of cross subsidy. Our view has been to seriously look at diversification options with the fundamental intention to create surplus that can be reinvested within the Group to deliver its core purpose and thereby offset the reduction in public funding levels. We accept that going forward this should be within a consent framework and should not be at the expense of placing social housing assets at undue risk.

We would wish to promote the continued support for innovation and flexibility where a clear case can be made to develop new affordable housing options that do not place assets at risk. The development of our Genie product for example, is something we believe can assist the supply of new affordable housing and can

do so in a way that can adhere to social housing purpose definition within a manageable risk framework.

We would also reiterate our point on clarification of definition around what is classed as social housing purposes. Social housing purpose is increasingly diverse and elsewhere in the consultation the HCA rightly points out that it is up to the registered provider to set its own aims and objectives which includes defining its approach to social housing. We would again, for example see the development of our Genie product as being in this space – providing a new housing access product for those who would otherwise be excluded from the housing market on the grounds of affordability. Our work on learning, employment, environment, health and community safety is also seen very much as part of core social housing offer and some clarity as to how such activity would be regarded if it were the subject of changes to the category 6 conditions would be welcome.

Our final point relates to the commercial sensitivities of making changes to category 6 conditions that may affect the Group's current activity and its ability to trade in its current markets. Our understanding of the proposal is that it would apply to future applications for Category 6 consent and therefore would not apply to existing loans and approved business plans within that activity including on-lending within group structures. We would therefore request further clarification on whether changes to category 6 would be applied across the board on current activity, whether they would be applied retrospectively or whether this would apply only to future category 6 disposal consent requests.

3.7 A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the regulator better meeting its fundamental objectives?

Our comments in response to question A6.4a again apply in terms of requesting clearer definition on what is regarded as social housing activity. We have expressed throughout this response that we agree it is up to boards to set their own aims and objectives but the use of terms such as social housing and non-profit may either prove restrictive, or, without any definition of what constitutes social housing, prove confusing.

b) Express the requirements of registered providers in a way that is clear and succinct?

For reasons of concerns around the definition of what constitutes social housing activity, we would respond that the additional changes to registration criteria do need some further work around definition.

4.0 FOLLOW UP DISCUSSION AND COMMENT

For further discussion or clarification on our comments to this submission please contact:

John Walker
Gentoo Group
Emperor House, Emperor Way
Doxford International Business Park
Sunderland
SR3 3XR
Tel: [redacted]
Email: [redacted]

Homes and Communities Agency

"Changes to the Regulatory Framework"

A response by Gloucester City Homes to the consultation

18th August 2014

Responses to the consultation questions:

No.	Question	Response
A6.1 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?	Yes - we agree with the focus on risk management and have appropriate financial controls and systems in place to ensure viability of the business plan. We understand the need to mitigate against risk and undertake robust stress testing of the business plan to ensure that assets are protected. It is common sense to hold a comprehensive register of assets and liabilities
b)	Does the proposed Standard express the requirements of registered providers in a way that is	Yes – we welcome the new standard as it is clear and establishes effective risk management approaches.

No.	Question	Response
	clear, succinct and as outcome focused as possible?	
c)	Do the requirements in paragraph 1.2 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 businesses?	Yes Yes
d)	Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	Yes Yes – we agree that the provisions where providers' businesses are ultimately controlled by a non-registered organisation, the requirement for additional assurances about the security of the social housing assets
e)	Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	Yes
A6.2 Code of Practice:		
a)	Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?	Yes

No.	Question	Response
b)	Is the role of a Code clear and is it reasonable?	Yes
A6.3 Do the proposed revisions to the disposals regime:		
a)	Meet the aim of protecting social housing assets and the value in it?	Yes – we agree the proposed changes will help to ensure social housing assets are protected as they move between the not for profit and for profit sectors
b)	Balance this aim with registered providers being free to run their own businesses?	Yes
c)	Are they reasonable?	Yes
A6.4 Do the changes to the registration criteria:		
a)	a) Reflect the proposed changes to the governance and viability standard?	Yes
b)	b) Are they reasonable?	Yes
A6.5 Do the proposed changes to the Rent Standard:		
a)	Reflect the Direction from DCLG?	Yes
b)	Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes
A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively		Yes

No.	Question	Response
A6.7 Do the other proposed changes to the registration criteria:		
a)	Contribute to the Regulator better meeting its fundamental objectives?	Yes
b)	Express the requirements of registered providers in a way that is clear and succinct?	Yes

In response to the consultation document, Grand Union Housing Group would like to make the following comments:

General Comment
We welcome the change of approach from the original discussion paper and support the overall aim to protect social housing assets and ensure effective risk management. We also agree with the separate specific requirements for profit making RPs and RPs with unregistered group parents. We have no specific concerns regarding the proposals other than those relating to the Rent Standard..

Rent Standard
Our specific concern, which has already been the subject of previous consultation, is the ending of upward convergence of rents by means of adding £2 per week. However we understand that the HCA has little discretion in implementing the change, which is in accordance with the formal direction from the DCLG.

Yours Sincerely

Alan Humphreys
Group Chief Executive
Grand Union Housing Group
Martell House
University Way
Cranfield
Bedfordshire
MK43 0TR
T: 01525 844429
E:[redacted]
www.grandunionhousing.co.uk
www.twitter.com/grandunionhg

Great Places Housing Group – consultation response

A6.1 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?

Yes.

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

Yes.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes.

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

Yes.

A6.2 Code of Practice

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

Yes. The Code is a useful document in outlining how compliance with the standard can be achieved. However, although not intended to be a tick list we feel that this is inevitably the way the document will be used by RPs due to experience in the past where advice from the regulator has been treated by regulatory bodies as being of equal force as formal regulation.

b) Is the role of a Code clear and is it reasonable?

No, as above - the role of the code simply as a guidance document seems unrealistic.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

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

c) Are they reasonable?

Yes. As grant funding is significantly reduced in the current climate, we agree that this investment needs to be retained within social housing to go some way to addressing the affordable housing crisis.

A6.4 Do the changes to the registration criteria:
a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?
Yes it seems reasonable that in order to be certified as 'a registered provider' organisations are required to meet a set standard to show they have appropriate governance arrangements in place.

A6.5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?
Yes.

A6.7 Do the other proposed changes to the registration criteria:
a) Contribute to the Regulator better meeting its fundamental objectives?
b) Express the requirements of registered providers in a way that is clear and succinct?

Yes.

Enquiries To: Howard Toplis
Tel No: [redacted]
[redacted]
Barbury House, Swindon SN5 7HB

Tim Sullivan
Regulatory Framework Manager
Homes & Communities Agency
Fry Building
2 Marsham Street
SW1P 4DF

12 August 2014

Dear Mr Sullivan

Consultation of changes to the Regulatory Framework

The GreenSquare Board considered the changes proposed to the Regulatory Framework, and welcomed the strong emphasis on:

- Ensuring that social housing assets are not put at risk;
- Protecting the public value within assets held within the housing sector.

Having reviewed the proposals in detail, the only area where they felt that feedback should be provided was within the changes to the Rent Standard, and particularly the specific expectation 1.5 where the setting of rents requirements should not apply where the household income was £60,000 or more.

A key objective for GreenSquare is to provide affordable housing to those on low incomes. For that to be achieved, then ensuring value for money is essential. The numbers of households that would be in the income bracket of £60,000 or more will be very small, yet to ensure compliance will require us to check all our residents. We see this as potentially expensive.

Yours sincerely

[redacted]

Howard Toplis
Group Chief Executive

Head Office: Daresbury Point, Green Wood Drive, Manor Park, Runcorn, Cheshire, WA7 1UG
T 0800 195 3172 | 0303 333 0101 (low cost from mobiles) | F 0151 510 5100 | www.haltonhousing.org

Title: Consultation on changes to the Regulatory Framework

Reference: RS106 : 2014/15

Contact: Nick Atkin

Telephone: [redacted]

Email: [redacted]

Closing Date: 19th August 2014

Submission Date: 14th August 2014

Halton Housing Trust

Head Office: Daresbury Point, Green Wood Drive, Manor Park, Runcorn, Cheshire, WA7 1UG
T 0800 195 3172 | 0303 333 0101 (low cost from mobiles) | F 0151 510 5100 | www.haltonhousing.org

Consultation on changes to the Regulatory Framework

Halton Housing Trust Response

Introduction

1. The Trust recognises the statement in the Chair's Foreword section that housing associations are now operating in a social housing sector, which *'is changing rapidly'*.

2. The need to ensure that a Regulatory Framework exists, which can cope with the impacts and demands of these changes in this climate is important for the entire sector and we welcome the opportunity to comment on the proposals.

Question 1: Governance and Financial Viability Standard –

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

Commentary Q1a

3. The Trust agrees that the proposed standard within the revised framework achieves the right balance to protect social housing assets. We also fully support the rationale of it being unacceptable for tenants to potentially lose the protection of their homes being part of a regulated sector.

4. By definition, an operating climate where grant for new build is reducing will require housing associations to enter into higher risk working arrangements. If the Government wants a risk free strategy, then consideration needs to be given to providing grant at a level that enables this to happen.

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

Commentary Q1b

5. Generally the requirements of this Standard are clear and outcome focused.

6. One of the 'Required Outcomes' within the Governance section of the Standard may need to be reconsidered or at least further clarification provided. This relates to: *"Governance arrangements shall ensure that registered providers …..adhere to all relevant law….".*

7. We are unclear how this new requirement will provide a demonstrable benefit to the Regulator. Boards already have duties to comply with law and should be

taking reasonable steps to ensure this is the case. Self-certification in itself will not guarantee this and it is not an effective measure of good governance. It is the quality of governance that will deliver the key outcomes and assurance.

8. Consequently, any judgments on cases of non-compliance would need to have regard to whether the manner in which the board obtains its compliance assurance and, if not, whether this in itself demonstrates a failure to meet the Standard.

c) Do the requirements in paragraph 1.2 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 businesses?

Commentary Q1c

9. The Trust welcomes this view as it is vitally important for both Boards, and their associated management teams, to have the necessary skill sets to manage their organisation's affairs properly.

10 Here at the Trust we have already embraced this approach via our recent Governance review, and the subsequent revised arrangements being introduced this year.

11. We welcome the conclusion that it would be inappropriate to stipulate Board composition and agree that this is a matter for housing associations to determine themselves, with appropriate reference to good governance codes of practice.

12. It will be interesting to see how the Regulator intends to oversee this revised approach, as our understanding is that resources are already significantly stretched.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Commentary Q1d

13. The revised approach to risk management seems proportionate in this context, as it should enable housing associations to achieve the aims of protecting social housing assets whilst supporting new activity in a dynamic environment.

14. There is one area where further clarification may be useful. Section 2.12 of the

Halton Housing Trust

Head Office: Daresbury Point, Green Wood Drive, Manor Park, Runcorn, Cheshire, WA7 1UG
T 0800 195 3172 | 0303 333 0101 (low cost from mobiles) | F 0151 510 5100 | www.haltonhousing.org

main consultation document talks about "*effective risk management*" being *"a central part of the proposed Standard*". It goes on explain that *"registered providers are expected to consider liabilities in the widest context"*; including "*not only those that have a direct recourse to the social housing assets, but also those that could have an indirect claim on the assets……..*".

15. The Trust agrees the scope of such consideration is important. Unfortunately the wording in the relevant sections of the Standard itself (section 1.5) or the Code of Guidance (section C.1.5.5) doesn't necessarily reflect such importance. Certainly within the Code, it may be useful to include some specific reference to items that may have an 'indirect claim on', as well as 'direct recourse to' social housing assets to emphasise this point.

16. The Code also refers to stress testing and advises that "*Registered providers should also ensure they have appropriate mitigation strategies in place……*" We agree stress testing is an important part of any sensible risk management approach. However, given that some of the tests will include external influences or factors that are outside of the registered provider's control, and may even affect the sector as a whole, it may not always be feasible or appropriate to have full and effective mitigation strategies for every potential scenario.

17. Further consideration needs to be given to the implementation timescale for this aspect of the standard so as to allow for a period within which all providers can achieve compliance.

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

Commentary Q1e

18. The Trust agrees that the requirements for specific types of registered providers are reasonable. In particular we welcome the removal of the proposed ring-fencing requirements of activity for non-profit providers but support the need for additional controls in the case of for-profit entities.

Question 2: Code of Practice

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

Commentary Q2a

19. The Trust accepts and welcomes the more detailed guidance provided within the Code for registered providers. However we are seeking further

reassurance where this fits with the principle of co-regulation. It has been our understanding that there has been a step backwards from a "comply or explain" approach. We acknowledge the assurance on this point and therefore assume its purpose is as a useful additional guidance and clarification of requirements.

b) Is the role of a Code clear and is it reasonable?

Commentary Q2b

20. Overall, the Trust feels that the role of the Code has been made clear. It is reasonable that where there appears to be any conflict between the Code and the Standard, that the latter would take precedence.

21. We are unclear why there is such emphasis upon the need to avoid conflicts of interest when entering arrangements with third parties. This is already explicit in our processes. We would question why emphasis is drawn to this over and above other areas of potential fraud.

Question 3: Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Commentary Q3a

22. The Trust notes and welcomes the consolidation work that has been incorporated into these revisions to the disposals regime, and acknowledges that the above aim also looks to have been successfully achieved. The approach requiring proceeds to be recycled via a DPF is also welcomed.

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

Commentary Q3b

23. An appropriate balance has been achieved.

c) Are they reasonable?

Commentary Q3c

24. The revisions, whilst still dealing with a technical operational area do seem reasonable.

Halton Housing Trust

Head Office: Daresbury Point, Green Wood Drive, Manor Park, Runcorn, Cheshire, WA7 1UG
T 0800 195 3172 | 0303 333 0101 (low cost from mobiles) | F 0151 510 5100 | www.haltonhousing.org

Question 4: Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Commentary Q4a

25. The changes to the registration criteria adequately reflect the proposed changes to the Standard.

b) Are they reasonable?

Commentary Q4b

26. The general 'tightening up' of the registration process is welcomed in the context of point 1 of this response, that housing associations are now operating in a social housing sector, which '*is changing rapidly*'.

Question 5: Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Commentary Q5a

27. The proposed changes to the Rent Standard reflect the requirements of the Direction from the DCLG. However as we stated in our earlier response to the DCLG's own consultation, the loss of the ability to converge rents at "target" levels is taking capacity out of business plans to fund new supply.

28. Consequently the only way of recouping this is through converting more properties to much higher "affordable" rents when they become vacant. This is likely to lead to higher housing benefit claims than would be the case otherwise.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Commentary Q5b

29. The Trust would have welcomed more freedom for housing associations to set their own rents. The requirements on rent setting still feel overly burdensome. Regulatory guidelines could be set, which still meet the direction without being as prescriptive as the proposed measures appear.

Halton Housing Trust

Head Office: Daresbury Point, Green Wood Drive, Manor Park, Runcorn, Cheshire, WA7 1UG
T 0800 195 3172 | 0303 333 0101 (low cost from mobiles) | F 0151 510 5100 | www.haltonhousing.org

Question 6: Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Commentary Q6

30. The Trust understands and supports the proposed changes to the General Consent to allow the Regulator to protect social housing assets more effectively.

31. The proposals are unclear for existing arrangements. Where funding arrangements have already been set in place that include the ability to on-lend to non-registered subsidiaries who are not using the funding for social housing purposes, it is assumed there will be no retrospective application of the consent arrangements.

32. We welcome the intention from the Regulator to assess each application for specific consent on its individual merits and not apply a 'one size fits all' criteria.

33. We do have concerns at the proposed further restricted on-lending of a secured facility within a group. This would tighten the general consent in a way that will potentially hinder development programmes that include a mix of affordable and commercial units, including those involving the outright sales of shops / offices.

34. An increasing number of housing associations like the Trust have significant funds raised on the bond market, where these funds are costing the RP money. Housing associations should be encouraged to use these funds efficiently to generate an appropriate return, provided this is in the context of a prudent and appropriate investment approach.

35. The need for additional consents for use of these funds could impact adversely on this outcome. We support the view from the Placeshapers Group to provide consent for a general programme of activity over a defined period, potentially with a maximum financial commitment involved. An additional flexibility would be to allow freedom to on-lend for non-social housing activities when that lending is secured on non-housing assets, such as offices and garages held in the parent body's stock.

36. Subsidiaries could be general trading companies undertaking a wide variety of activities. If this were the case, the proposals are silent on how the Regulator would deal with such a subsidiary company embarking on new activities once consent for the on-lending has been given. It is also unclear what level of ongoing regulatory engagement could be expected.

Halton Housing Trust

Head Office: Daresbury Point, Green Wood Drive, Manor Park, Runcorn, Cheshire, WA7 1UG
T 0800 195 3172 | 0303 333 0101 (low cost from mobiles) | F 0151 510 5100 | www.haltonhousing.org

37. The Regulator needs to ensure it has the necessary skills and capacity to deal with all of the changes outlined to the consents regime. Any delays could penalise organisations by jeopardising funding deals, which by their nature have to be completed within tight tmescales.

Question 7: Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

Commentary Q7a

35. The additional proposed changes to the registration criteria will contribute to the Regulator better meeting its fundamental objectives.

b) Express the requirements of registered providers in a way that is clear and succinct?

Commentary Q7b

36. These additional requirements have been set out as clearly as possible.

Hartlepool Council

Please find attached brief comments on the current consultation.

- We agree with all the proposals.
- In relation to disposing of land we would like it making clearer that RPs should discuss any disposals at the earliest opportunity with their local authority.
- In addition, the document does not address the issue of stock rationalisation and more efficient management of stock by disposal to another RP or back to the local authority. We believe this would seek to protect public investment and tax payer monies.

Regards

Karen Kelly

Karen Kelly (CIHCM)
Principal Housing Strategy Officer

[redacted]

Response by Hastoe Group to the consultation on Changes to the Regulatory Framework

Hastoe is the country's leading developer of affordable rural housing for rent and shared ownership. We build high quality homes that allow local people to remain in the communities in which they grew up. We have worked in more than 200 villages across the south of England.

Question 1. 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?

We agree that the revised governance and financial viability standards meet the Regulator's economic objectives. We are concerned that RPs will be required to confirm that they have complied with every law and piece of statutory guidance and that a very minor breach of the law could lead to governance downgrade. We do not agree that statutory guidance should be treated as law and request that this requirement be removed.

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

We believe that the proposed revised Standard is clear, succinct and outcome focussed and will enable providers to understand that it is the responsibility of board to ensure that their organisation remains well governed and financially viable.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes.

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

We agree that requirements for specific types of registered provider in Section 2 are reasonable.

Question 2. Code of practice:

a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved? & b) Is the role of a code clear and reasonable?

The Code clearly explains to providers what is required to comply with the Standard. However we are concerned that it will be used as an additional 'set of rules' for the HCA to enforce the Standard and not as a guide. For this reason, Hastoe opposes the adoption of the Code and urges the HCA not to proceed with this element of its proposals.

Question 3. Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it? & b) Balance this aim with registered providers being free to run their own businesses? & c) Are they reasonable?

We agree that proposed revisions to the disposal regime meets the requirement to protect social housing assets but continues to allow the provider to run their own business and are reasonable.

Question 4. Do the changes to the registration criteria:
a) Reflect the proposed changes to the Governance and Viability Standard? & b) Are they reasonable?

We agree with the proposed changes to the registration criteria and that they are reasonable.

Question 5. 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 focused as possible?

We acknowledge the HCA have no discretion regarding proposed changes to the rent standard, however it remains our view that the proposed changes will make it harder to fund our affordable rural housing programme. However we agree that the proposed changes to the rent standard do reflect the direction from the DCLG.

Question 6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We have three concerns regarding these proposals:

1) Properties can be charged to a security trust in advance of the security then being allocated to specific debt. Would this mean that the general consent could no longer be used for charging properties to a security trust?

2) Hastoe has a security trust that operates on a numerical apportionment basis, whereby individual properties are not charged against specified debt. This means that charged properties can subsequently be reallocated to different debt. Again, does this mean that the general consent could no longer be used for charging properties to a security trust?

3) Where monies are on-lent, it is often not possible to differentiate whether the cash lent was derived from an association's reserves or secured debt.

Question 7. Do the other proposed changes to the registration criteria:
a) Contribute to the Regulator better meeting its fundamental objectives? & b) Express the requirements of registered providers in a way that is clear and succinct?

We agree that the proposed changes are clear and contribute towards the Regulators objectives.

helena PARTNERSHIPS

Helena Central
4 Corporation Street
St Helens
WA9 1LD

29 July 2014

By email: consultation@hca.gsi.gov.uk

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Dear Mr Sullivan

HCA STATUTORY CONSULTATION: CHANGES TO THE REGULATORY FRAMEWORK

Please see set out below our response to the questions raised in your recent consultation document:

1. 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?
We believe that the overarching proposals are reasonable and meet the objective of protecting social housing assets.

b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
The proposed standard is clear and succinct.

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 businesses?
The principles are sound, however it is questionable as to whether the proposals will best enable a quick and thorough resolution to the issues of poor governance in the sector. A more directive approach may have been valid in this area, however we do understand the importance of co-regulation in this context.

d) Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
We accept the rationale for these requirements and believe they will attain the correct balance and freedoms for providers.

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

2. Code of practice:

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

b) Is the role of a code clear and reasonable?
Yes

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
Overall we believe these proposals meet the aims of protecting social housing and it's value.

b) Balance this aim with registered providers being free to run their own businesses?
We would ask that consideration is given to some form of de-minimis or aggregation limits on regulatory consents eg for secured on lending between not for profit providers - as changes in this area could add a level of unnecessary bureaucracy and removal of freedoms if not pitched at the correct level.

c) Are they reasonable?
Overall the proposals are reasonable.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?
Yes.

b) Are they reasonable?
Yes.

5. Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?
Yes.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes.

If you have any queries or wish to discuss any of the points raised please feel free to contact me.

Yours sincerely

Howard Roberts
Executive Director Business Resilience

Direct line: [redacted]
Email: [redacted]

Hexagon Housing Association's response to the consultation on 'Changes to the Regulatory Framework'

Introduction

Hexagon welcomes the opportunity to comment on the consultation on 'Changes to the Regulatory Framework'. We previously submitted a response to the Discussion Paper and we were pleased to see that the consultation document reflects many of the concerns expressed by Hexagon and the sector more generally, particularly around ring fencing.

In general, we think the consultation document now strikes the right balance between minimizing 'undue' risk taking activities that will threaten existing social housing assets with the sometimes legitimate desire by housing associations to diversify their business with some degree of commercial activities that will supplement the loss of government support for building new homes via grant funded development within a sound risk management framework.

This document has been approved by the Hexagon Board and is therefore our corporate response to the formal consultation.

A6.1 Changes to the 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?**

   Yes. We agree that a focus on risk management is preferable to the previous requirements to ring fence various activities. We fully agree that risk management is a key part of any well governed organisation and we agree that the proposals are reasonable requirements for any well run registered provider.

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

   Yes.

c) **Do the requirements in paragraph 1.2 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 businesses?**

   Yes, we agree that the requirements in paragraph 1.2 on skills, capability and independence meet the Regulator's aims.

In relation to the Regulator's requirement to protect social housing assets, a lender taking possession of a charged property given as security would clearly be 'lost' social housing. This is, however, just one way social housing is lost. It can be argued that social housing is also lost through the conversion of target rent housing to 'affordable' rent (where rents of up to 80% of market rents are charged) and asset disposals simply on the basis that they exist in high value areas.

On the latter point, an important principle is at stake which could result in the loss of a very large volume of social housing in high value areas in the near future if housing associations are encouraged by government or others to simply dispose of assets on the basis that they are held in high value areas rather than being "uneconomic to repair". In that context, we think the 'Regulatory Framework' should further consider 'protecting' these assets and not just assets that are charged to lenders.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assts with registered providers being free to run their own businesses?

In general, yes. We think it is particularly helpful that the Regulator explicitly recognizes that some risks will be acceptable to obtain some rewards.

At the same time, it seems that there is room for some confusion as the paper repeatedly makes reference to 'undue risk'. There is of course a difference between a reasonably taken risk which crystallizes and an 'unacceptable outcome'. The current wording carries a risk that HA Boards may shy away from taking <u>any</u> risks.

On a point of detail, in Section 3.20, the consultation document makes reference to 'having independent board members'. We think that the final document would benefit from making it clearer as to what that HCA believe board members should be independent of and, for what purpose.

We think it is a good idea for the Regulator to improve the quality of records relating to assets and liabilities across the sector so that good data can be easily accessed when needed.

In relation to Section 1.5 of the Framework, we think that additional requirements in relation to the assets and liabilities register should be part of the final document. We appreciate that the Regulator wants to achieve a balance between not prescribing too much detail, but as currently worded, there seems quite a lot of room for misunderstanding.

In relation to the stress testing required in Section 1.5 of the Framework, we agree that all well run organisations should be doing stress testing and we are currently carrying out multi-variant stress testing as a matter of course.

We do, however, think that there is a difference between running 'significant and realistic' scenarios and simply pushing a plan to breaking point as described in Section 3.32 of the consultation document. The final document may benefit from further clarity on this point.

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

We have no comment on this area as the requirements for profit making registered RPs do not apply to Hexagon or any members of the Group. The same comment applies to the arrangements for registered providers with unregistered parents.

A6.2 Code of Practice

a) **Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?**
b) **Is the role of a Code clear and is it reasonable?**

Generally, yes. In general, we think that the Code is relatively clear and appears reasonable.

A6.3 **Do the proposed revisions to the disposals regime:**

a) **Meet the aim of protecting social housing assets and the value in it?**
b) **Balance this aim with registered providers being free to run their own businesses?**
c) **Are they reasonable?**

Yes. We think the extension of the DPF to for profit providers is the right step.

A6.4 **Do the changes to the registration criteria:**

a) **Reflect the proposed changes to the governance and viability standard?**
b) **Any they reasonable?**

As Hexagon is already registered, and as we have no immediate intentions of registering any new bodies to the Group, we have no strong opinions to express in relation to Section 5 of the document at this time.

A6.5 **Do the proposed changes to the Rent Standard:**

a) **Reflect the Direction from DCLG?**
b) **Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**

It appears that the Standard reflects the direction from DCLG, but we would question why DCLG believe rent conversion should be ended.

The impact of not extending rent convergence in some cases will be a significant gap between existing residents rent levels. That was exactly what rent convergence was designed to end. If rents have not been converged by now, it is not because housing associations did not converge them quickly enough. It is because they were prevented from doing so by the £2 cap. It would seem much more logical and sensible to extend rent convergence so that all rents converged as was originally intended in the policy.

We recognise that the rent standard simply allows housing associations to charge market rents for households earning £60k rather than require them to do so. We do think it is worth noting that housing associations do not have direct access to HMRC data on taxable income for households and in the absence of this, it is difficult to know how housing associations would go about accurately determining household income other than asking households to volunteer to supply that information. It would be helpful if the final document clarified whether any primary legislation is intended to facilitate this process or not.

A6.6 **Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**

We find it less easy to answer this question as changes to the General Consent are scattered throughout the document (i.e. other changes on page 25, category 6 on page 26, and in several places in Section 4). Our

reading of Annex 4, however, is that the fundamental changes to the General Consent relate to ex-local authority stock and we therefore have no strong opinions on this point as we don't manage any such stock.

In relation to the minor changes, we note that the reduction of the number from 39 to 34 has no material effect on the nature of the disposals covered by the General Consent and we therefore do not have any comments to make on what seems a technical clarification exercise.

A6.7 Do the other proposed changes to the registration criteria:

a) **Contribute to the Regulator better meeting its fundamental objectives?**
b) **Express the requirements of registered providers in a way that is clear and succinct?**

The context for this question is not entirely clear and we therefore have no opinion to express.

Housing and Care 21

Dear Tim Sullivan

Thank you for providing the opportunity to comment on the proposed changes to the Regulatory Framework and in particular to the changes to the Governance and Financial Viability Standard and new Code of Practice.

Governance and Financial Viability Standard
The proposals are welcomed and demonstrate a positive response to feedback and comments prompted by the April 2013 Discussion Document 'Protecting Social Housing Assets and a more Diverse Sector'. It is recognised that the business activities of Registered Providers are becoming more complex, diverse and challenging. There is clear need to balance risk and opportunity and to ensure that organisations are effectively managed and controlled to achieve the purposes for which they were established whilst also ensuring that the value of social housing assets are protected. Overall the proposed Standard is considered to be appropriate, effective and reasonable in achieving these regulatory objectives.

The two proposed changes to paragraph A of the Standard, relating to Governance, are noted with interest.

'Adhere to all relevant law'
The requirement to adhere to all relevant law is considered to be of particular significance. At first sight this might appear to be a minor change and it would be hard to argue against a duty to comply with the law (rather than simply with relevant legislation). However, it is not clear how this provision is intended to be interpreted and applied. In particular it is stated that this change is intended to take account of common law, statutory guidance and Charity Commission guidance.

- Is it appropriate that statutory guidance (that clearly is not law) is to be applied as if it was a legal requirement? If it was intended to be law then surely would have been made law by enacting regulations into a statutory instrument?

- Charity law (as interpreted by Charity Commission guidance and case law) suggests that charity governance is intended to be a voluntary duty and so would appear to prevent the payment of board members of charitable Registered Providers unless this can be shown to be necessary rather than merely desirable. Is this intended to reverse the position on board remuneration?

- How is adherence to relevant law intended to be judged? Will this depend upon a court judgement being obtained against a Registered Provider or is the HCA intending to draw its own inference about whether or not a law has been breached?

- Will this impose a requirement to observe contract law? On occasion it might be a sensible economic decision to break a contractual commitment and pay damages

(e.g. dismissal of an employee), but without additional clarification or qualification of this duty it would appear to involve a beach of this requirement.

I hope these few examples indicate this apparently simple provision may in fact be potentially problematic. Whilst I am confident that the HCA would endeavour to apply such a requirement sensibly and proportionately it could prove to be a source of contention and confusion. Is this change of wording really necessary and if so should additional guidance be provided on how it is to be applied and what would be regarded as a breach of this element of the Standard?

'Protect social housing assets'
This is also a seemingly clear, obvious and necessary requirement. If this provision is included is further explanation and explanation and clarity required regarding the circumstances and basis for decisions about how judgements about disposals and reinvestment of proceeds should be made or the basis on which the rights and interests of existing social tenants could or should be weighed against the realisation of value and benefit for future tenants? Housing & Care 21 has recently had experience of a delay of over 6 months in seeking consent for disposal of a small number of non-core properties to a private sector landlord with current residents in situ but with protection for their rights. An indication has been given that this application is not likely to be approved which appears to suggest an inability to understand the balance of judgements that have to be made.

The need to have effective risk management, contingency plans and adequate funds are obvious and necessary measures required to protect social housing assets, but these requirements appear more appropriate to paragraph B of the Standard relating to Financial Viability and the requirement to ensure that social housing assets are not put at undue risk. Paragraph B3 of the proposed Code of Practice also helpfully expands on the expectations for this and the circumstances and basis for 'churn' of assets indicating that this is also linked to the Financial Viability element of the Standard. It is therefore not clear what the implication or intention is of including this statement and duty 'to protect social housing assets' within section A.

Code of Practice
The introduction of a Code of Practice to help expand and clarify the expectations and intentions of the HCA as regulator is a welcome development. This gives guidance without undermining the principles of co-regulation or the requirement for Registered Providers and their boards/executives to be active and responsible for determining how compliance with the Standard is to be achieved. The proposed Code of Practice is considered to clear and effective.

Reporting
Paragraph 1.8 of the Standard indicates that boards of Registered Providers should certify compliance with the Governance and Financial Viability Standard in their accounts. Whilst it is clearly desirable and appropriate for a board to review its compliance with the Standard on at least an annual basis and reflect this in the commentary of the board report, this is not necessarily considered to be the most appropriate or effective means of communication with stakeholders. Auditors also have a responsibility to ensure that statements in

accounts are true and fair. Does this requirement imply that there is an expectation that external audit should include review of compliance within the Standard within scope of their audits?

I hope these observations and comments are helpful and will be taken into account in the review and finalisation of Regulatory Framework.

Yours sincerely

Bruce Moore

Bruce Moore
Chief Executive

Tel: 0300 790 1314
Ext: [redacted]
Mobile: [redacted]
Web: www.housingandcare21.co.uk

Homes and Communities Agency (HCA) – Consultation on Changes to the Regulatory Framework
Response of Housing Quality Network (HQN)

AUGUST 2014

Roger Jarman

hqn
the network

Introduction

HQN welcomes the opportunity to comment on the HCA's proposals to amend the Regulatory Framework for registered providers of social housing. Established in 1997, HQN provides high-quality advice, tailored support and training to housing associations, councils, ALMOs and other housing providers. Around 1000 organisations subscribe to HQN's various member networks.

Much of this response is based on a briefing produced for HQN members in late July on the consultation proposals.[1]

General comments

The nature of this consultation exercise reflects the HCA's continuing problems with its regulatory remit. The HCA's regulation function – like that of its predecessors - basically oversees the financial viability and governance of housing associations and other 'private' providers of social and affordable housing. The regulation of the consumer standards (which includes oversight of local authorities) is very much an adjunct to the agency's core regulatory business. But with self financing in the Council sector, the HCA may well take on a more proactive role monitoring local authority housing accounts in future. After all, government seems keen to promote a more business-like approach by councils over the management of their housing assets. In the future, one scenario might see the HCA checking the methods used by councils to value their stock. Or perhaps the HCA could assess the use that local authorities are making of the headroom they have been allocated under the HRA changes to invest in their stock or in new provision.

There are other problems with the scope of the HCA's proposals. The agency is clearly taking the line that all registered providers – no matter what their size – should abide by the HCA's standards and follow the proposed Code. If this was followed to the letter, small registered providers would find their costs rising significantly to meet the new regulatory conditions set by the HCA. Does it make sense for a small registered almshouse, for instance, to undertake all the risk management and compliance activity that might be expected of a registered provider with nearly 100,000 homes? The HCA should revisit what it expects of providers with less than 1,000 homes to ensure that those organisations are not overwhelmed by regulatory requirements.

HQN also finds some irony in the regulatory effort to protect past investment in social housing stock that has been grant funded when the government (in England) continues to promote the Right to Buy (RTB). Also, many homes sold under the RTB end up in the private rented sector at high rents. Indirectly therefore the state appears to encourage deregulated landlords (and accept the consequential increases in the Housing Benefit bill) but frustrate those operating within the HCA's regulatory framework.

[1] The briefing is authored by independent housing consultant and trainer Roger Jarman. From 1999 to 2010 Roger was Head of Housing at the Audit Commission. For much of the last 20 years he has specialised in the regulation and inspection of housing services. Roger is also a non-executive director of two non-profit registered providers. Read his briefing at http://hqnetwork.co.uk/products/housing-quality-network-member-briefings/2014/document3651.html

Rockingham House | St Maurice's Road
York | YO31 7JA
Telephone | 0845 4747 004
Fax | 0845 4747 006
Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

Consultation questions:

1. 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?
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
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 businesses?
d) Do the requirements in paragraph 1.5 and 1.6 on risk
i) Meet the Regulator's aim of protecting social housing assets
ii) Balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

HQN comments

HQN believes that uniting the financial viability and governance standards may not be a sensible move at this juncture. Local councillors would bristle at the thought of their working methods being overseen by a government agency such as the HCA but some sort of regulation of their financial viability might be more palatable – particularly if it was linked to enhanced funding from the state and/or the private sector. But bringing the standards together in the way proposed in the consultation paper will make it more difficult for the agency to regulate councils' housing accounts in future.

The thrust of much of the consultation paper would appear to protect the interests of non-profit registered providers. Traditional housing associations have long been wary of the incursion of for-profit providers into the social housing arena. A number of proposals emanating from the consultation paper suggest the agency supports that position. For instance, non-profits will not be required to account for the distribution of their surpluses under the HCA proposals. The assumption is that the non-profits will plough surpluses into activity with a social purpose. However, this does not prevent non-profits from boosting executive pay or taking on expensive new offices.

By contrast, for-profits are expected to account for the distribution of the surpluses that they make. There is also the proposal that a for-profit should not have more than 5% of its business outside of 'affordable/social housing'. HQN believes this proposition is not sustainable given that for-profit providers are likely to have significant interests which do not constitute 'affordable/social housing' activity. Some activities may be housing-related, such as the provision of market housing either for sale or for rent. The HCA should instead look to establish a model where 'affordable/social housing' activity of a registered provider that is for-profit should always be at least 51% of the organisation's overall business.

Rockingham House | St Maurice's Road
York | YO31 7JA
Telephone | 0845 4747 004
Fax | 0845 4747 006
Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

There is also an expectation in the consultation paper that for-profits can make a surplus from 'management efficiencies' but not from development or trading activity. Capital gains from the disposal of social housing assets must be placed in the Disposal Proceeds Fund and then re-invested in social housing. Ensuring social housing assets are not lost from the sector is a laudable objective but these constraints may mean for-profits scale back their investment plans in the sector.

The consultation paper seems to suggest that common directorships involving for-profit providers will be prohibited. The boards of most for-profits will include executives and non-executive directors of the parent company. This is important for good governance, giving the parent confidence to invest. So a prohibition of this kind would seem to be counterproductive.

For-profits are also likely to be put off by the more stringent registration criteria. Many will be start-up organisations with possibly a limited track record in housing. Having a business plan is essential but expecting for-profit providers to meet the governance and financial viability tests fully at the time of registration is probably unreasonable.

The consultation paper's position on for-profits might be legitimately cautious. A counterview might suggest that the approach is protecting the interests of the non-profit registered providers that have built up a relationship with their regulator over many years.

Consultation questions:

2. Code of practice:
a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
b) Is the role of a Code clear and reasonable?

HQN comments

HQN always believed the HCA would struggle to adhere to its policy of not providing guidance to registered providers about how they should comply with the agency's standards. Publishing the standards and leaving providers to decide how to interpret - and then comply - with them was unlikely to remain sustainable. However, the 14-page draft 'Governance and Financial Viability Code of Practice' might not be enough for organisations eager to know in detail how the HCA is applying its standards. Some might say the draft Code is 'neither fish nor fowl'. Some organisations might like to be given a free rein while others will want to know precisely what they are expected to deliver.

Previously the HCA looked to trade bodies, consultants and professional groups to produce guidance on compliance with the standards. These organisations will still produce guidance of one kind or another but the regulator's codes and related material will now take precedence. In the consultation paper there is reference to guidance produced by the

Rockingham House | St Maurice's Road
York | YO31 7JA
Telephone | 0845 4747 004
Fax | 0845 4747 006
Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

National Housing Federation on 'Excellence in Governance'[2]. The HCA will need to think carefully how its own guidance now sits alongside advice produced by third parties.

The regulator insists that the draft Code does not represent a checklist to help providers achieve compliance. Nor does the HCA want to start producing best practice notes (like its predecessors) to encourage providers to deliver services in a particular way. This is probably sensible because the regulator's resources are stretched and producing detailed guidance on achieving the standards would undoubtedly be resource intensive. A counterview might say that clearly spelling out how standards can be achieved would benefit both the regulated and the regulator. Certainly the KLOE (key lines of enquiry) framework used by the Audit Commission assisted inspectors carrying out assessments of housing providers as well as providers themselves who got a sense of what was expected of them.

HQN's experience of providers' value for money self-assessments is that although they are much improved, there is still inconsistency in approach. It is not clear how the HCA will calculate the total level of savings, and how it will assess this value. There is a strong argument here for more prescription, to ensure that the sector and its regulator can answer the questions that ministers will ask.

Given the publication of the draft Code, inevitably providers will start looking for further assistance to comply with the HCA's standards. However the consultation paper does not offer guidance on, for instance, stress testing and asset management. Providers will undoubtedly be frustrated by this stance as they look for hints about how their submissions to the regulator will be assessed.

In a similar vein registered providers are not offered detailed guidance about how the independence of boards should be achieved. There is no definition, indeed, of 'independent' in this context in any case. Consistently, therefore, the regulator gives no advice on the proportion of 'independents' that should be included on provider boards. Probably more indicative of the HCA's current stance is that tenant representation on provider bodies does not even warrant a mention. The gender and ethic mix of boards is not considered either.

We note that the HCA does provide more guidance about the register on assets and liabilities that providers are being asked to keep. In this respect significant detail on liabilities attributed to inter-group borrowings, guarantees, leases, derivative exposures, cross default provisions and more besides are being requested of providers. HQN believes that providers could justifiably ask for more consistency from the HCA on the guidance on key business activities.

The consultation asks for views on providers supplying compliance statements with their annual accounts. Specifically these would be required to demonstrate compliance on financial viability and governance. Although not stated, there might be merit in having such statements signed off by an external party such as an auditor. The consultation paper calls for provider compliance with the standards but not with the Code. Given there is more detail in the Code than in the standards, in practice providers will probably pay as much

[2] http://www.housing.org.uk/publications/browse/excellence-in-governance-compliance-checklist/

Rockingham House | St Maurice's Road
York | YO31 7JA
Telephone | 0845 4747 004
Fax | 0845 4747 006
Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

attention to the Code as to the standards when they are completing their compliance statements.

Generally there are significant advantages in timely and honest communications with the regulator. HQN believes that providers should keep the regulator informed about breaches of the HCA's standards as and when they occur. As a consequence the regulator will be able to develop a record of cases brought to its attention and this will help the HCA decide when intervention is necessary. This would benefit both the regulator and regulated alike as a database of cases is created over time.

Consultation questions:

3. Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

HQN comments

Please see 'General comments' and the relevant comments under the questions posed for changes to the Governance and Financial Viability Standards.

Consultation questions:

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

HQN comments

Please see 'General comments' and the relevant comments under the questions posed for changes to the Governance and Financial Viability Standards.

Consultation questions:

5. 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 focused as possible

Rockingham House | St Maurice's Road
York | YO31 7JA
Telephone | 0845 4747 004
Fax | 0845 4747 006
Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

HQN comments

Proposed changes to the rent standard are likely to impact on providers of all kinds as income streams will be affected for years to come by the government's decision to link rent rises to CPI rather than RPI (alongside other changes too). Providers have suggested that the proposed changes will affect their business plans, which can be over 30 years. This may necessitate stock disposals to ensure providers can balance their books. Hopefully this can be achieved without an excessive loss of social housing stock. The HCA has also indicated that providers experiencing financial difficulties because of the revised rent standard can secure waivers and dispensations to ensure they remain financially viable. HQN welcomes this approach.

HQN believes the proposal to allow providers to charge market rents to tenants on high incomes is unlikely to gain traction. Providers will have difficulty collecting information on tenant incomes and may consider that the bureaucracy needed to create a system is not worth the limited benefit that may result. In any case providers may feel that there should be a range of households in their stock, including those on high incomes. Charging market rents to such tenants may only serve to encourage them to leave the sector. The objective to develop mixed communities would be impaired.

Rockingham House | St Maurice's Road
York | YO31 7JA

Telephone | 0845 4747 004
Fax | 0845 4747 006

Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

HQN provides fast practical guidance on everything to do with housing.
Find out more about our network memberships and our services by visiting www.hqnetwork.co.uk.

For further information, please contact:

Customer Services: support@hqnetwork.co.uk

Events: events@hqnetwork.co.uk

Networks: networks@hqnetwork.co.uk

Support work: Anna Pattison – anna.pattison@hqnetwork.co.uk

Training and Development Services: training@hqnetwork.co.uk

Urbica – Executive Recruitment: David Ganz – david.ganz@hqnetwork.co.uk

Or call us on 0845 4747 004

Rockingham House | St Maurice's Road
York | YO31 7JA
Telephone | 0845 4747 004
Fax | 0845 4747 006
Internet | www.hqnetwork.co.uk
Email | hqn@hqnetwork.co.uk

Trust through governance

Institute of Chartered Secretaries and Administrators

Saffron House
6–10 Kirby Street
London EC1N 8TS

020 7580 4741
info@icsa.org.uk
www.icsa.org.uk

Mr Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency – The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

19 August 2014

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 ICSA may be able to assist you in your endeavours on this topic, please do not hesitate to contact me.

Yours sincerely,

Louise Thomson FCIS
Head of Policy, Not for Profit
ICSA

Email: [redacted]
Tel: [redacted]

Consultation on Changes to the Regulatory Framework.

Incommunities Group Response

August 2014

Incommunities Group's response to the proposed changes to the regulatory framework is positive. There is a general consensus within the Group that it welcomes the changes the HCA has made to its proposals since the initial ideas expressed in the first discussion document.

There are some minor considerations we have highlighted within our responses to the consultation questions below.

A6.1 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?

We believe the proposed standard does meet the objective of ensuring viability and avoiding undue risk.

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

There is some confusion around the use of the word "should", which creates the impression that, where it is used, the requirement is not binding.
Like others, we also wonder about the need to include the requirement for RPs to "adhere to all law" as this would be expected irrespective of what the regulator may expect.

c) Do the requirements in paragraph 1.2 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 businesses?

i) Yes
ii) Yes, if one assumes that managing their affairs includes protecting social housing assets.

Also, see comments below relating to "independence"

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

i) Yes, it is right that there is an increased but proportionate focus on risk to ensure the protection of social housing assets.
ii) Yes,

These paragraphs are very clear.

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

Incommunities agrees that there needs to be some form of control to commercial activity in the sector in order to protect social housing assets. However, there is still some ambiguity about what constitutes "a very small part" of the registered providers' activity, and lines can become blurred when projects are in transition so we anticipate that pragmatic working with the HCA will be crucial if problems are to be avoided.

A6.2 Code of Practice

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

C1.1.2 is a little ambiguous. This paragraph seems to acknowledge that some aspects of governance review may fall outside the annual timescale, but then refers back to 1.1 of the standard which expects an annual review of governance arrangements. It has been suggested by others that a rolling programme of 3 years to cover all aspects of governance arrangements should be sufficient. If the HCA does not concur with this suggestion, then it would be useful to include a list of matters that must be included in an annual review.

C1.2.2(2) could be clearer on the matter of "independence" – there is a suggestion that RPs should refer to the FRC code on this matter, but this seems to be more restrictive than is necessary, particularly when it comes to holding cross directorships or having links with other directors through involvement in other companies in group structures for example, and seems to create a conflict with the statement at 3.20 of the section outlining changes to the standard which states the regulator would not expect independence from other non-profit registered entities within the same group.

b) Is the role of a Code clear and is it reasonable?

Whilst the consultation documentation goes to great lengths to reassure that the code is for guidance, it is generally the case that where a code exists, there is an expectation to comply with it. If that does become the case then there are sections of the Code that will need to be expanded, e.g. stress testing. In any event we would urge that the code remains just that, i.e. just one Code, to ensure that Boards are able to maintain genuine control.

There is some ambiguity in the Code – see above.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

We believe that the proposed revisions to the disposals regime are reasonable and easy to understand. However, until they are tested practically, we are not able to judge whether or not the proposed revisions balance the aim of protecting social housing assets with the freedom of RPs to run their own businesses.

The 3 year limit on use of disposal proceeds fund arising out of the preserved right to buy may push providers into entering into projects that may not "ensure that value for money is obtained from public investment in social housing", and delays may well be outside the RPs control.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?

Changes to the registration criteria are reasonable and reflect the fact that viability and governance is now within one standard.

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The changes are reflective of the Direction from DCLG, and are clear and succinct, however, until there has been some practical application of the Standard it is difficult to assess whether or how the outcomes will be met. e.g. the proposal to allow providers to charge market rents to tenants on high incomes may lead to difficulties for RPs in collecting information on incomes.

We have previously responded regarding the impact of the ending of upward convergence on Incommunities. We have calculated a significant rent loss over the 10 years from 15/16 as a result of this, and whilst we will manage the impact of the convergence addition, it will affect our capacity to invest in new homes.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We agree that the proposed changes to general consents will have a positive impact on the protection of social housing assets.

We would however highlight the need for quick decisions to be made to ensure that development opportunities are not jeopardized.

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?
b) Express the requirements of registered providers in a way that is clear and succinct?

The other proposed changes seem sensible and they are clear and succinct.

Completed by Ingrid Dzerins – Corporate Governance Manager

[redacted]

Irwell Valley Housing Association
5 h Floor, Paragon House
48 Seymour Grove
Old Trafford
M16 0LN

19 August 2014

Ref: HCA Consultation Changes to the Regulatory Framework

FAO: Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Dear Tim

Re: Consultation Response to Proposed Revised Regulatory Framework

Please find attached our response to the Homes and Communities Agency's (HCA) consultation – Changes to the Regulatory Framework.

As well as our response to the Consultation Questions we would also like to take this opportunity to comment on a number of relevant areas regarding the proposed changes and to reiterate some of our responses below to clarify our position with regard to some of our responses.

With regard to the proposed changes on the whole, we are confident that we can meet the requirements of the revised Regulatory Framework and we agree in principle with the amendments. We do, however, feel that there are a number of areas that require further clarification and clearer outcomes from the Regulator. In particular, we feel that the recording of assets and liabilities could be simplified through the production of a spreadsheet by the HCA that RPs would be required to complete and submit annually via NROSH+. This would be in a similar format to the Annual Fraud Return where the HCA has supplied an approved format for use should RPs prefer to use this.

Where the HCA has very specific requirements, we do not think that there are any advantages to having RPs make up their own style and format. This creates extra work and will be very time consuming for Lead Regulator's to check these with RPs to make sure that these documents are fit-for-purpose. Clearly, many of these won't contain the required outcomes, which again will not benefit either party and create further difficulty in the event of a recovery situation.

Likewise, the requirement for RP's Boards to self certify their compliance against the Governance and Financial Viability Standard (and the standards 'in the round') also requires further clarification. This would help prevent a repeat of a situation akin to the first year of submission of the Value for Money Self Assessments. As discussed in our response, a whole industry has been created for consultants as a result of the lack of clarity of requirement from the Regulator with regards to the level of response required. Clearly, the sector needed to respond more appropriately, however, where specific expectations are expected, these should be clearly communicated. We believe that the Code of Practice could go further with regard to this requirement.

Our final point is with regard to the new requirement for RPs to adhere to 'all relevant law'. In principle, we do not object to this however, on a practical level the ability to provide assurance that there are no breaches would be very difficult. This may be done inadvertently and decisions made in good faith can be overturned in a court of law. Where RPs have relevant safeguards in place and have taken all reasonable steps to comply with the law this should fulfil the Regulator's expectations.

Further areas that we would like the HCA to take into consideration are detailed in our response attached.

If you require any further clarification on any matters contained within our response, please do not hesitate to contact me.

Kind regards

Dr Tom Manion
Chief Executive

Irwell Valley™

IRWELL VALLEY HOUSING ASSOCIATION

Response to the Homes and Communities Agency Consultation Document: Changes to the Regulatory Framework

Consultation Questions

Question A61 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?**
We agree that the overall objective of the Regulator is being achieved through the revised Governance and Financial Viability Standard.

b) **Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**
No, we believe there are elements of the revised standard that we think require further clarification. We have highlighted these in our responses to the relevant areas of questioning below. To summarise these include:

- Allowance for a transitional period across the sector to train and / or recruit new Board Members where relevant;
- Allowance for time to review and implement succession plans and update governing documents, including Membership Rules;
- Clarification of the level of 'mitigation strategies' that RPs need to have in place;
- Clarification of the full list of liabilities that RPs need to hold and what level of detail is required here;
- Consideration of producing a set way of recording RPs liabilities to ensure consistency and accuracy across the sector;
- Clarify when the list of liabilities is expected to be complete and available;
- More detail as to what is required with regard to the self certification by Boards through their annual accounts that they are compliant with the Governance and Financial Viability Standard.
- Clarification of when Boards need to confirm compliance with the Governance and Financial Viability Standard.

c) **Do the requirements in paragraph 1.2 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 businesses?**
In relation to the requirements for Board Members we are confident that our own Board meets the requirements for paragraph 1.2 and we understand and appreciate the need for Board Membership to change to reflect the strategic direction of an organisation. Whilst we agree with this, there will inevitably be Registered Providers (RPs) across the sector that may need to refresh a number,

if not all of their Board membership to fully meet the requirements of the standard. If the revised standard is implemented from April 2015, it may be difficult for some RPs to fully meet this element. Therefore, we would like the HCA to clarify whether there will be a transitional period allowed for training and / or recruitment of new Board Members?

Where RPs need to recruit to their Boards, there would also be an issue with losing experienced Members in one go, who provide consistency and knowledge to the organisation. There are also practical issues, such as amending Membership Rules and gaining permission for these to be changed. Will the HCA, therefore, be allowing time for succession plans to be reviewed and implemented with regard to this area of the standard?

Again, whilst we are confident that we have set appropriate remuneration levels for our Board Members, payment to Board Members may be an issue for some organisations, in particularly to attract suitably skilled Members. Affected organisations will need to review their governing documents in order to meet this criterion.

There is also an issue in relation to Tenant Board Members, who often do not have the skills level expected, however they provide an alternative perspective that is invaluable and keeps Boards in touch with the people they are there to serve.

To reiterate, we believe that there will be a need for many RPs across the sector to review and amend their succession plans and recruitment policies in line with the revised standard, and the HCA should be allowing sufficient time to achieve this.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The requirement for stress testing is clearly an important part of an organisation's risk management framework and we agree that this meets with the Regulator's aim of protecting social housing assets. However, we feel that this is an important area that the HCA could expand on in the Code of Practice in relation to the detail of an RP's mitigation strategies. For example, will Board's be able to agree their own level of detail or does the HCA have some specific expectations here?

We also support the principal of an asset and liabilities register, however, we think that the HCA needs to:

- Clarify further how detailed the list needs to be, and;
- Provide further examples of what they are expecting to see on the register in terms of liabilities, e.g. pension liabilities.

In relation to the asset and liabilities register, we think that this is an area that the HCA needs to ensure consistency, particularly in the event of a recovery scenario. This could be something set by the HCA, such as a spreadsheet where RPs can easily and efficiently complete against set categories of asset

and liability with the option to add any miscellaneous categories. The HCA have already set up a spreadsheet for RPs to complete, should they wish to, for the Annual Fraud Submission via NROSH+. A similar spreadsheet could be completed for assets and liabilities with submission by NROSH+ annually being compulsory following the minimum requirement of an annual review. This would be advantageous to the HCA in that in event of a recovery situation; information would already be uploaded and available.

We also believe that there needs to be clarification of when the Regulator is expecting the register to be completed by, for example April 2015. Alternatively, will there be some lead in time from the implementation of the Regulatory Framework?

e) **Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?**
Yes, we agree with the principals of the requirements for specific providers.

Question A6.2 Code of Practice:

a) **Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?**
We agree with the introduction of a Code to assist RPs to meet the requirements of the standard. We think this is a useful introduction and helps clarify the requirements of the standard. We do think however, that the Code could go further, as detailed in our response to *A61 d* above. In particular, by clarifying the full list of liabilities that the HCA is expecting RPs to detail, preferably this would be requested in a set format.

We also think that the requirement for Boards to self certify their compliance in the annual accounts could have more detailed expectations. This would have the aim of avoiding a similar situation to the reporting of Value for Money (VFM) Self Assessments, where the specific detail of the Self Assessment was misunderstood by a number of providers. This has led to a whole "industry" being created within the sector with regard to consultants being brought in to advise RPs on the level, detail and presentation of the actual Self Assessment. This clearly deflects from actual VFM principles.

Further clarification is also sought as to when the first self certification of compliance is due i.e. in the 2014/15 accounts or the 2015/16 accounts?

b) **Is the role of a Code clear and is it reasonable?**
Yes, the role of the Code is clear.

Question A6.3:
Does the proposed revisions to the disposals regime:

a) **Meet the aim of protecting social housing assts and the value in it?**
Yes, the proposals achieve this aim.
b) **Balance this aim with registered providers being free to run their own businesses?**
Yes, as above the proposals balance this aim.

c) **Are they reasonable?**
Yes, the proposals are reasonable.

Question A6.4:
Do the changes to the registration criteria:

a) **Reflect the proposed changes to the governance and viability standard?**
Yes, we agree with the requirement for prospective RPs to meet the requirements of the Governance and Financial Viability Standard before they become registered. Requiring potential RPs to comply prior to registration may also have the added affect of requiring less HCA input following registration. This is particularly important if the proposals for charging fees for regulation are followed through.

b) **Are they reasonable?**
Yes, as above we think the requirements are reasonable.

Question A6.5:

Do the proposed changes to the Rent Standard?

a) **Reflect the Direction from DCLG?**
Yes, the proposed changes reflect the direction from DCLG.
b) **Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**
Whilst the requirements of the Rent Standard are clear, there is still a concern regarding the ending of the upward convergence of target rents. Across the sector many rents still do not conform and tenants living side by side are paying different levels of rent, which goes against the original ethos of the rent restructuring regime. Will this be addressed in the future and if so, how?

Question A6.6:

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?
There is a concern in relation to the time involved in this type of scrutiny and how this is going to work in practice. How will the HCA manage a “backlog” of potential funding arrangement deals to authorise? Favourable potential funding arrangements may be lost as a result.

Question A6.7:

Do the other proposed changes to the registration criteria:

a) **Contribute to the Regulator better meeting its fundamental objectives?**
Yes we agree with the proposed changes to the registration criteria.
b) **Express the requirements of registered providers in a way that is clear and succinct?**
Yes, the requirements are clear.

Lien Viet
HOUSING ASSOCIATION

Islington & Shoreditch
Housing Association Ltd
Lien Viet Housing Association
102 Blackstock Road
LONDON N4 2DR
020 7704 7300
isha@isha.co.uk
www.isha.co.uk

isha

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN

BY EMAIL ONLY

Consultation on Changes to the Regulatory Framework

The Board at Islington and Shoreditch Housing Association reviewed your consultation document on changes to the Regulatory Framework at its meeting held on 31 July 2014. The Board has previously responded to the discussion document on protecting social assets and also to the DCLG consultation on rents in social housing.

The Board is supportive that the consultation on changes to the regulatory framework is driven by the need for greater assurance on management of risks. The Board has scrutinised the increased multiple stress testing requirement and is satisfied that ISHA is already compliant with this increased scenario testing.

The Board supported the DCLG consultation on changes to the rent standard from RPI to CPI on the basis that it provides certainty over the next 10 years. We also commented at the time that given ISHA's loan portfolio includes long term financing predicated on an RPI formula, it is important that the link between inflation increases is not lost in the rent formula.

The Board however do not agree with the current proposal for Housing Associations to administer rent increases for households with more than £60,000. We have found that if we chose to implement this provision, it would increase the administrative cost of managing homes, and possibly divert resources from the core business. In addition, the actual number of households affected would be very small, and in business plan terms ISHA would continue to plan on a social rent, so as not to over predict income. Finally, the Board do not consider that the current proposal would best meet the objective of ring-fencing funds for future housing supply.

The Board considers that it would be more effective to collect the rent increase through the tax system, in terms of a levy on someone living in social housing. Households would need to declare their status on their tax form, and be subject to the same sanctions of false declaration under HMRC's rules. The increased revenue could then be directed to be reinvested back into new homes in the areas of greatest need. It was considered that placing the burden of proof of earnings on individual housing associations for the increased revenue to be re-invested by that organisation would splinter the impact of providing more homes for people in housing heed. This revised approach is proposed as it would preserve the property within the social housing sector, rather than contracting it out to market rent because of who lives there.

The Board of Islington and Shoreditch Housing Association
31 July 2014

Changes to the Regulatory Framework

Isos Response

Thank you for the opportunity to comment on your proposals for changes to the regulatory framework.

.

The following is our response:

A6.1 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?

The proposed new Governance and Financial Viability Standard certainly meets the Regulator's economic objectives. It strengthens the requirements on accurate reporting and transparency. The new requirements will focus a landlord's attention on the risks of their activities and how those risks can be managed and mitigated, thus helping to protect social housing assets in the process. We welcome the proposals as a much more proportionate approach compared to those set out in the pre-consultation discussion paper. We appreciate the steps taken by the HCA to listen to and to take on board our views and those of the sector as a whole.

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

The new specific expectations clearly and concisely highlight what social landlords are expected to do and how often they need to present evidence of their compliance to their Boards. The new specific expectations, especially concerning risk management and business planning simply reflect what any 'well run' business should be doing anyway.

c) Do the requirements in paragraph 1.2 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 businesses?

The new specific requirement is welcome, although it is perhaps 'common sense' that registered providers manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight.

However, as social landlords diversify into 'non-traditional' investment and activities we understand the importance of this specific paragraph. The new

specific requirement will ensure that if a social landlord is 'well run' (effective leadership, management etc) then it will be able to both safeguard it's assets and deliver wider services in its communities.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Again, the specific requirements outlined in paragraph 1.4 and 1.5 about risk simply reinforce what most responsible landlords already do. However, we recognise that many landlords have 'diversified their offer to tenants'; undertaking many more 'non-social housing' activities. As a result we agree that the HCA needs to place more emphasis on effective business planning and control. If it is done correctly, effective and robust risk management and business planning empowers management to better identify, evaluate, and exploit the right risks for their business, all while maintaining the appropriate controls to ensure effective and efficient operations and regulatory compliance (including protecting social housing assets).

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

We believe that the specific expectations set out in section 2 are largely reasonable.

Logically, 'for profit landlords' should require greater scrutiny from the HCA. If 'non-social housing' activities are delivered for profit then it is possible that core business (tenancy management and the welfare of their tenants) will be neglected. Perhaps greater or more frequent scrutiny (including published judgements) of 'for profit' providers is something that should be considered by the HCA.

A6.2 Code of Practice

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

We believe that the introduction of the new Code will help all registered providers to better understand how compliance with the Governance and Financial Viability Standard can be achieved. Perhaps some parts of the code could be written directly into the specific requirements of the standard to avoid confusion or misinterpretation.

For example, in section 2.1 of the Governance and Financial Viability standard, why state that profit making registered providers should ensure that activities they undertake which do not relate to the provision of social housing:

(i) *form only a very small part of the activities they undertake.*

Just include what the Code says i.e. *the amount of non-social housing activity within the entity should be in the region of no more than 5% of capital or turnover.*

b) Is the role of a Code clear and is it reasonable?

The Code highlights specific parts of the Standard and clarifies any potential confusion to avoid future ambiguity so that registered providers understand what they need to do.

Both the new Standard and Code will ensure that the governance of organisations is effective, plus that assets are more robustly managed and protected, whilst still allowing registered providers to continue to diversify into 'non-traditional' investment and initiatives.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

We firmly believe that the HCA needs to be able to regulate effectively what happens to the proceeds of disposals of social housing stock.

We are pleased that the HCA is not proposing to place any further restrictions on use of disposal proceeds by non-profit registered providers. We agree that there is more risk associated with the disposals of social housing assets where a provider also undertakes 'for profit activities'.

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

The new disposals regime is clear. 'For profit' providers are not prevented from making a profit. Providers can effectively 'do what they want' as long as they comply with the regulators specific requirements and do not exploit money gained from the sale of social housing assets.

c) Are they reasonable?

The proposals are certainly reasonable and proportionate and do not interfere with how a provider runs their businesses. It is important to ensure that money generated from the disposal of social housing assets is only used for social purposes.

To ensure that social assets are protected it is perfectly reasonable to ask providers to place any income generated from disposals of social housing into a Disposal Proceeds Fund (DPF) and use it only for specific purposes.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard? & b) Are they reasonable?

Changes to the registration criteria do reflect the proposed changes to the Governance and Financial Viability Standard.

To ensure that social housing assets are definitely protected, it is sensible that applicants must be able to meet the Governance and Financial Viability Standard (rather than just trying to) at the point of registration and demonstrate that they can meet this on an ongoing basis.

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

The proposed changes reflect the direction from the DCLG and incorporates the key changes:

- The guideline limit for annual rent increases to be CPI +1% rather than RPI +0.5%.
- Ending upward convergence of rents by means of adding up to £2 a week.
- Permitting flexibility in rents to be charged to high income social tenants.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The rent standard and associated guidance clearly outline the key requirements that registered providers need to meet including calculating and setting different 'types' of rent.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We agree that the proposed changes will protect social housing assets and make disposals easier to manage and monitor, especially as the new General Consent tries to harmonise disposals under s 133 of the Housing Act 1988.

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

We agree with the HCA that the registration criteria do not need significant amendment as they do not establish a barrier to entry to new providers of social housing. They recognise the need for new entrants to be financially viable and well-governed.

b) Express the requirements of registered providers in a way that is clear and succinct?

The revised registration criteria clearly highlight what an applicant must do in order to qualify to be a registered provider.

If you require any further information, please contact:

Richard Fryer, Executive Director, Business and People [redacted]

Phil Headley, Policy, Research and Performance Analyst [redacted]

Regulatory Framework Consultation Response

Alison Smith

T/A Jays8CIC - with experience in supporting small not for profit companies to register and with on-going regulatory compliance

A6.1 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?
Yes

b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes – much improved on the current standard

c) Do the requirements in paragraph 1.2 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 businesses?
Yes – good principles but difficult to evidence objectively

d) Do the requirements in paragraph 1.4 and 1.5 on risk
i) meet the Regulator's aim of protecting social housing assets
ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
Yes – much more clearly than the current standard

e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?
Not qualified to comment

A6.2 Code of Practice

a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?
Yes – this is really helpful for applicants
b) Is the role of a Code clear and is it reasonable?
Yes

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?

c) Are they reasonable?
Not qualified or experienced to comment

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?
Yes, noting that the Code of Practice will be essential reading for would-be RPs
b) Are they reasonable?
Yes

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?
Not qualified to comment – appears so
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes – more clearly than the current standard

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Not experienced to comment

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?
It appears to reflect the benefit of experience well
b) Express the requirements of registered providers in a way that is clear and succinct?
Yes – more so than the existing guidance

JOHN CROSS
consulting
07759 108721
john@johncrossconsulting.co.uk

8th July 2014

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency

Email: statutoryconsultation@hca.gsi.gov.uk

Dear Tim

Changes to the Regulatory Framework Consultation

The co-regulatory approach adopted by the HCA is absolutely the right way for the sector to be regulated. It is the housing providers responsibility and duty to ensure that the governance of the organisation has the capacity and capability to lead and govern the business. Whilst I understand the concerns of the HCA about the potential damage of individual failure on the sector as a whole I am concerned that the move towards tightening the regulatory framework and the associated code of practice may actually weaken the governance of the sector as a "tick-box compliance approach" is reintroduced. I believe that there is sufficient clarity already about the requirements and expectation on housing providers boards and executives that the introduction of the code is an un-necessary addition.

A strong regulatory framework backed up by a properly resourced regulation team in the HCA is critical for the ongoing success of the social housing sector. At the moment I believe that whilst there has been some improvement in skills and expertise following the relatively recent round of senior recruitment there is still more work to do. With a sector that is continually adapting and changing to the changes in the operating environment it is essential that the HCA can properly plan and resource ahead of the curve rather than after something has gone wrong. The introduction of fees as a mechanism to give the HCA some freedom from Central Government control of the operational purse strings was to be welcomed.

Given the changes to the operating environment effective business planning and risk management is a fundamental part of any governance standard. The focus of any changes to the regulatory framework must major on the responsibilities of the board to lead and control the business.

The emphasis on the protection of social housing assets is in part understandable but not necessarily welcomed. The link in paragraph 3.13 between protecting social housing assets and the ongoing viability of social housing providers is unhelpful. It is conceivable that the loss of some social housing assets from an organisation would not negatively impact upon the financial viability of the provider. If the purpose of this clause is to protect the reputation of the sector then be clear.

On a tangential point I have concerns that the introduction of such a clause could be detrimental to the operational efficiency of housing providers asset management strategies. Given the litigious world we live in it is important that this clause could not be used by protestors or interpreted by the courts to stymie legitimate asset disposals.

The clarity of the financial viability outcome is welcome in recognising providers should not put their social housing assets at undue risk.

JOHN CROSS
consulting
07759 108721
john@johncrossconsulting.co.uk

The focus on risk and protecting social housing assets sets out clearly the essential components of a risk assurance framework. It is the board and executives responsibility to ensure that these appropriate systems are embedded in the business. It is equally important that the team of regulators at the HCA have a sophisticated approach to the way they regulate organisation. This standard increases the need for the HCA to have the right people with the skills, knowledge and experience to effectively regulate the sector.

Overall the HCA regulation function is improving and this should be recognised and welcomed by the sector. However, the operating environment is as challenging as it has been for my entire housing career. It is vital that co-regulation works. The HCA must continue to focus on its relationships with the boards through the governance standard. Boards are accountable for the business and the HCA regulators must be skilled at assessing the capacity and capability of the housing provider boards. Changing the framework without the necessary investment and change within the HCA will only be a short-term fix. It is essential that the HCA have the operational freedom to properly resource and I hope the payment of fees will enable this to be the case.

Yours sincerely

John Cross

Dear HCA

As a long-term tenant of public housing I would like to raise the following issue as part of your consultation process.

The related
Consultation Question is
A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

I would answer 'no' for the reasons below:

In 2010 the Social Housing Regulator's policy was set out follows:

https://www.homesandcommunities.co.uk/sites/default/files/our-work/consent_to_disposals.pdf

"Providers are registered, and receive grant, to provide affordable housing to meet housing need. The Regulator wishes to see stock continuing to be used for the purpose intended and tenants remaining secure."

This policy commitment to social housing being regarded as a resource for people and not an asset to be sold off by housing associations already awash with vast unspent surpluses and highly paid officials has been seemingly dropped from the proposed new version of the General Consent.

Please inform the current regulator that the 2010 policy that social housing assets should continue to be used by housing associations for the purpose they were intended for and for their tenants to remain secure must be restored and reiterated if the proposed changes to the General Consent are to allow the Regulator to protect those assets effectively as it claims it seeks to.

Yours
faithfully,
[redacted]

[redacted]

Tenant of Freebridge Community Housing

Living as the tenant of a housing association has a useful simile. It is like being a citizen within the territory of a government. Each different government (landlord) has different ways of doing things, and different priorities, and the tenants (tax payers), feel, in there day-to-day lives, very strongly the influence of that government upon the quality of their existences.

I have been a housing association tenant for twenty years. When I started out, my (then) landlord's priority was the day to day lives of its existing tenants. Although it was keen to expand its housing offering, and to build more affordable homes, it put its current tenants first and foremost in its thinking, and its investment in terms of finance and manpower.

I want your framework to bring existing tenants back to the foreground of priority, and force housing associations to have existing tenants as their top priority.

I live in a housing association which has branded itself '[redacted]'. I don't like branding exercises, they are usually an attempt to disguise something. The reality behind this brand is that it is an anonymous colossus which has long ago abandoned the value of care for the quality of lives of its existing tenants and leaseholders.

I applaud you for trying to make housing associations more transparent. I have looked, but I have difficulty finding out how my landlord spends the rent money that it gets from its tenants.

Your proposed framework talks about how taxpayers money is spent, but please also remember that some taxpayers are not just paying tax which these housing associations spend, but also some of these taxpayers spend service charges and rent to them as well: thus some taxpayers are handing a considerable chunk of their income to housing associations every month.

I want housing associations to be obliged to answer Freedom of Information requests as part of your drive for their transparency.

To return to my simile: As a tenant of [redacted] I feel like a citizen in a dystopia, which takes its citizens' taxes in order to expand ever further into distant lands, and offers small, stale crumbs in return for the bounty that they take, and it gives back no communication about individual matters or complaints when they arise. Increasingly I worry about my home as I feel more or less abandoned as a tenant. I presume that some people in the organisation are paid: I want to know exactly what these people do?

The opacity of [redacted] is such that there is not even a clear schedule of cyclical maintenance on its website, and they don't bother to reply if you ask them for one.

I want to know why, on every survey I respond to, I tick the box asking me if I would like to join a tenants' panel, yet nobody has ever been in touch with me about actually doing that (admittedly, it would be hard for me as I am housebound, but I've got FaceTime and Skype).

I want there to be a way for you to impose special measures on housing associations you suspect to be corrupt, or which do not prioritise their current tenants and the quality of life of those tenants over sprawling expansionism. I want you to be able to break up and redistribute the assets of poorly performing housing associations and hand their assets to housing associations that perform well.

I want individuals who run housing associations to be subject to annual scrutiny and their decisions subject independent judgement and inspection.

Housing associations should not be allowed to get to big: bring back localism.

I could go on for a long time, but I am glad you are tightening your framework: I just wish there was stronger enforcement measures.

Yours faithfully,

[redacted]

HCA Consultation on changes to the Regulatory Framework

Response by Linden First Ltd (Registration No 4752)

As a For Profit RP owned by an unregistered parent, Linden First welcomes the great majority of the changes set out in the consultation paper. These include accepting that some of the regulatory controls on RPs like us will be tighter than on conventional Not For Profit RPs.

We have however a few comments/suggestions to make, which are outlined below.

Where relevant, we have cross-referenced our responses to the specific consultation questions in Appendix 6 of the suite of consultation documents.

(A) 1.6: Requirements on entering arrangements with third parties *(Question A6, but not a specific sub-question)*

Linden First appreciates – and supports – the Regulator's intentions to avoid there being "transactions which, for example, over-price a service received so that the contractor is paid more than market value or where services are given without an appropriate charge being levied.... the focus is on restricting inappropriate transactions which are designed for the personal or professional benefit of a third party".

However we believe that the proposed wording of 1.6 is too catch-all, and risks unintended consequences.

For example, an RP could freely enter a maintenance contract, or perhaps a joint venture for some development, out of which it (the RP) does as it expected but out of which the other/third party does significantly better than originally expected, perhaps because market conditions moved in its favour. Could that be seen as an example of "inappropriately advancing" that other/third party's interests?

Or could even the granting of a tenancy by an RP to someone whose needs subsequently change such that they become 'inappropriately housed' be actionable as a regulatory failure by the RP?

The wider point is that the Regulator will not want to, in effect, set up an potential obligation on itself to respond to what could be a very wide range of allegations of RPs "inappropriately advancing" the interests of third parties. And it will not want to create a climate of uncertainty amongst RPs about the Regulator's expectations of RPs having to assess the risk of "inappropriate advance" of a contractor's interests as opposed to concentrating on assessing what is good/good value for the RP.

Accordingly Linden First asks the Regulator to further reflect on the precise wording of 1.6 in order to make it less 'catch-all'.

(B) 2.4.a and 2.4.b: Support from unregistered parent *(Question A6.1.e)*

Linden First welcomes the Regulator's intentions to resolve "some confusion as to when paragraph 1.4 [of the current standard] applies and what the expectation is to ensure compliance." (para 3.59 of the main consultation document), and to "[simplify] to help ensure that the Regulator is transparent about its expectations" (para 3.60).

However in our view the wording of proposed 2.4.a and 2.4.b, which combines some new wording with a substantial amount of the old wording, needs some further adjustment before it achieves the right resolution.

The HCA has previously accepted that it is not realistic or deliverable for there to be a requirement for completely open-ended and unconditional support from an unregistered parent to an RP-subsidiary. For example the parent may have legal obligations or contractual commitments which reasonably place some limitations on what it can deliver.

Para 2.4.1 of the proposed Code of Practice uses the verb "assist" in this context, rather than the "ensure" used elsewhere. And both para 2.4.2 of the Code and 3.60 of the main document refer to variation/appropriateness in deciding precisely what support mechanisms to have in place (" It remains for registered providers to determine which mechanisms are appropriate for their business and to ensure that they are put in place. It is likely that this will vary according to the specific risks posed to social housing from the structure of the group").

Linden First believes that the above extracts better capture the Regulator's intentions than the unconditional/open-ended message of the current draft of 2.4.a and 2.4.b. Accordingly Linden First asks the Regulator to further reflect on the precise wording of these two clauses.

(C) Code of Practice *(Questions A6.2.a and A6.2.b)*

Linden First has two observations here, one general and one specific:

(1) Our general observation on the Code is that we think that, as currently proposed, there will be ambiguity in RPs' minds – and perhaps in the minds of HCA staff too – as to the precise status of the Code.

Para 3.62 of the main document encapsulates this ambiguity:

- "In considering whether standards have been met, the Regulator may have regard to a code of practice.
- "However, it is the Standard rather than the code of practice that the Regulator would enforce against."

A response to this concern could lie in reconsidering what might be described as the presentation of the Code:

- make less of an attempt to produce it as a rounded document, and be even clearer that is it in effect a series of 'advice notes' on specific Standards
- fiercely remove any duplication between the Code and the Standards.

(2) Our specific observation relates to the reference in C2.3 of the Code to “common directorships which, in the event of insolvency, might allow recourse to the social housing assets”.

The message here appears to be that there should be no common directorships between parent & subsidiary. This is surely not the message that HCA wishes to give.

(D) Systemic risks *(this is a general comment, not directly linked to the standard Questions)*

The timing relationship between RPs’ development work and the general economic cycle has changed in recent years – as an over-simplified generalisation – from counter-cylical (eg buying in housing & land from private developers during market downturns, or explicit counter-cyclical investment measures by Government) to pro-cyclical (some RPs becoming as reliant as private developers on a rising market – in the RPs’ case to generate cross-subsidies to substitute for grant).

Developing RPs – and the Regulator – will therefore need to become lighter-footed in their responsiveness to sometimes quickly changing market conditions. We are not sure if the new Standards sufficiently capture this changing context.

Linden First
August 2014

HCA – Changes to the Regulatory Framework

Section	Question	Comment
A.6.1 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?	Yes overall. The merging of the specific expectations for governance and financial viability makes sense to prevent duplication primarily. We would also support the retention of the separate judgements for Governance and Financial Viability for the reasons outlined in the consultation paper. Reference to "law" within the required outcomes for governance however does appear to be too wide a requirement and difficult to certify/measure compliance with. Statutory guidance is not always "law" as detailed within the code. Whilst "legislation" as currently drafted is too narrow "Adhere to all relevant legal and regulatory requirements or "..relevant law in all material respects".
	b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes broadly. Subject to the limited comments that follow and elsewhere in this response. Possibly provide illustrative examples within the code in relation to what are seen as issues which may require reporting/a regulatory awareness outside of routine engagement. In removing the word economic Registered Providers boards shall certify in their annual accounts their compliance with this Governance and Financial Viability Standard. The code is clear that in doing so RPs shall ensure that they consider regulatory standards in the round - should the G&FV standard not incorporate the same wording to ensure this is a clear expectation associated with self-certification? Disposal of assets in relation to protecting social housing assets and appropriate asset management. B3 of the code – 'churn' via the AMS v uncontrolled loss – 3.15 of the consultation document – assets sold to prevent potential insolvency due to poor business planning and decisions. The Regulator could better define what they would like to see and this would assist rather than be seen by the industry as prescriptive.
	c) Do the requirements in paragraph 1.2 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 businesses?	Yes. This is also an approach captured within the 2010 NHF code of governance by way of annual appraisal of the Board individually and as a whole. Appropriate skills and capability are assessed in this manner. Independence is a key element of appropriate probity requirements in any RP and the regulatory approach to not defining Board makeup is helpful in achieving co-regulation.
	d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	Yes broadly. It is helpful that in establishing the proposed standard it is recognised risk and control frameworks can exist within more than one document/process. The proposals are more helpful than those outlined in the discussion paper 'Protecting Social Assets' and the move away from Ring fencing proposals is supported. Stress testing and what, as a minimum, ought to be included within an assets register could be better defined – possibly in the code – (illustrative examples). Risk should be seen as a driver for change and improvement. The focus is the protection of social assets and the clear position is that they shouldn't be put at risk. The standard enables good risk management to steer RPs' towards strategic decisions and investment and sometimes the risk of doing nothing may have the greatest impact eg aging population, welfare reforms
	e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	Yes. The non-social housing activity code guidance concerning capital and turnover requirements is particularly helpful for those profit making providers involved in such business (subject to response 6.2.a below). Parents obligations are clearly and appropriately stated and do assist the Regulator's aim of protecting social housing assets.
A6.2 Code of Practice	a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?	Yes broadly (although see b) below) although comments elsewhere in this response suggest where better illustrative "guidance " within a code could be given.
	b) Is the role of a Code clear and is it	Yes - To a large extent. Whilst the Code is designed to be

Section	Question	Comment
	reasonable?	informative and it is suggested it is the standards (and not the code) which would be enforced against it would be difficult to argue the code hadn't been "persuasive" from a Regulatory perspective. The risk is an inconsistent regulatory approach to similar issues at different providers. It could therefore be argued this does not assist in providing certainty.
A6.3 Do the proposed revisions to the disposals regime:	a) Meet the aim of protecting social housing assets and the value in it?	Yes this appears to achieve the aim. The ring-fencing of proceeds from a sub-sale in this way ensures continuing reinvestment in social housing and prevents funds exiting the social housing sector.
	b) Balance this aim with registered providers being free to run their own businesses?	Broadly but this may be seen by some in the industry as overly prescriptive and fetter their discretion to use their assets in the way they choose.
	c) Are they reasonable?	Broadly – for those that operate in this manner already there should be little issue but see b) above
A6.4 Do the changes to the registration criteria:	a) Reflect the proposed changes to the governance and viability standard?	Yes. The requirement to meet governance requirements from registration gives assurance to the Regulator and Industry as a whole that proper arrangements are in place to enable the new business to function appropriately from the outset (rather than showing a path towards meeting that). This does reflect the proposed standard. The risk of not making this change is a new business may have immediate governance issues in need of remedy and that alone or alongside a risky/diverse business model could lead to immediate failure. It could be clearer however what entry level is acceptable (G2 V2?)
	b) Are they reasonable?	Yes. See 6.4a.
A6.5 Do the proposed changes to the Rent Standard:	a) Reflect the Direction from DCLG?	Yes although we have previously commented via the consultation on our disappointment and concern over the removal of upward convergence to target rent. This removes financial capacity from business plans that would have been used to support corporate objectives
	b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes. The drafting of the standard is clear
A6.6 Do you agree that the proposed changes to the general consent allow the Regulator to protect social housing assets more effectively?	Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?	Yes. A welcome refinement is consolidation of some specific consents reducing from 39 to 34 the total number of disposals covered in the general consent. The harmonising of s.133 and 172 consents wherever possible is also a welcome proposal which assists, again, in consolidating consents. Sufficient protection still appears evident in relation to social housing assets disposal outside of the sector or to another landlord and also in relation to some financial transactions/security transactions which the regulator would still require a request for specific consent in relation to.
A6.7 Do the other proposed changes to the registration criteria:	a) Contribute to the Regulator better meeting its fundamental objectives?	Yes. Whilst some of the changes reduce the regulatory consent requirements (the requirement for objects to contain non-profit reference and asset distribution expressly and therefore consent be needed to alter objects being proposed for deletion as registration requirements) none of them expose the sector to additional risk. They contribute to the Regulator achieving its objectives. s.122 (amendments to constitutions of CIO's) capturing CIO's and ensuring parity with IPS's is appropriate although there still appears to be little progress in addressing the fundamental issues s.122 creates in prohibiting gifts to shareholders.
	b) Express the requirements of registered providers in a way that is clear and succinct?	Yes. Social housing reference being a continuing requirement in objects ensures clarity in relation to regulated activity. The provisions in relation to subsidiaries are helpful in ensuring regulatory oversight and assurance and ensuring constitutions require regulatory consent to alter group structure The manner in which the requirements are set out is clear and concise

Consultation on changes to the HCA regulatory framework

Consultation response from London & Quadrant

In May 2014 the Homes and Communities Agency (HCA) launched a consultation on a range of changes to the Regulatory Framework including proposals to protect social housing assets and a new code of practice.

The following response represents the current views of London & Quadrant:

1. 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?

Response: The substantially increased standard will ensure the Regulator can meet its present economic objectives. We agree with the emphasis given to the importance of effective risk management.

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

Response: In most areas the governance outcomes and expectations are clear and succinct. Some comments are included below.

The new requirement to "adhere to all relevant law" (not only legislation but also common law and statutory guidance) is linked to a requirement to certify compliance (see below). It would help if the standard was more specific on the relevant law to be complied with.

Whilst we can see the benefits of an annual Board review of compliance with all the regulatory standards, we question why the Regulator is only requiring a Governance and Viability standard review and that such review be certified at this time.

Will the need to certify compliance with the G&FV standard in our annual accounts also result in the need for our auditors to review this compliance as part of their audit work – if so this will result in further costs to all audits from 2015/16. The Regulator needs to assess if additional compliance costs (e.g. audit) are a reasonable cost to be borne in order to meet these objectives.

The financial viability requirement "not to put social housing assets at undue risk" needs clarification. Whilst the proposed code of practice in section B2 gives a few examples, in view of the importance being placed on this in the revised standard we may need more examples, as it is accepted at times losses will be made from business decisions.

Finally the requirement to "safeguard … the reputation of the sector" is wide ranging and could be used to allow the HCA to act against anything it dislikes.

c) Do the requirements in paragraph 1.2 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 businesses?

Response: Overall we support the proposed requirements regarding skills and capability of Boards and the need to manage risks effectively. We agree that emphasis should be placed on skills and expertise and the independence of the decision making process.

An annual certification in our published accounts including that boards "manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight" is a demanding list of achievements. Again we are concerned Boards will find this difficult to certify, and if in addition this statement needs to be audited this will incur further verification costs.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Response: All requirements will assist the Regulator in meeting their aim to protect social housing assets. However, ultimately, if a registered provider becomes insolvent the protection will probably come from a rapid merger with another provider.

The proposed need for a thorough, accurate and up to date record of assets and liabilities and to at least annually review this document will result in increased compliance costs for every business. As most providers already hold most (if not all) this information should providers be required to combine this into one indexed document if the Regulator has no current concerns regarding their viability?

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

Response: We support all the proposed requirements.

2. Code of practice:

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

Response: Whilst we accept a code will aid providers in understanding what good governance will look like and to meet the revised standard we would prefer no code be issued. This is because we are concerned that a code will eventually be used by the Regulator as a checklist for compliance despite assurances that only the standard has regulatory force.

b) Is the role of a code clear and reasonable?

Response: The code of practice is meant to amplify and expand on the standard to help providers understand the concerns of the Regulator and understand how to achieve compliance. It is not guidance to be used as a compliance checklist.

We are concerned that there remains a potential for misunderstanding regarding compliance as in annex 1 section D2 you state "the Regulator **may** have regard to the code when considering whether the standard has been met".

Para C1.5.4 of the draft code refers to the Regulator's expectation that a registered provider's board will oversee the maintenance of any asset and liabilities register. A board may review and make proposals with respect to asset management strategies and/or IT strategies, both of which may impact on an asset and liabilities register. However, the draft

code suggestion that the Board should focus on operational matters that are typically delegated to management is at odds with modern corporate governance.

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

Response: Overall we support the proposed changes and believe they meet your aims.

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

Response: L&Q supports the proposed changes to disposals provided we are left free to run our own business. We welcome your statement that "the regulator is not proposing to place any further restrictions on use of disposal proceeds by non-profit registered providers".

c) Are they reasonable?

Response: We believe they are reasonable.

4. Do the changes to the registration criteria:
a) Reflect the proposed changes to the Governance and Viability Standard?

Response: We believe the proposed changes do reflect the proposed changes to the G&FV standard.

b) Are they reasonable?

Response: We believe they are reasonable.

5. Do the proposed changes to the Rent Standard:
a) Reflect the direction from DCLG?

Response: We agree that the proposed changes reflect DCLG directions regarding rent.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

Response: We welcome the certainty regarding rent increases from April 2015. Ending rent convergence will damage business plans of organisations with historically low rents e.g. recent LSVT transfers and reduce their capacity for new development. We would expect a number of waiver applications to be requested by organisations badly affected.

Due to delays in issuing the rent policy and its guidance and the need for a consultation period we would prefer to change the implementation date of the new rent policy to April 2016. This would allow all providers time to plan for these changes including revising their business models.

Finally we believe most providers will struggle to implement increased rents for "higher income social tenants". We would welcome further guidance as to how this can be implemented.

6. Changes to the General Consent

a) Do you agree that the proposed changes to the General Consent allow the regulator to protect social housing assets more effectively?

Response: L&Q supports the proposed changes to consent conditions provided we are left free to run our own business. However the changes need clarification and possible revision.

We can understand why the regulator will at times want greater control over decisions of providers to grant security, however it could result in reduced supply of new homes by restricting the cross subsidy of open market sales to finance new social housing.

Regarding changes to category 6 “Charging and other security interest” - We would like clarification regarding the future conditions for allowing on lending by not for profit providers, and in particular that if we wish to on lend for non-charitable activity such as outright sales development then this will be given - if for example we inform the HCA in advance, demonstrate good risk management, and we can show that the lending was not secured on social housing assets as the money is backed by retained reserves.

HCA CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

RESPONSE BY LONGHURST GROUP

AUGUST 2014

Consultation questions

1. 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?

Yes. The proposed Standard appears to robustly meet these objectives. However, it does not directly address the issue of what constitutes social housing assets. Given the complicated mix of current provision and the fact that this is getting more complex as time passes we feel that this will become an increasingly difficult aspect of regulation and business development and a potential source of future problems.

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

Yes.

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 businesses?

Yes on the whole. We would however like to see more emphasis on the importance of relevant experience within both staffing and governance structures alongside the need for appropriate skills and capability. We feel that good Risk Management is served best by a combination of skill and experience.

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

Yes. We welcome the comprehensive approach and feel that there is a good balance between what is expected of all providers and how we manage risk as an independent organisation.

We very much welcome the emphasis on RPs having a comprehensive knowledge of their asset base and liabilities. We are also pleased to see the focus on organisations effectively stress testing their businesses and the examples listed will inevitably be useful to many.

We are pleased to see the importance placed on the expectations of Boards, and their role in driving risk management and challenging appropriately.

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

Yes. Again this is welcomed.

2. Code of practice:

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

Yes. The Code is a welcomed 'guide' as long as it remains just that and doesn't develop into a stringent set of 'codes of practice' as the sector has experienced previously. We would not want to see further statutory requirements attached to it.

The current proposals seem sensible and on paper a fair balance has been struck between providing guidance and allowing flexibility. On the whole the Code appears to outline what most good organisations already do, but this will no doubt be of use to all to a greater or lesser degree.

b) Is the role of a code clear and reasonable?

Yes, as long as it remains a guide and doesn't evolve into a more prescriptive document in the future.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Yes we support the changes proposed. We in particular welcome the increased criteria and scrutiny regarding the disposal of stock by profit making providers.

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

Yes. We assume that the changes will not be retrospective.

c) Are they reasonable?

Yes, we believe this is a reasonable approach given the importance of the issue.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?

Yes.

b) Are they reasonable?

Yes, as long as some flexibility is offered.

5. Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?

Yes, we believe this clearly reflects the direction from DCLG.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes.

Magna Housing Group

A 6.1(a) It depends on how the HCA uses the proposed powers. The proposed standard prohibits 'undue' risk only. That is not compatible with an aim of 'protecting' social housing assets. The Standard envisages their being risked to some degree.

A 6.1(b) On the whole yes, and the HCA is to be congratulated for , on the whole, a clarity of writing and layout unusual in public bodies today. There are some errors e.g. 'Counsel' in C1.2.2 2) of the Code, and non-sequential numbering after C2.1.3, also of the Code.

A 6.1(c) No. The attributes mentioned omit critical ones of judgement and character and other qualities of a good Board or organisation which cannot be reduced to 'skills'.

Further, it is impossible to have 'a degree of independence'. It is a contradiction of terms and the fact that the HCA has used the phrase shows up its muddled thinking on this subject. This is not solved by advocating that some Board members should be really, really independent. Is not the only feasible standard the one that says that all NEDs must act in the interests of the organisation whose Board they are sitting on at the time?

6.1(d) They certainly attempt to blend the two aims. It is doubtful if it is desirable to have a 'balance'. The interests of social housing must come first and not be neutralised by other concerns.

6.1(e) It depends upon how far the HCA is willing to use its proposed new disposal powers to refuse consent. If it does do so, then the answer is 'yes'.

A 6.2 Yes to both.

A 6.3 It entirely depends on how you use the powers but we welcome the end of the free-for-all.

A 6.4 Yes

A 6.5 Yes

A 6.6 On the whole yes, but the proof of the pudding is in the eating.

Metropolitan
Improving life together

Metropolitan response to HCA consultation on changes to regulations

Metropolitan welcomes the opportunity to comment on the proposed changes to regulations, which we broadly support. Alongside our responses to relevant consultation questions we have made a number of general remarks about the proposals in the wider context of the regulation of social housing.

1. About Metropolitan

Metropolitan is a leading provider of integrated housing services, care and support and community regeneration. We manage over 38,000 affordable homes for rent and sale, along with a range of care and support services. In total we serve over 80,000 customers across London, the East of England and the East Midlands.

Metropolitan is a member of the National Housing Federation and the g15, which represents London's 15 largest housing associations and houses one in 10 Londoners.

2. General remarks

As this consultation paper acknowledges, the social housing sector is becoming more complicated. The shift from capital to revenue grant and growth in commercial activities mean that business models are becoming more complex, with a greater range of rent regimes and tenures. Many providers also continue to operate sheltered and student housing portfolios or care services alongside a more traditional housing offer.

Often these profiles are core to providers' offers, but add to the complexity of business models, risk profiles and governance structures. Given this, the regulator needs the capacity to identify risks, understand a range of business models and accurately assess financial viability and governance. We believe many of the proposals in this consultation paper would support the regulator in responding to some of these challenges.

However, we also feel that the regulator needs the freedom and flexibility to respond to changes in the sector, which includes the flexibility to bring in the necessary skills and expertise. To this end, we believe that the Department for Communities & Local Government (DCLG) should work with the sector and the regulator to establish a fully provider-funded regulator, independent of government and accountable to providers for the quality of regulation.

Metropolitan
Improving life together

3. Responses to consultation questions

3.1 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?

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

Metropolitan supports most of the proposed amendments to the Governance and Financial Viability Standard and believes, on the whole, the Standard is clear, succinct and outcome focussed. In particular, we support proposals for a risk and business planning framework, which we believe could be a valuable regulatory tool in supporting the protection of social housing assets.

To ensure that the framework does not significantly add to regulatory burden we suggest that it replaces the Value for Money (VFM) statement, which we do not believe is a valuable tool for either providers or the regulator.

c) Do the requirements in paragraph 1.2 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 businesses?

Metropolitan supports proposed requirements regarding skills, capability and independence. We have a broad range of skills represented on our Board and in our senior team and believe such expertise is essential in ensuring that our business is well run.

We support the decision not to be prescriptive in requiring or defining the skills needed on boards and senior teams. We believe the regulator should focus on satisfying itself that boards and providers are reviewing and considering the skills and capabilities they need; and we believe regulatory oversight of relevant business decisions and scrutiny of self assessment are the most effective tools to enable this.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Metropolitan supports proposals to implement a risk and business planning framework. Such a framework would ensure that providers demonstrate to the

regulator that they have fully considered risks of their business strategies and assessed the effects of possible changes in the housing market. We believe it could therefore be a valuable tool in ensuring that social housing assets are protected.

However, Metropolitan is aware that the requirement for providers to submit a risk and business planning framework is an additional regulatory burden, given other requirements such as the Value for Money statement. Given the benefits that a framework would deliver we suggest that the regulator removes the requirement for a Value for Money statement and replaces it with the risk and business planning framework. Metropolitan does not believe that the Value for Money requirements add to effective regulation of the sector or encourage providers to better manage their businesses.

3.2 Code of Practice

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

b) Is the role of a Code clear and is it reasonable?

Metropolitan welcomes the Code. We believe it is useful in supporting providers to comply with regulations. It is important that the regulator uses the Code as guidance, rather than an addition to regulations and standards.

3.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

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

c) Are they reasonable?

Metropolitan supports the proposal to revise the disposals regime. We believe it is right that for-profit providers' sale proceeds from disposal of subsidised-social housing assets are reinvested in building new affordable homes.

3.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Metropolitan
Improving life together

Metropolitan is disappointed that the regulator is proposing an end to upward convergence of rents by £2 a week. We have previously outlined our concerns about the implications of stopping upward convergence, especially in the context of regeneration schemes. Whilst Metropolitan welcomes that we have the flexibility to re-base rents on refurbishment programmes, we can only charge re-based rents on re-let.

Delivering major regeneration schemes is costly and can result in higher running costs where new services and facilities are put in place. Preventing providers from converging rents upwards will make regeneration schemes more expensive and less attractive to investors and lenders. Given the amount of stock which remains non-decent standard, we believe the regulator should reconsider the ending of rent convergence.

Metropolitan welcomes and supports the decision by the regulator to give providers flexibility in rents to be charged to high income social tenants. Tenants benefit from discounted rents which reflect the subsidy in their homes and providers should be available to charge higher rents to those tenants who can afford them.

However, we would encourage the regulator to adopt a lower income threshold than £60,000. Households earning £60,000 or more are in the top 30% of households by income. Many of those on waiting lists for social housing are on much lower incomes than this. Giving providers greater flexibility to charge higher rents to higher income tenants also means we will be able to increase our investment in neighbourhoods and in delivering new affordable homes.

For more information on this response, please contact **Chris Quince, Public Affairs Manager**, [redacted]

Metropolitan, August 2014

AH/ZM

18 August 2014

mhs
homes group

Broadside
Leviathan Way
Chatham
Kent ME4 4LL

T: 01634 565333
E: contactus@mhs.org.uk

www.mhs.org.uk

Tim Sullivan
Regulatory Framework Manager
Homes & Communities Agency – The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Dear Tim

Consultation on Changes to the Regulatory Framework

I refer to the HCA consultation paper published in May 2014 and am grateful for the opportunity to provide comments on the proposals outlined.

By way of background, the mhs homes group is an unregistered social housing provider which owns and manages 8,500 affordable homes. The organisation was set up in 1990 to facilitate the stock transfer from the then Rochester upon Medway City Council. mhs homes is a not for profit organisation and registered as a community benefit society (formally known as an industrial and provident society).

The Heart of Medway Housing Association is a Registered Provider and was set up by the mhs homes group in 2010 in response to the Housing & Regeneration Act 2008. Heart of Medway is an investment partner with the HCA for both the 2011-15 and 2015-18 Affordable Homes Programmes. Heart of Medway currently owns c. 230 affordable homes and this figure will grow to c. 1,000 homes in the next four years.

Generally, the provisions set out in the consultation paper would be supported by both the mhs homes group and Heart of Medway HA. We would, however, like to make specific comments in relation to the arrangements to be entered into for registered providers with unregistered parents. We have therefore restricted our comments to this particular element of the consultation paper.

In making these comments, I would stress that mhs homes group and Heart of Medway already have some considerable working knowledge and experience in this field – having worked on the basis of a registered provider with an unregistered parent for four years within the HCA contractual grant framework.

Registered Name:
mhs homes limited

Registered Office:
Broadside, Leviathan Way, Chatham, Kent ME4 4LL

Registered under:
Industrial & Provident Societies Act 1965 (No. 26688R)

Place of Registration:
England

mhs
homes group

As context, I would also add that the unregistered parent has gift aided over £14 million to the registered provider during this period to fund new social housing assets. This is a good example under Paragraph 2.4 (a) of the Governance & Financial Viability Standard of an unregistered parent providing "...appropriate support or assistance as necessary to the registered provider."

Our primary concern is in direct relation to Paragraph 2.4 (b) of the Standard; namely:

> (b) such registered providers have the ability to require the support or assistance of the parent company concerned.

Such an absolute requirement would be difficult to enforce and regulate and, indeed, may cause problems to the funders of the parent company if it were to lead to a breach of loan covenants.

Whilst we fully understand and support the intention to ensure that registered provider subsidiaries are able to ensure on-going compliance with standards, such an absolute requirement will be very difficult to provide.

As a suggested improvement, we would suggest that Paragraph 2.4 (b) be amended to include a test of reasonableness as set out below:

> (b) such registered providers have the ability to require the **reasonable** support or assistance of the parent company concerned.

I hope that this feedback is of assistance. Please do not hesitate to contact me if you have any queries on this matter.

Yours sincerely

PP Ashley Hook
Chief Executive

Registered Name:
mhs homes limited

Registered Office:
Broadside, Leviathan Way, Chatham, Kent ME4 4LL

Registered under:
Industrial & Provident Societies Act 1965 (No. 26688R)

Place of Registration:
England

HCA Consultation on Changes to the Regulatory Framework
Midland Heart's Response

1a) Yes it does

1b) Yes, the requirements appear to be clear, succinct and reasonably outcome focused. We would suggest that some further guidance be provided to RPs about what form the suggested stress testing might take, albeit we note that some guidance is provided in the Code of Practice.

1d) The requirements in paragraphs 1.5 and 1.6 seem to address the Regulator's overarching objective of protecting Social Housing assets whilst allowing Registered Providers to run their own businesses.

1e) Although the specific expectation section (section 2) has little or no direct relevance to our business, we have considered the requirements which we believe to be reasonable.

In section 2.3, after the words "material negative impact" we suggest you add the words "(immediate or prospective)" to allow for the Cosmopolitan type situation where the legal effect of the Agreement does not crystallise until a later point.

2a) Yes, the Code is well written and helpful in explaining what assurance the Regulator needs around compliance with the standard.

2b) Yes, and the purpose behind the Code is well explained in the Introduction section.

3a) We are content with these changes.

4a) Yes, the changes appear to be well reasoned and well written.

4b) Yes.

5a) Yes.

5b) Yes.

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Email: consultation@hca.gsi.gov.uk

19th August 2014

Dear Mr Sullivan

Consultation Response

At Million Homes, Million Lives (MHML) we welcome the opportunity to respond to the Consultation on Changes to the Regulatory Framework. At Million Homes, Million Lives, a not for profit company, we have a shared vision to apply our strong experience of finance, investment, housing, procurement, contracts, public policy and public administration to help to:

- provide more of the right homes in the right places
- design better life and work outcomes, particularly for younger people and in the home setting
- give support for quality of life and independent living for older people, particularly through communications and technology.

This is a general submission to the consultation which seeks to introduce a new framework for assessing and measuring social value and value for money which puts residents first.
We have published two reports this year, which are relevant for these considerations. These are Nation Rent (www.millionhomes.org/downloads/nation-rent.pdf), published in March and A Better Deal for Nation Rent (http://www.millionhomes.org/downloads/a-better-deal-for-nation-rent.pdf) published this month. We enclose these reports as part of our evidence.

Nation Rent set out the challenges of the possibility that more than half the population could be living in rented accommodation when this is not in line with what people want. The report set out a toolkit for the management and financing of dynamic portfolios of homes across a range of tenures. The report followed extensive consultation with a wide range of individuals and organisations including local authorities, housing associations, investors, developers, landowners and house builders.

A Better Deal for Nation Rent provides answers to the three most common questions raised following the publication of Nation Rent:
- how can housing associations be profitable if social housing doesn't make money?
- the Europeans like renting, what's wrong with renting?
- how does the model extend social purpose? Could this be attractive to social investors?

A Better Deal for Nation Rent sets out a number of principles to put the tenant back at the heart of the decision making in boards of social landlords and introduces a new framework to measure value for money. The three pillars are: Business Value; Housing Value and Housing Social Value. Business Value is the value to the national economy and to the local economy. Housing Value is the value to residents, such as affordability, financial stability, quality of life and wellbeing. Housing Social Value is the value to the residential family unit as a whole, including education and training, money management, care and support, work and volunteering.

Yours sincerely

[redacted]

Calum Mercer
Director
Million Homes, Million Lives

[redacted]

Consultation on changes to the regulatory framework

Moat response to the HCA

August 2014

Contact
Angelo Sommariva | Public Affairs and Policy Manager
T:[redacted] | E:[redacted]

About Moat

Moat is a housing association providing affordable homes in thriving communities for people in the South East of England. For over forty years we have delivered high quality general needs homes for social rent, Affordable Rent, retirement and independent living. We also have a strong low cost home ownership offer, with an excellent track record of helping people into homeownership. We are one of the Homes and Communities Agency's development partners and currently develop over 500 new homes per year.

Consultation response

General comments

1. We are in favour of a continued system of co-regulation, which we are pleased to see has been embedded as a guiding principle in the consultation document. We think that this system has served the sector well, and will continue to do so, even with changes to the composition of providers and the diversification of activities.

2. That does not mean that the system should not change at all, and we understand and support the intention of protecting social housing assets from ill-judged high risk activities. But we maintain that the protection of these assets must not unduly restrict measured and properly-managed risk that is taken to support the delivery of social housing activities – and in particular, the supply of additional stock.

3. We believe that a friction remains between the need to stimulate supply and a regulatory system that is overly focussed on the avoidance of risk. We would argue that some level of well-managed risk is not only appropriate, but necessary for the sector. It continues to be the case that an overwhelming majority of housing providers are currently managing their risk profiles actively and responsibly.

4. We believe that the consultation document correctly identifies that diversification presents an opportunity to both cross-subsidise main social housing purposes, and to manage and mitigate some of the risks facing the sector – such as welfare reform.[1] This means that it is no longer possible to see risk as something to be avoided altogether. The revised Framework must therefore find right balance between hands-off regulation when providers are managing their risks effectively, and a tough approach when they are not.

The primacy of boards

5. We believe that the primary emphasis of the revised Framework should be to ensure that risks are properly identified, profiled and managed. We have previously argued that this is the most important function of our Board, and we maintain that boards are best placed to assess the risk levels of their respective organisations. We therefore support proposed changes to the Governance and Financial Viability Standard to ensure that boards and executive teams have the right skills and expertise for the type of activities they oversee.[2]

6. We are supportive of the proposal to include skills, capability and independence as key requirements in the Governance and Financial Viability Standard, and we agree with the Regulator's conclusion that specifically stipulating the number of independent board members required would have challenged the co-regulatory model and the Regulator's duty to minimise interference.[3]

Rent Standard

7. We are concerned that there remains a lack of flexibility regarding conversions to market rent. The proposed Rent Standard does not create a sufficiently straightforward path for converting social or affordable rented properties to market rent outside of the strict rules of *Pay to Stay*. The proposed Standard states that:

[1] Consultation Document, Pgph 2.4.
[2] Consultation Document, Pgph 2.11.
[3] Consultation Document, Pgph 3.21.

1.5 The requirements of paragraph 1.2 shall not apply to rental accommodation let by private registered providers to a social housing tenant household during a financial year where the household income was £60,000 or more in the tax year which ended in the financial year preceding the financial year in which the Rent Standard will not apply.[4]

8. We believe that this wording would represent a missed opportunity in terms of building rent flexibility into the new Standard. Ideally, the figure of £60,000 should be left out of the Standard, opting for a more flexible wording which would allow rent levels to be raised when a household's income '*becomes higher than that deemed affordable under the requirements of paragraph 1.2*', or similar.

9. As more housing associations are looking to diversify activities in a low-risk way, we believe it is important to leave this option open without the need to take the converted asset out of the social sector altogether. This would allow the extra revenue generated by the higher rent to be used to build additional homes, which we believe to be more in line with the intended Direction from DCLG.[5]

Category 6 of the General Consent

10. We are concerned that proposals to amend Category 6 of the General Consent are unduly restrictive and impractical. Given that the co-regulatory approach seeks to ensure a balance between the protection of social housing assets and flexibility to make sensible investment decisions, we would urge the Regulator to revise the necessity of the proposed changes.

11. Under the current model, housing associations need controlled flexibility to underpin the delivery of affordable housing, which is heavily reliant on private financing. It is also reliant on cross-subsidy from open market activities, such as from homes for market sale and rent, to social activities. This is a consequence of the reduced capital grant environment, which has necessitated providers to borrow against their existing asset base to secure capital for further development. The ability to grant a security interest over social assets is therefore critical to future housing supply.

12. The Regulator is proposing to require specific consent on each occasion where private finance is lent to a registered provider which in turn on-lends the proceeds to a profit making RP (unless the on-lending is strictly used for social housing purposes only). From a practical point of view, once money has been lent to the borrowing RP, it is very difficult to trace how that money is utilised, particularly when aggregated with operating surpluses. Also, if the profit making RP receiving the funds is a 100% owned, open-market-sale delivery vehicle for the group, further clarification is required on whether this would qualify as being used for 'social housing purposes'. The following is a simple worked example of the practical issues which might impact on this proposal:

    a. A registered provider with £20m of cash reserves borrows £20m through a loan agreement. The RP, now with £40m of cash, invests £10m in its social housing development programme and lends £10m to a for-profit subsidiary. A legitimate question at that point would be whether the £10m lent to the subsidiary forms part of the £20m cash reserves or part of the £20m loan.

[4] Consultation Document, pp.36-38, Figure 1: Draft Rent Standard 2014.
[5] DCLG, *Guidance on Rents for Social Housing*, May 2014, pp.5-6, pgph.1.16.

13. Even if it is possible to allocate the funds under the above example, it is important to note that over a number of years, the traceability and the source of the funds lent to the subsidiary become increasingly obscured. As previously stated, this is simply a consequence of a model that relies on both private financing and cross-subsidy.

14. We note that the narrowing of the scope of the General Consent will also exclude performance bonds, guarantees, indemnities and letters of credit. We believe that the regulatory system should avoid excluding categories that may become necessary or useful in the future. Our view is that it would be preferable for the Regulator to suggest *de minimis* limits as an alternative to having these whole categories excluded.

15. On the issue of index linked finance, we understand that the Regulator is concerned with the different risks associated with this type of finance, and is proposing to scrutinise any such arrangements prior to them being entered into. The proposal seeks to remove the Category 6 of the General Consent where social housing assets are to be used to secure finance on an index linked basis, thereby requiring specific approval to be given on each occasion. However, this does not limit the potential for providers to effect any treasury hedging transactions which, for instance, could swap the basis of funding into an index linked category. This has clear implications on the practicability of this proposal, both in terms of its treatment by providers, and the Regulator's ability to identify breaches.

16. The general principles of co-regulation may form a more sensible basis on which to prevent undue risk under Category 6. We believe that requiring registered providers to ensure the viability and protection of their social housing assets, along with the quarterly reporting regime already in place, is sufficient for the HCA to monitor activities within this category.

<u>For-profit providers</u>

17. We support the distinction that has been made in *paragraph 2.1* between *not-for-profit* and *for-profit* providers. It is important to consider that cross-subsidy typically occurs within RP group structures, such as from a *not-for-profit* parent to a subsidiary which may technically be defined as *for-profit*. Clearer definitions will therefore become increasingly important as the sector continues to diversify. We believe that there is a significant distinction between providers who take measured and managed risks in order to support their social housing activities, and those who are driven by the desire for commercial return and the creation of shareholder value.

Response to specific questions

1. **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?**

We are supportive of the general principle and direction of the proposed Standard, and sympathetic with the overall need to protect social housing assets. We strongly believe that under a system of co-regulation, it is the primary function of boards to ensure that risks are properly identified, profiled and managed.

   b. **Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**
   c. **Do the requirements in paragraph 1.2 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 businesses?**

We support the new requirements on skills, capability and independence, and agree with the Regulator's conclusion that specifically stipulating the number of independent board members required would not be appropriate under the co-regulatory model.[6]

Overall, we think that the Standard's focus on the competence of boards is the right approach, and it is the best way of ensuring a balance between the protection of social housing assets and operational flexibility.

   d. **Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?**

We are satisfied with the requirements outlined in paragraph 1.4 and 1.5. As per our answer to *Question 1(c)*, we believe that a focus on the competence of boards is the right approach to ensuring a balance between the protection of assets and operational flexibility.

We are also satisfied with the condition that the control framework must be approved by board at least once a year.

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

We believe that it is reasonable to make a clear distinction in the requirements for *for-profit* providers, as outlined in *paragraph 2.1*.

2. **Code of Practice**
   a. **Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?**

[6] Consultation Document, Pgph 3.21.

We are supportive of the proposed Code, and believe that it may be helpful in providing examples of how to comply with the Standard.

b. Is the role of a Code clear and is it reasonable?

We believe that the Code is clear and reasonable.

3. Do the proposed revisions to the disposals regime:
   a. Meet the aim of protecting social housing assets and the value in it?
   b. Balance this aim with registered providers being free to run their own businesses?
   c. Are they reasonable?

We believe that proposed revisions to the disposals regime are reasonable. We are satisfied with the Regulator's approach in terms of treating *for-profit* providers differently in order to protect the value of social housing assets.

4. Do the changes to the registration criteria:
   a. Reflect the proposed changes to the governance and viability standard?
   b. Are they reasonable?

We support the proposed changes to the registration criteria, and believe them to be reasonable.

5. Do the proposed changes to the Rent Standard:
   a. Reflect the Direction from DCLG?
   b. Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

We believe that the proposed changes only partly reflect the Direction from DCLG. The new Rent Standard has no clear pathway for converting homes to market rent where appropriate to do so, except under the strict rules of *Pay to Stay*. It is our view that more flexibility on this issue would better reflect the Government's key aim of supporting 'landlords to charge a fairer rent to those social tenant households with high incomes'.[7]

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We do not believe that proposed changes would allow the Regulator to protect social housing assets more effectively. In our view, the proposed changes to Category 6 of the General Consent would challenge the co-regulatory model and the Regulator's duty to minimise interference and regulate in a way that is proportionate.[8]

The current model is heavily reliant on both private financing and cross-subsidy. This is a consequence of the reduced capital grant environment, which has necessitated providers to borrow against their existing asset base to secure capital for further development. The ability to grant a security interest over social assets is therefore critical to future housing supply.

We believe that the current proposal is impractical and likely to damage market activities designed to cross-subisdise social activities. We also believe that it will be

[7] DCLG, *Guidance on Rents for Social Housing*, May 2014, pp.5-6, pgph.1.16.
[8] Consultation Document, Pgph 3.21.

very difficult to trace how money is utilised once it has been lent to a borrowing RP, particularly when aggregated with operating surpluses. In addition, further clarification is required on the treatment of 100% owned, open-market-sale delivery vehicles.

On the issue of index linked finance, we believe that there are problems with the practicability of this proposal, both in terms of its treatment by providers, and the Regulator's ability to identify breaches.

Overall, it is our strong view that the general principles of co-regulation form a more sensible basis on which to prevent undue risk under Category 6. We believe that requiring registered providers to ensure their viability and protection of their social housing assets, along with the quarterly reporting regime already in place, is sufficient for the HCA to monitor activities within this category.

7. Do the other proposed changes to the registration criteria:
   a. Contribute to the Regulator better meeting its fundamental objectives?
   b. Express the requirements of registered providers in a way that is clear and succinct?

As stated under Question 4, we are supportive of the proposed changes to the registration criteria.

NATIONAL HOUSING FEDERATION

19 August 2014

Response:

Changes to the Regulatory Framework

Summary of key points:

- The focus of the HCA's consultation paper is on the protection of social housing assets by means of robust risk management by registered providers. The primary responsibility for this rests on boards.
- In general, the Federation agrees with the emphasis on risk management and strongly welcomes the abandonment of the HCA's former suggestion of mandatory ring-fencing between core and non-core activities.
- However, the Federation does not support the proposal to introduce a Code of Practice. Such a Code is very likely to become regulatory in its effect.
- The Federation agrees that providers' business plans should be subjected to rigorous stress-testing and providers should identify the risks to which they are subject and the steps that are necessary to manage and mitigate those risks.
- Every provider should maintain an accurate and up-to-date register of its assets and liabilities.
- The proposed restrictions in the use of the general consent for disposals will create additional burdens for providers and for the regulator. To manage these burdens, the regulator should allow providers to agree a programme of financial measures, and should not require individual consents to disposals carried out in accordance with that programme.

- The consents power is concerned with disposals. The HCA should be careful to avoid any suggestion that it is a power to regulate financial transactions generally.
- The consultation also incorporates changes to the rent standard, changing the annual adjustment from RPI+0.5% to CPI+1% and removing the provision for convergence with target rents.

NATIONAL HOUSING FEDERATION

1. Introduction

This is the formal response of the National Housing Federation to the consultation paper on *Changes to the Regulatory Framework*, issued by the Homes and Communities Agency in May 2014.

The consultation takes the form of a formal document supported by 7 annexes and a "Business engagement assessment". The annexes are:

1. Governance and Viability Standard as it will read following the proposed changes
2. Proposed Code of Practice on Governance and Financial Viability
3. Rent Standard Guidance
4. Changes to the General Consent
5. Changes to Registration Criteria
6. Consultation questions
7. Statutory consultees

This response does not follow this format. It is based on the consultation document itself; information from the annexes is incorporated where relevant.

This is a public document. The Federation is happy for it to be reproduced and further disseminated and to be quoted from, provided the Federation's authorship is acknowledged.

2. Executive Summary

The consultation affects only private registered providers (RPs) of social housing: that is, housing associations and for-profit RPs. It does not affect public RPs (stock-retaining LAs). Most of its provisions apply to all private RPs, but some elements apply only to certain categories of RP and this is noted at the relevant points.

The underlying purpose of the proposed changes is to ensure that social housing assets are protected. The focus is on effective risk management, requiring providers to show a clear grasp of their business, its assets and liabilities; and to show that their business plan has been stress-tested. In addition, there are some specific requirements for certain categories of RP, such as: for-profit RPs; RPs with unregistered group parents. There are a number of restrictions on the use of Category 6 of the General Consent, and some changes to the registration criteria.

The consultation therefore represents a marked change of direction from last year's discussion paper, in which the HCA proposed a general requirement for separating associations' core social housing functions from their other activities, so that they took place in separate ring-fenced entities. The Federation argued strongly that ring-fencing in this way would hamstring the sector without getting to grips with the fundamental issue, which is the need to manage risk.

Accordingly, the Federation welcomes the change of approach that the consultation outlines, and commends the HCA's willingness to listen to issues raised in response to last year's discussion paper.

This is not to say that we agree with the HCA's proposals in their entirety. In particular, we do not agree that it is necessary or appropriate to issue an accompanying Code of Practice as the HCA proposes. We have further concerns about some specific elements of the HCA's proposals and these are discussed in our main response below.

It should be noted that the consultation sets out changes to the Rent Standard; essentially, to change the rent increase formula to CPI+1% and to remove rent convergence. These changes are in accordance with the formal direction by the Secretary of State, which allows the HCA virtually no discretion on the issue. The changes to the rent regime have already been the subject of a separate consultation by CLG and Federation response.

While we welcome the above-inflation rent formula, we are very disappointed by the removal of provision for rent convergence. This will have a significant impact on a number of providers, and we strongly urge the HCA to allow waivers to mitigate the effect.

3. Background

This consultation comes two years after the formal commencement of the Regulatory Framework (1 April 2012) and represents a response to three main factors.

- The increasing complexity and difficulty of the operating environment for the sector.
- The advent of for-profit registered providers, which represent a major new challenge for a regulation regime that has grown up in the context of non-profit bodies.
- Experience of stresses within the sector, most obviously demonstrated by the near-collapse of Cosmopolitan Housing Group, that have shown how social housing assets can be put at risk.

These developments should be seen in the context of the rapid evolution of the sector, as it moves from an investment model that was reliant, at one time almost wholly and more recently very substantially, on large-scale grant funding from Government. This has led many associations to undertake a broader range of activities in addition to their core function of social housing, at the same time as they are exploring innovative approaches to funding. The overall effect is to make the sector's operations both more complex and less obviously subject to the HCA's oversight. As the sector draws more of its financial resources from commercial loans and from sales, it is increasingly exposed to macroeconomic risks and the vagaries of the notoriously volatile property market. No longer is the sector partially protected by the availability of large-scale grant against the possibility of an economic slump.

These are broadly the concerns that prompted the HCA's 2013 discussion paper, *Protecting Social Housing Assets*. This suggested a general requirement for providers to ring-fence social housing from their other activities. The Federation argued very strongly that such an approach, based on the

regulation of utilities, would require sweeping structural change within the sector, would make borrowing more difficult, and would not necessarily protect assets or reduce risk.

The HCA's current proposals take a very different approach, focusing instead on the need for robust management of risk. The ring-fencing requirement is retained from the 2013 paper, but only in respect of for-profit providers, not for the sector as a whole.

4. Main text

At the heart of the HCA's proposals are substantial changes to the Governance and Financial Viability Standard. However, they are far from amounting to a complete rewrite; most of the standard remains unchanged. The HCA is at pains to state that it remains committed to the principle of coregulation, and the Federation agrees that this is the right approach. This means a continued – indeed, strengthened – emphasis on the responsibility of boards to ensure that their organisations remain well governed and financially viable.

Governance outcomes

There is a new requirement on providers to protect social housing assets. The Federation agrees with this requirement.

In addition, providers are required to comply with "all relevant law", rather than "all relevant legislation", as previously. The Federation agrees that the requirement to comply with "law", rather than "legislation", is reasonable in principle, given that important areas of law are based on common law or court rulings rather than on legislation. However, we have concerns about two aspects of this requirement.

First, we do not agree that statutory guidance, such as that issued by the Charity Commission, should be encompassed within the definition of "law". Statutory guidance by the Commission is not law and does not purport to be: the duty of charities is not to comply with it but to have regard to it. By lumping it in with "law" the HCA is blurring a crucial distinction that is scrupulously observed in the Charities Act 2006 and by the Charity Commission itself; and a similar argument applies to other forms of official guidance to which providers may be subject. Therefore we do not agree that regulation should require providers to comply with official guidance, although we should have no objection if the HCA required providers to certify that they have had regard to it.

Our second concern is that it will be very difficult for boards to give the categorical assurance that the HCA apparently expects, at least if the proposed Standard is read literally. The "law", as defined by the HCA (even if statutory guidance were to be removed), comprises an immense body of material. Even the best conducted, most law-abiding organisation might occasionally transgress against some obscure legal requirement; or at least, might hesitate to give a categorical assurance that it has not done so. A further point is that an organisation may sincerely believe, perhaps on the basis of expert legal advice, that it is acting in accordance with its legal duties; only to find later, after a court ruling, that this was not the case.

We therefore propose that the requirement should be to state that the RP believes that it complies with the law and has taken all reasonable steps, including, if necessary, the commission of paid legal advice, to satisfy itself that this is so.

The proposed Standard maintains the existing requirement to "safeguard … the reputation of the sector", and this is somewhat developed in the Code. While the Federation agrees about the importance of upholding the sector's reputation, the danger with making it a regulatory requirement is that it could become a catch-all provision allowing the HCA to act against anything it dislikes.

Financial Viability outcomes

There is a new obligation to manage resources so as to ensure that they remain viable and that social housing assets are not put at "undue" risk.

Skills and capability

The proposed Standard sets out the characteristics that providers should show in managing their business: "skill, independence, diligence, effectiveness, prudence and foresight".

The proposed Standard strengthens requirements on RPs to ensure that they possess appropriate skills, at board and executive level, for the activities that they propose to undertake. The Code unpacks the thinking behind this: that the sector's increasing diversity imposes greater demands on its leadership. RPs should have "an appropriate skills strategy", including a regular "skills audit", and they should manage their affairs with "a suitable degree of independence". In addition, RPs should adopt and comply with a suitable Code of Governance, and should annually review the effectiveness of their Governance arrangements. The regulatory Code stresses the need for board members to be independent in "character and judgement" as well as free of conflicts of interest.

The Federation strongly agrees with the general proposition that the greater diversity of the sector, coupled with a more difficult operating environment, imposes increasing demands on associations' leadership; bluntly, a standard of governance that was acceptable ten years ago may well not be adequate today. The sector has made great strides in improving its governance but progress has sometimes been uneven and, as the demands on the sector further increase, there is undoubtedly more to be done.

The regulator's interest in this area is therefore understandable and legitimate. But the issue is inherently difficult for a regulator to get to grips with. The HCA discusses it in terms of "skills and experience" and obviously these are important (although not obviously open to regulation); but we suggest that an even more important quality for boards is a faculty for critical assessment and constructive challenge.

This quality cannot be imposed by regulatory edict: ultimately, it has to be a matter of judgment. The Federation therefore thinks that the HCA is wise to have kept its regulatory requirement strategic and

high-level. This puts the responsibility on RPs to ensure that their governance arrangements are suitable, and remain suitable as their business evolves.

Risk and protecting social housing assets

This is at the heart of the proposed changes. The Standard is substantially extended to require an "appropriate, robust and prudent business planning, risk and control framework". This should be approved by the board and reviewed at least annually.

The Standard will include a new requirement for RPs to protect social housing assets, including a specific requirement to ensure that these assets should not be put at "undue" risk to maintain an organisation's viability.

The concept of "undue" risk has attracted some comment but the Federation's view is that the HCA is wise to leave this undefined. It must be for individual providers to decide their own risk appetite; but they should do so in a well-considered way, based on a clear understanding of their organisation's position and the risks to which it is subject.

It is clearly not the HCA's position that existing assets must be retained at all costs, and the HCA recognises that it is important to allow providers to be able to "churn" their assets. The HCA's concern is with unplanned and unintended losses of social housing assets.

In addition, providers are required to

- maintain a register of their assets and liabilities;
- engage in "detailed and robust" stress testing of their business plans; and
- ensure that they understand the impact of any new liabilities on the business and on regulatory compliance.

These new requirements represent a very welcome shift in emphasis from the suggestions made by the HCA last year that providers should be required so to structure themselves as to insulate core activities from non-core.

The Federation agrees with the HCA about the importance of effective risk management, and welcomes the HCA's move away from the ring-fencing requirements it outlined in its discussion document last year. We note, however, that the HCA's discussion of risk is based on general business issues affecting the wider economy (e.g. property values, the cost of credit); there is an argument that it should also refer to risks that are more specific to the sector. We think the HCA should be clearer that the management of risk must apply to all parts of the organisation, including its core function of social housing; it is important to avoid giving the impression that social housing is inherently less risky than other types of activity.

Stress-testing

The HCA does not propose to spell out, either in the Standard or the Code, exactly how providers should go about stress-testing; the Code does, however, suggest examples based on the organisation's

profile. Whatever stress-testing approach is adopted, the HCA expects it to be rigorous and robust, reflecting the reality of economic pressures to which providers may be subject. For instance, it should reflect the multi-variate nature of financial crises (i.e. events such as a crash in property values, a seizing up of capital markets, and very high interest rates generally occur at the same time, reinforcing each other (and adding to the problems providers will face)). The Federation suggests that members may find it helpful to study the stress tests for the banking sector announced by the Bank of England in April 2014 (www.bankofengland.co.uk/financialstability/Pages/fpc/stresstest): this is not to say that associations should subject themselves to these exact tests, but the Bank's paper gives an idea of what a robust multi-variate stress test will look like.

The fact that HCA does not specify the exact test to be applied means that RPs will be able, if thought fit, to tailor their stress-tests to include not only macro-economic factors of the type outlined by the Bank of England but also risks that apply more specifically to the sector. For example, a default in the sector is an obvious potential risk that may result in the repricing of loans. Moreover, the sector is exposed to potential political risks from policies of the Government of the day (for instance, regarding welfare reform or rent constraints imposed by legislation or regulation), which may also need to be taken into account.

But the exact tests to be applied will depend on the vulnerabilities of the particular organisation concerned. If an association's business strategy is dependent on income from sales, it will be more vulnerable to a general fall in house prices; whereas another association's client group might be particularly exposed to possible welfare cuts. Moreover, the Cosmopolitan case has highlighted the importance of cash flow, and this should also be taken into account in stress-testing.

Some RPs may be vulnerable to regulatory change, not necessarily limited to the HCA; many RPs are subject to charity law and guidance, or potentially to the Care Quality Commission. In addition, RPs may be subject to more specifically local risk; for example, the closure of a large employer in the area where a provider's stock is concentrated, or a change of policy by a local authority partner concerning Council Tax exemptions, discretionary housing payments, nominations, planning, &c.

A final point, not addressed by HCA, is that the risks to an organisation are not necessarily financial. A recent example, from outside our sector, is found in the newspaper industry. No one suggests that the *News of the World* was financially unviable; yet it was still forced to close. This is a telling reminder that non-financial matters, such as an organisation's reputation, can also pose an existential threat. Loss of reputation would be damaging to any public benefit or charitable body, but perhaps particularly so for an organisation providing supported housing or social care.

Register of assets and liabilities

The asset register is another key part of the proposals, reflecting the regulator's experience that some providers that have got into difficulties have been unable to provide timely and reliable information. RPs will be required to hold an up-to-date register of their assets and liabilities, taking a broad view of liabilities to include, for example, loans, guarantees, leases, derivative exposures, cross default

provisions, &c. The aim is to ensure that RPs are fully aware of their assets and liabilities; and also, that both the regulator and any potential purchaser can be provided, if necessary at short notice, with comprehensive and reliable information.

The Federation supports this requirement. Attempts to rescue associations in difficulty have been hampered in some cases by the difficulty of ascertaining exactly what assets the organisation holds and the encumbrances to which they may be subject.

Arrangements with third parties

The Governance and Viability Standard will require RPs to act in furtherance of their own interests and purposes, not for the personal or professional benefit of third parties. The Code makes it clear that (for example) board members and other entities within a group structure are "third parties"; they should not receive any benefits except in furtherance of the organisation's objectives. This does not prevent providers from benefiting third parties in pursuance of their objects; nor does it stop for-profit entities from paying a dividend.

The Federation agrees that it is appropriate to include this in the standard, reflecting the arrival in the sector of new categories of provider that come from a for-profit background where standards of business ethics are different from the public-benefit and charitable culture that informs the work of housing associations.

Reporting to the HCA

Requirements are strengthened, stating that providers must "communicate" with the regulator in an accurate and timely manner. They are also required to certify annually that they comply with the Governance and Financial Viability Statement.

The Federation does not object to the "compliance certification" in principle, although a categorical statement may be difficult: RPs should be required to state that they believe they are in compliance and have taken reasonable steps to assure themselves that this is so.

We also question whether it is necessary to require that the compliance certification must appear in the annual accounts. The HCA recently appeared, at least as a matter of practice, to impose a similar requirement about RPs' "value for money statement", an insistence that caused a recent commotion that had the effect of concentrating providers' attention on unimportant procedural points instead of the substantive issue of achieving value. We are sure the HCA wishes to avoid a repetition of this. A further point is that anything that appears in the accounts should be capable of audit: it is open to question whether the compliance certificate can be subject to an audit process as normally understood. The HCA should consider whether the annual accounts are the best place for the compliance certification.

Ring-fencing **(NOTE: This applies to for-profit RPs only)**

For-profit RPs are required to undertake their social housing in a separate entity with not more than 5% of that entity engaged in activities other than social housing. This requirement will not affect housing associations, which are non-profit bodies. While the Federation does not support ring-fencing as a general requirement, we agree that it is appropriate for for-profit bodies to prevent leakage of assets away from social purposes.

Assistance within Groups **(NOTE: This applies where the group parent is itself registered)**

Where a group parent is itself registered, the HCA will expect it to "support and assist" all RPs within the group to ensure their regulatory compliance (including viability).

The Federation understands the thinking behind this requirement and in principle it is a reasonable expectation. In many cases, the "support and assistance" will consist of internal management or technical or administrative services. However, where the support consists of financial loans or guarantees, the ability of the parent to provide will have to be subject to any obligations or undertakings it has entered into with third parties, particularly its lenders.

We understand that the HCA has acknowledged this point and does not expect a parent to provide support that would involve a breach of its existing obligations. This should be made clear.

Even if such a clarification is added, however, the existence of such a regulatory requirement may well cause lenders to conclude that the parent has provided some form of guarantee, if only as a tacit understanding rather than as a formal commitment. It will be important to monitor whether the new requirement has any impact on lenders' approach.

An allied point is that if the parent's authority over subsidiaries is as extensive as the HCA's requirements imply, there must be a possibility that the parent is exercising a "shadow directorship" of the subsidiary. If so, this will have significant legal and regulatory implications.

To sum up, the HCA's expectation that group parents should maintain the viability and regulatory compliance of RP subsidiaries is understandable in itself, and reflects existing realities. Yet it implies that the parent exercises a strong degree of influence and control over other members of the group, and this raises an unacknowledged tension here with HCA's expectation, elsewhere, that RP subsidiaries will enjoy significant independence from an unregistered parent.

Group arrangements **(NOTE: This applies where the group parent is not registered)**

Where RPs are members of groups with unregistered parents, the HCA has no regulatory oversight of the parent. The HCA therefore proposes that RPs in these groups should be unable to enter into arrangements with the parent or with other members of the group that could result in a call on the RP's social housing; and there should be mechanisms in place that require the parent to provide the RP with support, if needed, and that prevent the parent or other parts of the group from acting in ways that prejudice the RP's ability to comply with regulation.

These are substantial changes that are likely to have a significant impact on RPs with unregistered parents. These requirements imply, but do not explicitly state, that the RP should have a significant level of independence from the parent. (There is no explicit link with the new requirements on board independence more generally.)

It should be noted that some group parents do not hold stock and are therefore not qualified to register, even though group parents without stock are permitted to retain their status if they are already on the register. It remains the view of the Federation that this anomaly should be removed by amending the law to give HCA discretion, on receiving an application, to register a non-stockholding parent of a group including at least one RP, if the HCA considers that this is in the interests of effective regulation.

See also the comments on changes to the Disposals regime (below), which also make special provision for RPs in groups with unregistered parents.

Code of Practice

The HCA also proposes to adopt a formal Code of Practice. The purpose of the Code is "to amplify requirements in the [Governance and Financial Viability] Standard, making it easier for registered providers to understand what is expected of them". The HCA states that it does not intend to return to the Housing Corporation's regime of "best practice guidance notes" and is at pains to say that the Code is not a "set of rules" and that only the Standard (and not the Code) has regulatory force.

While acknowledging these assurances in theory, the Federation believes that they will be worthless in practice. All past evidence suggests that "advice" from the regulator is treated, by the regulated bodies as well as by the regulator's own staff, as being of equal force with formal regulation. The Federation accordingly opposes the adoption of the Code and urges the HCA not to proceed with this element of its proposals.

It is particularly disturbing that the HCA appears to regard its proposed new Standard as needing "amplification", as if providers might otherwise fail to understand what is required. With all due respect to the HCA, surely it has only itself to blame if the redrafted Standard is obscure; and the remedy is surely to reformulate it in a more perspicuous manner.

Careful reading of the Code reinforces our concerns. Much of the Code consists of superfluous matter, such as: prefatory and perambulatory material required only to explain the status and role of the Code; simple reiteration of the Standard; and material of a bland general nature making points that could not possibly have been in doubt. More seriously, in some parts of the Code, the language is of an unmistakably regulatory tone, which is certain to create confusion about the status of the Code and undermine the HCA's stated intention in producing it.

Paragraph C1.4.4, for instance, uses expressions like "the regulator expects" and "boards should ensure", which can hardly be read in other than a regulatory sense. Language of this kind (C1.4.8 and C1.4.9 are further examples) belongs in the Standard, not in a document presented as a Code.

This is not to say, however, that these provisions should be added to the Standard; for they would add nothing to it. The gist of paragraph C1.4.4, for instance, is that operational costs should be met from operating income and that if a provider is forced to rely on sales to meet operating costs, it should have a plan to extricate itself from this position. The Federation agrees that this makes perfect sense, but also argues that there is no need to say it because the proposed Standard already says that providers must maintain viability and avoid putting social housing assets at risk. This requirement, which the Federation supports, is already enough to preclude any provider from adopting (except as a short-term expedient) the approach that C1.4.4 is intended to prevent. All the HCA is likely to achieve is to create confusion about the status of the Code and distract attention from the clear and straightforward requirement of the Standard.

This is not to say that the Federation necessarily objects to the entire content of the Code. Much of it is eminently reasonable and sensible, possibly even helpful. But the role of the regulator is to regulate; if good practice advice needs to be disseminated to the sector, there are many better ways of doing it.

Disposals **(NOTE: Some of these changes apply specifically to certain categories of RP, e.g. for-profit RPs or RPs with unregistered parents)**

In 2010 a system was introduced requiring RPs to obtain a letter of authorisation from the regulator which allowed access to Category 6, a General Consent to charge and dispose of social land and property. The letters remain valid until the Regulator withdraws or amends them and they have helpfully reduced the administrative burden previously requiring RPs to obtain specific consent for each transaction.

The new proposals restrict application of the General Consent in the following circumstances:

a) lending between unrelated RPs

b) transactions between a RP and its unregistered parent

c) intra group on-lending of facilities secured on social housing assets already requires specific consent. The proposals extends the on-lending restriction to group to either

   i. profit-making RPs or

   ii. unregistered bodies

   unless the funds are used for social housing purposes and to group members that operate in England

d) secure index-linked finance and

e) security to support a guarantee.

The new proposals do not seek to outlaw these transactions but allow the Regulator an opportunity for pre-scrutiny.

The Federation agrees with the aim of preventing social housing assets from leaking from the sector, or being put at undue risk of doing so. However, providers should not be obstructed in the carrying out of ordinary business operations that do not generate particular risk.

Scope of the consent power

The HCA needs to resolve an important discrepancy between paragraph 3.74 of the consultation document and the draft revisions to Category 6 of the General Consent as set out in Annex 4. Paragraph 3.74, specifically in subparagraphs (a) and (c), talks about restricting "lending" and "on-lending" in general terms, apparently losing sight of the fact that the consents regime, in accordance with section 172 of the Housing and Regeneration Act 2008 (or, in some cases, section 133 of the Housing Act 1988), is not concerned with lending or borrowing; it is concerned with disposals of assets. The term "disposals" is broadly defined, so that it includes not just sales but also the pledging of assets as security for loans; and the fact that RPs' borrowings are usually secured in this way means that the consent power can be used as an indirect mechanism for regulating their indebtedness.

Using the consent power in this way is a legitimate regulatory function, but the regulator must not lose sight of the fact that its underlying consent power is to regulate disposals, not to regulate borrowing as such.

Although this distinction is blurred in the consultation document, it is scrupulously observed in the draft revisions to Category 6 in Annex 4, which states specifically, in its opening paragraph, that a qualifying RP "may grant a Security Interest over a Social Housing Dwelling" in circumstances that then are set out in detail. The explanation of the circumstances extends over the following four pages, but it is all contingent of the introductory paragraph. This includes its reference to the grant of a "Security Interest", a term that is defined on page 37 of the draft General Consent.

What this means is that, as a tool of financial regulation, the consent power is confined to financial arrangements that involve the use of RPs' social housing as security. This will primarily cover borrowing by RPs, which will normally be secured against their assets; it will also extend to mechanisms such as the extension by a provider of a guarantee to another entity (such as another RP or an unregistered subsidiary) where failure to honour the guarantee would potentially allow recourse against the RP's social housing assets. But it will not extend to the control of borrowings or loans that do not entail the grant of a security interest such as to engage the consent power.

This is not to say that the regulator has no power over RPs' financial arrangements. Regulation requires RPs to maintain viability and act with probity and within their powers. This provides the regulator with the locus it needs to deal with reckless or improper financial arrangements. But this has nothing to do with the consent power, the underlying purpose of which is to regulate the disposal of social housing assets.

Turning to the specific issues raised in the consultation paper, a loan between unrelated RPs (the circumstances envisaged by 3.74(a)) would probably be within scope. But this is not because of the

loan as such; it is because the loan would almost certainly be secured against the social housing assets of the borrowing RP.

The same rationale does not apply to loans by RPs to unregistered entities in the same group (as contemplated in 3.74(c)) because any security for such an arrangement would be provided by the unregistered body, which would not require consent. The HCA should draw a much clearer distinction between consent for disposals (including the granting of security) and the control of onward lending. The latter, where it falls to be regulated, is governed by considerations under the Governance and Financial Viability Standard. Any attempt to regulate lending through the consents regime will, in effect, require providers to "track" borrowed money so that they can comply with conditions regarding its further use. This would be a major bureaucratic imposition and it would serve no useful purpose, since money is a fungible commodity and it will be impossible to demonstrate that the money used to make a loan is the "same" money as was secured against a social housing asset.

We therefore urge the regulator to dispel any doubt on this point by making it clear that paragraphs 3.72 to 3.74 of the consultation document are specifically limited to circumstances in which the consent power is engaged.

Managing the consents regime

We appreciate the regulator's assurance that the aim is not to prohibit activities that will now fall outside the general consent, but only to ensure that the regulator has oversight of them. However, this approach will inevitably result in an increased flow of consent requests and it raises concerns about whether the HCA is resourced to deal with this expeditiously.

The HCA can mitigate this problem by allowing RPs that plan to restructure or refinance their business to seek HCA consent to the whole process at the outset, such a consent to allow consequential disposals to be carried out without requiring separate HCA consent. This will allow RPs to proceed with confidence once HCA has consented to the whole process, and will also reduce the administrative burden and delay involved in consent requests.

Indeed, the HCA might wish to consider extending this idea so that the consents regime takes a provider's regulatory judgment into formal consideration: in other words, a provider that has successfully maintained a G1/V1 regulatory judgment might be able to avail itself of a broader general consent than a provider with a lesser (but still compliant) G2 or V2 ranking. We do not advocate the immediate introduction of such a system, because its ramifications would need careful consideration and this should be the subject of a further consultation. We do, however, suggest that it should be borne in mind as a possibility as regulation continues to evolve.

<u>Placing sales proceeds in a Disposal Proceeds Fund</u> **(NOTE: This new requirement applies only to for-profit RPs)**

The HCA proposes that for-profit RPs should be required to put the net proceeds of disposals into a Disposals Proceeds Fund (DPF), the further use of which will be subject to direction by the regulator. No change is proposed to the rules governing disposals by non-profit RPs.

The HCA justifies the distinction between for-profit and non-profit RPs on the grounds that non-profit RPs have no incentive to make funds available for distribution to shareholders. The Federation strongly supports this distinction and the reason for it. However, the Federation is not convinced that the HCA's proposal delivers its stated aim of achieving "as far as possible consistency between the different types of RPs".

This is because, for non-profit RPs, the obligation to put funds into a DPF applies only to certain categories of sales proceeds based on past grant; whereas in the case of for-profit RPs, the obligation will apparently apply to all net proceeds. This is a dangerous precedent that could be used, in future, to apply the wider obligation to non-profit providers as well (an objective in which the regulator has shown interest in the past). These concerns are reinforced by the HCA's assertion that the taxpayer has a legitimate claim to a stake in capital gains: if this "legitimate claim" applies to for-profit RPs, why not to non-profit RPs too? The Federation agrees that sales proceeds should not be distributed as profit, but argues that the objective of achieving consistency between different types of RP would be best achieved by applying the existing DPF obligations equally to all RPs and imposing an additional duty on for-profit RPs to spend any additional proceeds on charitable or public-benefit purposes. Provided they comply with this requirement, this spending should not be subject to specific direction by the HCA.

This can be achieved by requiring the for-profit RP to retain the whole net proceeds of sale within the non-profit entity. Essentially, this will require it to maintain two protected funds: the DPF element, based on grant, and the "other public benefit" element, containing the rest of the net proceeds of sale.

Use of Disposal Proceeds Funds

The Federation notes the HCA's announcement that the DPF determination will be revised (subject to a separate consultation) to tighten up procedures to ensure that RPs spend funds within the three-year limit.

Proceeds from sales under Preserved Right to Buy

For stock transferred from local authorities after 30 September 2014, proceeds of sales under the Preserved Right to Buy must be used for new social housing, and must be handed back if not spent within three years.

Registration criteria

The registration criteria will be amended to take account of the changes to the Governance and Viability Standard. In addition, applicants will be required to meet governance requirements from the outset, as opposed to being allowed to show only a "reasonable path" to doing so.

The Federation supports this change. While it is important that new entrants should be able to gain admittance to the register, they should be expected, once admitted, to abide by the same standards as existing providers.

Rent Standard

The consultation sets out major changes to the Rent Standard. However, these merely reflect the Secretary of State's Rent Direction, which followed a separate consultation exercise run by CLG, to which we responded at the time. We recognise that HCA had no choice but to comply with the Directive.

Although the Standard clearly articulates the requirements of the Direction in a way that will enable our members to apply them, the National Housing Federations has serious concerns with some the provisions.

The Standard confirms a 10-year rent policy from April 2015, to increase social rents annually by CPI + 1%. The Federation welcomes this medium-term, above inflation, rent rise as this provides the certainty that housing associations and their lenders and investors will need to allocate the resources required for significant house building.

However, the Federation is disappointed that DCLG has persisted with abolition of rent convergence despite significant opposition, including the Federation's. The removal of rent convergence will have a deleterious effect on many private RPs' business plans, including the risk of financial unviability for a few. DCLG and the HCA have agreed to consider waivers but only in a very narrow set of circumstances – to ensure ongoing viability and covenant compliance and, in early years' LSVTs, delivery of transfer promises, but only after all other options have been exhausted.

The Federation urges DCLG and the HCA to act quickly to widen the scope of waivers to include RPs where, for example, the removal of convergence will:

- create significant financial difficulties in relation to past tenant commitments entered into where there was legitimate expectation of these cashflows and
- require RPs to strip back to the bone activities which would otherwise be vital to support core activity.

Given the delay in issuing the Direction after the Rent consultation ended in December 2013, the Federation urges DCLG and the HCA to delay implementation of the new rent policy until April 2016. This would mean rent convergence continuing for an additional year, giving the Regulator and RPs more time to properly consider and plan for the impact of ending rent convergence before it is brought in.

The revised Standard also allows private RPs to charge higher rents to social tenant households on incomes of £60,000 plus per annum. Section 5 of the Rent Standard Guidance explains that PRPs "may" have a policy for these tenants, and "where they do so" they should act in accordance with section 5.

We suggest it should be stated clearly, preferably in the Standard rather than the Guidance, that PRPs are not required to adopt a separate rent policy for high-income tenants, and that when a provider has elected not to adopt such a policy, it may treat these tenants as if they were subject to the Rent Standard in the same way as any other tenant. We believe this would represent the policy intent. It would be helpful to add, for the avoidance of doubt, that where there is no separate rent policy for high-income tenants, there is no necessity for the provider to collect information with a view to identifying them.

Temporary housing and the Rent Standard

Temporary housing has hitherto been outside the Rent Standard. This exemption is maintained but is subject to a new restriction so that temporary housing is not exempt if its acquisition was funded with "social housing assistance or other public funding". This more limited exemption has not been the subject of any discussion or publicity and relates to a point not specifically addressed in the Secretary of State's Direction. HCA should engage in dialogue with RPs that have historically received funding for temporary housing before introducing any restriction on the existing exemption.

Recovery and Resolution Plans (also known as "Living Wills")

The Federation notes that this idea, which was outlined in last year's discussion paper, has been dropped. We agree that it would probably have been a distraction to require such a plan, since it would not have been needed for most organisations. Moreover, when such a plan was needed, i.e. in the event of serious difficulties, it is doubtful how much reliance could be placed on a plan drawn up by the same team that had gone on the lead the organisation into such severe trouble that the plan was needed. Moreover, one of the key ingredients in such a plan would be a reliable register of assets and liabilities, which the HCA does propose to require.

5. Federation's views

The Federation's comments on specific elements of the HCA proposal will be found in the previous section.

Stepping back from specifics to look at the proposals as a whole, they represent a heightened degree of regulatory concern about providers' risk management, and how far it is suitable for present-day circumstances.

While coregulation is maintained, boards need to be aware that the implication of these changes is a much greater degree of regulatory interest in how they are assessing the risks to which their organisation is exposed, and how they are planning to manage and mitigate those risks.

The Federation, whilst agreeing with this general approach, would argue strongly that effective risk management is, and always has been, essential to the success of the sector. This would be so even if the regulator took no interest in the subject at all. The underlying reason that the issue has become more salient is not that the regulator is paying more attention to it but that the operating environment has become more dangerous.

In saying this, the Federation does not want to discourage the regulator from taking a greater interest in risk management. On the contrary, this is, on the whole, a positive move. But the regulator's interest could be counter-productive if the effect is to focus the minds of providers on keeping the regulator satisfied rather than on the far more important issue of ensuring that they understand and are effectively managing their risks. The HCA's recent foray into Value for Money demonstrates how easily an issue can be sidetracked in this way.

Whilst supporting the general aims of the HCA's proposals, therefore, the Federation is anxious that they should be brought into effect in such a way as to encourage and support providers to manage risk effectively. It is imperative that Boards recognise that effective risk management is fundamental to the success of their organisations; in other words, that they feel real ownership of the issue.

6. Response to consultation questions

Governance and Financial Viability Standard

1a *Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?*

On the whole, yes. Its focus on risk management is a major step forward from the 2013 discussion paper, with its emphasis on ring-fencing. There remain some specific areas of concern as outlined elsewhere in this response.

1b *Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?*

We think that the Standard is, on the whole, clear, succinct and outcome-focused. Accordingly, there is no necessity for an explicatory Code.

Specific points where clarification is needed are noted in our main response.

1c *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 businesses?*

This balance is generally well struck. We agree that the regulator should refrain from making specific stipulations about the composition of boards.

1d *Do the requirements in paragraphs 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?*

This balance is generally well struck.

1e *Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?*

Yes, but they fail to deliver the regulator's stated aim of ensuring broad equality of treatment between for-profit and non-profit PRPs. For-profit RPs are required to put the whole of the net proceeds of sale in a disposal proceeds fund, whereas the corresponding obligation for non-profit RPs applies only to the grant element. This is misconceived in its underlying logic, which assumes that the taxpayer exercises a type of quasi-ownership of the whole of any asset funded by grant; it also has the undesirable effect of giving the HCA far too much control over the proceeds of sale, thus setting an undesirable precedent for the future treatment of sales by non-profit RPs. Where a for-profit RP disposes of social housing, the regulator's aim of equal treatment would be better achieved by confining the DPF obligation to the grant element, while requiring the balance of the net proceeds to be applied to public benefit.

Code of practice

2a *Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?*

Not necessarily. In some areas it is unhelpful or even misleading. Our main objection, however, is not so much to its contents as to the source from which they come. The role of the regulator is to regulate; the regulator is not well placed to offer advice and assistance of the kind the Code seeks to provide, and it is inevitable, whether intended or not, that the contents of the Code will come to be regarded as tantamount to regulation.

2b *Is the role of the Code clear and reasonable?*

No. Nor can it be. The prefatory statement that the Code is not regulatory is seriously compromised by the frequent use of quasi-regulatory language, but the real difficulty is even more fundamental: a regulatory body is, by its nature, unsuitable to provide advice and support in this way.

Disposals

3 *Do the proposed revisions to the disposals regime:*

(a) Meet the aim of protecting social housing assets and the value in it?

(b) Balance this aim with registered providers being free to run their own business?

(c) Are they reasonable?

There are some problems with this part of the HCA's proposals. The HCA seems, at some points, to have assumed that its power to regulate disposals amounts to a more general power to regulate financial transactions such as lending. This causes confusion and leads to a significant discrepancy between the consultation paper and the draft general consent.

Moreover, the changes to the general consent are likely, unless carefully managed, to result in a significant administrative burden both for providers and for the regulator. The HCA should manage this burden by granting a single consent to a financial process so that individual disposals as part of that process do not require further consent.

Registration criteria

4 *Do the changes to the registration criteria:*

(a) Reflect the proposed changes to the Governance and Viability Standard?

(b) Are they reasonable?

We support the proposed changes to registration.

Rent Standard

5 *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 focused as possible?

We agree that the HCA's proposed changes to the Rent Standard, in essence, reflect DCLG's Direction on the Rent Standard 2014 - the rent increase formula to Consumer Price Index (CPI) +1% and the removal of rent convergence.

Although the Standard clearly articulates the requirements of the Direction in a way that will enable our members to apply them, the National Housing Federations has serious concerns with some the provisions.

The Federation welcomes the ten-year CPI+1% rent rise, which provides certainty and allows the sector to plan with confidence. But the abolition of rent convergence will have a deleterious effect on many RPs' business plans. DCLG and the HCA have agreed to consider waivers to allow convergence but only in a very narrow set of circumstances. The Federation urges DCLG and the HCA to act quickly to widen the scope of waivers.

7. Conclusion

The Federation agrees that a more complex and demanding operating environment requires a regulatory response, and feels that the proposals in the HCA consultation paper represent a welcome advance from the ring-fencing approach outlined in last year's discussion paper. It is right to focus on risk and how it is managed, and the prime responsibility for this is rightly placed on boards.

However, the HCA needs to revisit a number of issues, chiefly:

- The issuing of a Code, which is an ill-advised proposal that will create confusion about the extent and role of regulation;

- The nature, and attendant limitations, of the power to consent to disposals, which is not a general power to regulate financial transactions;
- The treatment of disposals by for-profit RPs, which fails to distinguish the grant element from the other proceeds of sale.

Subject to these areas of concern, the Federation agrees that the paper represents, in general, a measured and proportionate regulatory response to the evolving nature of the sector and the changes to the environment in which it operates.

The Federation regards this as a public document. It is happy for it to be further reproduced, in part or in full, and fairly quoted from, provided the Federation's authorship is acknowledged.

John Bryant

Policy leader

19 August 2014

Consultation on changes to the regulatory framework
Network Housing Group Response

August 2014

About NHG

A member of the g15 group of London's largest housing associations, Network Housing Group owns and manages over 19,000 homes across London, Hertfordshire and the South East. We are also currently developing over 1,000 new homes a year.

The Group incorporates three registered housing providers – Network Stadium Housing Association, Riversmead Housing Association, Community Trust Housing, and a new commercial arm, Network Living, which is widening the range of homes and tenure options we can offer.

General Overview

We are generally happy with the proposed framework and Code of Practice, and feel that the HCA have created a workable solution to meet its own objectives whilst maintaining the principles of co-regulation.

We support the change in direction from last year's discussion paper which proposed ring-fencing social housing functions from commercial activities. The current proposals focus instead on the need for robust management of risk and protecting social housing assets which is welcomed.

We are pleased to see an on-going commitment to the principles of co-regulation and appreciate the additional clarity around the relationship between the parent company and its subsidiaries. We accept the strengthened requirement to ensure that boards possess the appropriate skills.

We welcome the proposed Code of Practice, and feel that this gives greater clarity about the expected outcomes.

Response to specific questions

1. **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?**

   b. **Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**

c. **Do the requirements in paragraph 1.2 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 businesses?**

We accept the pressure on the Regulator to protect social housing assets, and feel that the Standard is clear in the way that it sets out the requirements.

We appreciate that by ensuring suitable skills and capability, RP's are better able to effectively manage risks and thus protect social housing assets. We believe that it was right not to stipulate the number of independent board members as this should be a matter for individual Boards.

d. **Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?**

We concur with the requirement for RP's to have a robust business planning, risk and control framework in order to protect social housing assets. The proposed framework seems sensible in terms of achieving the objectives of the Regulator and also makes good business sense for the RP's.

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

We believe that it is reasonable to make a clear distinction in the requirements for for-profit providers, as outlined in Section 2.

2. **Code of Practice**
   a. **Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?**

It is helpful to be given guidance on how compliance with the standard can be achieved.

   b. **Is the role of a Code clear and is it reasonable?**

We believe that the Code is clear and reasonable.

3. **Do the proposed revisions to the disposals regime:**
   a. **Meet the aim of protecting social housing assets and the value in it?**
   b. **Balance this aim with registered providers being free to run their own businesses?**
   c. **Are they reasonable?**

We believe that in the main the proposed revisions to the disposals regime are reasonable, and meet both the Regulator's objectives whilst not overly interfering with the decision making processes of the Registered Providers.

We do however have a concern that the pursuit of consistency between 'for profit' and 'not for profit' providers, will adversely affect the work and capacity of the not forprofit sector as a whole.

4. **Do the changes to the registration criteria:**
   a. **Reflect the proposed changes to the governance and viability standard?**
   b. **Are they reasonable?**

We generally support the proposed changes to the registration criteria, and believe them to be reasonable. However, we are concerned that restrictions to on-lending within groups to profit making entities will damage the capacity of 'for profit' market sales subsidiaries, which will in turn constrain cross subsidy (via gift aid) to the development of more affordable homes. Clarification as to precisely what is meant by 'onlending a facility' would be welcome.

5. **Do the proposed changes to the Rent Standard:**
   a. **Reflect the Direction from DCLG?**
   b. **Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**

Yes, we believe that the proposed changes reflect the Direction from DCLG.

6. **Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**

We agree that the propose changes will allow the regulator to protect social housing assets more effectively. We concur with category 6 of the General Consent Code

7. **Do the other proposed changes to the registration criteria:**
   a. **Contribute to the Regulator better meeting its fundamental objectives?**
   b. **Express the requirements of registered providers in a way that is clear and succinct?**

We are supportive of the proposed changes to the registration criteria, and feel that the changes are clearly expressed.

Appendix 1: report to Board 29.7.14

Consultation on changes to the Regulatory Framework

Response from North Hertfordshire Homes following discussion at Executive and Board level

Consultation questions:

A6.1 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
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
c) Do the requirements in paragraph 1.2 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 businesses?
d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

NHH response: Yes

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

NHH response: No. The requirement to obtain written consent from the regulator for entering into arrangements such as sale and leaseback which involve the granting of a security interest over a RP's social housing dwellings undermines the legitimate role of boards to take properly made decisions on such matters. The HCA standards already require boards to obtain appropriate internal or external advice on such matters. This is sufficient from a regulatory perspective.

A6.2 Code of Practice

a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?
b) Is the role of a Code clear and is it reasonable?

NHH response: Yes

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

NHH response: yes

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

b) Are they reasonable?

NHH response: yes

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

NHH response: yes

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

NHH response: yes

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?
b) Express the requirements of registered providers in a way that is clear and succinct?

NHH response: yes

Notting Hill Housing Group
Dear Sir/Madam

Please see below our consultation response on two aspects of the proposed changes to the Regulatory Framework.

Response on proposed changes to Category 6	**This section of our response relates in particular to paragraph 3.74 (c).** Notting Hill Housing Group is a group with a charitable Registered Provider, Notting Hill Housing Trust (NHHT) at its head. NHHT provides support to other entities in its group. At 31 March 2014, NHHT had lent £156m to unregistered subsidiaries as well as provided share capital (or equivalent) of £49m. In addition, NHHT had lent £50m to its registered subsidiary, Notting Hill Home Ownership (NHHO). This compared with reserves in NHHT of £301m and of the Group of £382m. In addition, the Trust made a surplus of £54m, of which £47m arose from gift aid from its non charitable subsidiaries. We believe that this shows that (a) NHHT is investing substantial amounts in its non charitable activities and (b) that those activities produce a significant benefit for NHHT that can be used to support our core mission of providing low cost housing for Londoners who need it. This view is supported by the GLA who have provided us with the largest 2015-18 allocation for new affordable housing, showing that the profits being made by the non charitable parts of the group. We could not take on such a large programme without the contributions made by the non charitable parts of the Group. We find this part of the consultation difficult to fathom for the following reasons: **Tone** Notting Hill has received over £1bn of SHG over its life. There seems little chance of this increasing significantly in the short term - our annual allocations amount to an increase of about 2%pa on this number Given that the historic grant has been paid for particular reasons, we could simply stop developing. Over time, we could call in all the risky loans and investment investments. The social housing assets would be even safer than they are now. We wouldn't have to worry about the fact that the HCA (regulatory bit) seems to be worried about what the HCA (funding bit) would like to see happen. Is that what the HCA is trying to achieve? **Overall** We don't really think that the current proposals work. Their tone suggested that the regulator doesn't quite approve of what is being done by RPs, whilst at the same time the practical effect is likely to be such that organisations like Notting Hill could probably continue to have upwards of £200m invested in non core subsidiaries (and increase this) without seeking the consent of the HCA, so what does the regulator expect to achieve? For example, the control on "onlending" would not seem to limit investment by way of share capital, nor would it limit the amount of non core activity that we could carry out "on balance sheet".

	We feel that this proposal should be scrapped and the Regulator should rely on other levers, such as monitoring of the quality of Boards, monitoring the detail of each RPs business plan and nudging any RPs that seem to be moving beyond a reasonable risk profile - moving on to downgrading and regulatory action in more extreme cases. An alternative, compromise approach might be to require RPs to certify that the proceeds of secured borrowings will be used in accordance with the Group's strategy as shared with the regulator.
Response on Section 6: Changes to the Rent standard **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 focused as possible?	The issues of removal of rent convergence and basing increases on CPI instead of RPI are straightforward and the Standard is therefore clear about how this would be implemented, though we would like to reiterate that the removal of convergence will limit our capacity for creating new homes by around 50 homes a year. As we fed back in December, it would be useful to have more guidance around the permission to charge a market rent for higher earning households e.g. a commitment that registered providers would have access to income information provided by e.g. HMRC as it would be difficult to implement if we were reliant on households self-declaring; also that we would be basing the rationale on household income from nearly 2 years previously; finally that the £60k ceiling potentially needs to increase over time, perhaps linked to the Mayor's income limit for Intermediate Housing. The Standard makes no reference to GLA's introduction of two new products - 'Discounted Rent' and 'Capped Rents'. It would be useful to have specific guidance on this to ensure consistency in how these are managed across London. The Standard gives little guidance about our ability to change the use of existing units, which would be useful if we move towards trying to have more flexibility in the products that we offer according to local need/affordability and shifting aspirations (e.g. GLA has said we could potentially convert IMRs to shared ownership or to AR). It would therefore be useful to have more guidance about an agreed process for converting between tenures. This could potentially be linked to the criteria for renewal of fixed term tenancies e.g. linked to the direction of charging market rent to high earners; or offering higher earners a shared ownership product if appropriate; or even changing from Affordable to Social rent, based on affordability for that household and performance against the quotas on AR for development funding.

Regards,

Charlotte Currie
Manager
Business Improvement Directorate

t: [redacted] **| m:** [redacted] **| e:** [redacted]

Notting Hill Housing
Bruce Kenrick House, 2 Killick Street, London N1 9FL
www.nottinghillhousing.org.uk

Consultation on Changes to the Regulatory Framework

Response to the Consultation issued by the Homes and Communities Agency in May 2014, from Nottingham City Homes

Nottingham City Homes (NCH) is an Arms Length Management Organisation (ALMO) managing and maintaining around 28,500 tenant and leasehold properties on behalf of Nottingham City Council, as well as on behalf of other landlords. NCH is the largest housing provider in Nottingham.

This response also includes a short section of additional comments from our colleagues at Nottingham City Council which we are pleased to provide as part of this submission.

General Points

NCH supports the broad objectives behind the HCA's intentions as expressed in this document. It is of the utmost importance to ensure the regulatory framework is up to date and fit for purpose. It is extremely important that tax payer assets are protected and continue to be used for the purposes intended when organisations pursue new or diversified ventures, and that tenants' security of tenure is protected. NCH believes that tenants and their families generally expect security of tenure and predictable long term quality of service from their landlord. This should not be put at risk. The regulatory framework should aim to achieve this.

However, it is correct to recognise that housing providers have sought to diversify their activity. This often provides the opportunity to deliver improved and enhanced services to the sectors main customer base, and can also serve to bring the same quality of service provided to existing tenants to other groups of customers. This is very welcome. The proposals should seek to strike the right balance to allow such diversification and innovative services to be developed without regulatory requirements that would stifle this ambition.

Section 1: Introduction: The housing ALMO sector is increasingly looking to diversify areas of work with activity that complements its core business. However, this document does not set out how the HCA sees the ALMO sector in the context of this framework. As ALMOs develop and engage in diversified activity it would be helpful for the Regulator to set out where the sector 'sits' in terms of this framework. This is an area where greater clarity could be set out to help organisations engage and comply with the Framework. The document could be clearer on how the HCA regards ALMOs in respect of their status and be clearer about how they fit into the range of providers described.

The overall objectives set out in paragraphs 1.6 – 1.9 are supported.

Section 2: Executive Summary: The analysis set out in paragraph 2.2 is useful in setting out the challenges faced by the sector.

The general issues of being timely and necessary in terms of appropriate regulation is reasonable and NCH broadly welcomes the steps the regulator is taking to address these matters. However, it is indeed important not to strangle a spirit of 'entrepreneurship' in the sector so we would agree that it is important to ensure the correct balance is struck.

Paragraph 2.7 makes important points about profit making providers that sets out good reason for the approaches, in broad terms, being put forward.

It is correct to set out the risks clearly as in 2.8. It is important to ensure these are addressed. The residents that we provide housing services to would regard it as extremely important that these risks do not affect the tenure security of their homes or the quality of the services they receive, as well as the trust they will have placed in their landlord or managing organisation to deliver such services.

In respect of Paragraph 2.12 we would agree with the sentiment expressed here about what needs to be achieved in order to satisfy the regulator, but there is a need to be clear that all types of providers are treated in broadly equal fashion (on a level playing field as it were) in terms of the expectations set out, unless there are inherent risks associated with an organisation's structure or ownership that necessitate variations from this approach. The expectations set out in 2.13 and 2.14 would thus seem justifiable.

In respect of changes to the disposals regime (2.21), NCH would fully support the objective of ensuring that public investment made in developing and maintaining social housing assets is captured on disposal and re-invested in social housing. We believe that this is also what would be expected by tenants and residents.

Section 3: Changes to the Governance and Financial Viability Standard: NCH generally supports the approach outlined to the management of risk. The protection of social housing assets (e.g. 3.13) is important and the approach not unreasonable. Matters sets out (for example in paragraph 3.8) should be helpful.

NCH seeks to comment that where an organisation has an RP as a subsidiary it is acceptable to rely on 'Group' documents that set out how it complies/evidences compliance with the framework / principles and the monitoring and review of compliance of those at the Group level. This is for the avoidance of duplication where it may otherwise require an RP subsidiary to go through processes of adopting documents and require administration disproportionate to the size/stock holding of the RP subsidiary when the Group or parent organisation already has this evidence to a satisfactory standard.

Paragraphs 3.48 and 3.49 refer to the remuneration of Independent Board members of "for-profit" RPs. NCH believes there is the potential for conflict of interest and enhanced ability to influence decision making. It is suggested that the appointment and remuneration of such board members is subject to independent control / monitoring through the Regulatory Framework.

NCH considers that the ability of lenders to have existing and future "floating" charges over the assets of a parent company is an unacceptable risk to social tenants / social housing of the subsidiary RP. It should therefore be outlawed where the parent organisation is not also an RP.

The proposed blanket ban on index link (3.74d) could be seen as unduly restrictive and NCH suggests a possible better approach would be to define which index link finance is approved.

Section 4: Changes to the disposals regime: NCH appreciates that these changes are designed primarily for profit making registered providers. However, we would agree that sale proceeds that are derived from existing stock should be used to build replacement housing units. These should be at equivalent social rents as part of a general 'like for like' approach to replacement, although of course changing needs may make it desirable to change type of provision based on the needs of a particular area served (for example, replacement units with different numbers of bedrooms, or replacing flats with houses). There should also generally be a presumption that re-provision should, as far as practical, be in the areas where the disposal income is generated. It is our experience that tenants, residents and other stakeholders do not find it acceptable to learn that funds generated from disposals in one area are used in a completely different region to finance provision there.

The point made in paragraph 4.3 is particularly endorsed, and NCH agrees with the analysis presented in respect of non-profit RPs in 4.5. The intention not to place further restrictions on use of disposal proceeds by non-profit RPs, for the reasons given, is supported. The details set out to prevent avoidance of this objective (4.12) are helpful. Although we support the statement in 4.7 that disposal restrictions should be placed where proceeds arise from existing social housing stock originally acquired from a non-profit RP or local authority RP, we would endorse an approach that ensured suitable restrictions should be in place for any housing stock constructed with any taxpayer financial support to ensure that the taxpayer receives proceeds commensurate with the stake it might be expected to hold in the assets proportionate to the support originally provided.

The use objectives as set out in 4.14 – 4.17 (and the intended effect as set out in 4.17) are supported. The intention to ensure that proceeds from preserved Right to Buy sales are invested in replacement stock are also strongly supported.

Proceeds from land sales that may have originally been acquired as part of social or other local authority housing or held under a local authority Housing Revenue Account, should also be used for the provision of social housing, or for the provision of related amenity land / facilities.

Section 5: Changes to the registration criteria:
The changes proposed seem reasonable.

Section 6: Changes to the Rent Standard: This section reflects changes required as a response to alterations in Government policy in respect of social housing rents. Nottingham City Homes has responded separately to consultations on those changes in the past.

The stipulation that rents should be set at not more than 80% of market rent may be difficult to comply with in some specific areas of cities, and also if market rents are subject to decline (e.g. due to increase in supply). We therefore recommend that there should be exceptions allowed by declaration.

NCH is not intending to make further comments here, as the proposed changes reflect the direction from DCLG.

Additional Comments by Nottingham City Council

The Council has chosen not to submit a detailed response to this consultation as most of the proposed amendments affect private registered providers (PRPs) and for - profit RPs rather than local authority RPs. However, there are a number of PRPs operating within the Nottingham City local authority boundary; indeed between them they provide approximately 11,000 social homes, equating to 9% of the City's housing stock. Given this, the Council has a keen interest in ensuring that these providers are meeting the standards set by the Regulator in terms of their governance and viability. Our first concern is for the tenants of these providers, and a desire to see that the service they receive and the security they enjoy in their homes is not compromised in any way by their expansion into new business opportunities. At the same time, Nottingham City Council recognises that the world has changed and diversification is becoming more and more important to providers. The Council therefore echoes the overall support for the amendments to the regulatory framework stated in NCH's submission.

In terms of the disposals regime, the proposed revisions are also welcomed by the Council. Any disposal income derived from the sale of assets in the non-profit sector should be reinvested in social housing to build replacement units. The Council fully endorses NCH's point that re-provision should be in the local area where the disposed asset was located. It is extremely frustrating to see the benefits derived from assets in the City leave the area – this is already happening with conversion of social rents to affordable rents to fund schemes which do not benefit local people. We do not want to see a similar leaking of proceeds derived from disposals by for profit RPs of existing stock in the non-profit sector.

This response has been submitted by Nottingham City Homes. If further information is required about the content of this response please contact:

Nottingham City Homes
Loxley House
Station Street
Nottingham
NG2 3NJ
0845 330 3131

Contact Officer: Dan Lucas
[redacted]

Consultation Response

Title: Consultation on Changes to the Regulatory Framework

Contact: Grahame Hindes (Chief Executive)

Tel: [redacted]

Email: [redacted]

Date: 13. 8. 2014

Octavia Housing
Emily House
202 – 208 Kensal Road
London W10 5BN
T : 020 8354 5500
F : 020 8354 4280
Email : enquiries@octaviahousing.org.uk

Response to Homes & Communities Agency (HCA) consultation

Octavia believes that good homes makes for better lives.

Inspired by our founder, the social reformer Octavia Hill, we are a not-for-profit organisation providing thousands of people with good-quality affordable homes in inner London. Like her we believe in the power of well-planned, well-managed housing to make a difference.

Octavia Housing own and manage a portfolio of over 4,000 affordable homes; a precious resource in the most expensive part of the country. We also provide specialist care and support services, homes on a part own / part rent basis, develop properties for outright sale, and have an active new-build development programme.

We welcome this opportunity to comment on the HCA's proposed changes to the regulatory framework:

Q6.1a: Governance and Financial Viability Standard – Overall does the proposed Standard meet the regulator's economic objectives which require the protection of social housing assets?

We support the principle that social housing assets should not be put at "undue" risk with unplanned or unintended losses and welcome a risk management approach to protect those assets. However there is a balance to be struck between excessive prudence in pursuit of protection of the existing asset base and the use of existing assets to leverage more homes. In our view the current proposals weigh too heavily in favour of asset protection and insufficiently toward the obligation for all providers to contribute towards meeting housing need. There is an inevitable tension between these two objectives which needs to be addressed if the sector is to fully exploit the value of available assets.

At a more detailed level we note that the new regulations set out an expectation that all providers should understand all of their assets and liabilities at all times and "sufficient to allow the Regulator and any other applicable party to immediately access data on the business's assets and liabilities such that a potential purchaser can price the assets". Whilst having a full up to date record of assets and liabilities is important, the wording of this expectation will potentially result in disproportionate cost. We would question the need for a permanent state of readiness for handling a distress situation in all registered providers at all times.

Q6.1d: Governance and Financial Viability Standard – Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The consultation paper places substantial emphasis on the importance of multivariate stress testing:

This approach is a change of direction from last year's related discussion paper which proposed a general requirement for separating associations' core social housing functions from other activities. We welcome this move away from 'ring-fencing'.

In addition, we would want to avoid the potential differences of interpretation about what the term 'stress testing' covers (a problem which had occurred with the expression Value for Money). Although the consultation paper states it is for Boards to decide which scenarios to test it would be helpful if any minimum expectations could be made clear at the outset. Furthermore we would suggest that where a clear exit route is available in the event of difficulties then stress testing is less significant and treated as such by the regulator.

QA6.2a: Code of Practice – Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

The new code extends the obligation on Boards to comply with all relevant 'law' and regulation. Octavia have previously raised with the Regulator the issue of due diligence and materiality. We would ask that the Regulator be clear about the expectations on Boards in terms of satisfying themselves that all possible laws have been complied with since taken to extremes this is potentially an enormous exercise. In terms of materiality there needs to be some form of threshold so that a minor event (for example a single parking ticket for a company pool car) is not classified as a breach to be reported. We do not believe this is the intention behind the code.

On two specific points of detail:

- Annex 2 Para C1.3.2 appears to omit the words "registered providers" from the penultimate sentence which should, for the sake of clarity, read "… and registered providers are only obliged to disclose those matters which have or may relate to such a breach".
- Para A.1 to A.2 clarifies that the term 'law' as used in the standard is fully inclusive and takes into account statutory guidance. This point has renewed debate in the sector as to whether statutory guidance should be regarded as 'law'. To avoid this continued debate, it may be simpler to state in the standard and code that landlords are required to adhere to all relevant legislation, common law, and statutory guidance – given that appears to be the HCA's intention.

QA6.5b: Do the proposed changes to the Rent Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The published proposals included in the papers for charging higher rents for those households with a combined income of more than £60,000 are not completed. It is not clear, for example, how associations are expected to collect income data. The provisions as currently drafted –

with income in Year 1 determining rent levels in Year 3, rely on out of date data and are therefore effectively unworkable in practice.

We have previously commented on the proposal to remove rent convergence and therefore will not repeat those detailed comments here. We would however ask the HCA to note that we are not in favour of this proposal. Ending rent convergence runs counter to encouragement of landlords to make use of assets in high value areas and would mean a loss of development capacity. We find it difficult to understand the rationale underpinning the proposal in relation to joined up policy. We understand, however, that the formal direction of the Secretary of State allows the HCA little discretion on this matter.

Q6.6: Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The proposed standards clarifies that certain inter-association lending swaps, in future, require prior Regulator consent and on-lending by a registered provider to an unregistered subsidiary is prevented. We presume this provision is not intended to cover investment activities, but this issue is not clear in the drafting. If the intent is to stop this type of investment activity then this will effectively bar many associations from doing development for sale and will certainly prevent Octavia from delivering the recently announced 2015 - 2018 programme commitments.

The draft proposals require that the Regulator's consent be given for all index-linked transactions. Although we currently have no proposals to take on funding of this sort at present, there are circumstances in which such finance can reduce risk. It is difficult to understand why one particular type of facility has been identified over others as requiring additional approval.

Homes and Communities Agency

Changes to the Regulatory Framework: Consultation Response

August 2014

one housing group

Homes and Communities Agency

Changes to the Regulatory Framework: Consultation Response

This paper will assess the issues raised in the proposed Regulatory Framework and provides One Housing Group's (OHG) views on some of the key recommendations that it contains. OHG has provided comment on each of the consultation questions which affect our key business areas.

We believe it is timely to be reviewing the framework and feel it would strengthen the exercise to take the opportunity to recast / refocus the position of the HCA in this process. Learning from recent regulatory interventions shows the HCA, playing to its strengths, and performing a key role stepping in with its specialist brokerage skills when required; but it should also be confident enough to step back too. A regulatory role facilitating not impeding RP's operating in the new commercial & financial realities, many of whom are embracing the freedoms with which we now work, and in which we can also thrive. A modern role which reflects this new environment, and which enhances delivery of the housing supply in the volumes and variety now required. OHG is shortly to announce its new corporate plan, which features a heavy focus on strengthening OHG's financial position, ensuring all reasonable steps are taken to achieve top regulatory rankings for governance and financial viability whilst maintaining our strong social purpose and customer orientation. This is an exciting period for us as our plans are ambitious but we are confident we can deliver to the people that matter: our residents.

We will continue to develop our services to residents, in dialogue with them through our area boards and the resident involvement framework. We also recognise that access to market housing is becoming ever more difficult, particularly in London. This means that the homes we build and make available now need to address a broader spectrum of income levels and individual aspirations for our residents of the future. We will continue to provide a choice of housing with care and support services targeted at the most vulnerable in society. By investing in initiatives to build aspiration and promote employment initiatives, we will help residents escape benefits dependency. We remain free-standing but will be open to opportunities for growth as they present themselves.

We are therefore keen to understand how proposed changes to the Regulatory Framework will impact on our aspirations and delivery of our core objectives and specifically in obtaining the funding to build the new homes required going forward.

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?

OHG is satisfied that the majority of the Standard remains unchanged. We maintain that a 'light touch' approach to regulation is necessary as a guiding principle, and that the current operating model is sufficient in providing this function. We would, however, question how effective the new monitoring arrangements to regulate the economic objectives could be. We understand that the Regulator believes ongoing economic regulation is necessary to protect some of the most vulnerable members of society. We would argue that, in the absence of consumer regulation, further economic objectives do very little in terms of 'adding' any further protection. Tenants are protected by their tenancy agreement and law. The private rented sector continues to remain unregulated, yet still in the forefront of government

housing policy. OHG would question therefore, why any further regulation is required? Further clarification and transparency is needed on exactly how the HCA intends to regulate and maintain this new approach going forward.

- Will the Regulator test each RP?
- Are there adequate resources to undertake this function sufficiently robustly and consistently across the UK?

This paternalistic approach and strengthened monitoring arrangements are archaic and directly at odds with the 'light touch' regulatory approach first promised by the government with the abolition of the Audit Commission.

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

OHG believes that the Standard is a useful repository of good practice that RPs can apply to their businesses; however we find the purpose of the Standard to be far from clear. The consultation documents themselves are dense, lengthy and challenging. OHG would encourage clear, succinct and digestible guidance in order to apply the requirements as efficiently as possible. OHG would also like to understand how prescriptive this guidance will become going forward. It does little to address current outstanding issues for RPs operating in the sector; therefore this document is in the main, disappointing and fails to address current pertinent issues.

c) Do the requirements in paragraph 1.2 on skills, capability and independence i) meet the Regulator's aim of protecting social housing assets:

OHG is satisfied with the new governance requirements. We have a sound structure in place with a series of boards and committees which have been implemented throughout the Group to provide effective governance and robust scrutiny.

OHG follows a vigorous recruitment and selection process to appoint all board members. Selected members sign a code of conduct and terms of reference and agreement before commencing their role. OHG continuously reassesses and refreshes our governance structure to ensure that the breadth of skill, capability and independence are ever present.

Our central Group Board members each have a 'resident friend' to ensure that local communities are effectively represented. Our regional Area Boards are also key to the governance structure, helping to scrutinise key performance information and shape our 'local offers' to communities. Our range of independent committees are also extremely effective in monitoring and scrutinising the work we do. This holistic approach allows for the continuous sharing of information and offers insight and rigorous scrutiny to the organisation.

OHG is pleased to see this commitment from the HCA, and believes that the proposed mechanisms within the Standard will be effective in helping to prevent repeat mistakes, such as those by Cosmopolitan. Failings of an RP are usually caused by bad executive or board decisions, therefore this clause is a means to address and potentially reduce those issues from reoccurring in the future.

ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

OHG agrees that the Regulator has a duty to protect social housing assets, however we believe that freedom is necessary in order to explore all opportunities to maximise income to further develop social housing. Cosmopolitan failed under the auspices of regulation and it is perverse to assume greater regulation will prevent this in the future. We believe we need to creatively use all available opportunities to best make use of existing social housing in order to continue to fund our future development programme.

OHG remains clear on its social purpose, and in order to protect existing assets and continue to supply social housing it is imperative to explore new commercial models to generate the income required. Currently there are a number of directives from government departments which are troubling providers. The recently published retrofitting targets are an unfortunate example of this. If housing providers take into account the lack of public funding, coupled with London's unique housing stock, the target is challenging. Without generating continued opportunities to supplement our existing income, these targets will simply not be met.

d) Do the requirements in paragraph 1.4 and 1.5 on risk:
i) meet the Regulator's aim of protecting social housing assets?
ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Many of the requirements in paragraphs 1.4 and 1.5 reflect current good practice in any well-managed organisation. The consultation document does not provide however clear details on how prescriptive the measures will become. Ideally, compliance with the Standard should not require additional work over and above what would already be good practice in the sector.

The assumption has been made that commercial models for funding pose greater risks to the sector, affecting future borrowing potential. OHG would question the validity of this, and would seek to establish whether there is any evidence of this being the case? Will the whole sector be adversely impacted by a single RPs failure? House builders have failed in the past, yet the sector still attracts investors. Since 1988, no lender has had to enforce their security. Derek Joseph, in his article in Social Housing, March 2013, said "I don't believe that the cost of funds for RPs is reduced due to economic regulation." The myth that we can borrow at better rates has been debunked.

OHG is very clear on our '2 for 1' model, and our new corporate plan places a renewed, increased focus on our innovative delivery models. Without further clarity and with insufficient freedom from the Regulator on more commercial opportunities, it is challenging to explore further options for our income streams which are essential to fund future programmes. Our asset management, development and income strategies, by their very nature protect current and continue to provide social housing assets. We are therefore disappointed that the consultation does not fully reflect the current realities and provide guidance on these opportunities.

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

As mentioned in response to questions (d) above, OHG believes that the requirements are clear but will await further guidance to understand how this will operate in practice. OHG would echo comments made previously, and state that for full, effective governance, the guidance must be clear, succinct and digestible. We would again stress to the Regulator that a 'light touch' approach is required by RPs, ensuring that regulation does not stifle development and freedom to explore all opportunities available. We believe that further guidance is needed to clarify the role of the Regulator to make clear the position going forward.

The Regulator should take this opportunity to re-think its position, to understand the new role which is required. The Regulator has excelled at dealing with failing housing providers. The HCA should therefore consider implementing a small team of high powered regulators, whose role would be to resolve failing RPs, protecting public investment, assets and lenders alike.

Code of Practice

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

The consultation document describes at length the role of the Code within the Standard. OHG is encouraged to see that only the Standard has regulatory force. The Code is useful for providers to identify good practice on how the Standard can be achieved and what the Regulator expects RPs to prepare in order to be compliant.

However, we question the following:

- To what extent will the Code be used to apply the Standard?
- Will this guidance from the Regulator be treated as having equal weight to the Standard itself?

OHG is concerned that by providing more prescription and detail in the Code, it runs the risk of becoming another tool by which to regulate, rather than merely a supplementary document for housing providers to use as a guide. When the government abolished the Audit Commission and its 900 KLOE's, the sector embraced the new freedoms. RPs built new relationships and structures with tenants, and as the grant has reduced, housing associations have delivered innovative plans to deliver their social purpose. Given the pioneering response to the changes in recent years, OHG believes that the way forward for the Regulator is less regulation, not more.

b) Is the role of a Code clear and is it reasonable?

If the role of the Code is for an advisory purpose only, then we question whether there are already other mechanisms within the sector to deliver this. OHG is concerned about the role of the Regulator in terms of disseminating advice and potential for confusion over its regulatory status

OHG is concerned that the Code could be increasingly used as a tool to measure RPs and will eventually have as much weight and used in conjunction with the Standard itself. OHG believes that the information contained in the Code is useful, reasonable and sensible advice for the sector. OHG would again reiterate that the HCA should not try to re-invent bureaucratic regulatory regimes.

The Code highlights the importance of the sector's reputation. OHG shares the NHF's concerns about this particular section being used for 'a catch all provision allowing the HCA to act against anything it dislikes'. We would again re-iterate that there is no proven link between increased economic regulation and better borrowing rates and therefore no tangible benefit to our tenants, so we would question what benefit these new measures are aiming to deliver.

OHG wishes to see further guidance for B.3 of the Code especially regarding market rent conversions in relation to asset management strategies. There is no doubt that the world in which RPs now operate is more risky than in previous years, as providers aim to achieve their social purpose. Yet, without taking those measured risks, and operating more commercially, homes will not be built. The Code therefore must not hinder or stifle our opportunities to develop and grow.

OHG has committed in the next corporate plan to explore all possible options for our assets, but this latest guidance offers little by way of setting clear boundaries in order for OHG to understand all possible opportunities with our stock.

Rent Standard

Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

OHG believes that the Rent Standard is not wholly reflective of the direction from the DCLG. This will be further explored in our response to question B below.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

OHG is concerned regarding the lack of clarity surrounding the new proposed £60,000 income threshold for High Income Social Tenants (HIST). If OHG were to utilise this new

policy it is unclear how we would continue to obtain information regarding household income.

We are unsure that once this information was received, how often the tenant can request a recalculation of rent? Also, would Providers be bound to Section 13 of the Housing Act 1988 which details circumstances as to when the rent can be increased in tenancy? Therefore, we are concerned how we would react to an ever changing household and their individual circumstances.

Furthermore, it is not apparent how we could enforce our tenants providing us voluntarily with information that will result in an increase in rent. The Rent Standard is silent on this, and does not clearly show RPs how this can be overcome, which is needed should OHG wish to pursue this option in the future.

OHG is concerned that tenants may use the income changes and arrears mechanisms to force a lower change in their rent. If HIST tenancies have this mechanism, are RPs expected to explore lowering rent before recovery of the property?

These details are not clear in the guidance provided by HCA, and make it extremely challenging to see how this will affect RPs in practice should they choose to offer this product to their residents. Rent teams will be tasked with managing yet another calculation model, in the ever expanding array of products and rent structures.

The removal of rent convergence is disappointing, and will impact on surpluses that are ploughed into affordable housing. The HCA's latest concession with regards to convergence will not be used by OHG as it was not modelled in the business plan.

When considering the use of rent caps and target rent, OHG believes that target rent should be the only rental control available. Target rent takes into account the area in which the property is placed, whereas a rent cap merely addresses the number of bedrooms a property has. With an RPs ever expanding housing portfolio, it is unlikely that any three two bedroom properties are identical. The rent cap does not take into account the variances in stock, which could be addressed when using the target rent formula alone.

c) Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

With regard to s3.74 and Category 6 consent, the majority of proposed changes are satisfactory. OHG does not agree however with 3.74d which relates to the proposal for index linked finance to have to be approved by the HCA.

This is unnecessary and provides additional burden on the Regulator when such is not needed. The use of index linked instruments is but one of numerous funding vehicles for a Housing Association (Borrower) and should be down to the Borrower to consider, assess, and agree (or decline).

The HCA should instead rely on the earlier guidance/directive that the Borrower's Board has the sufficient skills, capability and independence to assess borrowing needs (and therefore the format of the borrowing) and part of their general risk management responsibilities.

The HCA can additionally gain assurance from the above through its regular Governance and Viability assessments and also via the quarterly credit return.

Furthermore, the introduction of FRS102 throughout the sector indicates that index linked borrowing is termed a "basic" accounting instrument rather than "other" and puts it firmly in line with plain vanilla loans.

To require special consent for index linked lending therefore would place this at variance to the non requirement for authority on other basic financial instruments.

Summary
Overall, the consultation document lacks the detail necessary to fully understand the implications of all new tools and mechanisms outlined by the HCA. It is particularly disappointing to note the silence in the Rent Standard related to market rent conversions. The removal of rent convergence, the use of Target Rent and lack of detail surrounding HIST are also disappointing.

We do feel that the proposed measures to ensure that boards have effective governance and the overall direction of the Standard are both expected and appropriate. We are disappointed that the Regulator has not taken this opportunity to re-focus their role, rather it is expanding its remit and adding further prescriptive conditions. OHG is of the firm belief that the way forward is less regulation and less bureaucracy, not more.

For the attention of Tim Sullivan (Regulatory Framework Manager),

Please find below a joint response from One Vision Housing, Pine Court Housing Association and North Lincolnshire Homes to the consultation on changes to the Regulatory Framework:

1. **Introduction and purpose**

1.1 One Vision Housing Limited (OVH), Pine Court Housing Association (PCHA) and North Lincolnshire Homes Limited (NLH) are all registered providers (RPs) who set up their own groups (the Group Structures) with non-registered parents. The genesis for the group structures, in all instances, was RP led. The HCA was closely involved in the establishment of these group structures.

1.2 OVH, PCHA and NLH would like to feedback to the HCA on the Regulatory Framework Consultation (the Consultation) in particular in relation to the comments made to groups with non-registered parents. We would welcome a joint discussion with the HCA, if possible, about unregistered parents before the actual framework is published.

1.3 All registered providers party to this joint response are committed to the principles of the co-regulatory framework but want to develop a common basis to support social housing activity in the absence of social housing grant.

2 **Background**

2.1 The Group Structures were set up in response to the fact that the social housing sector could no longer rely on social housing grant as the only basis upon which to develop social housing. It was considered that, in the long term, it would be necessary to find alternative means of supporting and growing the RP businesses of delivering social housing. OVH, PCHA and NLH, therefore, decided that it was necessary to establish a Group Structure which would, in a cost effective and value for money fashion allow for the use of appropriate and compatible related businesses which would be able to generate profits which could then be used to support the RP element of groups.

2.2 Using this business model OVH and PCHA (part of the same group structure) has been able to gift aid circa £18 million back to the RPs in the group from the non RP elements of the group. This has enabled OVH to deliver over 100 additional social housing units. NLH's relatively new group is on the way to seeing similar benefits for the RP element of the group within the next few years given that it is an LSVT RP.

2.3 The unregistered parents of OVH/PCHA are "not for profit" registered societies under the Co-operative and Community Benefit and Societies Act 2014 (formerly known as industrial and provident societies). The parent of NLH is a company limited by guarantee, there to provide group facilities such as HR, Finance etc. All elements of the respective groups are linked by intragroup agreements that clearly set out that no part of the non RP business can undermine the RP element. This substantially inhibits the capacity for the commercial businesses to jeopardise the viability of the RPs and so protects the social housing assets from risk.

3 **Why have a non-registered parent?**

3.1 As you will be aware, historically, the HCA would not register an organisation as an RP if that organisation did not, at the point of registration, own a substantial number of social housing properties. We were informed, at the time, that ownership of a token one or two social housing properties would be insufficient from the HCA's viewpoint. This applied at the time when the Group Structures were established, and on that basis and for the reason below it was not possible to set up an RP parent.

3.2 It was not possible to move social housing properties into the parents as, for example all of the RPs' properties were in charge to a funder which would not have consented to the level of asset transfer needed to satisfy the HCA's registration criteria without (at the time) re-pricing the loan. On that basis both RPs were forced to go down the non RP parent route.

3.3 We understand that the HCA's thinking on this has now altered and it is willing to accept the registration of parents as RPs even if they only own two or more properties or are completely non stock holding.

4 **Current position**

4.1 As the Group Structures have now become established and developed with new non RP "sister" subsidiaries sitting alongside the Group Structure RPs, both OVH/PCHA and NLH have identified a number of benefits both from a ring fencing and procurement perspective to having a non-registered parent, which are detailed below.

5 **Procurement benefits**

5.1 The non-registered parents are not a "contracting authority" for procurement purposes which means that OJEU doesn't apply. Each Group Structure has non RP subsidiaries "hanging off" the non RP Parent. This means that the parents are currently free from the procurement regulations whilst at the same time are completely ring-fenced from the social housing element of the Group Structures. This means that the financial benefits and services can be kept within the group and particularly benefit the RP element of the Group Structures. In fact OVH/PCHA and NLH have developed their Group Structures in this way (i.e. with non RPs as subsidiaries of the Parent in this way to ensure this) and have invested a lot of time and effort in establishing their group structures which ultimately benefit the RPs in the absence of social housing grant.

5.2 If the parent were to become an RP then OJEU could potentially apply to the whole group and the benefit described above would be immediately lost.

5.3 Through the flexibility which the non RP parent group structure provides, OVH for example has delivered more than 100 units of new social housing only because it has been able to gift aid £18 million from commercial companies within the group. Without the flexibility referred to, it is highly likely that a substantial proportion of the £18 million would have been lost to the group by having to pay higher costs for services and from VAT on to other suppliers from outside the group.

6 Ringfence

6.1 Each of the Group Structures non RP commercial companies (including the parent) are "isolated" units with their own boards who are responsible for their own debts and liabilities (e.g. with limited liability shareholdings). On that basis, if for example, a commercial Group Structure company becomes insolvent, its insolvency cannot affect the rest of the group because of the ring fence i.e. it is it's own corporate entity with liability entirely contained within that organisation. In fact we think that RPs would be more at risk with registered parents where the RP element "dabbles" in commercial activities (for example sharing repairs and maintenance services with other RPs) because it can be traced back to the registered parent as it is not ring-fenced and so can create a much greater risk of liabilities being visited upon the other RPs in the group. However, if as in this case there is a quite separate (and ring fenced) company carrying out those repairs and maintenance services it is possible to better isolate the risk.

6.2 OVH has a practical example of the ring fence working, which the HCA has been made aware of. The Sovini Group parent acquired a builders merchants organisation (Haydocks) which, for sound commercial reasons was subsequently deemed appropriate should go into administration. This had no impact at all on the RP element of the group as Haydocks had its own board and limited liability, with no legal, financial or contractual connection (not even ownership or rights to appoint directors) with the RPs in the group. This is an excellent example of a strong ring fence in action.

6.3 Ongo Group have yet to really grow their commercial offer as they are in start-up, but any commercial activity will be a subsidiary of Ongo Commercial so if needed it can be closed down without impacting the group including NLH.

7 Shadow directorship benefit

7.1 Another important feature of the non RP parent group structure is that it greatly facilitates a sufficient level of independence between the parent and RP boards to better avoid the threat of a finding of shadow directorship being levelled at the RPs.

8 Conclusion

8.1 OVH/PCHA and NLH jointly agree that it may be a good idea to set up an unregistered parents' forum so NLH and OVH/PCHA (and perhaps also KHT) can speak with the HCA about these points.

8.2 OVH/PCHA and NLH also suggest that the HCA could be given a power to require that, under the new regulatory framework, each RP in a group with a non RP parent must give a regulatory undertaking that the RPs in the group must have the HCAs prior written approval to the terms of all intragroup agreements (and to any future amendments to them) so giving the HCA locus to control (effectively by proxy, but not regulate) the terms of the relationship between the non RP parent and the RPs who are its subsidiaries.

8.3 A step further would be for the non RP parent to enter into a contract with the HCA, at the specific request of all the RPs in the group, that it would (for the HCA's benefit, to better perform its legal responsibility to safeguard the social housing assets) abide by the terms of that intragroup agreement and not change its terms without the HCA's written agreement.

8.4 The suggestions in paragraphs 8.2 and 8.3 simply reflect OVH/PCHA and NLH's view of how they wish their groups to operate, but without losing the key benefits identified above.

Homes and Communities Agency – Consultation on Changes to the Regulatory Framework August 2014 (Response to Consultation Questions)

Joint Response by One Vision Housing / Pine Court Housing Association (Part of the Sovini Group) and North Lincolnshire Homes (Part of Ongo)

Governance and Financial Viability Standard	
1.a Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?	On the whole we agree that the proposed revisions to the Governance and Financial Viability Standard meet the Regulator's objective for protecting social housing assets. Our business model as part of an innovative Group structure with an unregistered parent brings together both commercial and social housing activities under the same umbrella. We are, however, extremely mindful of the need to protect both social housing assets and the security afforded to our tenants. To this end we allow for cross subsidisation and 'on-lending' across the Group structure but will not allow for any of the commercial ventures to put the social housing provision at risk in any way. To prevent this happening we already provide assurances to our Boards that 'ring fencing' arrangements are in place and any of the commercial activities will not have recourse to social housing assets in any potential business failure situation. Our recruitment, training and reporting functions to our Boards ensure they have the appropriate skills and information to be able to effectively manage all financial risks. We, therefore, support the merging of governance and financial viability expectations into one part of the standard for clarity purposes (whilst also supporting separate regulatory judgements in these areas)

	We completely endorse the internal control mechanisms for providing assurance to Boards and external reporting requirements to ensure risk is being effectively managed i.e. up-to-date and accurate asset registers, stress testing and effective mitigation strategies and currently employ these techniques as good business practice.
1.b Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Whilst the standard is clear and succinct there is some concern, as has been echoed throughout the sector, on the need to 'adhere to all relevant law'. Our Boards feel confident that they can provide assurances with the current wording and requirements to adhere to 'all relevant legislation' even though this in itself is a fairly broad sweep. They would not, however, feel confident with the revised wording and feel this could lead to potential challenges in areas it has no provision to control or mitigate against. We would suggest the wording and requirements could be limited to 'relevant legislation, where failure to comply would to lead a breach of the 'serious detriment' thresholds'.
1.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 businesses?	We agree with the suggested wording on how registered providers should 'manage their affairs' as this chimes completely with our adopted code of governance (based on the National Housing Federation good practice and guidance). We believe it is a matter of good practice for all registered provider Boards to adhere to the principles outlined in this section.
1.d Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulators's aim of protecting social housing asset ii) balance the aim of protecting social housing assets with registered providers	We believe the requirements set out in section 1.5 and the additional guidance provided in the Code, work well for both the regulators stated aims and those of providers.

being free to run their own businesses?	The definition of a 'third party' in section 1.6 (which is given further clarification in the Code as being, 'any person or body which is not the registered provider') creates a number of practical difficulties for intra-group lending and cross subsidy arrangements. We would view it as being perfectly legitimate and vital to allow the above funding arrangements for example for business start-up or development costs to non-registered bodies where this will lead to improved revenue for social housing purposes.
1.e Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	We agree with the need to have separate arrangements according to an organisations profit making status and the registration arrangements for their parent companies Similar to the point above there are, however, concerns about the wording contained within the section on 'Category 6' consents. The consultation document states that whist on-lending within groups will be permitted, subject to consent being obtained, it specifies that this will be for 'social housing purposes only'. This definition is extremely restrictive and provides no scope for other forms of investment for example in 'plant or infrastructure' that might not necessarily be classed as being for 'social housing purposes'. We would suggest that the consents requirements remain (although with a possibility of imposing limits above which this permission would be required?) but with the 'for social housing purpose only' wording removed from the section.

Code of practice	
2.a Does the proposed Code assist	We appreciate the addition of the non-

registered providers to understand how compliance with the Standard can be achieved?	prescriptive Code, providing added clarity as to how compliance may be achieved. This guidance will be of particular benefit to our Board members, helping them understand what is required of them and the skill sets they will need to operate effectively.
2.b..Is the role of a code clear and reasonable?	Whilst the exact legal status of the 'Code' is confusing we appreciate its role in supporting registered providers to meet the requirements of the 'Standard'.

Changes to disposals regime	
3. Do the proposed revisions to the disposals regime: **a)** Meet the aim of protecting social housing assets and the value in it? **b)** Balance this aim with registered providers being free to run their own businesses? **c)** Are they reasonable?	The registered providers within our group are all 'non for profit' and are, therefore, unaffected by the proposed changes to the standard on the issue of disposals. We do, however, agree completely with the principle that the value of public subsidy should not be lost to the sector on any disposals that occur from 'for profit' providers and the means for capturing these proceeds via the Disposal Proceeds Fund.

Changes to the Registration Criteria	
4. Do changes to the registration criteria: a) Reflect the proposed changes to the Governance and Viability Standard? b) Are they reasonable?	Whilst there is a high burden of expectation on new providers seeking registration with the Homes and Communities Agency, we agree that this is necessary and reasonable to protect the sector and its tenants from unnecessary risk.

Changes to the Rent Standard	
5. Do the proposed changes to the Rent Standard: a) Reflect the direction from the DLCG? b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focussed as possible?	As the revisions to the standard mirror exactly the direction issued by Department for Communities and Local Government, we have no issues with the proposed change.

Consultation on changes to the regulatory framework

Orbit's response - August 2013

Strategy and Insight

Research • Insight • Information

orbit group | building communities

Orbit Group, one of the largest housing organisations in the country, providing more than 37,000 high-quality homes in the Midlands, the South East and the East of England, welcomes the opportunity to comment on the HCA's consultation on changes to the regulatory framework.

Response to consultation questions

1. 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?

The proposed Standard reflects the current and ongoing change in the sector and the need for RPs to diversify into more commercial activities, which bring increased risk. There is sufficient focus on the protection of social housing assets, together with an acknowledgement that innovation will be necessary and will not be discouraged. It is sufficiently clear in the Standard however that RPs will need to be thorough in their stress testing and ensure that all risks (and particularly a combination of these) have been identified and mitigation measures put in place.

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

The delivery expectations for RPs in terms of outcomes are clear in the document. It provides a sufficient amount of freedom for RPs in how to govern themselves which will be welcomed by most but not by some others who may seek a more rigid and process-driven regulation regime. The emphasis on the responsibility of boards in this area is reinforced and acknowledged.

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 businesses?

On the whole, yes. It makes sense that as the role of RP boards changes to reflect the increasing diversity of the sector, then organisations should look to refresh their boards and ensure that the overall mix in terms of skills and [redacted] is [redacted] they are managing. Executive Teams within RPs are changing to reflect the more commercial approach and it is right that RPs should be seeking Non-Executives who can continue to challenge and have the professional background and credibility to feel confident in so doing. However, we feel that meeting the requirements of the NHF's Excellence in Governance Code will no longer provide the levels of assurance being sought by the Regulator and that the Code no longer reflects adequately the 'new world' operating environment in which we find ourselves. We consider that there will

be a need to review and strengthen the Code to coincide with and reflect the new Standard.

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

Yes. The area of risk has been significantly improved and aligned itself to the practices operating within elements of the commercial sector. The concept of stress scenario's will provide an interesting insight into many organisations ability to deal with changes in the external environment and their own management failings. This should support a change in risk culture within organisations if adopted appropriately.

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

Yes. It is important that the Regulator provides clarity on its expectations in relation to the role of non-registered group parents. This will help to avoid instances where parent activity could have an adverse impact on registered providers in terms of them meeting the requirements of the Regulator. A separation of activities relating to social housing provision from other activity is clearly important in protecting social housing assets.

2. Code of Practice

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

The Code of Practice will help RPs to feel their way through the Standard as it sets out what the Regulator is looking for when seeking assurance and gives examples. However, perhaps more clarity is needed on what is an expectation and what is guidance only.

b) Is the role of a code clear and reasonable?

Yes, subject to the comments in 2a) above.

[redacted]

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
Yes.

b) Balance this aim with registered providers being free to run their own businesses?
Yes.

c) Are they reasonable?
Yes.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?
Yes.

b) Are they reasonable?
Yes.

5. Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?
Yes.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes.

We are happy to discuss any of the issues raised in this response with the Homes and Communities Agency. Please direct any queries to Christoph Sinn, Research and Policy Manager, Orbit Group, Garden Court, Harry Weston Road, Coventry, CV 3 2SU, Tel.

Chief Executive's Office: [redacted]
email: [redacted]

Orwell Housing Association
Crane Hill Lodge
325 London Road
Ipswich IP2 0BE

Telephone: (01473) 218818
Fax: (01473) 286818
email: qwc@orwell-housing.co.uk
Web: www.orwell-housing.co.uk

Our ref: SRJ/APP

Date: 22 July 2014

Mr Tim Sullivan, Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

email: statutoryconsultation@hca.gsi.gov.uk

Dear Tim

Consultation on changes to the regulatory framework

Working through the consultation document, the Association's comments are as follows.

1. Governance and Financial Viability Standard

   A. The Association feels that the proposed standard meets the Regulator's economic objectives to protect social housing assets.

   B. The proposed standard does provide associations with a succinct outcome-focused remit.

   C. You will probably be aware that paragraph 1.3 does not exist but assuming this is the content of 1.4 then the tone is appropriate.

   D. As regards paragraphs 1.5 & 1.6, these make good business sense.

   E. Orwell feels that it is important to protect social housing assets and therefore agrees with the tone of section 2.

2. Code of Practice

   A. Orwell has concerns regarding the development of a code of practice in parallel to the framework. The reason for this is that, rather than giving guidance as to how to understand the delivery of compliance, codes have invariably been used by the Regulator as a reference point as to how things should be done, ie it almost also becomes the regulatory standard. For this reason the Association would be averse to a code.

3. Proposed revisions to the disposals regime

   A. Broadly speaking, in terms of questions from A to C, the Association feels that the proposed revisions to the disposals regime adequately protects the assets within the sector and, indeed, provides the appropriate disciplines for profit-making organisations as currently held by not for profit organisations.

4. Changes to the registration criteria

   A. The Association supports the changes to the registration criteria.

5. Changes to the rent standard

   A. Orwell supports the standard as set out on page 37 of the consultation.

If you have any queries concerning the above, please do not hesitate to contact me.

[redacted]

Paragon response

HCA consultation on a revised regulatory framework August 2014

A6.1 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?

The approach should assist with this objective, especially in relation to protecting social housing assets under the control of for profit providers.

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

The requirements are not as clear as they could be. Two particular examples are:

i) VfM requirements are very broad. It is right that in the context of co-regulation these should be outcome focused but some clearer guidance would assist compliance in this area where that has proved difficult recently.

ii) The purpose of the Code of Practice is put forward as to 'amplify' the Standards. However, the Code is not clearly set out. It contains long paragraphs that would make it difficult to judge if compliance is being achieved. Providers will want to properly be able to judge if they are following the code. Therefore if there is to be a code it should be succinct and set out very clearly- maybe in a similar format to the NHF Code of Governance. However, it would be preferable for any sufficiently important parts of the Code to be integrated into the Standards to make compliance clearer.

c) Do the requirements in paragraph 1.2 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 businesses?

1.2 says 'skill, independence, diligence, effectiveness, prudence and foresight'. These are all open to broad interpretation and the combination of all six means there is the potential for almost any action to be dissected.

The requirement for independence seems to miss the opportunity to promote single status boards with stock transfer providers. It would be useful for the HCA to create an expectation that stock transfers have a single status board once they mature, this would help providers to manage the expectations of stakeholders more effectively.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Paragraph 1.4 on risk management and business planning should be adequate to protect social housing assets where it is properly followed. Paragraph 1.5 is quite prescriptive and these very specific requirements should be reserved for organisations that the HCA judges to be not managing risk adequately.

e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?
These requirements do appear to be reasonable.

A6.2 Code of Practice
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

The Code is intended to be a helpful amplification of the Standard but it will unfortunately become to be a requirement regardless of how it is badged. The reason for this is twofold:

i)Anything of this nature published by the regulator will always have a weight that means it will be inherently difficult for it to be advisory rather than perceived as a requirement.

ii)Annex D2 of the Code records the statutory status of the Code and indicates that the Code may be used to judge if a provider meets the Standard. As a result providers will feel obliged to follow the Code and will want to measure compliance against the Code in more or less the same way as they would with the Standards.

Inevitably regulators will give out inconsistent messages about the Code and the nuances of this will lead to inconsistent behaviours. It also gives the regulator too much discretion to make subjective judgements about compliance with the Standard. This will create uncertainty about compliance and many will be inclined to take a belt and braces approach.

Unfortunately the effect of this will be to undermine the balance of the co-regulatory settlement. This will be resource intensive and undermine intelligent independent thinking on governance and risk management.

Paragon is therefore opposed to the inclusion of a proposed code of practice as a matter of principle on the grounds of the way it will not serve the purpose intended and it will affect co-regulation. Furthermore additional resources will be required to provide assurance on compliance with the Code.

The other aspect of the proposals that undermines the co-regulatory settlement is the proposal for boards to certify compliance with the Standards through the annual accounts. This could slow down the process for signing off the accounts and it could also create a distraction from the scrutiny of the accounts.

Notwithstanding those two points, as a matter of principle the annual accounts should not be used as a proxy regulatory return. If the HCA wishes for providers to produce such a return it should be clear about this and about the implications for co-regulation.

b) Is the role of a Code clear and is it reasonable?

The general tenor of the Code is reasonable although it is wordy and with a long pre-amble. As stated at A6.1 b(ii) above it would be much better to extract any sufficiently important parts of the Code and include them clearly and transparently in the Regulatory Framework document.

This would be easier to follow and do less to undermine the balance of co-regulation.

A6.3 Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?

The changes for profit providers should mean they are subject to the same re-investment restrictions as not for profit providers and this should fulfil the objective of protecting social housing assets.

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

We don't anticipate that the changes will create any particular obstacles for Paragon as there is no intention to use the general consent to on lend to an unrelated body or to an unregistered body for non-social housing purposes.

c) Are they reasonable?

It is reasonable to take steps to prevent for profit providers from selling publically funded assets and not reinvesting all the proceeds in social housing but any further changes to the requirements for not for profit providers could unreasonably restrict activities particularly where a not for profit provider needs to cross subsidise an element of its social housing activity.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?
The changes are consistent with proposed changes to the governance and viability standard.

b) Are they reasonable?

These changes should ensure that new entrants are more able to sustain good governance and viability and therefore create better outcomes for their customers.

A6.5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG?

The proposed changes are consistent with the direction set out earlier in 2014 which has already been reflected in the way rent increases have been implemented.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The implications of the rent direction have been considered and understood.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The proposed changes will assist in the protection of social housing assets although there may be circumstances where non-profit providers could find that they are less able to undertake a profit making activity that could generate revenue to invest in social housing.

For example a provider may wish to on lend to a subsidiary but find this is difficult and therefore forego an opportunity to develop their business and make a good return that would ultimately be for a social purpose.

A6.7 Do the other proposed changes to the registration criteria:
a) Contribute to the Regulator better meeting its fundamental objectives?

The proposal to ensure that newly registered organisations are fully compliant with the Governance and Viability Standard is consistent with the objective of protecting social housing assets.

b) Express the requirements of registered providers in a way that is clear and succinct?

Importantly, the specific wording that needs to be included in the rules of prospective providers is made clear and those applying will be able to make plans accordingly.

Changes to the Regulatory Framework

Response from Peabody
7 August 2014

PEABODY

To: Tim Sullivan

Regulatory Framework Manager

Homes and Communities Agency - The Social Housing Regulator

By Email only: statutoryconsultation@hca.gsi.gov.uk

About Peabody

Peabody has been creating opportunities for people in London since 1862.

Peabody was established in 1862 by the American banker and philanthropist, George Peabody. Our vision is 'to make London a city of opportunity for all by ensuring that as many people as possible have a good home, a real sense of purpose and a strong feeling of belonging.'

We work solely in London, with a presence in the majority of London boroughs. We own and manage around 27,000 homes, providing affordable housing for over 70,000 people.

By 2015, Peabody aims to deliver around 1,000 new homes each year. We are committed to sustained investment in affordable housing, and recently issued a £350m 40 year bond, the first social housing provider to issue a 40 year bond. Around 600 of our new homes will be available for affordable and social rent; the remainder will be available on the open market, and the returns from this activity will support our social purpose. We have a development pipeline of 5,000 homes and in 2013/14 exceeded our targets by building 174 new homes and starting 1,335 on site. Our sales programme generated a surplus of £6.8m. We invested £3m, over and above donated income of £1m in community programmes, helping 1,500 people into work and training and delivering 19,447 hours of community work.

Peabody Group is growing. The addition of Gallions Housing in January 2014 brought around 6,500 homes into the Group. The addition of Tilfen Land in April 2014 brought over 100 acres of developable land in Thamesmead, Trust Thamesmead joined the Group at the same time. For the first time in a generation, the area of Thamesmead in the London boroughs of Bexley and Greenwich has been brought into a single, well-resourced ownership. We expect to make a significant investment in Thamesmead to build and refurbish homes: working in partnership with others to transform Thamesmead into a vibrant place to live and work.

Our response

CONSULTATION QUESTIONS	RESPONSE
Governance and Financial Viability Standard Overall a) Overall does the proposed Standard meet the Regulators economic objectives which require the protection of social housing assets?	**Overall** a) We welcome an approach where the HCA focuses on the health of RPs and the sector at a strategic level, including the focus on risk, high financial impact and need to increase the supply of affordable housing. It will be helpful to have clear, outcome focused guidance and on-going a dialogue with the HCA. It will be unhelpful to introduce cumbersome mechanisms such as the disposals/intragroup

	on-lend arrangements. That is not in the spirit of co-regulation and doesn't help RPs or the HCA. It makes more sense to use existing information gathering mechanisms and dialogue, together with the enhanced stress testing proposed. Examples of information gathering are the business plan and financial plan, our development and asset management plans, FFR and quarterly returns which gather risk information, and information about stock. In other words focus on strategy, risk and the whole organisation – and engage with boards at that level.
Is this proposed standard clear and outcome focused? b) Does the proposed Standard express the requirements of registered providers in a way which is clear, succinct and as outcome focused as possible?	**Is this proposed standard clear and outcome focused?** b) In general the outcome based approach is helpful. It is important to keep the guidance simple and short – otherwise e.g. there is a danger of creating more technical rent standard (including service charge) non-compliance obligations for RPs to fall foul of.
Fit for purpose Boards c) Do the requirements in para 1.2. 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 able to run their own businesses?	**Fit for purpose Boards** The emphasis on fit for purpose effective boards is appropriate. It is important that the way in which the Code of Practice describes expectations about effective boards is aligned with Governance Codes such as the UK Corporate Governance Code and its subsidiary guidance. This will make use of good practice, and where necessary take account of variations such as stakeholder accountabilities.
Risk and assets d)Do the requirements in para 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social, housing assets with registered providers being able to run their own businesses?	**Risk and assets** The expectations that Boards will make use of accepted strategic risk governance practice, including more use of stress testing and horizon scanning, is appropriate. This should not be confined to "hard" risks. The need for comprehensive asset registers is accepted. It would be helpful to have information on the regulators minimum expectations. At a practical level implementing changes may be more onerous for providers with older stock and this should be taken into account in deciding any implementation date.
Requirements for specific types of providers e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulators aim of protecting social housing assets?	**Requirements for specific types of providers** It is important that the wording of the requirement does not inadvertently inhibit tax efficient registered providers such as Peabody Enterprises which is a "not for profit" developer and provider of social housing. It meets the requirement that objects must include the provision of social housing, not-for-profit status and the non-distribution of assets to members. In theory there should be no confusion. The expectations placed on registered parents to oversee registered subsidiaries are reasonable.

	The regulators stated intention to set out its expectation of unregistered parents is regarded as appropriate.
2. Code of Practice **General** a) Does the proposed Code assist regulated providers to understand how compliance with the standard can be achieved? **Specific issues** b) Is the role of a Code clear and is it reasonable?	**2. Code of Practice** **General** a) In principle the proposed outcomes based Code is helpful. The HCA should ensure that the Code of Practice is drafted such that it doesn't cut across the Codes of Governance which are refreshed frequently. For example the UK Corporate Governance Code- which informs other codes- sets expectations about board composition, skills, board effectiveness, terms of office. **Specific issues** The logic of an asset register is accepted, but is realistically more of a challenge for large older providers to put in place, so the implementation date must take account of this if it is to be a regulatory requirement. Whilst the need for an up-to-date record is self-evident the regulatory requirement should be realistic rather than setting an absolute "always live" requirement. The focus on a skilled board is appropriate and key to effective co-regulation. It is hard to argue with the idea of an annual certificate of compliance BUT a wise board will ensure that there is an audit trail which backs up its assurance, and the less cautious may sign without these in place. So regulatory expectations must be realistic and take account of the fact that RPs already meet a wide range of legal and other regulatory compliance requirements and have systems and reporting designed accordingly. It will be important not to add additional burdens.
3. Disposals regime Do the proposed revisions to the disposals regime a) Meet the aim of protecting social housing assets and the value in it? b) Balance this aim with registered providers being free to run their own businesses? c) Are they reasonable?	**3. Disposals regime** a, b, c) Following the "keep it high level" principle argues against the disposals/on-lend approvals proposal, index linking constraint and other tools whereby specific HCA consents are required. If the HCA engage in the detail rather than taking a regular look at the health of the overall business –which after all is the central issue -the HCA will have to second guess commercial decisions which the board is better placed to decide. Inevitably it will have to rubber stamp proposals to keep up with the sheer volume of requests in London to cope with the demand for new housing.
4. Registration Criteria a) Do the registration criteria changes reflect the proposed changes to the governance and viability standard? b) Are they reasonable?	**4. Registration Criteria** a) The proposals are appropriate. It is important that expectations are commensurate with the stage of development.
5. Rent standard proposed changes Do the proposed changes to the Rent Standard :	**5. Rent standard proposed changes** a,b) In general the guidance appears to be consistent and clear. We are always concerned that guidance on rent or

a) Reflect the direction from DCLG? b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	service charges is carefully drafted so as to avoid the potential for inadvertent non-compliance. It would be desirable to review this carefully, including from the perspective of the practicalities of compliance, before implementation. We had hoped to see changes that would allow RPs to charge market rents in appropriate circumstances. As the HCA is aware, this is important in regenerating areas such as Thamesmead with the potential to provide large numbers of new homes. We encourage the HCA to bring forward changes at the earliest possible date. Government policy on rent convergence has resulted in lost income of about £7m per year which has to be found from other sources which is arguably inequitable and does not represent good value for money. The benefit of the policy to tenants and the public purse is therefore unclear and we hope that this will be revisited in due course.
6. Changes to General Consent Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?	**6. Changes to General Consent** Following the "keep it high level" principle argues against the disposals/on-lend approvals proposal, index linking constraints and other tools whereby specific HCA consents are required. If the HCA engage in the detail rather than taking a regular look at the health of the overall business – which after all is the central issue -the HCA will have to second guess commercial decisions which the board is better placed to decide. Inevitably it will have to rubber stamp proposals to keep up with the sheer volume of requests in London to cope with the demand for new housing.
7. Other changes to registration criteria Do the other proposed changes to the registration criteria: a) Contribute to the Regulator better meeting its fundamental objectives? b) Express the requirements of registered providers in a way that is clear and succinct?	**7. Other changes to registration criteria** See response to 4 above

For further information, please contact:

Kristina Ingate, Director of Governance

Direct dial: [redacted]

Mobile: [redacted]

[redacted]

RESPONSE TO STATUTORY CONSULTATION ON THE REGULATORY FRAMEWORK FROM PHOENIX COMMUNITY HOUSING ASSOCIATION

Phoenix Community Housing Association welcomes the opportunity to respond to the consultation on the proposed changes to the Regulatory Framework. Our response has been collated from a Board seminar as well as discussions at our Executive Management Team meetings.

Our feedback is summarised under the questions in the consultation document.

Any questions about this response should be initially directed to:

Say Leddington, Head of Performance and Quality [redacted]

Consultation Questions

Governance & Financial Viability Standard

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

Overall the proposed standard meets the Regulator's economic objectives. However the benefits of setting required outcomes for governance and viability individually and then a joint set of specific requirements for governance and viability is not clear. The standard would be more transparent if it was fully combined and 1 judgement was issued combining financial viability and governance or if the two were separated and linked by commentary, as currently.

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

The standard makes clear what the requirements of registered providers are. However it also presents challenges, for example:

- Changing Part A Governance from "adhering to all relevant legislation" to "adhering to all relevant law"; broadens the requirement to common law and all statutory guidance. This presents a challenge. We believe providers Boards will respond with caveats such as "to the best of our belief having considered assurance from ----", etc. The requirement would be more realistic if there was a reference to practically reasonable.

- For PCHA following the law is also having a negative impact on protecting social assets. The increased RTB discounts are decreasing our stock, as properties are sold; without adequate returns to replace them. (Please see

appended a copy of a letter setting out this position in detail and explaining our local context).

- Some non social housing activity is a direct result of social housing activity. For example, PCHA has over 800 leaseholders, who have received and have been invoiced for external major works on their homes, having previously exercised their RTB as tenants. We cannot control the growth of this activity, only mitigate the risk of non payment of major works charges, minimise the likelihood of fraudulent RTB applications through our internal controls and ensure valuations are up to date to maximise our RTB receipts, (which are shared with the London Borough of Lewisham). An exemption for activities which are a direct consequence of social housing activity would be helpful.

c) **Do the requirements in paragraph 1.2 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 businesses?**

PCHA welcomes the acknowledgement of the use of external experts (code C.1.2.2). Our Board has successfully used this approach to assist them in making challenging decisions, to provide guidance to the Chair and Vice Chair and to bring additional expertise to sub-committees.

It would be useful to receive further guidance on materiality (in 1.3), within the code. Is this limited to financial materiality and serious breach of the consumer standards (as suggested by C1.3.2)? Some examples may assist providers in interpreting both materiality and the "timely manner".

d) **Do the requirements in paragraph 1.4 and 1.5 on risk**

i) **Meet the Regulator's aim of protecting social housing assets with registered providers being free to run their own businesses?**
ii) **Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?**

The requirements on risk are clear and build on learning from viability and governance failures. PCHA is currently reviewing its risk strategy using these requirements and learning from other organisations.

We are however concerned that some of the specific expectations will be applied literally when regulatory judgements are made unless clear exceptions are laid out. C1.4.4 notes that the Regulator expects Registered Providers "to meet non discretionary expenses (including major repairs)---from operating income" but the business plan of a LSVT Association in the early years of operation will always show

costs, including major works, not being met from operating income. We would recommend this scenario is included as an acceptable position providing the registered provider is performing within its business plan (which the DCLG will have approved).

PCHA are pleased to note there has been a movement from the debated proposal to publish a "living will" to providing accessible asset registers. This proposed requirement is more realistic.

PCHA would recommend some guidance is set in 1.7 for the materiality of reports of fraud, for example over £1000.

PCHA notes there could be additional audit costs if the proposed certification that we comply with the Governance and Financial Viability Standard is included in the audited accounts. An alternative would be to include this certification in our annual report and via NROSH+.

There are some references to "appropriate" which it would be useful to have clearer guidance on what is meant in the Code of Practice.

Code of Practice

a) **Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?**
b) **Is the role of a Code clear and is it reasonable?**

The Code is clear and assists in interpreting how compliance with the standard can be met. Sections B2 and C1.5.10 are useful in providing examples. Further consideration could be given to including more relevant examples. We have highlighted where this would be beneficial under our comments on the Standard.

Do the proposed revisions to the disposals regime

a) **Meet the aim of protecting social housing assets and value in it?**
b) **Balance this aim with registered providers being free to run their own businesses?**
c) **Are they reasonable?**

The aim of the changes is clearly reflected. The changes consolidate previous guidance providing clarity. However we would like, again, to draw the Regulator's attention to the RTB and its impact on our business.

Do the changes to the registration criteria

a) **Reflect the proposed changes to the governance and viability standard?**
b) **Are they reasonable?**

The changes are clear and reflect the overall aims of the changes to protect the public value in assets and ensure social housing assets are not put at risk

Do the proposed changes to the Rent Standard:

a) **Reflect the Direction from DCLG?**

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The Standard reflects the direction from the DCLG. At PCHA we have already reflected this change in our business plan projections.

Consultation on changes to the regulatory framework

Places for People response

August 2014

Places for People

1. Places for People is one of the largest property management, development and regeneration companies in the UK. We own or manage over 140,000 homes, including 24,000 private rented homes, and have assets of more than £3 billion. Our vision is focused on ensuring successful places and enabling people to reach their potential. We have a long track record of successful development and a solid reputation for delivering large-scale development in towns and cities. Our approach goes much further than simply building homes. We look at what an area needs to be able to thrive — whether it is new schools, shops, leisure facilities, job opportunities, and access to learning and training or specialist support services. We were named Housebuilder of the year 2013 and Landlord of the year 2014.

2. We welcome the opportunity to respond to the HCA consultation on changes to the regulatory framework. Any queries with regards to our representation should be addressed to:

David Cowans
Group Chief Executive
Places for People
The White House
10 Clifton
York
YO30 6AE

Tel: [redacted]
Email: [redacted]

Executive Summary

3. We share the Regulator's view that the regulatory framework should be targeted and sharply focused on the management of the risk of social housing assets being lost to the sector through financial and governance failings. In broad terms we are content with the proposals in this area, with some important caveats which we outline below.

4. Where we raise concerns it is because we are not convinced that further powers are needed and we think the answer lies in a more effective strategy for using existing powers. In two areas we have concerns that the proposals represent a significant step beyond regulation and constitute an intrusion on the independence of our board and risk creating a situation where the HCA is acting as a shadow director.

5. **Governance and Viability standard:** we are not content with the proposed drafting of 1.6 on third parties. This change is not needed. Existing regulation already prevents all companies, including registered providers, from inappropriately advancing the interests of third parties. While we agree with the HCA intent to require Boards to certify their compliance with the Standards we do not agree that the annual accounts is the right mechanism.

6. We are not content with the proposed new standard (2.2) on assistance to subsidiaries. We would like to better understand the risk that the HCA is seeking to mitigate as we cannot see a circumstance in which the proposed additional standard would add to existing regulatory expectations.

7. We are not content with the proposals (at 2.3) on unregistered parents. As currently drafted they are very broadly drawn and open to a wide range of possible interpretations that could place unreasonable additional constraints on non-registered parents.

8. We welcome the proposal to issue guidance alongside the regulatory standard and we are content with the proposed shape and content of the guidance. That said, we do not think "code of practice" is the correct term.

9. We do not agree with the Regulator's intention to make some amendments to category six of the General Consent. In particular to further restrict access to category six. The Boards of registered providers should be free to fund activity within their group from social housing assets as they see fit as long as the activity concerned is within their objects.

10. **Disposals regime:** We do not agree with the proposals to require that receipts from sales under preserved right to buy are placed in the DPF. There are already very clear rules in place governing the recycling of grant and our board should not be placed under any further restriction.

11. **Rent Standard.** As we have previously suggested, to avoid significant losses to registered providers the rent increases allowed should be set at CPI+1.2% rather than CPI+1%.

12. We are also concerned about the proposals on high income social tenants. As drafted this measure gives registered providers flexibility to apply higher rents. It is vital that the measure remains an option and doesn't become a requirement.

Our Response

Changes to the Governance and Financial Viability Standard

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

Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

- We share the Regulators view that the regulatory framework should be targeted and sharply focused on the management of the risk of social housing assets being lost to the sector through financial and governance failings. **In broad terms we are content with the proposals in this area, with some important caveats which we outline below.**

Do the requirements in paragraph 1.2 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 businesses?

- **We are content with this wording.**

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

- **We are content the proposals on stress testing**.

- **We are not content with the proposed drafting of 1.6 on third parties.** This change is not needed. Existing regulation already prevents all companies, including registered providers, from inappropriately advancing the interests of third parties. We would recommend that HCA use existing powers to scrutinise such activity. If the HCA feels further powers are needed they should be more targeted and specific about the precise gap in powers that is being addressed. We are concerned that – as drafted – the proposals in this area represent a significant step beyond regulation and constitute an intrusion on the independence of our board and create a risk that the Regulator could act as a shadow director.

- **We are not content with the proposals at paragraph 1.8.** While we agree with the HCA intent to require Boards to certify their compliance with the Standards we do not agree that the annual accounts is the right mechanism. Rather we should return to the previous system whereby the Boards of Registered Providers were required to submit a separate declaration to HCA.

Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

- We are a not for profit provider. **We have no comments on the proposals on for profit providers.**

- **We are not content with the proposed new standard (2.2) on assistance to subsidiaries.** We would like to better understand the risk that the HCA is seeking to mitigate as we cannot see a circumstance in which the proposed additional standard would add to existing regulatory expectations of registered group parents. We would like to see the proposed text replaced by a clearer and more tightly defined standard.

- **We are not content with the proposals (at 2.3) on unregistered parents.** As currently drafted they are very broadly drawn and open to a wide range of possible interpretations that could place unreasonable additional constraints on non-registered parents. We assume that the aim of this standard is to ensure commercial activities in the parent company do not put at risk social housing assets held by the registered provider. If so, it would be preferable for the standard to be specific – placing a requirement on registered providers to assure the HCA that even if the commercial activities of the unregistered parent, or other group members, were to fail the social housing assets held by the registered provider would not be put at risk.

- **We are content with the proposals at 2.4 to clarify the expectations that apply to registered providers with unregistered parents.**

Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
Is the role of a code clear and reasonable?

- We welcome the proposal to issue guidance alongside the regulatory standard. We are content with the proposed shape and content of the guidance.

- That said, **we do not think "code of practice" is the correct term**. In our view, whatever the plan at the outset, "codes of practice" soon come to be seen as carrying the same weight as regulation. This document is guidance and should be badged as such, notwithstanding the reasoning in the document – it is the intention that defines it.

- We also note the Regulator's intention to make some amendments to category six of the General Consent. In particular to further restrict access

to category six. **We do not agree with this proposal.** The Boards of registered providers should be free to fund activity within their group from social housing assets as they see fit as long as the activity concerned is within their objects. As drafted – the proposals in this area represent a significant step beyond regulation and constitute an intrusion on the independence of our board and create a risk that the Regulator could act as a shadow director.

Changes to the disposals regime

Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

- **We agree with the proposal that no further restrictions be placed on use of disposal proceeds by non-profit registered providers.** We have no comments on the restrictions proposed for profit making providers. However we note that for profit providers will be required to place all proceeds into a disposals proceeds fund whereas not for profit providers will continue to operate as now. It will be important that the restriction placed on for profit providers is not extended to all providers in future.

- We note the comments made about Government's stake in the latent value of social housing and any capital gains that arise from it. We have long taken the view that there are potential benefits to be secured from looking afresh at ways to unlock that latent value.

- Our ideas range from associations paying sunk grant back to Government to support more building, to turning grant into Government equity. Or new agreements to reduce the Government's right to clawback in return for a specified number of new homes built. Many of these we have modelled in detail.

- **We do not agree with the proposals to require that receipts from sales under preserved right to buy are placed in the DPF**. There are already very clear rules in place governing the recycling of grant and our board should not be placed under any further restriction when considering how to make best use of receipts.

Changes to the registration criteria

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

- **We are content with the proposed changes to the registration criteria.**

Changes to the rent standard

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 focused as possible?

- As we noted in our original response to the DCLG consultation we have some significant concerns about the direction from DCLG. In broad terms we welcome the ten year rent certainty offered by the Government. Our view is that the certainty is vital to enable registered providers to plan for the future, particularly given the revenue implications of moving from RPI to CPI at a time when social landlords' incomes are facing multiple threats from changes to welfare policies.

- **We welcome the proposed changes on tolerance levels and rent caps. However, we have concerns about the annual rent increases projected under the new formula**. Our analysis, based on CPI rates since 2000 shows that use of CPI+1% would have resulted in a mean average annual increase rate of 3.28%, which is 0.2% lower than the average from RPI+0.5% over the same period. On the face of it this is not a large difference, but since the loss would be cumulative it could be significant over the ten year period being proposed for the new rent setting regime. Accordingly, we have previously suggested adoption of CPI+1.2% rather than CPI+1%.

- **We are also concerned about the proposals on high income social tenants.** As drafted this measure gives registered providers flexibility to apply higher rents. Our view is that doing so, and in particular, identifying the individuals concerned could create a significant administrative burden. It is vital that the measure remains an option and doesn't become a requirement.

Places for People
August 2014

PlaceShapers Response to HCA Consultation:

Changes to the Regulatory Framework

Background

PlaceShapers is a network of over 100 community-based housing associations formed in 2008. Between us we own over 725,000 homes and provide housing and support services to more than two million people. These include health services, social care and a range of other community services. As an alliance, our views therefore represent those responsible for over a quarter of the sector's housing stock. Since we formed we have built over 75,000 new homes and provided many life-changing new services. Collectively we have plans for considerable further investment in the coming years and will exploit all opportunities available to help address Britain's housing crisis. Details of our members and more about what we do can be found on our website: www.placeshapers.org

This submission represents the collective response from PlaceShapers to the questions posed in your consultation paper. As the proposals will impact on our members to a varying extent, we have limited our response to general comments. Individually, some of our members will have submitted their own responses and in so doing may have set out in more detail their views and what the proposals would mean for them if implemented.

We would like to start by welcoming the extent to which the consultation proposals represent a major shift from ideas suggested in the HCA's initial discussion paper on this subject in 2013. We met Julian Ashby, Matthew Bailes and Jonathan Walters on a number of occasions to debate the original proposed changes and, like others in the sector, are very pleased that the HCA listened and took on board the feedback received. As strong supporters of the co-regulatory approach we consider that the process by which we have got to this point is testament to its effectiveness. We consider the final consultation proposals to be a far more proportionate and reasonable response to regulatory challenges than those originally put forward and any ongoing concerns expressed below on matters of detail should be seen in this context.

Our response to the consultation questions follows:

1	**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?** Yes - we agree that the final proposals represent an appropriate way forward for the Regulator.
b)	**Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?** Yes, in general it does although we have some points on the detail as set out below. The bringing together of the governance and financial viability standards into one for clarity and to avoid duplication is welcomed. We understand that two separate regulatory judgments will still be published.

We, no doubt like other respondents, do wonder whether the new requirement to "adhere to all law" will provide a demonstrable benefit to the Regulator. Clearly, RP boards already have duties to comply with law and all should be taking reasonable steps to ensure that this is the case. Self-certification in itself will not guarantee this and it is not an effective measure of good governance; it is the quality of governance that matters and any judgments on cases of non-compliance would need to have regard to whether the manner in which the RP board obtains its assurances of compliance is adequate and, if not, whether this of itself demonstrates a failure to meet the Standard.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes they do and are understandable. We welcome the clarity around co-terminous boards for non-profit RPs with a registered parent. They are becoming increasingly common and can deliver significant efficiencies and improved governance. We also are pleased that you have concluded it would be inappropriate to stipulate matters relating to board composition and agree that this is a matter for providers to determine themselves with reference to good governance codes of practice.

Our main concern here relates to the Regulator's own skills. Julian in his introduction to the consultation document says that there needs to be a "step-change" in both the Regulator's approach and that of providers. We agree and see this as key to the success of co-regulation as well as ensuring that the sector is on a firm footing going forward. Our worry is that regulatory resources will continue to be under pressure and that they will be insufficient for the work required. A case in point is the current high turnover and vacancy rate for financial appraisal staff.

d) Do the requirements in paragraph 1.4-1.5 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?

We understand the tension of having a principle of co-regulation and an increasingly diverse and riskier sector. The revised approach to risk management seems proportionate in this context, as it should enable RPs to achieve the aims of protecting social housing assets whilst supporting new activity in a dynamic environment.

The principle that providers need to have a strong understanding of risks and business stress points is welcomed as is the need for this to be driven by boards with appropriate skills and independence. We would be surprised if our members were not conducting detailed stress testing already and in particular when considering new and different activities.

We agree that the need for RPs to keep accurate records of their assets and liabilities is essential for good business. We understand that an up to date asset register is important to this work and will be crucial in any "rescue" situation. Many RPs will

already have this in place and the sharing of good practice in the sector is important to ensuring the quality is of the standard needed. To this end we have already run a number of seminars for our members on the subject with the support of Anthony Collins Solicitors. The outline of what you would expect to see in an asset register as set out in your proposed Code of Practice is of help although more specific guidance on what is needed by you in order to deal with any insolvency situation would assist further. We also wonder whether consideration needs to be given to the implementation timescale for this aspect of the standard 'though so as to allow for a period within which all providers can get compliant?

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

Yes, in general we believe them to be reasonable. We welcome the removal of the proposed ring-fencing requirements of activity for non-profit providers but support the need for additional controls in the case of for-profit entities.

We have a few members whose parent body in a group structure is not a registered provider and they may have responded themselves on the implications of the proposed requirements for them.

2	Code of Practice

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

A code of practice does seem somewhat at odds with co-regulation and we would, as you'd expect, be concerned if this was to take us back to a tick-box approach to regulatory judgements or "rule" creep, particularly given that we understood the Regulator had stepped back from the suggestion in the original discussion document of a "comply or explain" approach. However, we acknowledge your assurance on this point and in this light see the proposed code as useful additional guidance and clarification of requirements. We will be interested to see how the use of the code plays out in practice in terms of regulatory engagement and will welcome the ability to discuss any emerging issues as part of our regular bi-lateral liaison meetings with senior regulatory staff.

b) Is the role of the Code clear and is it reasonable?

Yes in general it is. We are slightly puzzled however as to why there is such emphasis on the need to avoid conflicts of interest when entering arrangements with third parties. This is fundamental to effective organisations and is explicit in many of our processes already because to conduct business for the personal or professional benefit of a third party is fraudulent activity and therefore unlawful. We would question why emphasis is drawn to this over and above other areas of potential fraud.

There is however one area of potential self-interest that has perhaps not received sufficient regulatory attention in the past and deserves more going forward. This is the significant role that Chief Executive self-interest can play in driving mergers. This can

lead to the perceived benefits of mergers being overstated and can also result in a blindness to potentially catastrophic risks. Clearly, objective and independent assessment of merger proposals by RP boards is key to the management of this conflict but we do think it is worthy of at least mention in the Code.

3	**Do the proposed revisions to the disposals regime:**

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

We agree with the proposed additional controls to ensure ring-fencing of social housing assets within profit-making entities and to protect the profit from disposal of such assets. The approach requiring proceeds to be recycled via a DPF is welcomed.

4	**Do the changes to the registration criteria:**

a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?

We have no comments on these proposed changes.

5	**Do the proposed changes to the Rent Standard:**

a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposed changes do indeed reflect the Direction from DCLG and they are clear. As we said in our response to DCLG's own consultation on these matters, we do feel strongly about the loss of the ability to converge rents at "target" levels and we feel it only appropriate to restate the implications of this change here. Loss of this facility is taking capacity out of our members' business plans to fund new supply and the only way of recouping this is by converting more properties to much higher "affordable" rents when they become vacant which is likely to lead to higher housing benefit claims than would be the case otherwise.

The fairness principle underpinning rent convergence was and remains a good one and we still believe that it should be allowed to run its full course. In this context, at the very least we would ask that the ability for the Regulator to waive specific requirements of the new Rent standard for a period of time should be extended to cover any situation where there will be a demonstrable adverse impact on a landlord's approved business plan. Only in this way will development capacity and the provision of cost-effective community support be protected.

There are two further measures that if approved would provide additional needed flexibility to support effective asset management and development capacity. We ask

for these to be considered and included within the revised rent standard.

Firstly, where market and social rent levels are close, providers have the freedom to charge less than target rents if supply and demand factors suggest they need to in order to achieve a letting. To compensate for this, we believe that there should be flexibility to enable them to increase rents (above the annual CPI + 1% formula) back up to target levels if the market changes over time. There is no provision to allow for this in the proposed standard.

Secondly, in 2010 the rent standard did away with any ability to convert a property to market rent without individual consent. This may well be a more appropriate way of subsidising provision of new homes at lower rents than via outright disposal or conversion to "affordable" rents, subject of course to market renting being an appropriately controlled business activity for the provider. It is included as an option within the GLA's guidance on funding affordable housing but the flexibility is not currently permitted in the regulatory standard.

6	**Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**

We understand and support the Regulator's objectives in proposing to restrict the granting of category 6 consents and agree that changes would protect social housing assets more effectively.

There is however one proposed change that does cause us concern, and that is the proposed further restricted on-lending of a secured facility within a group (paragraph 3.74c in the consultation document). This would tighten the general consent in a way that will potentially hinder development programmes that include a mix of affordable and commercial units including those involving the outright sales of shops / offices. Such schemes are typical in urban areas where land or property is bought and developed in non-charitable entities to be tax efficient and / or to ensure that there are no ultra vires commercial activities happening inside the charity. The proposed tightening of the general consent would lead to a potentially unworkable need for rapid scheme by scheme approval in a volatile and fast moving market where opportunities would be lost in the absence of immediate decisions. We are concerned that the regulatory resource will be insufficient to respond to such needs and that in any event such programmes in general are and should be regarded as legitimate.

In addition, we are mindful that an increasing number of RPs are sitting on significant funds raised on the bond market in particular, where these funds are costing the RP money. RPs should be encouraged to use these funds efficiently to generate an appropriate return provided this is in the context of a prudent and appropriate investment approach. The need for additional consents for use of these funds could impact adversely on this outcome.

In this context, we suggest that consideration is given to providing consent for a general programme of activity over a defined period, perhaps with a maximum financial commitment involved. An additional flexibility would be to allow freedom to on-lend for

non-social housing activities when that lending is secured on non-housing assets such as offices and garages held in the parent body's stock.	
7	**Do the other proposed changes to the registration criteria**
a) Contribute to the Regulator better meeting its fundamental objectives? **b) Express the requirements of registered providers in a way that is clear and succinct?** We have no comments on these proposed changes.	

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN

Plymouth Community Homes
Plumer House
Tailyour Road
Crownhill
PL6 5DH

T [redacted]
E [redacted]
[redacted]

W plymouthcommunityhomes.co.uk

Date 18 August 2014

PLYMOUTH COMMUNITY HOMES RESPONSE TO PROPOSED CHANGES TO THE REGULATORY FRAMEWORK, MAY 2014.

Dear Tim

In general, Plymouth Community Homes are supportive of the proposed revisions to the Regulatory Framework that recognise the balance between allowing registered providers to run their business whilst further protecting social housing assets.

The general approach to enhanced risk management, stress testing, knowing your assets and the continued support for co-regulatory principles are welcomed as is the emphasis on Boards' responsibilities for the delivery of strong governance and viability.

However, we do have concerns as noted below.

Governance and Financial Viability Standard and Code of Practice

The proposed widened requirement to comply with 'law' rather than 'legislation' is reasonable but the inclusion of statutory guidance, such as from the Charity Commission, within the proposed widened adherence to 'relevant law' from 'relevant legislation' introduces unnecessary burdens. PCH feels such guidance should not be regarded as law and the proposed Regulatory Framework amended accordingly.

The proposed introduction of a 'Code of Guidance' raises a number of concerns.

Firstly, that despite the HCA's assurance that such a Code will not have regulatory force, experience has shown that in practice and over time the proposed Code will become treated as equal to formal regulation.

Secondly, that whilst much of the content of the proposed Code is reasonable, the provision of such advice is not a regulatory function and shouldn't be contained within proposed changes to the

regulatory framework. Such guidance can and should be provided other than in a regulatory framework.

Thirdly, notwithstanding the above, the emphasis on having suitable skills and capability as a key element of a well governed organisation that is managing its risks effectively is welcomed, as is the responsibility for registered providers to determine how best to meet regulatory requirements on independence. However, it is important that the proposed Code avoids the risk of registered providers being deemed to have failed the independence test due to Board representation of significant shareholders such as local authority Members.

Fourthly, the proposal that registered providers' Boards shall certify their compliance with the Governance and Financial Viability Standard in their accounts raises two concerns; the creation of an industry for consultants, as has arisen under VFM, together with such a statement of compliance not being a matter for the accounts. Whether the statement is re-located or remains within the accounts, it is proposed for the sake of brevity a simple statement of "The registered provider has complied with regulation" will suffice- similar to the current "The accounts have been prepared under GAAP", which has a huge set of related rules.

Disposals Regime

The proposal that for-profit registered providers will be required to put the net proceeds of disposals into a Disposals Proceeds Fund, to prevent leakage, is welcomed provided the requirement isn't extended to non- profit registered providers.

Rent Standard

Plymouth Community Homes has previously responded to Rent Standard consultation and we would refer the Regulator to our comments of December 2013.

Notwithstanding the above, the proposed requirement for registered providers to not set rents for low cost rental accommodation to a social housing tenant household during a financial year where the income was £60,000 or more is prescriptive and raises real difficulties of accessing household income details aligned to the introduction of Universal Credit. It is suggested the setting of such rents is optional for registered providers, to allow local circumstances to be taken into account when making business decisions, without any related grant implications.

General Comment

PCH are generally supportive of the proposed revisions with specific concerns as noted above.

Please feel free to call myself on any of the points raised above.

Yours sincerely,

Clive Turner,

Chief Executive,

Plymouth Community Homes

HCA Consultation on Changes to the Regulatory Framework

QUESTION:	RESPONSE:
A6.1 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?	Yes, subject to the comments set out below.
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Overall, we agree that the proposed Standard is clear, succinct and outcome focused. However, we believe that the proposed amendment to widen the standard wording to refer to "all relevant law" should be redrafted in a way that is clearer and more specific as to the expectation on providing legal compliance assurance. As presently drafted, the wording leaves providers in a position where it is very difficult for the board to provide realistic and accurate assurance to the regulator given the wideness of this drafting.
c) Do the requirements in paragraph 1.2 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 businesses?	Yes – we have no further comment on this other than that the requirement for providers to annually assess their governance arrangements should be clarified in terms of the extent of the requirements of the annual assessment. Most providers will undertake an annual assessment against their adopted code and report this in their accounts. If the expectation in the standard is to go beyond this it would be useful to receive further clarification.
d) Do the requirements in paragraph 1.4 and 1.5 on risk: i. Meet the Regulator's aim of protecting social housing assets; ii. Balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	In broad terms, yes the requirements do meet the aim. The requirement to maintain a register of assets and liabilities which is accurate and up to date will support this aim.
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 broad terms, yes the requirements do meet the aim.
A6.2 Code of Practice	
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?	The view of the Group is that the presence of a separate Code creates an additional layer of potential confusion in terms of demonstrating and ensuring compliance with the standard and it would be more beneficial for the contents of the actual standard to be drafted in such a way to either cover the specific requirements for compliance or the elements of the Code be used to disseminate advice and best practice. The presence of the Code within the regulatory framework creates the potential for confusion within the sector in terms of its status and role in formulating regulatory judgements.
b) Is the role of a Code clear and is it reasonable?	Whilst the contents of the Code appear to be clear and reasonable, the status as a Code of Practice rather than as part of the actual Standard has the potential to create issues in interpreting the status of the Code.
A6.3 Do the proposed revisions to the disposals regime:	
a) Meet the aim of protecting social housing assets and the value in it?	In broad terms, yes and it is noted that the new proposed provisions for placing sale proceeds in a Disposal Proceeds Fund applies only to for profit registered providers.

b) Balance this aim with registered providers being free to run their own businesses?	In broad terms, yes.
c) Are they reasonable?	In broad terms, yes.
A6.4 Do the changes to the registration criteria:	
a) Reflect the proposed changes to the governance and viability standard?	We believe it is a sensible approach for an applicant to meet both the Governance and Financial Viability Standard at the point of entry, rather than to differentiate between the two standards particularly in view of the fact that the HCA will base its regulatory judgement on both elements.
b) Are they reasonable?	In broad terms, yes.
A6.5 Do the proposed changes to the Rent Standard:	
a) Reflect the Direction from DCLG?	The proposed changes do reflect the Direction.
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes.
A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?	We agree that the main focus of regulation for specific applications for section 172/133 consent should be where there is a risk of loss of public funds by way of a transfer of assets outside of the regulated sector. We welcome the proposed approach of the General Consent becoming applicable to both section 172 and 133 as this is an area which often causes confusion in practice. The amended layout of the General Consent showing which parts apply to the relevant sections is also welcomed. Whilst the impact of the proposed changes to the Category 6 of the General Consent (disposal by way of granting a security interest) are clear in their purpose, it would be beneficial to understand whether the HCA intends to revoke or amend existing Category 6 letters which are already in existence as this could have an impact on those providers who are currently relying on such letters. Further guidance on the HCA's approach to this element would be welcomed.
A6.7 Do the other proposed changes to the registration criteria:	
a) Contribute to the Regulator better meeting its fundamental objectives?	In broad terms, yes.
b) Express the requirements of registered providers in a way that is clear and succinct?	Yes.

Radian response

HCA – Consultation on changes to the regulatory framework

1. 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?
Yes. There is no attempt, however, to capture gains by profit-making RPs from time-expired planning conditions requiring provision of social/affordable housing, which could therefore be traded later at market value. We feel this is an omission.

b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes.

c) Do the requirements in paragraph 1.2 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?
Yes, as far as it can do. Since putting social housing at risk will be through incompetence or by design, 1.2 alone is not proof against flawed judgement. Consequently it leaves room for some RPs to diversify and fail. Subsequent paragraphs are more specific and prescriptive, and taken with 1.2 meet the aim.

d) Do the requirements in paragraph 1.4 and 1.5 on risk
i) meet the Regulator's aim of protecting social housing assets
ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
i. Yes. They will go some way towards it.
ii. Yes. It is heavier touch regulation, but necessary and sustainable.

e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulators aim of protecting social housing assets?
Yes. They are reasonable in relation to the Regulator's aim.

2. Code of Practice

a) Does the proposed Code assist registered providers to understand how compliance with the standards can be achieved?
Yes, somewhat. Given the debate about the VfM standard, some assistance is helpful. It reads like guidance rather than a Code, however, which means there will still be much debate about what constitutes compliance with the Standard.

b) Is the role of a Code clear and is it reasonable?
Yes, the role of the code is clear, but potentially unrealistic. Some will find it difficult to accept that following it may not guarantee compliance.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
Yes. Though as mentioned earlier it does not address leakage when planning consents restricting tenure to social or affordable housing expire, leaving an opportunity for a sizeable uplift in value of vacant stock.

There is an anomaly at present that for non-profit RPs that are LSVTs some stock transfer agreements require return of right to buy receipts to the local authority, where they are not guaranteed to fund replacement social housing.

b) Balance this aim with registered providers being free to run their own business?
They are appropriately prescriptive

c) Are they reasonable?
Yes.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?
Yes.

b) Are they reasonable?
Yes, it would be unacceptable to register organisations that do not meet the governance and viability standard. We would question whether this goes far enough, and ask whether organisations wishing to register should have to meet all the standards?

5. Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?
Yes.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes.

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?
Yes

7. Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?
Yes.

b) Express the requirements of registered providers in a way that is clear and succinct?
Yes. Apart from in respect of intermediate rent, on which the Rent Standard is silent.

End

Consultation Response: Changes to the Regulatory Framework

Introduction

Raglan owns and manages over 12,500 affordable homes across 95 local authority areas.

We also build properties in urban and rural areas for general rented and shared ownership and provide a range of specialist accommodation for people over the age of 55 and for those with specific support needs.

As an organisation we are committed to being *"the first choice landlord, partner and employer in our areas of operation*" and we recognise that effective regulation is an important element in helping deliver this mission.

The following submission therefore sets out our views on the proposals as detailed in the paper, as well as highlighting recommendations for change and improvement. However, we would welcome more opportunities to engage with the HCA and to explore how we can continue to support a thriving and well managed sector.

Broader View

Raglan welcomes the continuous dialogue that the HCA has promoted as part of this consultation and we believe that it has and will lead to better regulation. In particular we are pleased that the revised proposals have taken a more co-regulatory and outcome focused approach.

We still have some concerns that the regulation may place high burdens on associations, but in general we feel the principles have moved in the right direction.

Specific Responses

Governance and Viability

Changes to the governance and financial viability standard

We are in agreement with the proposed approach of robust risk management and effective stress testing across multiple scenarios. This will enable the regulator to protect social housing without negatively impacting on the ability of providers to manage their business.

However, guidance and suggestions to help develop more instructive scenarios could be a useful additional feature; and it would be something we are happy to explore.

Recommendation 1: Work with providers to help develop a programme of 'robust' scenario models for the sector to use.

We also support the principle that Boards are responsible for managing risk. However despite assurance, we are concerned that the formal requirement for boards to adopt and demonstrate compliance with an appropriate code of governance does not hark back to old eras of 'best practice'.

Perhaps a more effective way would be to develop and build up a centre of governance excellence which gives Board members the opportunity to train, develop and improve their own understanding in relation to areas including finance, performance and health and safety.

Recommendation 2: Develop a centre of governance excellence to promote high standards and understanding amongst Board members.

Bringing together the financial viability and governance standards into one is welcomed, although we also appreciate the need for two separate regulatory judgments.

However we have reservations about whether the new requirement to "*adhere to all law*" is going to be useful, or whether it is likely to lead to more bureaucracy. Boards already have duties to comply with the law and self-certification would not seem to be a measure that would promote further compliance, or indeed reduce illegal activity.

Register of assets

Requiring providers to establish an up to date register of assets and liabilities is an important and useful requirement.

Nevertheless, it maybe useful to set out time-scales and expectations so that providers are clear about what needs to be achieved and when it needs to be achieved by. Presumably, for this to be useful there also needs to be some level of uniformity, and while the requirements in the consultation are clear, there are benefits to having a consistent template.

Recommendation 3: Support development of a consistent template for registering assets and liabilities.

Reporting requirements

Annual compliance checks and certification in the annual accounts would seem a fair and balanced way to report and we think it is reasonable to continue to require accurate and timely reporting.

Section 2 requirements

While Raglan is a not-for-profit provider and does not have unregistered parents, we believe that the intention to protect and maintain social housing assets is a sound one.

Category 6 consents

Although the issues raised by Category 6 consents would not affect Raglan at the present time, we are concerned that the changes may be drawing a tight boundary that causes a rise in applications for specific consents.

Loan agreements already restrict use of funds to furthering the purpose of social housing, and this narrowing could catch a lot of innocent transactions.

Also it will place a significant administrative burden on the regulator and could negatively impact on providers. Our suggestion would be to loosen this requirement, for example through allowing certain levels of funding before scrutiny is required or restricting it to private providers only.

Recommendation 4: Soften the requirement on consent 6 to allow a certain level of private finance facilities before specific consents are required.

Changes to Disposals

We welcome the recognition from the regulator that the sector has an inherent social and ethical purpose and as a result, it should not be subject to any further restrictions on use of disposal proceeds.

To this end we also appreciate the proposed additional controls to ensure ring-fencing of social housing assets within profit-making entities and to protect the profit from disposal of such assets.

Changes to Registration Criteria

Requiring providers wishing to register to comply is reasonable.

Changes to the Rent Standard

While there were elements of the DCLG's rent standard that we would not agree with, the rent standard as set out clearly and adequately reflects the directive from DCLG.

Robert Smyth
Head of Business and Market Intelligence
Raglan Housing Association
Tel: [redacted]

Consultation on changes to the regulatory framework from The Homes and Communities Agency

Response of The Riverside Group Ltd.

About Riverside

Riverside is one of the largest housing association groups in the country, owning and managing over 53,000 properties across England and Scotland. The Riverside Group Limited is the main asset-owning association in the group. As a charitable housing association, it is a not-for-profit private registered provider, with a number of subsidiaries including a housing association registered with the Scottish Housing Regulator, and commercial and administrative subsidiaries.

A summary of our response

We welcome the opportunity to respond to the statutory consultation on changes to the regulatory framework, and support many of the proposals set out in the consultation documents.

In particular, we recognise the increasing risks to the sector associated with a challenging operating environment. We welcome the framework's renewed emphasis on the protection of social housing assets in the context of strong governance, within an overall approach which is still founded on risk-based co-regulation. We also support the proposals on changes to the registration criteria.

However, we are concerned about some of the detailed proposals set out in the consultation including:

(i) The imprecision of a number of the specific requirements of the new Governance and Viability Standard
(ii) The requirement for Boards to certify compliance with the Governance and Viability standard, where objective measurement is likely to be very difficult
(iii) The wide-ranging nature of the proposed Code of Practice

Whilst we acknowledge the new requirements set out in the Governance and Viability Standard will have cost and resource implications for providers, this is not the root of our concern. On balance, we agree that the benefits for the sector justify the additional administrative burden. However, we believe that Government should recognise there are also significant resource implications for the Social Housing Regulator (SHR) if social housing assets are to be properly protected in accordance with the objectives of regulation. We would re-iterate the point made in our recent response to the consultation on the introduction of fees for regulation, that any introduction of fees for RPs should be linked to the securing of **additional** resources for the regulator.

Governance and Financial Viability Standard (in answer to consultation questions A6.1 a, b, c, d and A6.2 a)

In general, the proposed new Governance and Viability Standard feels appropriate given the objectives of the regulator. However, we have a number of significant concerns regarding its detail.

- The required outcomes and expectations of providers are not always set out clearly and succinctly. In particular, we believe that the wording of paragraph 1.2 is too broad and open to significant interpretation. The six characteristics ('skill', 'independence', 'diligence', 'effectiveness', 'prudence' and 'foresight') are not precise enough to enable objective assessment. If, as we assume, the phrasing is intended to be a less specific, higher-level description of the attributes of a well governed provider, we would welcome a shorter list. In particular, it will be virtually impossible to define how appropriate 'foresight' can be demonstrated as the future is by definition an unknown quantity. Given the specific requirements for stress testing and risk management set out later in the standard, the inclusion of this term seems inappropriate.

- The requirement to **certify** compliance with the standard (1.8) is extremely onerous, and represents a disproportionate burden when compared to the requirements for PLCs set out in the Financial Reporting Council's UK Corporate Governance Code where certification of this nature is not required. This is compounded by the fact that the standard, as drafted, is outcome focused and relatively imprecise (see above). For example, Boards will need to certify that the provider complies with all relevant 'law'. In practice, and without reams of operational information, this will be extremely difficult to certify at a moment in time, and Boards could find themselves in the impossible positon of either refusing to certify compliance (and therefore being in breach of the standard) or certifying compliance without full access to the information which would enable them to do so. As an alternative, we suggest that a Board should be required to minute that it **has reviewed compliance** with the standard and to report any areas of non-compliance that the Board is aware of.

- We support the introduction of the requirement to undertake stress testing (paragraph 1.5b), and see this as a logical extension of the sensitivity testing we already undertake as part of our business planning processes. However, we encourage the SHR to use the Code of Practice to articulate clearer expectations about the nature and scale of stress testing expected, given the sector's well documented difficulties in developing satisfactory self-assessments against the Value for Money standard. Going further, and to avoid costly duplication across the sector, we suggest the regulator commissions and publishes a triennial 'futures' report for the sector (building on the Sector Risk Profile). This would consider the range of short and medium term scenarios which may unfold in the external operating environment, and the **minimum** range of outcomes which should be stress tested, for example in terms of economic growth, inflation, interest rates etc. It would be for each individual provider to assess the impact of

these scenarios on their business planning assumptions depending on the nature of their business and geographical area of operation, as well as considering additional scenarios relevant to their activities and investment plans. This approach would have some similarities with that adopted in the banking sector where the Bank of England (under EU requirements) prescribes the basis of stress testing undertaken by the eight major banks and building societies.

— Under the 'Governance required outcomes' section (A) of the consultation, it is proposed that the current requirement to adhere to all relevant 'legislation' should be changed to all relevant 'law' to ensure statutory guidance such as Charity Commission guidance is covered. This is also stated in the draft Code (paragraph A.1). Such guidance is not actually law, and so if this is the requirement we suggest that the wording should be amended to state "relevant law and applicable statutory guidance".

Code of Practice (in answer to consultation questions A6.2 a and b)

We have some reservations about the introduction of a Code, and whilst the proposals state that the Code is not part of the Governance and Viability Standard, we believe that over time it is likely that it will be regarded as a de facto extension of it, particularly in view of its statutory status.

For this reason we believe that any Code should be structured and worded precisely, only amplifying the standard where this is absolutely necessary, and avoiding discursive commentary which is more appropriate to other documents such as 'Regulating the Standards'.

As written, the draft Code provides a comprehensive commentary on the standard, when much of the standard speaks for itself and amplification is not necessary. We believe that the Code should be more selective, and be restricted to clarifying the **new** elements of the standard with more precise details of expectations and requirements, or amplifying other areas which are not adequately covered in other relevant documents such as the NHF's Code of Governance. For example, the Code could provide more detail on the development of the self-assessment against the Governance and Viability Standard, the implementation of stress testing, and the maintenance of adequate data about assets and liabilities.

In this context, the Code should also provide more detail about what the regulator considers to be appropriate levels of 'independence'. At the very least, this would involve repeating the wording set out in 3.20 of the consultation document: "the Regulator does not expect Boards of non-profit registered providers where the parent is registered to remove co-terminous boards that are common practice in the sector". This should be extended to cover circumstances where it is appropriate for boards (of non-profit registered providers) within a group to share some common members. By way of contrast, it feels inappropriate for this section of the Code (c1.2.2.2) to refer to a code of governance from outside the sector as an exemplar (Financial Reporting Council UK Corporate Governance Code), particularly as compliance with that code would rule out having co-terminous boards. If the FRC's

code contains useful detail on the independence of boards, then it should be repeated in this Code, within the context of social housing regulation.

On a more specific point, whilst the expectation in C1.4.4 for providers to consider the relationship between operational and capital cash flows is entirely reasonable, the detail in this paragraph that follows feels out of place and should be removed from the code. We agree that non-discretionary expenses should normally be met from operating income, however it is not the place for a process focused Code of this nature to set this out as an absolute requirement.

General Consent – Category 6 (in answer to consultation questions A6.2 and A6.6)

We are anxious to see a consent regime that operates in a way that will not introduce practical difficulties to the raising of new funding, for example by introducing delays into funding negotiations.

Also, at the time of putting facilities in place, which will normally be to cover cashflow requirements two to three years ahead, intentions as to their use will be based on forecast performance and cashflow of the various parts of the business. The actual cash required, and hence properties charged by each will, inevitably, be different and therefore the consent process has to be flexible to accommodate this.

A suggestion is that there be a mechanism for a simple protective request for consent in advance of social housing assets being pledged. This would give security for funding that may, in part, be invested in non-registered group members and would be enough to flag possible risk to social housing assets whilst ensuring appropriate regulatory oversight. Alternatively, general consent could be given to on-lending to an agreed asset value, which would reflect the potential risk, taking into account the size, complexity and management expertise of the RP. Further consent would be required if investment decisions exceed the agreed value.

It is also important to recognise that businesses do not generally account for their cashflow by source, so that money invested into non-social activities could always be held to be that generated by the business rather than that borrowed, so bypassing the requirement for consent.

Carol Matthews
Chief Executive
The Riverside Group

Sandbrook House
Sandbrook Way
Rochdale
OL11 1RY

Telephone: 08450 705170
Website: www.rbh.org.uk

Direct Line: [redacted]
E-mail address: [redacted]
Fax: [redacted]

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
Maple House
149 Tottenham Court Road
London
W1T 7BN

Date: 19th August 2014

Consultation on changes to the regulatory framework

Dear Tim,

Set out below is the response of Rochdale Boroughwide Housing to the questions set out in the consultation paper.

A6.1 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?

Yes, although it would be helpful for the wording around 'ensuring adherence to all relevant law' to be reconsidered. Whilst we fully appreciate that the Board's responsibility is to ensure that the organisation has in place reasonable processes to enable it to operate within the law, it would be difficult and costly to be able to provide assurance around this. 'Take all reasonable steps to follow the law' would perhaps be more appropriate.

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

Yes

c) Do the requirements in paragraph 1.2 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 businesses?

Yes.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes. For clarity and to ensure completeness paragraph 1.4.1e could state to whom registered providers should be reporting

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

Yes

A6.2 Code of Practice a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved? We support the HCA's proposal to take a 'purposive approach to the interpretation of the Standard'. b) Is the role of a Code clear and is it reasonable? The role is clear and reasonable. It is not clear to us whether the reference to the 'Financial Reporting Counsel Code of Governance' is merely to reference practical examples or whether this indicates that a wider review of the Code's requirements is expected.Thsi reference should be clarified.
A6.3 Do the proposed revisions to the disposals regime: These changes do not relate to RBH and therefore we have no comment. a) Meet the aim of protecting social housing assets and the value in it? b) Balance this aim with registered providers being free to run their own businesses? c) Are they reasonable?
A6.4 Do the changes to the registration criteria: a) Reflect the proposed changes to the governance and viability standard? Yes b) Are they reasonable? Yes
A6.5 Do the proposed changes to the Rent Standard: a) Reflect the Direction from DCLG? Yes b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible? Yes
A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively? Yes
A6.7 Do the other proposed changes to the registration criteria: a) Contribute to the Regulator better meeting its fundamental objectives? Yes b) Express the requirements of registered providers in a way that is clear and succinct? Yes

I hope you find our comments useful and constructive.

Yours sincerely,

Gareth Swarbrick
Chief Executive

Response from Sadeh Lok

Good Morning

Please find below the response to the consultation document from the Board and Senior Team at Sadeh Lok Housing Group.

- All Board Members and the SMT are in agreement with the content and it seems well thought out given the operating climate.
- The rent paper appears more as technical guidance for officers and seems to confirm what we already know/do.

Thank you

Kind Regards

Saffron Housing Trust
Annex 6. Consultation questions

A6.1 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?

Response

a) Based on what I have read, the 'Standard' aims to set the future requirements for the Social Housing sector, which - if effective, is a good thing. Bringing to the foreground the need for Associations to have the right Skills & Capabilities, Financial Viability and mitigation of Risk and protection of social housing. Ensuring good governance and financially viable associations is exactly what we all should be aiming for.

However, as a set of principles, the 'Standard' sets out the overall expectations of the HCA in the spirit of co-regulation. The 'Code' providing a more detailed guidance and as such falls into the trap of a "one size fits all" approach. The detailed application of the Standard will vary from Association to Association. What works or fails for one housing association will not necessarily be the same for another. The 'Code' as written does not add to the principles of the 'Standard', but does risk becoming a regulatory "tick list". As a means of exercising control over Associations, this was the approach adopted by the Housing Corporation when it was the regulator.

The level of economic objectives and protection of social housing assets will only be reached by the HCA providing an atmosphere of cooperation, a willingness to listen then act and not putting all Associations in specified categories.

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

Response

b) The proposed Standard does not express the requirements of registered providers at all. It expresses the HCA's requirements from registered providers. Again, the Standard contains fundamental principles and the Code provides more detailed guidance.

We all want positive outcomes; increased or increasing Housing Stock, Well looked after Tenants, Financially Viable Associations, secured housing assets…..etc. The Regulator sets those parameters. From a Governance point of view, we as Housing Associations should have the right level of Skills & Capabilities, Financial Viability and mitigation of Risk and protection of housing stock. Those are our requirements as responsible Housing Associations.

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 businesses?

Response

C) As stated in the Standard, the requirement is to meet the first aim "protect social housing assets". The 'Standards' are a set of general principles which should underlie any commercial enterprise. As such, they meet the principles of co-regulation. However, they do not imply any balancing of protection of assets whilst allowing associations the freedom to tend to their own affairs.

The Governance and Financial Viability Standard provides as an explanation to what the Regulator generally wants. The tone as written, is very much one of compliance with the law, Accountability, and risk management. That is understandable and straightforward. Both 'The Standard' and 'The Code' provide sufficient guidance to RP's on protection of social housing assets and make it clear that protection of social housing assets is the Regulator's over-riding concern. To this end, the skill level of Boards must reflect the activities of the Association.

It is unclear whether the Regulator expects the Board to have sufficient skills to be able to undertake the role of the Executives or just to challenge the Executives. There is clearly a big difference between the two. The growing emphases on the responsibilities of Boards are blurring the distinctions between Boards and Executives and run the risk of down-playing the role of the Executive, for which they were hired. The blurring of the two roles and responsibilities can only lead to the detriment of housing associations and therefore counterproductive to what they and you as the regulator are trying to achieve.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Response

d) The standard states fundamental business management requirements and begs the question "Don't Associations do this already?" The Code provides further guidance on the HCA's expectations. It is more prescriptive e.g. C1.4.4, C1.5.4, C1.5.5, and could form the basis of a "tick list" which Associations will find useful in demonstrating compliance with the Standard.

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

Response

e) Not answered (not relevant to Saffron)

A6.2 Code of practice:

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

Response

a) The code of practice contains useful guidance on the expectations of the Regulator. However, it does not find the right balance between guidance and prescription. It contains a level of prescription which goes deeper than any prescription found in Housing Corporation guidance notes e.g. C1.4.4

b) Is the role of a code clear and reasonable?

Response

d) The role of the code is not clear, and nor is its relation to co-regulation. The HCA must decide on the level of control it wishes to exercise over the management and performance of registered providers. The Standard makes a good start by setting out principles, and by doing so it reinforces the concept of co-regulation. The Code negates the good start and takes a more prescriptive approach, and by doing so undermines the principle of co-regulation. In the Code, the HCA are treating all HA's as the same, regardless of size, complexity or experience.

Kenneth Richardson
Governance & Compliance Officer

Saffron Housing Trust Ltd, Saffron Barn, Swan Lane, Long Stratton, Norwich, Norfolk, NR15 2XP

DDI: **TEL:** 01508 532000 **FAX:** 01508 532083
E-MAIL: **WEB:** www.saffronhousing.co.uk

Consultation on changes to the regulatory framework

Sanctuary Group's Response

August 2014



1. Our response – key issues

1.1 Sanctuary Group welcomes the opportunity to respond to the draft regulatory framework published in May 2014. Below we have set out our views on the key issues outlined in the document, followed by our responses to the specific consultation questions.

1.2 In general we support the continued focus of the Homes & Communities Agency (the Regulator) on ensuring the effective regulation of the housing sector. We also welcome their decision not to progress with the original proposals for ring-fencing the social housing assets of non-profit Registered Providers (RPs).

1.3 As the largest registered provider of social housing in England, Sanctuary recognises the role of the Regulator in protecting social housing assets. However, the sector is becoming increasingly complex and diverse, with businesses such as ours operating across sectors including care, maintenance, facilities management, student accommodation and home care. This requires us to operate our business in a way that will enable safe and continued growth.

1.4 We believe that any regulation should not limit the ability of the boards of RPs to run their businesses effectively, and consider the most effective regulatory regime to be one which recognises the differences between providers operating within the sector. RPs with a track record of maintaining the highest levels of governance and financial viability should be given greater operational freedoms and autonomy, equating to a more competency-based regulatory regime, rather than the current focus on those providers deemed 'too big to fail'.

1.5 Many of the proposals outlined in the consultation document reflect good governance practices which RPs should be adopting as standard and which are already embedded within our business. Our business planning, risk management and financial controls are already robust and subject to regular external review in order to drive continuous improvement throughout our operations. However we remain concerned that some of the requirements outlined in the consultation document may become administratively burdensome, diverting valuable resources away from our core activities.

1.6 We are also concerned about some of the proposals which have the potential to limit our ability to deliver the assets which the Regulator is seeking to protect. The new Rent Standard and the changes to category 6 of the General Consent could negatively impact our financial capacity and plans for growth, which has the potential to limit the amount of capital available for building new homes.

1.7 Whilst we understand the Regulator's desire to safeguard social housing assets and manage risk across the sector, we believe that this needs to be balanced with greater flexibility and freedoms. For some of the proposed changes we have concerns that this balance has not been struck.

2. Response to consultation questions

2.1 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?

The proposed Standard codifies a number of activities relating to risk, governance, financial controls and business planning which could assist in safeguarding social housing assets by encouraging better management processes in some RPs. Although these may help to safeguard existing social housing assets, other proposals set out in the Standard may limit the ability of RPs to deliver more social housing assets in the future. We have highlighted where these are of concern below.

We also draw the Regulator's attention to the potential conflict with other bodies responsible for regulating RPs. A number of providers are regulated by organisations including the Care Quality Commission and the Scottish Housing Regulator which may have overlapping or conflicting priorities. The Regulator is asked to ensure that any changes to the regulatory framework do not increase administrative burdens on RPs by duplicating requirements.

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

The Regulator's proposal to adopt a formal Code of Practice aims to ensure that RPs are provided with guidance on the proposed Standard in order to aid understanding and clarity. We have some concerns about this approach which are outlined in section 2.2 below.

We also question the guidance given in the consultation regarding the widening of the legal responsibilities of RPs to include 'all relevant law'. While we support the incorporation of common law as well as statute, we query whether the inclusion of guidance given by statutory bodies (such as the Charity Commission) should also be included. As boards will require assurance that each RP has met this requirement

(in order to sign off the annual certification of compliance) this could create difficulties in evidencing such a far reaching requirement, particularly without further guidance or an exhaustive list which sets out which statutory bodies should be included.

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

A number of the proposed changes reflect good practice in the governance of RPs. Sanctuary already has systems and processes in place which ensure that our boards (of both the parent organisation and our subsidiaries) have the skills and experience needed to run a complex and diverse business. We therefore do not view the requirement for strong and effective governance arrangements as an unreasonable restriction on our operational freedom.

The requirement for RPs to ensure that they manage their affairs with an appropriate degree of independence translates in practice into a requirement for independent board members. This has some impact on co-terminous subsidiary boards. Although co-terminous boards of non-profit RPs in a group structure will still be permissible, where the parent is a Registered Provider but a subsidiary is unregistered the guidance in the Code suggests that problems could arise in reaching an independent quorum for dealings between the two. Further clarity or guidance on this point would be welcomed as it is likely to impact on RPs operating a Group structure.

d) Do the requirements on risk i) meet the Regulator's aim of protecting social housing assets and ii) balance this aim with registered providers being able to run their own businesses?

We believe that the dynamic and subjective nature of risk makes it a difficult area to regulate. Organisational culture, history and a number of other factors can influence risk perception and appetite. RPs are under increasing pressure to deliver more affordable homes while facing reducing grant funding to do so – thus requiring innovative business models and cross-subsidy from other activities. This means that risk-taking (with appropriate safeguards) is a necessary part of a dynamic social housing sector.

The requirements aim to prevent the consequences of financial failure caused by RPs failing to manage risk effectively. This is a position that we welcome in principle. However we have some concerns over the requirements in their current form. The proposals for new or improved

asset and liability registers and more detailed stress testing have the potential to cut across the existing responsibilities of the boards of RPs. Our Group and subsidiary boards already carry out detailed risk analysis in a way that is bespoke to our organisation and its risk. Introducing new forms of registers may undermine this work and the role of the Board.

The Code of Practice commentary (para 3.25) for requirements 1.4 and 1.5 states that investments in activities should be priced at such a level and with a rate of return which is commensurate to the level of risk presented. This currently does not include any consideration of investments in subsidiaries or investment which is in furtherance of a charitable or associated purpose. The Group has recently been involved in the high profile rescue of another registered provider, and as part of that inherited a number of ventures, financial instruments and obligations. Pursuant to this rescue we may be required to make investments that do not necessarily generate a commercial return, but are required in order to resolve problematic arrangements and safeguard the long term viability of the business. We would like the Regulator to confirm that it is not its intention to restrict pricing of investments in activities in line with our charitable or long term business objectives.

e) Are the requirements for specific types of registered provider in Section 2 (private providers) reasonable given the Regulator's aim of protecting social housing assets?

The entry of for-profit RPs represents a risk to the sector. We support the proposed requirements for such providers and welcome closer monitoring of their performance. While we do not support the general principle of ring-fencing, we agree that it is appropriate for for-profit providers in order to protect social housing assets and public funding.

2.2 Code of practice:

a) Does the proposed Code assist RPs to understand how compliance with the Standard can be achieved?

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

The introduction of a Code of Practice for the Governance and Viability Standard is useful in so far as it provides further information and detail regarding specific requirements. However, even though the Regulator has stated that it is not a set of rules and is provided for guidance only, we believe that, in practice, it will be treated as having the same weight as formal regulation. We therefore urge the Regulator to consider the contents of the Code carefully (both in terms of what is included and omitted).

4. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

The proposed revisions to the disposals regime fall into two main categories: those which affect for-profit providers by requiring them to place sale proceeds in a separate fund which is limited in its application, and the changes to category 6 of the General Consent which affect non-profit providers.

Although we agree that the sale of social housing assets by for-profit providers should be regulated to prevent them from being sold in order to realise distributable profits, we believe that this sets an unwelcome precedent for non-profit providers. We recognise that there will be circumstances where our robust asset management strategy dictates that social housing assets will need to be sold for a variety of reasons, including releasing capital for reinvestment, regeneration or reprovision, as well as for new development.

We are concerned about the potential implications of the changes proposed to category six of the General Consent. As a large and diverse organisation, with subsidiary entities in England and Scotland, we operate a central Treasury function for the entities within our Group which are Registered Providers of social housing. This allows the cost-effective raising and draw-down of funding and creates a simple finance structure which allows better oversight and risk management. The proposals which seek to restrict the on-lending of facilities secured against social housing assets could prove problematic and extremely difficult to implement for Sanctuary and would substantially restrict the way in which we run our business.

In particular:

- it would prevent on-lending to subsidiary entities (such as our home care or maintenance operations),
- it would create a specific issue regarding on-lending to our Scotland-based RP subsidiaries; and
- it would be difficult to track and monitor (as any funds borrowed may not be on-lent for some time and where a loan is made it may not always be easy to determine whether it is an on-loan or a loan of other funds of the RP).

We ask the Regulator to reconsider this revision.

Although we understand that the Regulator is keen to gain greater oversight of financial agreements and facilities being negotiated across the sector, for complex organisations such as ourselves it is vital that we have the flexibility to raise finance and invest and on-lend where necessary.

We believe that a competency-based regulatory framework would create an environment which combines appropriate control and risk management with necessary operational freedom for qualifying providers, allowing those with the requisite skills and capacity to further pursue their social mission.

5. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?
b) Are they reasonable?

The changes to the registration criteria reflect that the Governance and Viability Standard will now consist of one set of specific expectations and that organisations will need to need to meet the combined requirements at the point of registration. We consider these changes to be reasonable and reflective of the proposed changes to the Standard.

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

The guideline limit for annual rent increases reflects the direction from DCLG in changing to CPI+1%. The direction also states that the Rent Standard will not apply to social housing tenants with household earnings greater than £60,000 per year. This is incorporated in the proposed changes.

The changes proposed to the Rent Standard will have a negative impact on Sanctuary's financial capacity. Moving basic rent increases from RPI +0.5% to CPI +1% and removing the £2 per week rent convergence option will reduce income and the funds available to pursue our social mission. Whilst we welcome the clarity provided by the Rent Standard which allows us to plan more effectively, we are concerned that our ability to build new social housing will be reduced as a result. We have calculated that, all things being equal, the income

we would have received to 2025 under the current Rent Standard would have allowed us to develop over 1,100 units for affordable rent, which will not be delivered under the new Standard.

The new Rent Standard also proposes flexibility in rents to be charged to high income social tenants. We have concerns regarding the ability of RPs to be able to implement this proposal effectively. There is currently insufficient data available to RPs regarding the household income of tenants and there is no requirement for tenants to disclose this data. In practice we believe that this would be problematic to implement.

HCA – CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Response of Severnside Housing

Severnside Housing is a not-for profit provider, based in Shrewsbury, providing over 5,000 homes and associated services to residents and communities in Shropshire.

1.	**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?***
	Yes. Severnside is satisfied that the proposals meet your economic objectives and importantly, taken overall, are proportionate.
b)	***Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?***
	Yes. It is evident that account has been taken of comment received in the initial consultation which is pleasing. The presentational change to this standard is helpful and aids clarity. The decision to continue to publish separate judgements, however, is welcomed and considered appropriate. The required outcomes are acceptable as, in practice, this is what a well governed, effective organisation will be doing in any event.
c)	***Do the requirements in paragraph 1.2 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 businesses?***
	Yes. The requirements are clear and also take account of the spirit of co-regulation.
d)	***Do the requirements in paragraph 1.4-1.5 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?***
	Yes. The requirements reflect what a good business, with effective governance arrangements, that is planning for the future whilst protecting the interests of existing customers, will be doing in any event. For this reason, they are considered proportionate and appropriate.
e)	***Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?***
	Yes. In principle, the requirements seem reasonable.
2.	**Code of Practice**
a)	***Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?***
	Yes. The proposed code amplifies and provides guidance on what is expected and to that extent will assist understanding by registered providers with regard to achieving

	compliance with the standard.
b)	***Is the role of the Code clear and is it reasonable?***
	Yes. However, it is important that the context of the Code is understood and is used as an element of the co-regulatory approach that has been developed and which is increasingly important at a time of pressure on resources both within registered providers and with the regulator.
3.	**Do the proposed revisions to the disposals regime:**
a)	***Meet the aim of protecting social housing assets and the value in it?***
	Yes. The proposals with regard to the use of the DPF are welcome and appropriate.
b)	***Balance this aim with registered providers being free to run their own businesses?***
	Yes. The clarity here will also aid business planning.
c)	***Are they reasonable?***
	Yes.
4.	**Do the changes to the registration criteria:**
a)	***Reflect the proposed changes to the governance and viability standard?***
	Yes.
b)	***Are they reasonable?***
	Yes.
5.	**Do the proposed changes to the Rent Standard:**
a)	***Reflect the Direction from DCLG?***
	Yes. They reflect this Direction very clearly – whether the Direction is appropriate and fair and in the best interests of the sector and our customers, both existing and future is, however, open to question.
b)	***Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?***
	Yes.
6.	**Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**
	Yes. However, we have some concerns that the proposals may impact upon the ability of registered providers to respond to development opportunities in certain circumstances.
7.	**Do the other proposed changes to the registration criteria**
a)	***Contribute to the Regulator better meeting its fundamental objectives?***
	We have no comment on this question.
b)	***Express the requirements of registered providers in a way that is clear and succinct?***
	We have no comment on this question.

The United Charities
Shepton Mallet

Incorporating the almshouse charity of George and William Strode, 1627, supplemented in 1864 by Mary Anne Wickham, and that of Edward Strode, 1699

Tim Sullivan,
Regulatory Framework Manager,
HCA. London

By email statutoryconsultation@hca.qsi.gov.uk 16th July 2014

Dear Tim,

The Trustees of United Charities have looked at your document and would comment as below:

Consultation questions:
A6.1 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?

It appears so.

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

This is a catch-all document and does not emphasise the minimal input required of small charities

c) Do the requirements in paragraph 1.2 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 businesses?

By and large but the Independence of the Registered Provider is in danger of being subsumed.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

They should prove adequate to their need.

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

N/a

A6.2 Code of Practice
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

Only in part

b) Is the role of a Code clear and is it reasonable?

Specific guidance not given

A6.3 Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?

It would appear so

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

Quite so

c) Are they reasonable?

If we are sure we can get guidance; we are not sure if they are avoidable

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

We do not know the Almshouses Association view. they are fair on the face of it but small players fear over regulation

b) Are they reasonable?

They are fair on the face of it but small players fear over regulation

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

We are assuming that you have done the job

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

For us the issues are complex

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively? 2

In the main

"The above responses may appear to look light however we do not have the recourses or skills to understand the more financial and company structure questions. It is appreciated that smaller charities can be subsumed into larger organisations and will then require to be regulated however it is felt that small Charities that have simple structures and organisations should have simplified regulation with very clear guidance. It would be appreciated if this could be considered especially since you have already recognised that the Charities regulations perform a lot of the required functions"

For Shepton Mallet United Charities

Jeff Curtis (Chair) 1st August 2014

Registered Charity Number 236 426

Registered Housing Association Number A0482

shropshire
housing

The Gateway The Auction Yard Craven Arms Shropshire SY7 9BW
Tel: 0300 303 1190 **Email:** info@shropshirehousing.org.uk

Tim Sullivan
Regulatory Framework Manager
Homes & Communities Agency - The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

14th August 2014

Dear Tim

Consultation on Changes to the Regulatory Framework

Thank you for providing us with the opportunity to comment on the proposed changes to the regulatory framework for social housing.

Broadly speaking, we believe that the proposed changes are reasonable. We also welcome the fact that the HCA appears to have listened to feedback from the sector regarding the original discussion paper and amended proposals accordingly. As always with regulation, its effectiveness and reasonableness depends up the detail and the way in which the framework is interpreted and applied in practice. Our experience in this respect has generally been positive, as long as we have been able to have a dialogue with our regulatory contacts and to explain our position or decisions we have made. We hope that implementation of the changes to the framework and subsequent regulatory engagement will follow a similar pattern.

In answer to your specific questions regarding the revised Governance and Financial Viability, our response is as follows:

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

Yes – the proposed standard should assist the HCA in protecting social housing assets (obviously excluding those which are lost through statutory schemes such as the Right to Buy).

p.t.o

FSA registration no: 30269R VAT no: 905 0033 77 Housing Corporation Number: L4494 shropshire housing group A member of the Shropshire Housing Group

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

Yes – and we anticipate that the Regulator will take a pragmatic approach to looking at evidence of compliance with such broad outcomes as 'adhere to all relevant law'.

c) Do the requirements 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 businesses?

Yes – and they appear consistent with the principles of 'co-regulation'. It is also helpful to have the clarification regarding independence and co-terminous boards.

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

Yes – again these seem reasonable and we believe that such an approach is in our interests even if it were not required by the regulator. Our main query would be in the interpretation of 'detailed and robust stress testing', which we note is further explained in the code of practice. We accept that the detail required may vary from organisation to organisation and needs to be proportionate to potential risks.

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

We have no specific comments on this section of the consultation document.

In answer to your specific questions regarding the proposed Code of Practice, our response is as follows:

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

Yes – our initial view is that this is helpful, that the level of detail is about right and it is not overly prescriptive. I think it will help our Group to further develop its approach, to, for example, risk management, in a way that is proportionate to our activities and operations and to the environment in which we operate.

b) Is the role of a code clear and reasonable?

Yes – HCA staff at recent 'roadshow' events have reiterated the message in the consultation document, which is that the code will not be used as a 'checklist' for regulators; we welcome this approach.

We do not have any additional comments on the specific questions about disposals, registration or the rents standard.

I hope that these comments are helpful and we look forward to working constructively with the regulator in effective implementation of the new framework once it is agreed.

Yours sincerely

Jen Hayball
Director – Corporate Services
Shropshire Housing Group
Tel:
Mobile:
Email:

HCA consultation response from Soha Housing

Introduction
Soha Housing is an LSVT of around 6,000 properties in Oxfordshire and surrounding areas. We are a member of the Placeshapers group and support the group consultation response. In addition, we are submitting our own response below.

Overall, we are supportive of the proposed changes and particularly recognise and agree with the need to protect social housing assets and the need for a high skill base amongst Board members.

Responses to Consultation Questions

A6.1 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?

Yes, we feel the proposed standards help to achieve the Regulator's objectives

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

Yes, we think it does. Having one set of required outcomes is clear and helpful for us to have a good overview of requirements.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes and we endorse the requirement to sign up to a Governance code. This is a helpful addition in defi ing the overall Governance skills that are essential to an effective Board. This is an area we have worked on and continue to improve with a programme of bespoke Governance training over the next 18 months.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, we think they do.

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

Although we are not a profi making provider, we fully support the role of the regulator in protecting social housing assets.

A6.2 Code of Practice

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

Yes, the Code provides helpful additional clarific tion.

b) Is the role of a Code clear and is it reasonable?

The role of the Code is clear. There is always a risk that anything issued by the regulator becomes mandatory by association, no matter what the intention. We would not want to see regulation by the back door. However, on balance and given the regulator's assurances, we believe that the Code is helpful and reasonable as a single, stand alone document.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Text in the consultation document reads 'DCLG published a revised manual for stock transfers which contained a proposal that proceeds which stock transfer landlords receive from the preserved RTB should be used for new social housing'. We agree with the principle that such proceeds should be placed within a DPF, with the view to increasing housing supply.

We would ask the Regulator and the DCLG to consider the impact of RTB sales on associations where the transfer agreement requires a large proportion of the RTB proceeds to be paid to the local authority. We would ask the DCLG to apply consistency and ask local authorities who receive RTB proceeds from a transfer landlord to be placed within a similar fund, to be solely used to increased housing supply. The Regulator is not considering RTB proceeds in entirety; it is not protecting the element of RTB sums paid to local authorities.

Therefore, proposed revisions in respect of aiming to protect social housing assets and the value in it not fully met.

b) Balance this aim with registered providers being free to run their own businesses?
Yes

c) Are they reasonable?
Not fully. The Government (via the DCLG) should apply consistency of approach to the use of RTB proceeds. The amount of RTB proceeds paid by associations to local authorities represents the lost value of social housing assets, hence the assets are not fully protected.

A6.4 Do the changes to the registration criteria: a) Refl ct the proposed changes to the governance and viability standard? b) Are they reasonable?
Yes, we believe they do and that they are reasonable.

b) A6.5 Do the proposed changes to the Rent Standard: a) b) Refl ct the Direction from DCLG? Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

We feel they do, although we have doubts about how realistic it is that we will monitor tenants' income and therefore whether the standard can be properly implemented.
We take pride in providing clear and accessible information about how tenants' rent is calculated and will use the new standard to update our information going forward.

Tim Sullivan
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Peter Thomas BA FCIH
Chief Executive

Bridge Mills Business Centre
Stramongate
Kendal
Cumbria LA9 4BD

Tel: [redacted]
Fax: [redacted] Email: [redacted]

Our Ref: **Contact:** **Ext:**

Your Ref: **Date:** 19 August 2014

Dear Tim

Consultation on changes to the Regulatory Framework

The South Lakes Housing (SLH) Audit & Risk Committee has fully considered and welcomes the implications surrounding the changes to the Regulatory Framework. The Committee were particularly interested with the emphasis on strengthening risk management and skills to protect the social housing business. This is a welcomed development given the previous proposals for 'ring-fencing'.

SLH is a recent LSVT and our risk profile highlights government policy as the highest level business risk. Whilst SLH has in place a robust business plan with a certain degree of financial headroom there are inevitably threats to SLH's viability including welfare reform, end of target rents and particularly the changes to RTB discounts. Whilst we understand that the remit of the HCA is to deliver its statutory powers, we cannot comprehend the irony that exists with RTB and the HCA's stated aims to '*protect social housing assets and the value within it*' and to '*safeguarding the investment made by taxpayers in these assets*'. The augmentation of RTB discounts and reduction in qualifying periods is undermining our prospects for further investment and is exacerbating the housing supply problem in South Lakeland. RTB is affecting the credibility of the HCA's pledge to '*protect social housing assets*' which is admirable but simply cannot be achieved alongside this policy.

SLH has formulated its own view on VFM and what it means for us, given our local operating environment and the challenges that presents in terms of high management and maintenance costs as a result of geographical spread and the cost of maintaining external appearances in areas of outstanding natural beauty. Whilst SLH accepts that the regulator does not wish to be prescriptive in relation to reporting against regulatory standards, the issuing of a VFM warning

letter naturally makes us nervous and eager to comply. We therefore suggest it would be beneficial for the regulator to clarify the exact details of requirements and considers a single annual report, which includes VFM, in a pre-determined format. This would alleviate our concerns that some of the larger associations appear to be incurring considerable levels of cost in developing their VFM Strategies, Self Assessments and Social Value evaluation methodologies. A pre-determined basic structure would also facilitate easier comparison of returns and VFM performance.

SLH's response to the specific questions is set out below:

1. 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?
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
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 businesses?
d) Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Subject to our concerns set out in the introductory paragraphs above, the detail included within the revised Governance and Financial Viability standard is welcomed, particularly the greater emphasis on charity law, asset management, stress testing, risk management, not using social housing as security for other ventures and skills. Paragraphs 1.5 and 1.6 is welcomed detail and does serve as a useful checklist for assessing long term risks.

Whilst SLH does not currently have any non-regulated activity, it has growth ambitions which include diversification and particularly welcomes the restriction of regulation to only the provision of social housing. It also welcomes the protection of social housing assets by retaining these in a separate legal entity, but suggests no standard limit set so as to avoid unnecessary administration costs in the establishment of a group structures for what might be a shorter term project (for example development for sale as part of a mixed tenure scheme).

SLH agrees with the other proposed amendments and has taken the opportunity to reflect on a number of these issues in its Operating and Financial Review for the year ended March 2014, effectively adopting early some of these requirements.

2. Code of practice:
a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
b) Is the role of a code clear and reasonable?

The code of practice is extremely helpful and is a welcome step towards reducing overall cost of demonstrating adherence to regulatory standards, and makes sense to help providers in managing their businesses by publicising the tools which the regulator itself will use. The 8 questions document is a good example of this where providers can undertake regular self

3. Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

Perhaps the regulator could request CLG to extend regulator powers to include monitoring of capital gains arising from the sale of homes through RTB. The regulator may not have the powers to regulate RTB but ought to be concerned about protecting the value within these assets by ensuring that 100% of these receipts are used for social housing or infrastructure to support additional social homes.

SLH welcomes the clarification in paragraph 4.5 that the regulator is not proposing to place restrictions on the use of disposal proceeds for non-profit providers. The need to cross-subsidise is a greater temptation as the sector manages the risks coming from threats to its social housing business principally through RTB and welfare.

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

SLH registered as a non-profit provider in 2012. Overall we found the process to be fairly time consuming and the revisions to the criteria could be a barrier to new entrants. As an ALMO previously we already complied with the NHF's Code of Excellence in Governance and continued to do so through transfer. There should be an alternative pursued. '*A reasonable path*' to compliance could be strengthened instead e.g. the applicant to agree an action plan with the regulator for achieving full compliance within 6 months with critical success factors and other targets built in. If the action plan failed then registration should be suspended.

5. 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 focused as possible?

The standard is very clear in detailing the changes implemented by CLG and further guidance which has been issued in respect of 'waivers'. The latter is a welcomed move, particular where providers may be in trouble at no fault of their own because of government policy changes brought in with little input from the sector. However whilst the ability to charge market rents to [redacted] earnings and how this might be enforced through the courts, for example if tenants continue to pay lower rent levels. Application of a market rent policy for high earners may not therefore deliver VFM.

Thank you for considering our feedback.

Yours sincerely

Peter Thomas
CHIEF EXECUTIVE

We have reviewed the proposed changes to the Governance and Financial Viability Standard and believe they broadly meet the HCA's aims to prepare both registered providers and the regulator for the different set of risks arising from recent and future changes in the social housing sector. We therefore support the proposed changes to the standard.

For and on behalf of South London YMCA (H4400)

Dennis Simmonds Director of Corporate Services
South London YMCA | Marco Polo House | 3 - 5 Lansdowne Road | Croydon | CR9 1LL
Telephone: [redacted] | Mobile [redacted] | Fax: 020 8688 7086

Karen Mitchell
Chief Executive
Southway Housing Trust
Aspen House
825 Wilmslow Road
Didsbury
Manchester
M20 2SN

Email: [redacted]
Tel: [redacted]
Fax: [redacted]

Matthew Bailes,
Director of Regulation,
Homes and Communities Agency,
Maple House,
Tottenham Court Road,
W1T 7BN

Date:19 August 2014

Dear Sir

Re: Response to changes to the regulatory framework

I am writing in response to the consultation document on changes to the regulatory framework that was issued in May of this year.

Southway Housing Trust is a stock transfer organisation that owns and manages 6,000 homes in the South Manchester area and was established following a large scale voluntary transfer in November 2007.

We have recently completed our programme of home improvement and have started a programme of developing homes for affordable rent. We are also carrying out initial feasibility studies as to how we may further diversify and make optimum use of our assets to benefit the tenants who live in our properties and communities.

We are alert to some of the pitfalls of diversification and crops subsidy as highlighted by some of the high-profile cases within the sector and embrace the ethos of co-regulation as a way of avoiding these problems.

We endorse the proposed changes, suggested in the consultation document, as a way of further strengthening the role of the regulator in the co-regulatory framework.

In addition to the above we have also contributed to the Placeshapers response to the consultation document, which again is broadly supportive of the suggested changes.

Yours sincerely

Karen Mitchell
Chief Executive
Southway Housing Trust

Consultation Response

Changes to the Regulatory Framework

1. Introduction

Sovereign Housing Association owns and manages around 37,500 homes in south and south west England. Encompassing four large scale voluntary transfers, Sovereign has exploited its financial strength to meet housing need, becoming a key developer across the region. In 2013/14, Sovereign developed over 1,100 new homes, and acquired around a 100 from other housing associations as part of their stock rationalisation programmes.

The overwhelming majority of Sovereign homes are provided for social rent. However, there are also over 6,000 other homes of which around 3,800 are shared ownership and former shared ownership. Sovereign manages 380 non-social rented homes on behalf of other housing organisations; and Sovereign Living Ltd, a non-charitable registered subsidiary of Sovereign Housing Association owns 142 market rented properties. Almost all of Sovereign's non-social homes are both owned and managed by Sovereign Housing Association.

Sovereign is rated A1 by Moody's, and AA by Standard and Poor's, amongst the highest credit ratings for any HA. These ratings reflect both the underlying strength of the business, and the robust approach to risk and treasury management that is embedded in the Association's governance structure.

2. General remarks

At Sovereign we recognise that the environment within which the housing sector exists is changing rapidly; RPs can no longer rely on government grants and full housing benefit covering full rental income. We recognise that this changing environment has increased the need for RPs to look at new business opportunities and ways of raising money which could increase the level of risk in the sector. We therefore welcome the Regulator's efforts to tighten the framework and manage risk to protect social housing assets and residents and also welcome the efforts made to maintain the co-regulatory approach and to minimise burdens on the sector.

There were however, some sections of the consultation paper that were not clear, and we have raised requests for clarification in our answers to the questions below.

3. Responses 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?
Yes, the overall approach taken to the proposed standard strengthens the protection of social housing assets.

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

The majority of the proposed changes were clear and succinct; however there were some sections of the proposed standard which were unclear, the majority of these being in the section referring to changes to the General Consent. These areas will be discussed in our answers to the subsequent questions.

We also have concerns about the requirement for RPs to **certify** their compliance with the standard; this seems a disproportionate word to use especially when Boards will also be expected to certify that they comply with 'all relevant law'. It would seem more appropriate for RPs to certify that they have self-assessed their compliance and to highlight any areas of non-compliance that the Board is aware of.

c) Do the requirements in paragraph 1.2 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 businesses?

Yes, we recognise that the changes to the housing sector prompt more complex arrangements and structures and that this requires RPs to ensure that their Boards and Executive Teams have the right skills and knowledge to manage new levels of risk. We also welcome the Regulator's decision not to be prescriptive in its approach in this area; we feel that this helps to maintain a co-regulatory approach.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes, we believe that any well-run organisation should carry out robust business planning and risk management activities. We would also like to suggest that there would be merit for RPs to include recovery scenarios, including third party 'rescue', as part of their risk management and scenario planning activities.

We would welcome some further clarity regarding the proposed requirement to hold a record of assets and liabilities. We are confident that our assets and liabilities are clearly recorded. However, in common with many RPs, there is considerable room for improvement at the detail level which is being addressed by our active programme of preparing assets for charging. We would like to understand, if bearing this in mind, the Regulator will be open to taking a 'work in progress' approach to this record keeping. It would also be useful to understand if there are any elements of this information which will be of particular priority to the Regulator.

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

Yes, we think the proposed requirements are reasonable and support the Regulator's objective to protect social housing assets.

We would like to suggest that rather than capping the amount of non-social activity to 5% of capital or turnover it may be beneficial to introduce a de minimus threshold based on a monetary amount. However, if a percentage based threshold is used there would need to be a clear definition of exactly what is meant by capital and turnover in this context.

Q2: Code of Practice

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

b) Is the role of a Code clear and it is reasonable?
Yes, we welcome the fact that the Code has been designed to be illustrative and that the Standard rather than the Code will be enforceable.

Q3: Disposals regime

a) Do the proposed revisions to the disposals regime meet the aim of protecting social housing assets and the value in it?
Yes, they ensure that social housing assets and any latent value contained in the stock will be protected.

b) Do the proposed revisions to the disposals regime balance this aim with registered providers being free to run their own businesses?
Yes, we also welcome the fact that the Disposals Proceeds Fund will be able to be utilised to fund further homes at social rent and not just at Affordable Rent levels.

c) Are the proposed revisions reasonable?
Yes, we believe that the proposed revisions are reasonable.

Q4: Registration criteria

a) Do the proposed changes to the registration criteria reflect the proposed changes to the governance and viability standard?
Yes

b) Are the proposed changes reasonable?
Yes, we support the proposed changes as we believe that any organisation planning to become a RP should be in a position to meet the set governance standards.

Q5: Rent Standard

a) Do the proposed changes to the Rent Standard reflect the Direction from DCLG?
Yes. However we would like to take this opportunity to express our disappointment with the Government decision to remove RPs ability to add up to £2 each year to a resident's weekly rent. This will affect RPs who have a disproportionate amount of properties that are not yet at target rent level;

for example recent stock transfer associations. Calculations we have carried out suggest that the decision to prevent us up-rating rents by £2 will result in a rent loss of approximately £19 million; the equivalent of at least 500 new homes. For some RPs the result of removing the ability to raise rents to target rent level will be much starker.

We would also like to draw your attention the guidance in relation to the 5% tolerance on raising formula rents. We are concerned that over-seeing this requirement could produce an administrative burden to Registered Providers and the Regulator.

b) Do the proposed changes to the Rent Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?
Yes

Q6: General Consent

a) Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?
Lending between otherwise unrelated RPs
It is not clear whether this proposal has been designed to affect the borrower or the lender in this context. It is also unclear what is meant by 'unrelated RPs'. For example, this could include RPs without a constitutional connection; alternatively HAs within a Local Authority Partnership, a development consortium or a joint venture might be considered to be related in this context. It is also not clear whether this would affect a RP's ability to on-lend to a charitable body which is not a RP.

On-lending to support non-social housing activities
We also have concerns about the constraints regarding on-lending of the facilities secured on social housing assets within groups. In practical terms RPs may not know at the point at which they raise new funding whether they are going to on-lend any of it, and for what purpose. They may, therefore, apply for specific consent every time rather than relying on the general consent, and risking later problems.

Index linked funding
We would also like to address the proposed condition which stipulates that RPs must request approval to secure finance which is on an index linked basis. We have assumed that the Regulator would be likely to employ external advisors to evaluate these requests, particularly the more complex proposals. In this case, it seems at least possible that they may be employing the same people who had advised the RP, resulting in a duplication of resources and possible conflict of interest. Alternatively the Regulator's consent could be treated as a risk management technique by RPs; providing treasury expertise at no cost to the RP, and burdening the Regulator with large numbers of poorly considered proposals. We would also like to highlight that this measure would not prevent a RP from carrying out a stand-alone interest rate swap. We would also like to question the Regulator's

reason for seeing index linked funding as more inherently risky than other types of funding and why it requires specialised regulatory treatment.

Issues of definition and clarification
We are concerned that the amended definition of 'private finance facilities' may inadvertently capture some bond issues, particularly where they have special purpose funding vehicles in the structure. We do not believe that this was the Regulator's intention and would welcome clarification.

We are also concerned that the withdrawal of the right to rely on the general consent could be interpreted as meaning that a lender could no longer rely on security charged using the general consent once the right to use general consent has been withdrawn. Again, we do not believe this was the intention of the Regulator.

Managing the practicalities
Generally, we are concerned that the proposed changes could create the very situation that Category 6 was brought in to alleviate; the Regulator being overwhelmed by a large number of requests, resulting in delays and weakening of RP's negotiations with funders. Alternatively, requests for consent may not be made by the very RPs whose investments might merit further scrutiny. Since the majority of RPs fund their business through borrowing and surpluses, it is not always clear which of these 'pots' is being used in each case. Using the withholding of disposal consent to control how RPs invest may therefore fail to control high risk activities; meaning that the changes could weaken the businesses of the 'willingly compliant', without affecting the activities they had been designed to restrict.

We would suggest that the Regulator could consider adapting the letter of consent to include an agreed asset value that RPs would have the freedom to use in support of on-lending or index-linked funding without having to request permission from the Regulator. This amount could vary from provider to provider reflecting both the size and complexity of the organisation and the treasury expertise in place within it.

We would also like some further guidance in regards to the requirement to report annually on the use of category 6 of the general consent. It would be helpful for RPs to understand if the Regulator will just want information on specific uses of the general consent or whether it extends to uses of on-lending to assess whether these had been in accordance with the general consent.

We support the proposal that the Regulator will withdraw the access to category 6 of the general consent as a regulatory tool when it has concerns about the governance of a provider. We view this as a sensible and proportionate response to a concern, avoiding the need to inform all of an RP's lenders, which could make the situation worse for a struggling association.

Spectrum Housing Group's Response to HCA Consultation on Changes to the Regulatory Framework

Background to Spectrum

Spectrum Housing Group is a non-profit organisation, formed in 2007. We own and manage approximately 18,000 homes and maintain a further 45,000 across the South of England through Spectrum Property Care. We work in partnership with local authorities, health trusts, statutory bodies, a range of voluntary organisations and higher education establishments to create safe, sustainable communities.

We provide a wide range of homes, both for rent and sale:

- Homes to rent (through referrals e.g. from local authorities)
- Student accommodation
- Keyworker accommodation
- Supported housing
- Independent accommodation
- Shared ownership homes (through our Get-Move-In team)
- New homes for sale on the open market (through Spectrum Premier Homes)
- A foyer for young adults (via Foyer for the Island on the Isle of Wight)

Background to our response

We welcome the opportunity to respond to the HCA's proposals about a matter that is clearly fundamental to us as a social housing provider. The change in the sector's profile, the necessity to cross fund our social housing activities through diversified means and the uncertainty surrounding the regulation of this has been a concern to us.

Overall, we support the proposals set out in the proposed framework. They are clear, and they will bring stability. We did have a particular concern about the impact that the removal of 'convergence' which is outlined below: otherwise our comments are about the detail.

The maintenance of the co-regulation approach is also welcome. We have all learnt from the near failure of Cosmopolitan but are pleased that this hasn't clouded the view of the Regulator; all providers are different and most are managed extremely capably and therefore need the flexibility and autonomy to run their businesses as effectively as possible; businesses which are ultimately for the benefit of some of the most vulnerable in society.

Responses

A6.1 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?

b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
c) Do the requirements in paragraph 1.2 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 businesses?
d) Do the requirements in paragraphs 1.4 and 1.5 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?
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

a) The proposed standard does meet the Regulator's economic objectives which require the protection of social housing assets.

b) The proposed standard expresses the requirements of RPs in a way that is clear, succinct and outcome focussed as possible. However, it recognises that one size doesn't fit all and is based upon frameworks and principles for RP's boards to apply and approve appropriately according to the needs of their business.

c) The requirements in para 1.2 on skills, capability and independence;

    a. Meet the Regulator's aim of protecting social housing assets as organisations that have the appropriate mix of skills, capability and independence will be run more effectively and are therefore better able to protect the assets
    b. Balance the aim of protecting social housing assets with RPs being free to run their own businesses as the requirement on RPs is to have 'suitable' skills to reflect the range of activities they undertake. This differs from one organisation to the next, thus allowing RPs the freedom to run their own business. The HCA's reference to independence could be further clarified as Boards may wish to appoint members to a joint venture or special purpose vehicle being set up to carry out diversified activities.

d) The requirements in para 1.4 and 1.5 on risk;

    a. Meet the Regulator's aim of protecting social housing assets as organisations it specifies the outcomes that RPs must achieve to ensure that social housing assets are protected. The revised standard increases the regulatory focus on effective risk management to help ensure that RPs fully understand their businesses, their operating environment, the risks to the business and the recourse funders might have to the social housing assets.
    b. Balance the aim of protecting social housing assets with RPs being free to run their own businesses as understanding the risks and the assets and liabilities of a business are key to its effective operation.

The introduction of asset and liability registers assist a RP in understanding which assets are encumbered and to whom; helps inform the RPs risk profile and aids asset and debt management decision making, therefore minimising the risk to social housing assets. This general approach to risk management and asset registers recognises that RPs are different in size and complexity and that one size doesn't fit all, thus enabling RPs the freedom to run their own businesses.

e) The requirements for specific types of registered provider in section 2 are reasonable given the Regulator's aim of protecting social housing assets. It is clear that RPs are prevented from supporting other non-RP group members' activities in the form of loans or guarantees so as to protect the social housing assets. The Code also exemplifies the less formal arrangements which give creditors of the non-social housing activity recourse to the social housing assets. However, for RP parents with non-RP subsidiaries and despite on-lending covenants within funding agreements and compliance with such, is the HCA excluding all on-lending or would it be sufficient to demonstrate through risk provision work that loans could be serviced by the RP if the subsidiary could not pay for any reason? Or, if the RP could demonstrate that a default would not lead to a recourse to the secured assets? Declining grant rates have forced providers to look for more commercial income streams to cross subsidise affordable housing. Whilst risk clearly has to be managed there is a danger that restrictions on manageable on-lending will force up funding costs and reduce output of much needed new affordable homes. Some flexibility is necessary for investment in profit making subsidiaries to cross subsidise RPs.

A6.2 Code of Practice

a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?
b) Is the role of a Code clear and is it reasonable?

a) The proposed Code will assist providers in understanding how to comply with the Standard. It is very clear in terms of the Regulator's expectations, yet remains flexible to be applied to the varying circumstances of RPs. One minor suggestion would be to detail the statutory guidance which should be adhered to under 'relevant law' or to amend the requirement to 'to take reasonable steps to adhere to all relevant law' as the sources are numerous and it would be difficult for boards to declare with absolute certainty that the law is being followed in all circumstances. Another suggestion is to amend the declaration to 'to the best of the organisation's belief having made reasonable enquiries.'
b) The role of the Code is very clear and reasonable given the risk profile of the sector. The Board are the custodians of the social housing assets and the Code breaks down their responsibilities in sufficient detail to be followed. It recognises that one size doesn't fit all and it is for the Board to assure the HCA that they have considered this requirement appropriately, having regard to their own internal and external operating environment. It is encouraging that the HCA recognises that business

decisions carry risk and will look at the degree of control that the Board exercises in accepting risk. We suggest that the HCA considers merging specific expectations 1.3 and 1.7 as both refer to timely and accurate communication; one in terms of 'material' issues of actual or potential non-compliance; the other in terms of data returns.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

As a not for profit registered provider, the proposed revisions to the disposals regime seem reasonable. The intentions to maintain the assets as social assets are understood and the need to recycle any net proceeds from any sale of social assets into further social housing is fully expected and accepted. However, we wonder how practical it is to make the recycling obligation on-going for all future sales and suggest it would seem sensible to apply a time limit to the recycling obligation.

A6.5 Do the proposed changes to the rent standard:

a) Reflect the direction from DCLG?
b) Express the requirements of registered providers in a way this clear, succinct and as outcome focused as possible?

When the 2013 Spending Review announced changes to the rent policy (CPI +1% and end of £2 per week uplift) there was some doubt about where this left rents, particularly those that were above target (or the "flexibility level" which includes the 5% or 10% tolerance).

We welcome that the Rent Standard Guidance makes the new policy clear. This states that downward convergence does not end where rents are above the "flexibility level" (generally target + 5%). Rent increases must be at less than CPI+1% until the appropriate level is reached within a reasonable period of time, whilst ensuring financial viability is maintained. We welcome this pragmatic approach.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The proposed revisions seem reasonable to us; as a parent registered provider, we are least affected in terms of the additional conditions for private finance applied to the general consent by the HCA. Further clarification is sought from the HCA around on-lending from a registered provider to a non-registered group member as practically it is difficult to trace

how that money is utilised by the group member. Clarification may also be needed on the requirement for consent to give security for index linked finance. In practice that security may already be in place via a security trustee and it is re-allocated from general to indexed linked finance.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?

A6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?
b) Express the requirements of registered providers in a way this is clear and succinct?

The changes to the registration criteria do reflect the changes to the governance and viability standard and it is reasonable to expect an applicant provider to already meet both parts of the standard rather than being on the path to meeting the governance standard. Good governance is critical for providers in being able to deliver their business plans.

The proposed changes fully support the Regulator's ability to meet its fundamental objectives and clearly and succinctly express the requirements of registered providers.

St Mungo's Broadway
Rebuilding lives, day by day

St Mungo's Broadway submission:

Homes and Communities Agency - Consultation on changes to the regulatory framework

August 2014

St Mungo's Broadway provides a bed and support to more than 2,500 people a night who are either homeless or at risk, and works to prevent homelessness, helping about 25,000 people a year.

We believe no one should be homeless and that people can – and do – recover from the issues that create homelessness.

We support men and women through more than 200 projects including emergency, hostel and supportive housing projects, advice services and specialist physical health, mental health, skills and work services.

Formed in April 2014 by the merger of two long established charities, we currently work across London and the south of England but influence and campaign nationally to help people to rebuild their lives. For any queries regarding this submission please contact [redacted]

1. Summary

The race to find funds for new development is being run at the expense of specialist supported housing; this is being condoned by the Homes and Communities Agency.

Recommendation: The Regulator should make further changes to the disposals regime to protect supported social housing stock. If the Regulator feels unable to directly restrict supported housing disposals through the consent regime, it should at least require any proceeds from sales of supported housing to be ring fenced and recycled towards the cost of new supported housing.

2. Answer to specific questions

Question 3: Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?

St Mungo's Broadway supports the proposals to require profit making providers to dispose of proceeds from sales in a disposals proceeds fund.

However, we believe that the Regulator should make further changes to the disposals regime, in order to protect supported social housing stock in locations where it is needed. As stated in our letter of 03 June 2013 in response to a discussion paper on this topic, the Regulator should address the current lack of strategic oversight of supported accommodation stock.

Supported housing fulfils a number of important functions, including providing accommodation for people who might otherwise be sleeping rough. It can best fulfil this function if is located in close proximity to areas where there are high concentrations of people who are homeless, including many inner city areas.

In London, where 22 per cent of the people sleeping rough in England are found,[1] these areas often have high property values. This leads to a risk that supported accommodation designed to house people who may otherwise be sleeping rough is disposed of in order to be sold and generate high proceeds.

We recognise that these proceeds will usually be recycled into new development. However, it is very unlikely that proceeds from the sale of supported housing will be used to fund new supported housing development in the areas where property is sold off. Proceeds will usually be recycled into general needs housing, which in most cases will be in cheaper and located in less central locations.

It is extremely difficult to replace supported accommodation beds if they are sold off to the private sector. Planning permissions are particular to the properties, and supported accommodation projects are understood and accepted as part of the fabric of a local neighbourhood. Older schemes will often have been developed with 100 per cent capital grant, whereas it is very challenging to meet the additional costs associated with design and development of supported accommodation under the current capital funding regime.

This loss of supported accommodation bed spaces is especially problematic at a time when the numbers of people who are homeless and sleeping rough continues to increase in many parts of the country. The supported accommodation system is silting up as the supply of beds fails to match demand.[2] People are stuck on the streets as there is no supported accommodation available for them to move into.

Case study

A care home, owned by a large housing association, was decommissioned. It was turned into an emergency shelter run by St. Mungo's Broadway, offering 37 temporary accommodation beds for people moving off the streets. It provided a home for the main hub of the Mayor of London's No Second Night Out programme and had support from the local authority for future use as a first stage hostel.

---

[1] Department for Communities and Local Government (2014) Rough Sleeping Statistics England - Autumn 2013 Official Statistics
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284024/Rough_Sleeping_Statistics_England_-_Autumn_2013.pdf

[2] Homeless Link (2014) Support for Single Homeless People in England 2014
http://www.homeless.org.uk/facts/our-research/services-and-support-research

In 2013 the housing association which owned the property put the property on the open market in order to raise funds for its development programme. The property was sold to a hotel group, which was not deterred by its current planning status. The scheme, originally developed with 100 per government grant, has now been lost to the sector and is unlikely to be replaced in the local area.

The race to find funds for new development is being run at the expense of supported housing; this is being condoned by the Homes and Communities Agency. If the Regulator feels unable to restrict disposals through the consent regime, it should at least require that any proceeds from sales of supported housing are ring fenced and recycled towards the cost of new supported housing.

HCA: Consultation on changes to the Regulatory Framework

Response from Stafford and Rural Homes:

1. 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? The standard is clear and focuses on housing association duties to have strong policies in place to protect their social housing assets. Keeping accurate records of assets and liabilities along with stress testing contributes to managing risks and protecting assets. It must be noted however, that social housing assets are at risk from current policies on Right to Buy (RTB). Registered providers (particularly stock transfers) have a disproportionate risk of loss of assets against which they have no control. Ever increasing discounts, increased demand and the loss of income and more importantly a capital asset base poses an ongoing risk. The policy does not ensure a one-for-one replacement in most areas in the country and this poses the risk to the overall business plan. The Regulator is urged to consider this in monitoring compliance on protection of social housing assets and considers influencing government departments.
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible? The Standard seems light on co-regulation. Housing providers have responded well generally to ensuring that service delivery and protection of assets not only ensures skilled, capable and independent scrutiny is provided within Boards but also in customer panels/boards. This does not seem to be reflected as originally envisaged in the Standard.
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 businesses?

Boards of Housing Associations need to make social, economic and commercial decisions that reflect the outcomes of their company's strategic direction. In a time when providers are faced with the challenges of Welfare Reform, changes in government policy and a prospective election it is even more important to ensure Boards are free to exercise judgement and risk management that is relevant and bespoke to their organisation. The Regulator has rightly captured a need to assess internally the capabilities and independence of Board Members, but needs to reflect the responsibility to run the company is that of the Board and a risk of tick boxing to comply could reduce a Board's risk appetite.

In a time of increased economic challenge Boards must be able to be responsible for decisions without fear of generic regulatory requirements. This can be achieved through a "comply or explain" approach enabling providers to push the boundaries where good economic or social outcomes can be achieved locally. It is requested that the regulator considers that a good business case could sometimes mean a provider achieves more even where the complete compliance is perhaps not rigidly demonstrated.

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

It is considered that the management of risk as described does balance the above aim. It is important to reflect the need for providers to deliver social value/community investment that may not always make a return on assets. The Regulator is requested to consider as above the principle of "comply or explain" where Boards take decisions that meet their corporate social objectives.

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

Yes the requirements seem reasonable. The code however does not cover a structure where a registered provider has a non-registered subsidiary. It may be necessary for a registered provide to subsidise a non-registered subsidiary where there is a social/community value – see 'd' above.

The code refers to a parent providing "support and assistance" to ensure compliance with the standard. It is not clear whether this is management support or financial support/loans and it may be helpful to define this.

2. Code of practice:

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

The Code is a helpful contribution to provide a steer. It is important that the code is not overly prescriptive to prevent a tick-box mentality developing.

b) Is the role of a code clear and reasonable?

Whilst the code is clear and reasonable, it is important to understand that diverse businesses may not understand the "language" of housing providers. Terms such as "churn" are sometimes linked to the sector and may not be helpful with larger numbers of commercial people entering the sector and needing to understand the code.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

It is welcomed that the code is explicit, that profit making providers must reinvest returns from social housing assets into affordable housing provision after disposal.

Paragraph 4.18 it would be helpful to ring-fence all Right to Buy receipts back to the asset owning provider to reinvest into new supply. This would have been a welcome decision in protecting social housing assets and may be useful to discuss with the DCLG.

b) Balance this aim with registered providers being free to run their own business?

Yes

c) Are they reasonable?

Yes – see 'A' above re Right to Buy receipts.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?

Yes

b) Are they reasonable?

Yes – However, the principle at 5.10 sits well with the "comply or explain" principle set out for current registered providers in response to earlier questions in this consultation document where a provider could achieve exceptional outcomes but compliance is marginally different from the standard.

5. Do the proposed changes to the Rent Standard:
a) Reflect the direction from DCLG? The proposed standard sets out the requirements clearly and succinctly except for the section on rents for social housing tenants on high incomes (Section 5). The paper indicates the standard does not apply to households with incomes in excess of £60,000. To achieve this registered providers would have to channel significant resources into assessing customer incomes, fluctuations, household incomes, changes in benefit etc. This is potentially costly, difficult to implement and may be a breach of a customer's right to privacy of income from their landlord in non-benefit dependent households.
b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible? Yes.
A6.6 - Do you agree that the proposed changes to the general consent allow the Regulator protect social housing asset effectively? Generally yes.
A6.7. – Do the other proposed changes to the registration criteria a) contribute to the Regulator better meeting its fundamental objectives Subject to adequate recognition of co-regulation, Board accountability, flexibility in understanding organisational differences, it is agreed that it does contribute to the regulator better meeting its fundamental objectives. b) Express the requirements of Registered provider in a way that is clear and succinct Generally yes.

Stockport Homes Ltd – Response to consultation on changes to the regulatory framework

Theme	Consultation question	Proposed response
Governance and Financial Viability Standard	Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?	The standard gives clear emphasis to the importance of protecting social housing assets through the introduction of a specific criterion. The additional change that requires Board level sign-off on compliance with the economic standards also raises the profile not just of the regulatory standards but also the importance of protecting social housing assets. The standards do this in a proportionate way by giving registered providers the freedom to decide the best approach to protecting assets but within a board framework that is not overly prescriptive. We agree that social housing assets should be protected from risk or poor financial decisions. The proposed standard broadly reflects the priorities of the sector without restricting the ability for it to grow and develop through prudent financial borrowing good business planning.
	Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible	The standards provide a broad outcome-focused framework for registered providers without being burdensome or having prescriptive levels of detail. There are a small number of sensible and clear outcomes that give registered providers enough guidance on what the regulator expects the sector to consider and the reasons for that are made clear. The standard makes it clear that providers should operate a business model that can withstand foreseen and unforeseen changes and that the

		protection of social housing assets should be at the core of any providers' business plan. The additional section on 'specific expectations applicable to specific categories of registered providers' strikes a balance between giving providers clear guidance on expectations of the standard and delivering the desired outcome of protecting social housing assets.
	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 businesses?	A code of governance and a Board consisting of members that exercises independent judgement will provide a balanced level of oversight for a registered provider. The standard reflects the need to have Board members with the right skills and abilities to effectively challenge the provider and this will offer a degree of protection to social housing assets. The approach of independent challenge through a Board is proportionate and in line with the co-regulatory aims of the regulator. Rather than restricting the ability of providers to run their own businesses the changes provide a degree of challenge to ensure business decisions are taken in the best interested of the company.
	Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	The approach to managing risk is sensible given that it is designed to ensure that a registered provider is able to meet its financial obligations.
	Are the requirements for specific types of registered provider in Section 2	The restrictions on profit-making providers to ensure that the non-social housing activities they

	reasonable given the Regulator's aim of protecting social housing assets?	undertake 'form only a very small part' of their activities has the potential to be restrictive. The guidance to separate out the social housing activities into a distinct legal entity is more effective at protecting social housing assets without restricting the future opportunities of a profit-making provider to move into other sectors to support their social housing aims. The remaining details for each of the specific providers appear to be sensible and proportionate regulation mechanisms, although the guidance fails to give clear guidance to Arms Length Management Organisations about their regulatory obligations.
Code of practice	Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?	The Code provides clear details on the outcomes that the regulator is seeking to achieve in the sector. It re-enforces the Standard without being prescriptive and acts as a good practice guide for registered providers.
	Is the role of a code clear and reasonable?	Yes.
Disposals regime	Do the proposed revisions to the disposals regime: - Meet the aim of protecting social housing assets and the value in it? - Balance this aim with registered providers being free to run their own businesses? - Are they reasonable?	The disposals regime proposal will help prevent public assets from being used to create profits in the for-profit sector. It won't restrict the development of public assets as it encourages further social housing developments where disposals have taken place. The proposals still leave for-profit providers free to develop non-social housing business streams and profits and they appear reasonable. The only risk may be that the proposals could encourage for-profit providers to split off their social housing business as they are not able to cross-subsidise

		the profit-making element of their business.
Registration criteria	Do the changes to the registration criteria: - Reflect the proposed changes to the Governance and Viability Standard? - Are they reasonable?	The registration criteria impose a more strict set of rules in that a provider must meet the governance and financial viability standard at the time of joining. The amended standard does, however, allow the regulator the flexibility to assess a registration applicant on the plans it has in place to embed effective governance of the organisation. In that respect the changes to the governance and financial viability standard are not that far removed from the original registration criteria and so don't represent a fundamental change of approach.
Rent standard	Do the proposed changes to the Rent Standard: - Reflect the direction from DCLG? - Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes, the guidance reflects the DCLG guidance on rent levels. Yes, the requirements are clear and the different scenarios that a registered provider may experience are clearly set out.

HCA consultation on changes to the Regulatory Framework

Response from Swan Housing Association

A6.1 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?**

Yes. The proposed changes are welcomed by Swan Housing Association (SHA). In an increasingly changing market where Registered Providers (RP's) operate different business models, it is imperative that the Regulator has a framework that protects social housing assets through ensuring all RP's have in place robust risk management and good governance.

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

Yes. SHA does not see the additional governance and financial viability required outcomes as an additional requirement as the ethos and practice already exists within SHA.

c) **Do the requirements in paragraph 1.2 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 businesses?**

Yes. SHA supports the Regulator's view to ensure that RPs have the suitable skills and capabilities to manage their own businesses, in particular, around risk management and good governance.

The Regulator recognises that where a skills gap is identified, RPs may need to access skills and capability from outside their own organisation. Reliance on external consultants can be costly and opinions may not always be consistent. SHA would advocate using resources to train and develop own boards and staff, to ensure they have the appropriate skills and capability.

d) **Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?**

Yes. RP's must have in place business planning, risk management and effective controls to ensure their own sustainability and the protection of social housing assets. With such a necessity for strong financial control and risk management, SHA would recommend having Executives such as the Finance Director on the Board.

From SHA's own experience this has allowed the Board to have fully informed discussions, resulting in informed decision making and stronger governance.

SHA recognises the importance of maintaining an up to date record of assets and any liabilities, and for reasonable stress testing to be applied for business planning purposes, outside that of any requirement by the Regulator.

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

As a non-profit making RP, Section 2 is not applicable to SHA. However, the additional controls proposed for profit making RP's to ensure the protection of social housing assets seem logical and sensible and are supported by SHA.

A6.2 Code of Practice

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

The guide is helpful in outlining the Regulator's expectations about the Governance and Financial Viability Standard and will assist SHA fulfil its responsibilities in complying with the new standard. SHA welcomes the flexibility it is offering Boards by not being prescriptive and allowing them to operate with independence and in a way that works for them.

SHA would encourage the Regulator to avoid regular changes to the code and the introduction of additional new codes. This is to avoid the appearance of regulation by the back door and any uncertainty about what the Regulator requires from Registered Providers.

b) Is the role of a Code clear and is it reasonable?

SHA notes point C.1.7.1 regarding information returns to the Regulator, and welcomes the opportunity for the sector to comment on the contents required for such returns before implementation. This will ensure RPs have appropriate time to gather and place the information in the format requested by the Regulator. If the Regulator already has a view on the type of information desired, then the provision of a template would assist greatly.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

SHA welcomes the proposed changes to the disposals regime for profit making RPs. SHA agrees that it will reduce the risk of value generated from current assets leaking out of the sector. SHA believes that creating consistency between the different types of registered providers is the right thing to do.

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

The proposals allow profit making RPs the freedom to run their own businesses and incentivise them to use or plan to use the funds in the Disposals Proceeds Fund within a relatively short timescale. SHA support this requirement as a way of recycling resources to meet housing need in a timely manner.

c) Are they reasonable?

SHA believe that the proposed revisions are reasonable.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Yes. It is logical to align the registration criteria with the Governance and Financial Viability Standard and that organisations wishing to register as new providers are required to meet the standard from the start.

b) Are they reasonable?

SHA believe that the proposed revisions are reasonable.

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes. The proposed changes to the rent standard reflect the 10 year rent policy proposed by government following their consultation last year.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes. The standard sets out clearly the Regulator's expectation.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes. The changes to the General Consent reflect the right balance between protection of social housing and flexibility for providers.

A6.7 Do the proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?

Yes. The proposed changes will make the registration more effective. This will be by removing unnecessary hurdles for example the removal of the requirement for charitable organisations to state they have a non-profit status in their objects. This historic registration

requirement adds no value as all charitable RPs are subject to other controls from the Charities Commission and the HMRC.

SHA believes it is sensible for non-profit applicants to expressly declare their position within any group structure, and seek consent from the Regulator to change their group arrangements.

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes. The requirements sets out clearly and succinctly the regulators expectations of new applicants.

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK – SYMPHONY HOUSING GROUP RESPONSE

A6.1 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?	Yes, we agree that the changes meet the Regulator's objectives.
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes, the proposed Standard does express the requirements in a clear and succinct manner. In addition, the Code of Practice does provide supplementary detailed guidance which is extremely helpful.
c) Do the requirements in paragraph 1.2 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 businesses?	i) Yes, we agree that the changes meet the Regulator's aim of protecting social housing assets. ii) Yes, there is sufficient flexibility for an organisation to comply with the regulatory requirements and freely run their own business. The Code of Practice is a good underpinning tool throughout. The clarification in terms of 'independence' is welcome, as although there has been the shift from representation to skills for some time, some organisations have had varying challenges in their evolution to a truly skill based board. An important first move is changing constitutional arrangements so as to be silent on any representative composition, however, this can be challenging, particularly in stock transfer organisations. The Standard is now very clear that boards need to be independent and free of any connections which may lead to conflicts if they are to be effective.
d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	i) Yes, additional information in terms of risk tolerance and returns to be commensurate with the perceived level of risk really spell out how important is in a diverse and more challenging environment. Social housing assets must be protected, and as boards across the sector will have varying levels of capability it is vital that there is clarity as to how important this is – particularly as it would affect the whole sector if there was a significant failing business which could not be rescued. ii) Yes, there is sufficient flexibility for registered providers to run their own businesses. On the whole 1.2 and 1.4/1.5 are key and really dovetail together. Appropriate assurance mechanisms will not be effective unless the skills as outlined in 1.2 are in place. If there are not adequate skills in place then the impact of risks either at the point of decision making or as they start to materialise, will not be fully understood. This would lead to a lack of early warning signals being in place, and it not being apparent that external help may be required.
e) Are the requirements for specific	Yes, we agree that the requirements are reasonable.

types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	
A6.2 Code of Practice	
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?	Yes, it provides a clear framework to adhere to. The Code of Practice is a very good underpinning tool in helping to understand more fully the requirements of the governance and viability standard.
b) Is the role of a Code clear and is it reasonable?	Yes, a welcome additional form of guidance which adds a great deal of clarity. As a Group we adopt an approach of continuous improvement, we are therefore always looking to further develop and strengthen our approaches to ensure regulatory compliance in all areas. We feel that the Code of Practice would assist this development.
A6.3 Do the proposed revisions to the disposals regime:	
a) Meet the aim of protecting social housing assets and the value in it?	Yes, we agree that the proposed revisions meet the aim of protecting social housing assets.
b) Balance this aim with registered providers being free to run their own businesses?	Agreed.
c) Are they reasonable?	Yes, reasonable.
A6.4 Do the changes to the registration criteria:	
a) Reflect the proposed changes to the governance and viability standard?	Agreed.
b) Are they reasonable?	Yes, reasonable.
A6.5 Do the proposed changes to the Rent Standard:	
a) Reflect the Direction from DCLG?	Agreed.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Agreed, however it was noted that further clarity is needed over secure rents. With all rents, a lower increase and/or the ability to have more flexibility in not increasing rents to a target limit would be welcome in the context of an affordability discussion.
A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?	Agreed.
A6.7 Do the other proposed changes to the registration criteria:	
a) Contribute to the Regulator better meeting its fundamental objectives?	Agreed.
b) Express the requirements of registered providers in a way that is clear and succinct?	Agreed.

TCUK HOMES
Part of the Changing Lives group

HOMES & COMMUNITIES AGENCY
CONSULTATION RESPONSE
'CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK'

TCUK Homes is a very small registered provider (RP number 4756), which currently has 45 units of supported accommodation in development and 25 affordable rent empty homes refurbishments in the pipeline. We expect to grow at a rate of around 25 units per year over the next three years.

Consultation Question	**Response**
A6.1 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?	Yes, the proposals advocate the adoption of good business disciplines based on a robust risk management approach to protect social housing assets.
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	The proposed Standard is clear and succinct and outcome focused. It is aligned to a co-regulatory approach that recognises responsibility for managing the business rests with the Registered Providers and their respective Boards.
c) Do the requirements in paragraph 1.2 on skills, capability and independence i) meet the Regulator's aim of	The requirements in paragraph 1.2 are aligned to meeting the Regulator's aim of Registered Providers understanding how compliance with the standard can be achieved. TCUK Homes recognises that a well governed organisation has capacity & capability to deliver with the right mix of skills to manage the business, an effective Board to independently scrutinise performance with robust internal audit and

Central Office
Textile House
Dukesway
Team Valley
Gateshead
NE11 OLF

t 0191 273 8891
f 0191 256 2914

central.office@changing-lives.org.uk
www.changing-lives.org.uk

protecting social housing assets and ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?	risk management arrangements in place. It is aligned to a co-regulatory approach that recognises responsibility for managing the business rests with the Registered Providers and their respective Boards.
d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own business?	The requirements on Registered Providers to ensure that they have an appropriate, robust and prudent business planning, risk and control framework are appropriate. Maintaining a thorough, accurate and up to date record of assets and liabilities, carrying out detailed stress testing across a range of scenarios and assessing the impact of potential new liabilities on the current and future business and regulatory compliance are aligned to the achievement of the Regulator's aim and reflect good business disciplines. The proposals are aligned to a co-regulatory approach. Explicit recognition of 'size, scale and risk profile of the organisation, the business it is involved in or is going to be involved in as well as the external operating environment' is sensible and is welcomed by a small organisation such as TCUK Homes.
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?	Yes, the requirements for specific types of Registered Provider are reasonable.
A6.2 Code of Practice	
a) Does the proposed Code assist	The Code is a useful tool in understanding what is required to comply with the Standard. It provides enough information without going into too much detail,

Central Office
Textile House
Dukesway
Team Valley
Gateshead
NE11 OLF

t 0191 273 8891
f 0191 256 2914

central.office@changing-lives.org.uk
www.changing-lives.org.uk

registered providers to understand how compliance with the standard can be achieved?	recognising that it is for the Registered Providers and their Boards to apply the Standard and certify compliance.
b) Is the role of a Code clear and is it reasonable?	Yes, it is clear and concise and reasonable. It is a much better approach than issuing numerous circulars which can over complicate things. Explicit recognition of 'size, scale and risk profile of the organisation, the business it is involved in or is going to be involved in as well as the external operating environment' is sensible and is welcomed by a small organisation such as TCUK Homes. It is useful to note that the HCA will have regard to the Code but enforce against the Standard.
A6.3 Do the proposed revisions to the disposals regime:	
a) Meet the aim of protecting social housing assets and the value in it?	Yes, they are aligned to the achievement of this objective
b) Balance this aim with registered providers being free to run their own businesses?	It is aligned to a co-regulatory approach that recognises that responsibility for managing its business rests with the Registered Providers and their respective Boards.
c) Are they reasonable?	Yes, they are adequate and appropriate. Non-profit providers currently must reinvest surpluses to meet their objects. There is no such restriction for profit making providers. It is reasonable to expect that profit making providers must place proceeds of stock acquired from non-profit sector into the Disposable Proceeds Fund and reinvest.
A6.4 Do the changes to the registration criteria:	
a) Reflect the	Yes, the changes to the registration criteria are that

proposed changes to the governance and viability standard?	applicants must demonstrate that they meet the Governance & Financial Viability Standard and not just 'on a path to full compliance with governance.'
b) Are they reasonable?	It does seem sensible to ensure from the outset that any new applicants have robust governance arrangements in place to fully comply with the Standard, though for small Housing Providers who are just starting out it will inevitably delay their registration. An alternative approach would be to allow a 'provisional registration' upon receipt of an action plan signed off by their Board with agreed actions to achieve full compliance within a specified deadline, e.g. within 12 months. Thereafter, the Board must provide a statement of full compliance to facilitate 'full registration'. This is aligned to a co-regulatory approach and would enable the regulator to achieve its objective without stifling the potential registration of new entrants.
A6.5 Do the proposed changes to the Rent Standard:	
a) Reflect the Direction from the DCLG?	The changes to the Rent Standard reflect the direction from DCLG.
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?	Yes, the requirements are clear, succinct and outcome focused.
A6.6 Do you agree that the proposed changes to the General Consent allows the Regulator to protect social housing	Yes, the proposed changes are appropriate.

Central Office
Textile House
Dukesway
Team Valley
Gateshead
NE11 0LF

t 0191 273 8891
f 0191 256 2914

central.office@changing-lives.org.uk
www.changing-lives.org.uk

assets more effectively?	
A6.7 Do the other proposed changes to the registration criteria:	
a) Contribute to the Regulator better meeting its fundamental objectives?	Yes, they support the achievement of good governance and financial viability
b) Express the requirements of registered providers in a way that is clear and succinct?	Yes, the requirements are clear and succinct

Anthony Fellows, General Manager, TCUK Homes
18.8.14

Central Office
Textile House
Dukesway
Team Valley
Gateshead
NE11 0LF

t 0191 273 8891
f 0191 256 2914

central.office@changing-lives.org.uk
www.changing-lives.org.uk

Teign Housing

This e-mail provides Teign Housing's response to the consultation on changes to the regulatory framework. The proposed changes were considered by the Board at a recent meeting and the Board have endorsed this response to the consultation.

1 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?**
   Yes, we agree that these proposals are appropriate.
b) **Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?**
   Yes it does.
c) **Do the requirements in paragraph 1.2 on skills, capabilities 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 businesses?**
   Yes they do and are understandable.
d) **Do the requirements in paragraph 1.4-1.5 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?**
   Yes they do. We agree with the need to keep accurate records of our assets and liabilities.
e) **Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?**
   Yes, we consider them to be reasonable.

2 Code of Practice

a) **Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?**
   Yes it does, it is clear and concise and gives useful, appropriate guidance. We welcome the Code and do not see this to be at odds with co-regulation.
b) **Is the role of the Code clear and is it reasonable?**
   Yes it is.

3 Do the proposed revisions to the disposals regime:

a) **Meet the aim of protecting social housing assets and the value in it?**
b) **Balance this aim with registered providers being free to run their own businesses?**
c) **Are they reasonable?**
   Yes we agree with all of the above proposed revisions and find them reasonable.

4 Do the changes to the registration criteria:

a) **Reflect the proposed changes to the governance and viability standard?**
b) **Are they reasonable?**
   Yes, we agree they reflect the proposed changes and are reasonable.

5 Do the proposed changes to the Rent Standard:

a) **Reflect the Direction from DCLG?**
b) **Express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?**
   Yes, they do reflect the direction from DCLG and they express the requirements appropriately.

6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

As members of Placeshapers we wish to reflect their response in our answer to this question. Although these proposed changes do not impact upon us at the moment we are keen to play our role in providing new housing and may well diversify in the future to a point where these proposals would impact upon us.

Therefore, we understand and support the Regulator's objectives in proposing to restrict the granting of category 6 consents and agree that changes would protect social housing assets more effectively.
There is however one proposed change that does cause us concern and that is the proposed further restricted on-lending of a secured facility in a group (paragraph 3.74c in the consultation document). This would tighten the general consent in a way that will potentially hinder development programmes that include a mix of affordable and commercial units including those involving the outright sales of shops/offices. Such schemes are typical in urban areas where land or property is bought and developed in non-charitable entities to be tax efficient and/or to ensure there are no ultra vires commercial activities happening inside the charity. The proposed tightening of general consent would lead to a potentially unworkable need for rapid scheme by scheme approval in a volatile and fast moving market where opportunities would be lost in the absence of immediate decisions. We are concerned that the regulatory resource will be insufficient to respond to such needs and that in any event such programmes in general are and should be regarded as legitimate.
In addition we are mindful that an increasing number of RPs are sitting on significant funds raised on the bond market in particular, where these funds are costing the RP money. RPs should be encouraged to use these funds efficiently to generate an appropriate return provided this is in the context of a prudent and appropriate investment approach. The need for additional consents for use of these funds could impact adversely on this outcome.
In this context, we suggest that consideration is given to providing consent for a general programme of activity over a defined period, perhaps with a maximum financial commitment involved. An additional flexibility would be to allow freedom to on-lend for non-social housing activities when that lending is secured on non-housing assets such as offices and garages held in the parent body's stock.

7 Do the other proposed changes to the registration criteria:

a) **Contribute to the Regulator better meeting its fundamental objectives?**
b) **Express the requirements of registered providers in a way that is clear and succinct.**
   Yes we consider they do.

This concludes our feedback.
Kind regards.

Mike Hanrahan
Chief Executive
Teign Housing
Direct Dial [redacted]
E-mail: [redacted]

THE ABBEYFIELD NORTH DOWNS SOCIETY LIMITED

David Gresham House, 2 Oak Close, Hurst Green, Oxted, Surrey RH8 0BA.

Homes and Communities Agency
7th Floor
Maple House
149 Tottenham Court Road
London W1T 7BN

14 August 2014

Dear Sirs

I am replying on behalf of this Abbeyfield Society to your consultation on changes to the Regulatory Framework. My apologies if I respond in general terms rather than to the specific questions but I believe there are significant issues only partly addressed by the consultation.

The two principal justifications offered in the consultation are: to ensure that social housing assets are not put at risk and to protect the public value of the assets. The second of these is surely already accomplished since the HCA controls the ability of Grant-funded organisations such as mine to dispose of property. The former raises the question whether a privately-owned and run care home like ours, though in a regulated sector, falls within the category of 'social housing assets'. It also overlooks what may be at least as great a risk to tenants, namely that the increasing burden of regulation (and we have several regulators) will not only deter new volunteers from stepping up to take responsibility for running the Society, a problem organisations like us already face, but may cause existing unpaid volunteers, as we all are, to ask whether the additional risks and commitment outweigh the value we believe we can offer the community. If either of those happens, voluntary organisations, of which there hundreds, will collapse unless paid employees are installed by some external authority. Even if this could be achieved seamlessly, it would not be to the benefit of residents, either financially or in terms of their wellbeing.

I do not want to comment line by line. Rather I would ask that the HCA, which in its various guises starting with the Housing Corporation has been a benign regulator so far as this very small organisation is concerned, to leave regulation to the body most suited to the work we do. In our case that is undoubtedly the Care Quality Commission which, as you may know has also launched a consultation on regulation.

Yours faithfully

Richard Grayson, Secretary.

Reg'd society 23568 R, an exempt charity. Reg'd with the HCA H3370. R.O. office as above.

Abbeyfield

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - the Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN

12 August 2014

Dear Mr Sullivan,

Abbeyfield Society - Our Response to Consultation on Changes to the Regulatory Framework

Thank you for the opportunity to submit comments as part of the above consultation exercise. We welcome the review of the Regulatory Framework, in light of changes within the sector in recent years, and in particular in an environment where increasing diversification and lower public subsidies have had an impact on the level of risk that the sector currently faces. Whilst we do not consider that The Abbeyfield Society is in any way at risk as a result of these pressures, the review of the framework is a timely one, given the current position.

This response is submitted on behalf of The Abbeyfield Society and our numerous Member Societies, separately registered with yourselves, following an internal exercise we recently carried out to seek the views of all such organisations. For some of the following sections, where we broadly support the proposed way forward, we have had few comments to make. In other sections, our comments are more substantial.

I will address each element of the Consultation document in turn:

A6.1 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?

Overall, yes, we would agree that the proposed Standard meets these objectives, making the protection of social housing assets a much more overt responsibility. In practice, it makes very little difference to the way The Abbeyfield Society and our member societies operate, as we have always taken that responsibility very seriously. The increased stress on that element may, however, be of benefit in relation to some other providers

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

To those of us who are used to reading documents like this, the proposed Standard is clear. However, Trustees of our member societies are not perhaps as experienced at reading documents from the regulator and may have some difficulty with its length and the use of industry jargon. It may be useful if, when the Standard is finalised next yet, a shorter summary document could be produced using more accessible language that could be more easily understood.

c) Do the requirements in paragraph 1.2 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 businesses?

The balance appears to be about right, emphasising the skills and approach needed. The relevant sentence reads '*an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight*' and although it is difficult to further define it, it may be sensible to consider what is meant by '*appropriate*' as there will be different views on what that word could mean. As an example, although they may require the same level of independence, do those responsible for the running of a very small provider with only a few bedspaces require the same level of skill as those running a large national provider?

There may also need to be some consideration, though perhaps outside the Standard, on the recruitment, training and retention of Trustees and Board Members. At a time when there is increasing focus on their roles and responsibilities, it is increasingly difficult to attract and retain people with the right degree of skill, commitment and interest for these roles. Although this clarification of their responsibilities is helpful, it will not make recruitment and retention any easier.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The requirements proposed undoubtedly go some way to meeting the Regulator's aim of protecting social housing assets and the right balance seems to have been achieved. As some providers in the sector diversify into other areas of work, the increased focus on risk and stress-testing is welcome. However, we feel strongly that a 'one-size-fits-all' approach would be inappropriate. Again, a large provider will likely have a higher level of risk (or, at least, a wider range of risks) than a small provider but they will also have greater resources to expend on assessing those risks, stress-testing their business and developing mitigation strategies. The expectation that the degree of stress-testing should be relevant to the size of the business are not sufficiently clear at this stage and we believe this area requires further consideration. A way of achieving this clarification may be by adding a further example, that of a small society with only

one service, into C.1.5.10 of Annex 2 where the only two current examples are significantly sized businesses

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

Yes, on the whole, they appear to be reasonable

A6.2 Code of Practice
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

Yes, it does assist providers in their understanding of how compliance can be achieved but, as stated above, a version in more accessible language would also be helpful for voluntary trustees. An example, to assist, is in Annex 2 at C.1.5.5 where it refers to '*the potential for any impairment particularly in relation to investments in non-core activities*' - a sentence that would need to be explained to trustees of a small provider if they were to understand it fully. Explaining the whole Standard could take a huge amount of time if the language used is not made more accessible.

b) Is the role of a Code clear and is it reasonable?

Yes, the role is clear and it is reasonable

A6.3 Do the proposed revisions to the disposals regime:

We have no comments to make in relation to the revisions to the disposals regime - they seem broadly appropriate and present no concerns

A6.4 Do the changes to the registration criteria:
a) Reflect the proposed changes to the governance and viability standard?

Yes, the proposed changes to the criteria do reflect the changes to the governance and viability standard

b) Are they reasonable?

It seems reasonable to expect that a provider seeking registration should be able to demonstrate compliance with the Governance and Financial Viability Standard at the point of registration rather than having to demonstrate that they are '*on a reasonable path*' towards doing so, as is the requirement at present. There is some concern, however, that operating this as a catch-all condition may prevent new, small providers from being formed and registered. We would ask

that some consideration be given to how this might be put into place in such a way as to encourage the formation of new, small local providers whilst providing sufficient comfort to the regulator

A6.5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG?

Yes, the proposals clearly reflect the DCLG's direction

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The way forward proposed does, indeed, seem to be clear and outcome-focused but that is not to say that it does not raise some concerns. These concerns, however, relate more to the direction given by the DCLG rather than to the way in which the Standard has implemented those directions. Although appreciating the difficulty in predicting future levels of inflation, and therefore, unable to assess the full impact of this change, a number of member societies felt that RPI was a much appropriate tool to use then CPI when calculating rent increases as it contained some elements of housing costs. The use of a 'plus 1%' figure to replace the previous 'plus 0.5%' is, however, welcome.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The proposed changes appear to be useful and reasonable

A6.7 Do the other proposed changes to the registration criteria:

The other proposed changes to the registration criteria, as detailed in Annex 5, appear to be reasonable and offer clear guidance to all those seeking registration.

Please contact us if you require any further information.

Yours sincerely,

John Robinson
Chairman

The Abbeyfield Society
Royal Patron HRH The Prince of Wales

The Abbeyfield Society is Registered Charity No: 200719, TSA Regulator of Social Housing, No: H1046, Company No: 574816
Registered Office: St Peter's House, 2 Bricket Lane, St Albans, Herts, AL1 3UW. Registered in England & Wales
Tel: 01727 857536 Fax: 01727 846168 Email: post@abbeyfield.com Website: www.abbeyfield.com

THE ALMSHOUSE ASSOCIATION

The National Association of Almshouses, Billingbear Lodge, Maidenhead Road, Wokingham, Berkshire RG40 5RU
Tel: 01344 452922 Fax: 01344 862062 email: naa@almshouses.org www.almshouses.org

HCA

24th July 2014

Homes & Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN

Dear Sir

HCA Consultation on changes to the Regulatory Framework

Thank you very much for the opportunity to comment on the new proposals being considered to the Regulatory Framework. I am writing to you as Chief Executive of the Almshouse Association which represents over 1,650 individual almshouse charities throughout the United Kingdom, providing homes for over 35,000 residents.

Almshouse charities are regulated by the Charity Commission, and governed by locally recruited trustees in accordance with a Scheme issued by the Charity Commission which derives from the wishes of the benefactor. Almshouses are not subject to the Housing Act and almshouse residents are not tenants but occupy their almshouses as licensees. A smaller proportion of almshouse charities are also Registered Providers, having at some time received Social Housing Grant through the Homes & Communities Agency which requires them to register for any new build or for substantial remodelling. Over 80% of almshouse charities comprise less than twenty dwellings, and rely solely on the weekly maintenance contributions from their residents to remain solvent.

Almshouse charities have been accessing grant funding from the HCA, latterly utilising the Almshouse Consortium Ltd. (ACL), as a lead developer. ACL Ltd was created to facilitate HCA grants being channelled to participating almshouse charities. The Consortium was successful in securing grant funding for the current 2011 - 2015 HCA National Affordable Housing Programme.

The comments contained in this response are in respect of those almshouse charities which are Registered Providers. The Almshouse Association has historically worked closely with the HCA, and previously with the Tenants Services Agency and the Housing Corporation, to promote the highest standards of governance and management for almshouse charities, and it is anxious to continue this positive relationship. However, in 2013 the HCA started to apply different criteria to almshouse charities wishing to register, and this highlighted a number of

issues which the Almshouse Association considers contradict the requirements laid down by the Charities Act 2011. Almshouse Charities which are also registered providers must comply with the Charity Commission as primary regulator, and with the HCA in respect of the Housing & Regeneration Act 2008 but in certain respects, these requirements conflict and trustees are being placed in an impossible position.

Almshouse charities which have converted to either charitable companies or charitable incorporated organisations, are being required to alter their charitable schemes by making reference to the provision of social housing by way of almshouses. While the phrase itself may be uncontentious, it is an established principle that charitable schemes are tailored to the individual charity which reflect the wishes of the original benefactor. The Almshouse Association believes it should be accepted that an almshouse charity is, by definition, providing social housing by way of almshouses. A charitable scheme issued by the Charity Commission should be sufficient for that purpose. We believe that the requirement for such alterations 'crosses the line' of the state altering the last will and testament of a benefactor, even if it appears a harmless amendment.

For many years almshouse charities have been allowed to de-register as Registered Providers on the understanding that they would be unable to apply for SHG for a period of 5 years after de-registration. However, it would appear that new regulations will effectively require such charities to pay back any grant they have received in order to de-register, as set out below;

De-registration of a Registered Social Landlord by the Regulator, under section 118 or 119 of the Housing and Regeneration Act 2008:

When an RP (ex-RSL) seeks to de-register from the social housing Regulator, all grant previously paid to the RP (ex-RSL) is required to be repaid, including credits in the RP's (ex-RSL's) Recycled Capital Grant. RP's (ex-RSL's) are required to inform the HCA immediately of their de-registration application.

The provision of SHG is an essential component in the funding structure for any almshouse charity seeking grant, and it follows that an almshouse charity wishing to de-register would be most unlikely to have the funds to repay. At the same time, continued registration represents a significant regulatory burden which many smaller almshouse charities already find onerous. The Association believes that the effect of changing the current criteria for de-registration would make almshouse charities reluctant to seek SHG in the first instance as the burden of registration might be considered disproportionate to the modest level of grant now available. This would almost certainly result in less provision of social housing from almshouse charities which would be undesirable. As it is, there are adequate safeguards to ensure that SHG allocated to almshouse charities is protected in perpetuity by their charitable schemes, and in the case of mergers, provided that a merger takes place with another RP, SHG does not have to be repaid. While other measures might be relevant for other providers, and especially those which are "for profit", the Almshouse Association believes that regulation should adopt a risk-based approach, and abides by measures which for years have proved totally reliable in respect of almshouse charities.

A number of member almshouse charities have contacted the Almshouse Association in respect of the universal governance standards applied to Registered Providers. While almshouse charities aspire to the highest standards, the imposition of mandatory standards is at variance with the legal duty of trustees to act independently in the best interests of their respective almshouse charities. For example, one standard suggests a ceiling on the number of trustees, and a maximum length of tenure. While the selected benchmarks might be appropriate for the majority of charities, it does not follow that they would be suitable in all cases. Many charities are experiencing difficulties in trustee recruitment, especially in inner cities and where a charity has a group of effective trustees it may not wish to retire someone simply because some individuals had exceeded the normal recommended tenure. The central point is that the length of tenure or the decision to recruit a defined number of trustees is matters which are and should remain the prerogative of the trustee body. In our view, the standards should be provided as guidance rather than mandatory requirements.

In outlining the issues set out above Almshouse Association believes that the HCA is not taking the risk-based approach is espouses. In fact, through the proposals set out in this consultation, the regulatory burden is becoming more onerous and a significant challenge to charities seeking to assist the governments drive to build new, affordable housing.

Governance & Financial Viability Standard and Registration Criteria

The Almshouse Association supports any proposals to improve standards of governance and the requirement for effective financial management. Nevertheless, the impact of increased regulation can have a significant and negative impact on smaller almshouse charities, and the Association would argue for a more flexible, risk based approach. Specifically, proposals that registered providers must demonstrate robust risk management processes (including 'stress testing') on an ongoing basis would have a disproportionate impact on the resources for small charities.

The degree of regulation for registered providers has markedly increased in the last two years despite the government's commitment to reduce the burden of regulation.

Changes to Disposal Regimes

The Almshouse Association would support efforts to protect charities that place their assets into the hands of profit-making bodies. There have been examples where trustees have sought to transfer their dwellings to long term leases in exchange for capital funding and management agreements. The effect of such arrangements is that the charities cease to operate as almshouses

Rent Standards

Almshouse Charities charge a Weekly Maintenance Charge as their residents occupy the almshouses as licensees rather than tenants. The Almshouse Association notes the change in calculating annual increases from RPI + 0.5% to that of CPI + 1%. From the Association's perspective, the cap on increases can prevent almshouse charities from reaching a realistic level of income, and the proposed change from using RPI to CPI will exacerbate this

problem. It is essential that where almshouse charities have historically charged a low Weekly Maintenance Contribution that they are assisted in reaching a realistic level of income as quickly as possible, in order to ensure the financial viability of the charity. The exception is where residents may experience hardship if the increases are too steep but in such cases, trustees are able to make individual grants or to stagger the increases over months or years. In the majority of cases, almshouse residents will be entitled to Housing Benefit, and provided that the ceiling being applied by the almshouse charity does not exceed the Housing benefit rate or the Local Housing Allowance where applicable, then hardship is unlikely to occur. The Almshouse Association believes that Registered providers should be entitled to make reasonable increases annually, provided that the overall level of income does not exceed target rent.

Yours faithfully

Chief Executive.

Response to Homes & Communities Agency's discussion:

CHANGES TO THE REGULATORY FRAMEWORK

Response to:
Tim Sullivan, Regulatory Framework Manager
Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London W1T 7BN
consultation@hca.gsi.gov.uk

Changes to the Governance and Financial Viability Standard

1. **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?
We believe your proposals are reasonable.

b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes.

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 businesses?
We welcome the emphasis on organisational skills and capability both with the Executive and the Board, and the need for registered providers to manage their affairs with a suitable degree of independence.

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

[redacted]

e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?
Whilst Havebury has a relatively simple structure, the issue of general consent for disposals is of concern to us. We understand that the Regulator needs to assure itself, and indeed lenders, that any new arrangements are not creating undue risk for social assets. The need, therefore, to seek specific consent for disposals in certain circumstances is therefore not unreasonable. However, it is important that any response to requests is dealt with expeditiously. This would particularly be our comment if the Homes and Communities Agency is seeking to charge a fee for these services in the future. It is essential that any additional specific consent does not hinder the smooth running of individual organisations.

2. Code of practice:

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

b) Is the role of a code clear and reasonable?
Yes.

Changes to the disposals regime

Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
Yes.

b) Balance this aim with registered providers being free to run their own businesses?
Yes.

c) Are they reasonable?
Whilst we understand it is reasonable that assets which have been gained from the sale of social housing assets are preserved as such for future generations, it is important also to recognise that using profit making activities to create additional housing is a tried and tested route, which has worked well for many organisations. Any response therefore by the Homes and Communities Agency needs to be proportionate and expeditious to ensure provision of new homes is not unnecessarily impeded.

[redacted]

Changes to the registration criteria

Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?
Yes.

b) Are they reasonable?
Yes. With a key emphasis on protecting social assets, it seems reasonable that any organisation which seeks registration, whether profit making or non profit making, should have to meet the full financial and viability standard from the outset. The removal of the 'reasonable pathway' approach to registration would seem to be sensible and proportionate.

Changes to the Rent Standard

Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?
Yes.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes .

[redacted]

The Housing Plus Group

Response to Consultation On Changes to the Regulatory Framework

1. 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?

Overall yes. It is positive that the proposed changes are not major so that existing controls, policies and processes that providers have already developed to meet their regulatory requirements can still be used with relatively minor amendments as opposed to "major surgery".

Providers are as keen as the regulator to protect social housing assets and it is pleasing to see this as a specific outcome. Protection for the long term public investment in social housing and an appreciation of the public value that this provides is also welcome.

The change to meeting the requirements of "law" rather than "relevant legislation" is not reasonable and we do not agree with it. Statutory and other guidance should not be included in the definition of "law" as this will cause confusion and may lead to differing interpretations of legislation and advice.. For example, as the proposals stand. The Code of Practice, as guidance, could be considered "law" but the Regulator is clear that the Standard overrides the Code. This will cause confusion.

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

Yes, the requirements of providers are clear. The move to a single set of Expectations rather than separate for Governance and Financial Viability streamlines the Standard but it will be interesting to see how this works with separate regulatory judgements for each of these areas.

The specific requirement to safeguard the reputation of the sector is not unreasonable – and what most providers would support. It is important that this does not become a "catch all" clause for anything that the Regulator does not like and that does not fit elsewhere within the Regulatory Framework.

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 businesses?

The balance feels right. The emphasis remains on Boards to manage their businesses and ensure they have the skills, knowledge and experience to do this. The proposed changes strengthen this emphasis which is positive. It is helpful that the proposals recognise that such skills, knowledge and experience can come from outside the business (such as through co-opted Board Members or external advice).

The existing and proposed Standard requires providers to adopt a Code of Governance which is fine and makes specific reference to the National Housing Federation (NHF) Code of Excellence in Governance. This is the "industry standard" and many providers, including ourselves have adopted it. However, other Codes do exist and providers should maintain the freedom to adopt a Code that works for their business, as well as meeting regulatory requirements.

The proposed Code of Practice is helpful in setting out more detail on the Regulator's thinking around skills, capability and independence, particularly the need to have a skills strategy and the inclusion of management skills alongside Board. Many providers will already be meeting these requirements.

d) Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
The continued emphasis on effective risk management is supported. This is already a core business activity for providers and the proposals are a more mature approach than the earlier "ring fencing" proposals.

The proposed Code of Practice is helpful in setting out more detail on the Regulator's thinking regarding risk, particularly the need to maintain a focus on specific social housing risks and the need to reflect risk assessments in decision making. There could be more focus on social housing sector specific risks alongside the wider business and economic risks.

The emphasis on stress testing including multiple risks and scenarios is important and whilst no "standard" or template for this is proposed, it will be interesting to see what emerges from the sector and what the Regulator feels is good practice.

e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?
Given the increasing diversity of the sector and the entry into it of "for profit" providers, there does need to be a reflection of this in the Regulator's approach. The proposals do provide protection for social housing assets however the Regulator will need to ensure that it has the right skills, experience and approach to regulating this new element of the sector to ensure compliance. This is particularly relevant for organisations that may not be used to operating in a regulated environment.

2. Code of Practice:
a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
Much of what the proposed Code sets out is sensible, realistic and achievable. Many providers will already be doing some or all of the actions included or suggested. As reflected above, the Code is helpful in providing more detail on the Regulator's thinking and expectations in several areas (notably risk management and Board and management

skills, capability and experience). There are perhaps fewer examples than expected for an advisory document.

b) Is the role of a code clear and reasonable?
The consultation document is clear that the Code provides "amplification" of the proposed Governance and Financial Viability Standard and that in the event of any conflict between the two, the Standard will take precedence. This is fine in theory but we are unconvinced that the Code will not become an annex to the Standard considered with equal weight. Past evidence suggests that "advice" from the regulator is treated, by the regulated bodies as well as by regulatory staff, as being of equal force as formal regulation. The Regulator needs to ensure that this will not happen and that the Code will remain as an advisory document.

3. Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?
The proposals seem to meet this aim. It is positive to see a specific statement on preventing value "leaking out of the sector" and proposals to stop this. These will need to be enforced however and the Regulator will need to ensure it has the skills and experience available to do this.

A commitment to ensure profit making providers sales proceeds are used to fund replacement units is welcome, although this could be strengthened to ensure it is social housing that it provided.

b) Balance this aim with registered providers being free to run their own businesses?
As a non profit making organisation the commitment to not placing any further restrictions on us regarding disposals is welcome as it means "as you are" and we can continue with current practices and processes.

c) Are they reasonable?
Yes but as we state above, they need to be enforced.

4. Do the changes to the registration criteria:
a) Reflect the proposed changes to the Governance and Viability Standard?
Overall, yes they do. We welcome the strengthening of the requirement to meet all elements of the proposed Governance and Financial Viability Standard rather than be on a "path" to these. This means that all new entrants to the sector should be meeting the required Standard.

For avoidance of doubt it would be helpful to state that aspirant providers must demonstrate that their risk management, including stress testing, is robust, adequate and meets the Standard.

b) Are they reasonable?
Yes.

5. Do the proposed changes to the Rent Standard:
a) Reflect the direction from DCLG?
Yes. There has been significant discussion on the pros and cons of the changes to rent setting and rent increases and this is not the place to repeat these. However, the inclusion of a waiver for organisations that may be at risk of failing due to the proposed Standard is welcomed, although there needs to be more detail on how providers can apply for this. It is also noted that the flexibility for charging higher rents to tenants with higher incomes is a permissive power rather than a requirement. This is welcome, as we stated in our response to the consultation on this, it is a lot of administration work for a very small amount of additional income.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?
Yes. There is more detail and Guidance on this Standard due to the more technical nature of the subject matter and it is helpful to have this appended.

Re: Response from Housing Diversity Network to HCA's "Consultation on Changes to the Regulatory Framework"

The Housing Diversity Network (HDN) is a social enterprise, not-for-profit, limited company based in West Yorkshire working mainly (but not exclusively) within the social housing sector across England to promote equality and diversity and also mentoring to a range of groups.

Our vision is to be the leading organisation in the UK promoting equality and diversity in housing, neighbourhoods and communities – reducing inequality, maximising the benefits of diversity and changing lives for the better.

We very much welcome this opportunity to contribute to the HCA's consultation paper.

1. *Skills and capability - "Registered providers shall ensure that they manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight"*

We very much agree with the HCA's analysis that in having to operate in a changing and more complex business environment, registered providers need to ensure that they have the appropriate skills on their Board. This means not just attracting the right skills to fill specific knowledge gaps, but ensuring all Board members are equipped to fully contribute to effective governance and decision making . There is the added challenge of having smaller Boards and shorter terms of tenure. There is a risk in the rush for skills, Boards lose the diversity and inclusion they need to represent their stakeholders and make good decisions, and lose the values and experience which are also key to their mission and purpose.

Whilst the HCA references in paragraph 3.19, the National Housing Federation Excellence in Governance code, it feels that reference should also be made to more recent programmes of support such as HDN's Board Members Mentoring Programme that has been specifically designed to ensure that registered providers have access to the right skills and capability.

It is clear that from the feedback from HDN's 2013 Pilot Board Mentoring programme as well as from the regional consultative board mentoring events held in June 2014 and subsequent feedback, that a structured programme of mentoring and other support to be launched in specific regions across England during 2014/15 can play a crucial role in helping organisations meet many of the challenges identified in the consultation paper.

From the experience of the 2013 pilot and feedback to date, we know that issues around effective governance, in particular risk management, value for money, understanding finance

and diversity are likely to feature prominently, as well as developing the key skills and confidence for effective scrutiny, challenge and whole Board working.

2. *Recognition that skills and capability can be provided externally*

HDN strongly supports the important point also made in paragraph 3.19 that organisations can have their skills and capability needs met “from outside their organisation”. We have designed our Board Mentoring Programme with a view to encourage this “external” focus on learning and skills development and based on the feedback from our pilot programme and recent regional consultation events we would argue that programmes like ours can offer more benefits than purely in-house board members training.

Every Board member is different and the HDN programme provides targeted individual mentoring support linked to personal needs, whether the Board member is new to the sector, new to being a Board member, is experienced but underperforming or is developing new skills such as becoming a chair. It also enables key experience and skills to be shared, through mentoring and developing Board members to be even better Board members who can offer their experience to other Boards in the future. Board appraisal and individual Board member self-awareness are critical to this, and 360 feedback is a very useful tool which is included, both for individual board members and whole Board appraisal if appropriate.

There is much good practice and experience in the sector, and both mentoring and shared group sessions offer the opportunity to share knowledge, best practice and apply these to real issues and case studies. We hope that the HCA will, in looking at what comes next after this consultation make it very clear that it would expect regulated organisations to demonstrate clear succession planning and a related plan to attract and develop the skills they require. Participating in a programme like the HDNs Board mentoring programme would help provide such evidence.

3. *Equalities Statement and the need for greater diversity amongst boards*

The HCA’s Equalities Statement outlined on page 5 of the paper is duly noted. However, there appears to be very little else in the consultation paper around equalities and diversity. In particular, HDN amongst many other individuals and organisations, strongly believe that boards need to be far more reflective of the communities they serve. Recent data produced earlier this year by the Board Development Association revealed the lack of diversity amongst boards across the UK and this we feel is an issue that the HCA should be willing to flag up with Boards. HDN’s Mentoring Programme is aimed not only at existing board members but also at *potential* board members for example staff who are interested in governance issues and who would welcome the opportunity to become board members in other organisations. We feel that this would be an effective way of increasing/improving board member diversity across the sector and look forward to hearing from the HCA on this and the other issues highlighted in our response.

Clifton Robinson
Chief Executive
Housing Diversity Network
18 August 2014

The Hyde Group
Making a lasting difference

The Hyde Group response: consultation on changes to the regulatory framework

July 2014

The Hyde Group is a leading provider of affordable housing and makes a significant contribution to meeting housing needs and improving people's quality of life. The Hyde Group has close to 50,000 homes and houses over 95,000 residents. Hyde provides a range of social housing products ranging from general needs, intermediate housing products and supported housing.

Hyde is one of the largest housing association groups working in England, owning or managing homes in London, Kent, Surrey, Sussex, Hampshire, the East of England and East Midlands.

We welcome the opportunity to respond to the HCA's consultation on changes to the regulatory framework. We agree with the Regulator's analysis of the sector's changing risk profile and the need for housing associations to be able to demonstrate their firm grip of the impacts of these risks on their business. We also firmly support the Regulator's stated aim to strike the right balance between strengthening the Regulatory Framework while minimising burdens on the sector and to continue to uphold the principles of co-regulation.

We consider that the proposed changes to the consents regime for viable and well governed providers fall somewhat outside of these principles and call on the regulator to review them. We do not believe that the implementation of this regime for providers who otherwise adhere to the new, strengthened regulatory framework will do much to improve the risk management. Instead it will reduce the flexibility to access finance which providers need to deliver more new housing under the Affordable Homes Programme.

The changes will give providers the right to charge high-earning tenants higher rent. We have argued previously and re-state here that the practical implementation of the change will depend on any further legislation to compel tenants to disclose their income. We further argue that alongside this change the government should give housing associations further flexibility on rent setting and allocations, to help us better manage our stock and the communities we work in.

Below we set out our position on this issue in more detail in our answer to consultation question 1 (Governance and Financial Viability Standard), question 6 (Changes to the General Consent) and question 5 (Changes to the Rent Standard). We have not attempted to answer questions relating to landlords who are subsidiaries of non-registered providers or for-profit providers as this does not apply to Hyde. However, Hyde is a member of the g15 group of landlords. The g15 response covers some of the issues Hyde has not responded to.

The Hyde Group response

Governance and Financial Viability Standard (question 1)

a) Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

c) Do the requirements in paragraph 1.2 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 businesses?
d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Hyde Group response:

1. We agree with the Regulator's view of its own remit and agree that it must update its regulatory framework so that it is able to provide effective regulation to the sector which has changed its approach to risk management.
2. In this light we consider the new requirements relating to the planning, risk and control framework; the skills and capability requirements; and the asset register and stress-testing of the business plan (1.2, 1.4, 1.5) sensible and reasonable. Hyde already meets most of these requirements. We are currently considering what further steps we need to take in order to be fully compliant with the new requirements by April 2015.

Changes to the General Consent (question 6)

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Hyde Group response:

1. The social housing sector on the whole does not see itself simply as a custodian of public assets. Instead, most associations see themselves as social businesses who aim to provide homes for future residents while ensuring that their existing assets are safe and that the current tenants continue to receive great service and live in homes and communities that are of good quality and well managed. We are pleased that the Regulator recognises this and states that any attempts to strengthen regulation must be balanced with allowing providers to run their business freely. This also chimes with the HCA encouraging providers to use their assets more effectively.

2. Proposed changes to Category 6 of the General Consent go against this principle because they will add an extra layer of oversight and scrutiny for providers who are otherwise considered financially viable and well governed.

3. The Regulator says that the changes are not designed to stop the transactions and that it is content that providers will continue to use these arrangements in the future. The change is about the quality of risk assessment and due diligence carried out by providers prior to entering into these arrangements. If the Regulator is assured that a provider is well-governed and financially viable it should trust it to apply the same high standards of scrutiny and diligence to its financial arrangements. They are unlikely to enter into poor or badly-assessed deals which the Regulator would reject. The Regulator should be further assured about providers rated by credit agencies such as Moody's. The Regulator shares best practice and methodology with these agencies which gives the Regulator a good oversight of how rated providers assess risks of private finance arrangements.

4. The change has the potential to create unnecessary delays in securing finance. This could impede the providers' freedom to run their businesses . The Regulator does not specify situations in which consents won't be granted, any timescales for consideration of applications and the procedure for appeals. The change will also substantially expand the Regulator's financial scrutiny function without assuring the sector that it has the necessary capacity, skills and knowledge to scrutinise individual deals in a timely and comprehensive manner.

5. The Regulator does not specify if the facilities already arranged but as yet undrawn will be subject to the same rules as new facilities. We urge the Regulator to assure the sector that facilities arranged prior to the rules coming in won't be affected.

Changes to the Rent Standard (question 5)

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

Hyde Group Response

1. The changes reflect the Direction from DCLG. However, they do not change the legal framework which places no obligation on tenants to disclose their income to their landlord. Without such an obligation the sector will struggle to use this new power to charge higher rents.

2. Hyde had previously stated that it agreed with the principle that tenants on higher incomes should be paying higher rent. We use this opportunity to reaffirm this position. We have also previously argued that without changes legislation requiring tenants to disclose their income the policy will be very difficult to enact. Therefore we call on the government to work with the sector on further details of the policy and plans for its implementation.

3. Hyde would further argue that the government should grant providers further flexibility in allocating housing and setting rents, to allow us to better manage our business and the communities we serve.

For more information about Hyde and this response please contact Elena Scherbatykh, Lead Policy and Research Analyst on [redacted]

Response of The Wrekin Housing Group Ltd. to the Consultation on Changes to the regulatory Framework, published by the HCA in May 2014

To: Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency - The Social Housing Regulator
Email: statutoryconsultation@hca.gsi.gov.uk

From: Chris Horton
Group Company Secretary
The Wrekin Housing Group Ltd.
(registered number L4424)
Email: [redacted]

Introduction

This response is made on behalf of the Boards of the three registered providers in the Group to the various consultation questions in the paper.

1. 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?

Yes. We welcome the continued commitment to Co-regulation as being the most likely means of providing assurance to stakeholders.

We also welcome the emphasis on good risk management, provided it is based on the evaluation and control of risks in developing the business and not on an assumption that risk should be minimised and avoided. The latter would ironically increase exposure to risk as it would lead to many providers managing a declining and aging stock efficiently but with no prospect of increasing the stock of social housing. In other words it invites the risk of stagnation and inertia leading, over time, to a failing business.

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

Yes, it would be confusing and complex to try to specify in more detail the outcomes expected due to the diversity of registered proprietors. For example it is helpful to add a requirement to safeguard social housing assets because this avoids specifying how it should be done while making sure the expectations of the wider public and other stakeholders are met. The reporting requirements in 1.7 are considered normal and not onerous. The new certification requirement in 1.8 is not likely to be effective but, in many cases, merely a formulaic and routine statement.

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 businesses?

Although each of the concepts is distinct, the requirements of 1.2 seem repetitive and the combined effect (particularly including the word 'prudence') is likely to signal a risk-averse approach that may not be the best way of safeguarding and expanding social housing assets. It might be better not to require how providers manage but to require that the result of appropriate, professional management is that the provider is run on a sound financial basis to maximise its effectiveness in achieving all its strategic aims.

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

Yes. It is important to ensure that the management of each provider routinely considers, in a holistic way, risk assessment and risk control and that the Board oversees the processes and receives assurance of the way they are operating. All providers should be able to know with confidence the requirements of 1.5 are met.

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

Yes. In relation to 2.2 we consider the wording strikes the appropriate balance between encouraging parents to oversee and to support compliance while making subsidiary boards responsible for compliance.

2. Code of practice:

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

No. Much of the content is little more than re-stating the provisions in different words. It is not sufficiently detailed to be clear and helpful in directing how providers should comply but to adopt a detailed, prescriptive approach is considered inappropriate because:

- it would not be possible to draft a prescriptive code so as to permit sufficient diversity in how providers manage their businesses to reflect the diversity of the sector: some providers aspire to 100,000 units and others to 1,000;
- it would derogate from the principles of Co-regulation;
- above all, by taking responsibility away from Boards and executive management there would be confusion over accountability for decisions and appropriate risk management.

b) Is the role of a code clear and reasonable?

No. It is hard to imagine what positive result might be achieved by a code. If providers wish to have regard to more detailed guidance it is considered that advice from the NHF or other bodies in the sector would suffice.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

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

c) Are they reasonable

We consider the revisions generally are reasonable and likely to be effective.

We have a particular concern relating to paragraph 4.20 of the Consultation document which refers to the regulator re-issuing 'Disposing of Land.' Although it is not referred to in this consultation, we understand from a conversation with a regulation manager that there will be a revision so that paragraph 3.12 of 'Disposing of Land' does not apply to auction sales. In practice this will have an adverse effect on value for money in the case of The Wrekin Housing Trust. This arises because we will incur an additional valuation fee on the 150 to 200 properties likely to be sold each year by auction in addition to the fee for valuations and sale payable to the auctioneers (whose surveyors comply with the formal requirements for sales by charities). We consider there will be no corresponding benefit as our analysis of the valuations and prices achieved shows that overall we have achieved faster sales at higher prices through auction sales than through private treaty sales.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?

b) Are they reasonable?

We have no strong views but consider the changes reasonable and appropriate.

5. 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 focused as possible?

Yes.

THIRTEEN GROUP

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Thirteen Group is pleased to submit its response to the Consultation on the Changes to the Regulatory Framework. Our comments are set out below, and we would be happy to clarify our thinking if required.

Any queries on this submission should be addressed to Linda Minns, Head of Governance: email: linda.minns@thirteengroup.co.uk; telephone: 01642 947081

Consultation Questions

1. **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?**

   It is our view that the proposed Standard meets the Regulator's economic objectives to protect social housing assets. We welcome the proposals, which we feel are reasonable and in reality simply set out the approach that any well-run and conscientious business/registered provider would be expected to take, especially from a risk management perspective.

   There are, however, some areas where we feel clear guidance will be of benefit, as detailed below.

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

   Whilst appreciating the need to minimise interference and allow registered providers to run their own business, as well as recognising the fact that one size does not fit all, we feel that clarity in some areas would be beneficial.

   For example, there are differing views on the definition of 'social housing' and the social housing product, e.g. does this include community work, employment and training, and what is classed as diversification? It could be argued that care and support fits into both categories.

   It is clear that the required outcome is the protection of social housing assets, however the non-prescriptive nature of the Standard may make it difficult to 'prove' compliance and demonstrate that registered providers have been judged on a consistent and transparent basis. Benchmarking will also be difficult. We appreciate that the Code of Practice will provide further guidance and examples of how the requirements may be met.

We welcome the requirement for Boards to confirm compliance with the Standard on an annual basis.

c) Skills, capability and independence:

Recognising the difficulties of operating in the current economic and political climate, and factoring in changes to grants and funding regimes and the impact of welfare reform, we agree that it is imperative that Boards have the appropriate skills and capability to understand the complexities of operating in such an environment and the ability to ensure the viability of the business.

We welcome the focus on independent boards, and moving away from traditional LSVT representative boards. The Standard will support the Group's proposals to move towards smaller and more independent boards, with increased focus on commercial and financial skills.

The Standard will also help organisations move away from the concept of board directors remaining on boards for the maximum 9 years' term of office, encouraging more frequent board renewal based on business need and robust appraisals of board effectiveness.

d) Risk:

We feel the requirements on risk are reasonable and proportionate, and are the requirements we would expect any registered provider to follow to ensure the continued viability of its business.

However, it is felt that some guidance on what 'good' looks like would be useful, i.e. a minimum standard of what the Regulator is looking for in the context of risk reporting, risk appetite and management of all risk activity, assuming there is a requirement to demonstrate assurance at appropriate levels throughout the organisation and at appropriate frequencies. We accept that this should not be prescriptive but there should be clarity on what the Regulator is looking for, and how this will be evidenced.

e) Assets and Liabilities:

Whilst appreciating that the Regulator feels that specifying a format for records on assets and liabilities goes against the principle of co-regulation, it could be argued that in this instance it would be useful to provide a standard baseline, with registered providers then able to include additional information as they see fit on the basis of their business practice and preferences.

f) Stress Testing:

The Code will apparently be non-prescriptive but will provide examples of scenarios that should be considered, on the basis that registered providers differ in size and complexities. Again it may be difficult to judge compliance

on this basis, and there should perhaps be some key areas stipulated that the Regulator would expect to be stress tested. That way we would have some clear guidance and the Regulator would have at least some basis of being able to measure compliance by every registered provider, irrespective of size and complexities.

2. Code of Practice

The role of the Code of Practice seems clear and reasonable, though it is difficult to ascertain how useful it will be at this point. We look forward to seeing what is included, to better understand the level of guidance available.

Linda Minns
Head of Governance
Thirteen

[redacted]

Tel: [redacted]

Thrive Homes

Response to Consultation on Changes to the Regulatory Framework

Thrive Homes is a medium registered provider that currently operates in South West Herts and Buckinghamshire. We broadly welcome changes to the regulatory framework that enhance clarity and facilitate Providers ability to comply without unduly adding to the costs of governance as we recognise the importance of the sector retaining its reputation of being well managed and a 'safe' investment.

6.1 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?

Yes - The changes in the wording of the standard make this requirement 'overt' so providers and their Boards cannot be in doubt as to the regulators intent.

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

In the main the expectations are clear – the challenge is in anticipating the evidence that the Regulator will require to demonstrate compliance as some of the expectations e.g. Para 1.2 are easy to put into words but relate to concepts that are to some degree subjective. In a situation where the Regulators resources are limited and there may not be much time to build relationships with providers, this subjectivity is a concern for providers and it would be helpful to providers for the regulator to maintain a dialogue with the sector on its approach to evaluating compliance.

While acknowledging the importance of the sector's reputation, we would seek re-assurance from the regulator that the requirement to 'safeguard' this is not used by the Regulator in ways that inhibit innovation within the sector.

c) Do the requirements in para 1.2 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 businesses?

It is reasonable for the Regulator to expect providers to run their businesses in this way however, in assessing compliance with this standard, it is important that the regulator is mindful of the constraints that apply to some providers, particularly those that were established as a result of stock transfer, around the composition of their boards and that meeting the requirement to maintain skills etc. may result in organisations adopting governance structures that are more cumbersome than would be considered to be ideal.

d) Do the requirements in para 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes – these paragraphs provide a helpful explanation of the Regulators requirements.

e) Are the requirements for the specific types of registered providers in Section 2 reasonable given the Regulators aim of protecting social housing assets?

It seems appropriate that there are specific requirement in place for specific types of provider to ensure that the risks associated with different types of entity are covered.

6.2 Code of Practice

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

The introduction of the Code is welcomed as guidance on meeting the Regulator's expectations is helpful. However, rather than producing this as a separate document, it might be useful to incorporate the code into a 'reference' version of the Regulatory Standards so that providers can read across the Standard and applicable part of the code.

b) Is the role of the code clear and reasonable?

Yes – the role of the code is clear and the re-iteration of providers ability to determine how it will comply with the standard at Para 7. is welcome subject to the comments in response to Q 6.1 b.

Para 5 -the examples of potential sources of undue influence are a little oblique and might benefit from greater explanation.

.

6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?
b) Balance this aim with registered providers being free to run their own businesses?
c) Are they reasonable?

These proposals seem to provide an appropriate balance between the protection of social housing assets and the freedom of providers to manage their businesses.

6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

b) Are they reasonable?

These proposals seem to be appropriate.

6.5 Do the changes to the rent standard :

a) Reflect the direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

These proposals seem appropriate and clearly set out the requirements of providers.

6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The changes to the general consent have strengthened regulatory oversight of transactions that would result in a reduction in social housing assets and it seems reasonable that the regulator should have this assurance across all providers.

6.7 Do the other proposed changes to the registration criteria:

a) Contribute to the Regulator better meeting its fundamental objectives?
b) Express the requirements of registered providers in a a way that is clear and succinct?

These changes appear to be appropriate.

Elspeth Mackenzie
CE – Thrive Homes
Tel : [redacted]
[redacted]

town&country™
housing
homes people choose

Tim Sullivan
Regulatory Framework Manager
The Homes and Communities Agency
The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

Town & Country Housing Group
Monson House, Monson Way,
Tunbridge Wells, Kent TN1 1LQ

Telephone 01892 501773
Fax 01892 501772
Email info@tchg.org.uk

tchg.org.uk

15th August 2014

Dear Mr Sullivan,

CONSULTATION ON CHANGES TO THE REGULATORY FRAMEWORK

Town and Country Housing Group welcomes the opportunity to comment on the above consultation document.

We have carefully considered the proposals and have produced the attached response.

Town & Country submitted detailed comments to the discussion document issued by the Regulator in April 2013 and we are pleased that our main concerns have been reflected in the proposals outlined in this latest consultation document. Consequently, we broadly support the proposals contained in the consultation document.

The main area where we have some concerns is around the proposed Code of Practice. Despite the assurances given in the Code itself that it is not intended to be prescriptive, our concern is that over time the Code may become another set of requirements that providers will have to meet. Consequently, we would prefer to see the details contained in the Code to be issued for information rather than as a formal Code of Practice.

We would like to thank you for the opportunity to comment on the proposals and would welcome further opportunities to engage with the regulator on these issues.

Yours sincerely,

[redacted]

Bob Heapy
Chief Executive
Town and Country Housing Group

A Charitable Industrial and Provident Society
FSA registration number 30167R
Tenant Services Authority registration number L4251

Consultation on Changes to the Regulatory Framework – Published May 2014

Consultation questions:

A6.1 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?

Yes. The proposed changes will in our view help to protect social housing assets. We are pleased to see the additional emphasis on effective risk management, including the requirement to carry out stress testing against identified risks.

We also support the more targeted approach of setting specific expectations for profit making registered providers in order to manage the additional risks to social housing assets.

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

Yes. We particularly welcome the way the proposed standard combines the governance and financial viability expectations, as they are so inter-linked.

We do have one concern, which is the proposal to change the required outcomes so that governance arrangements must adhere to "all relevant law" rather than "all relevant legislation". Whilst we understand the rationale for this change, in practice the law is constantly evolving, for example through case law and as a consequence it is difficult for boards to make this declaration to the HCA with absolute certainty. We would like the wording to be changed to allow landlords to comply with the standard if they have made the declaration to the best of their knowledge having made reasonable enquiries.

One minor point in terms of presentation is that paragraph 1.3 of the Standard states "Registered Providers shall communicate in a timely manner with the Regulator" on non-compliance issues and paragraph 1.7 says "Registered Providers shall communicate with the Regulator in an accurate and timely manner." As these paragraphs are similar we would suggest combining them into a single paragraph.

c) Do the requirements in paragraph 1.2 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 businesses?

i) Yes. We agree that providers must have appropriate skills, capability and independence and these are essential requirements to help protect social housing assets.

ii) Yes. We are satisfied that these requirements appropriately balance the aim of protecting social housing assets with providers being free to run their own businesses. For example, we are pleased that the Standard does not identify the skills required by providers, how skills assessments should be conducted and how any skills gaps should be addressed. These are all matters for individual providers taking into account the nature of their businesses and the risks involved.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

i) Yes. The requirements will help to protect social housing assets. In particular, we are pleased to see such an emphasis on effective risk management, which we believe is essential in protecting social housing assets.

ii) Yes. There is an appropriate level of balance. Notwithstanding our comments below about the Code of Practice (see A6.2), we are pleased that the Code makes it clear that the business planning, risk management and control framework does not have to be captured in a single document. This will allow providers to produce the framework in a form that works best for them and their stakeholders.

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

Yes. We support the proposed approach to having specific expectations for profit making registered providers and registered providers with unregistered parents. We also feel it is reasonable to stipulate the need for registered providers that are parent companies to provide appropriate support and assistance to their subsidiaries that are also registered providers.

A6.2 Code of Practice

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

Yes. The proposed Code provides some useful information to illustrate the requirements of the Governance and Financial Viability Standard and how to comply with it; however, we would question whether this information needs to be issued in the form of a Code of Practice or whether it could just be published as an informal information document (see comments below).

b) Is the role of a Code clear and is it reasonable?

Yes, the role of a Code is clear, but we are concerned that in practice the Code may be introducing a further set of detailed requirements that providers will need to meet. Paragraph 7 of the Code provides some reassurance by stating that "Examples of how compliance might be achieved [within the Code] are not intended to be exhaustive neither are they intended to be prescriptive". However, we would still prefer to see the details contained in the Code issued for information to providers rather than as a formal Code of Practice.

A6.3 Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

Yes. The proposals will help to protect social housing assets and the value of investments in them. We agree there is a risk that public assets could be lost when they transfer from a non-profit registered provider to profit making one and therefore we agree that safeguards are necessary.

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

Yes. The proposals provide this balance.

c) Are they reasonable?

Yes. The proposals are reasonable in our view.

A6.4 Do the changes to the registration criteria:

a) Reflect the proposed changes to the governance and viability standard?

Yes. In our view the changes to the registration criteria reflect the proposed changes to the governance and viability standard.

b) Are they reasonable?

Yes. The changes are reasonable. The regulatory requirements for governance and financial viability are now so closely linked in the Standard that it is reasonable to expect providers to meet both of them at the point of registration.

A6.5 Do the proposed changes to the Rent Standard:

a) Reflect the Direction from DCLG?

Yes, the proposed changes reflect the Direction from DCLG. However, we are concerned that some providers, particularly LSVTs, may experience difficulties in meeting financial commitments due to a reduction in rental income brought about by these changes. We therefore welcome the reassurance in the Standard that the specific requirements of the Rent Standard could be waived if the financial viability of a provider is affected by the changes. We would like to see this safeguard remain.

The proposals include allowing providers to charge market rents to tenants earning more than £60k a year. We are pleased that the introduction of this policy is discretionary and it will remain up to individual providers to decide whether to introduce it.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes. The proposals are expressed clearly, succinctly and are outcome focused.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes. The proposed changes will help the Regulator to protect social housing assets more effectively.

A6.7 Do the other proposed changes to the registration criteria:

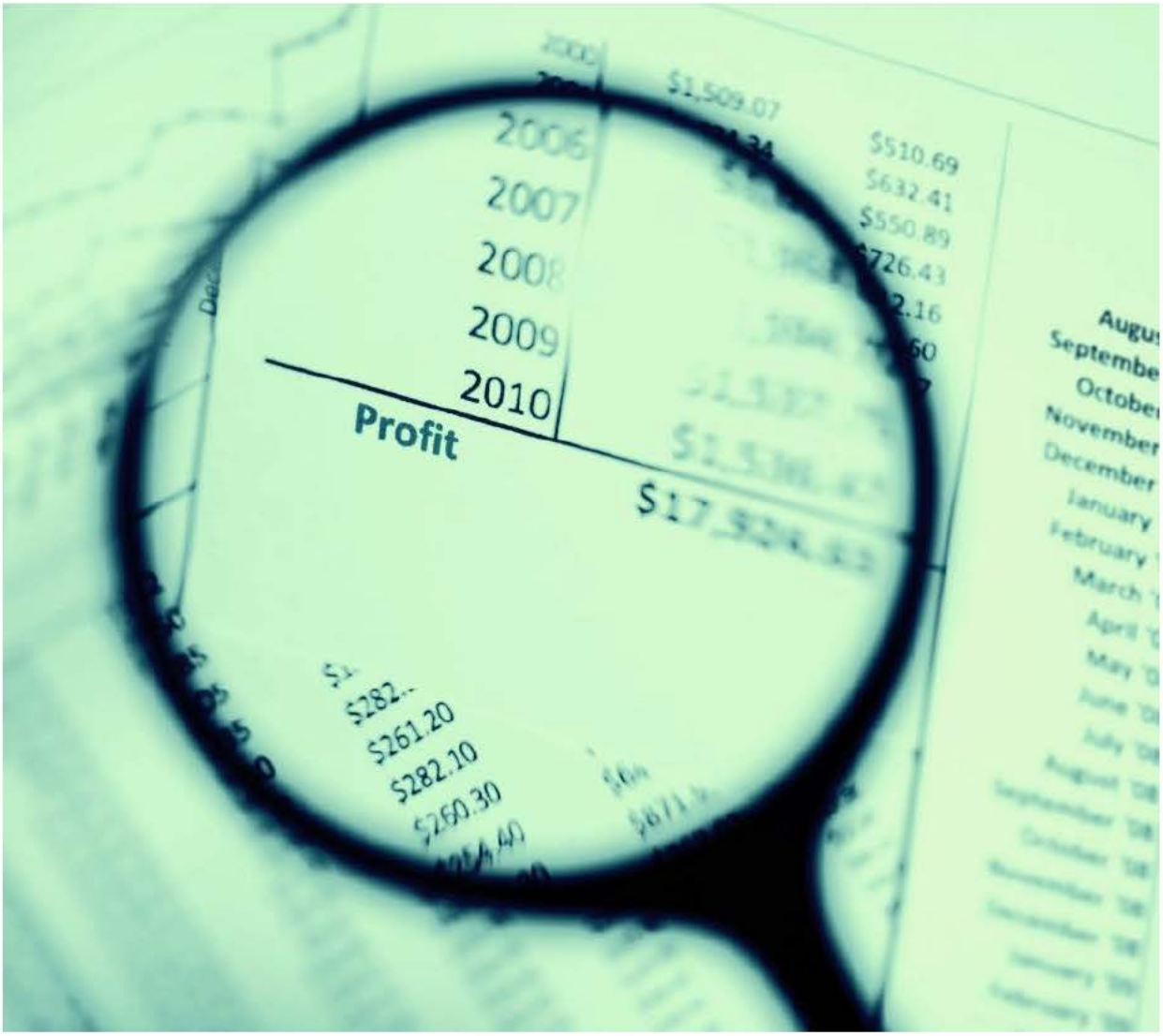
a) Contribute to the Regulator better meeting its fundamental objectives?

Yes. We particularly agree with the need for both 'for profit' and non-profit Registered Providers to refer to the provision of "social housing" explicitly in their objects. We agree that the proposed changes to the registration criteria will contribute to the Regulator better meeting its fundamental objectives.

b) Express the requirements of registered providers in a way that is clear and succinct?

Yes. The requirements are expressed in a clear and succinct way.

trowers & hamlins



Response —— August 2014

Consultation on Changes to the Regulatory Framework – Response relating to for-profit registered providers and new applicants

Pioneering — Bahrain — Construction — Public sector — Energy — Real estate — London — Tax — IT — Dubai — Manchester
Knowledge — Pragmatic — Malaysia — Exeter — Thought leadership — **Housing** — Agile — Creative — Connecting
Local government — Manchester — Environment — Focused — Islamic finance — Projects — Abu Dhabi — Corporate finance — Passionate
Employment — **Regulation** — Procurement — Expertise — Specialist — Planning — Investment — Committed — Delivery — IT
Corporate — Infrastructure — Value — Development — Private wealth — Oman — Governance — Birmingham — Corporate finance
Dynamic — Pensions — Dispute resolution — Insight — Banking and finance — Arbitration — Diverse — Regeneration — Care

Trowers & Hamlins LLP
3 Bunhill Row
London EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

Contact
Robert Beiley
Partner

d [redacted]
e [redacted]

Contents

Section One

Introduction

This response to the HCA's "Consultation on Changes to the Regulatory Framework" (the **Consultation Paper**) is based on comments and feedback arising out of discussions with clients during May and June 2014. This response is directed at comments and feedback from "for-profit-registered-providers" (**FPRPs**) together with potential applicants for registration.

The views recorded in this response do not necessarily represent the views of Trowers & Hamlins LLP or any of the organisations to whom we have spoken.

We have divided comments into topics by reference to the consultation.

We have also submitted a separate response arising out of workshops facilitated with non-profit RP clients.

Section Two

Governance and financial viability standard

A number of our clients and potential applicants have questioned the 5% threshold for non-social housing business discussed at paragraph 3.50 of the Consultation Paper. Concerns are twofold:

- Firstly it is noted that there is no similar threshold of application to the not-for-profit sector which puts the for-profit sector at a potential disadvantage in terms of its ability to structure their business operations in an efficient manner.

- Secondly, a number of clients have observed that it is probable that the Regulator's concerns in relation to non-social housing activity would be covered by other aspects of the regulatory framework in any event, and in particular the proposed requirements for stress testing.

It is also noted that a number of FPRPs and potential applicants have business activities which are either traditionally (but not technically) defined as social housing or which are closely aligned to social housing. For example, the provision of care and support services or the provision of rented housing at sub-market (but not affordable or social) rents and that some or all of these activities are either incidental to the provision of social housing (and should therefore be undertaken in the same legal entity) or provide a necessary cross-subsidy to the social housing aspects of the provider's business.

Concern has been raised in relation to the proposed expectations of the Regulator in relation to dealings with third parties, and in particular in the context of FPRPs interactions with related parties. In particular, a number of our clients have commented that (subject always to the overriding requirement to maintain compliance with the Regulator's Governance and Financial Viability Standard) it is down to each group as to how best to "extract" profit from its group entities and that in certain circumstances (and, of course, always subject to HMRC's transfer pricing regime) one mechanism may be through intercompany recharges. It may be the case that in some scenarios these transactions may not accord with "market value". These arrangements are absolutely standard practice within the private sector.

A number of comments have been received from clients and potential applicants in relation to the commentary in the consultation about "independent" directors on FPRP boards. Two concerns have been raised in particular. Firstly the fact that in the corporate sector, it is widely understood and accepted that a subsidiary vehicle is just that – in other words it is under the control and direction of its parent entity. Secondly, as a matter of company law, it is a director's duty to act in the best interests of the company – which is interpreted as being in the best interests of the company's shareholders. There is therefore a real danger that in the context of a FPRP which is wholly owned by another entity, the Regulator's expectations in terms of the "independent" role of directors is directly at odds with the requirements of company law.

Section Three

Proposed revisions to the disposals regime

A number of clients have commented that the proposed implementation of the disposals proceed fund is potentially a "blunt instrument" and that there may be occasions where particular providers need to make an application based on specific circumstances to the Regulator, in order to achieve particular outcome-focussed objectives. It has therefore been suggested to us that the Regulator may wish to consider, as an alternative, allowing the flexibility of entering into contractual arrangements on a case by case basis with FPRPs in much the same way that the HCA in its investment capacity is capable of doing.

Section Four

Changes to the registration criteria

It has been put to us that the proposed changes to the registration criteria could act as a serious barrier to entry for new applicants to the sector and, given the relatively low number of providers who have sought to register on a for-profit basis, there is a view that strengthening the registration criteria may reduce this number even further.

In particular, it has been put to us that a number of applicants (and in particular their parent entities) will only commit to particular projects on a contingent basis (i.e. the project will only proceed if and when registration with the Regulator is achieved). As such, a number of developer clients in particular are only prepared to commit what can be substantial resources to a project on the premise of successful registration and whilst a project remains at risk (pending registration) developers may be reluctant to commit significant funds to a project.

We would also note that, from a technical perspective, the Regulator is capable of accepting voluntary undertakings from FPRPs and it would seem to us that the voluntary undertaking route could be used as a mechanism for allowing small scale applicants to maintain a proportionate registration process with the Regulator's advised expectations, then being required to be met at a particular point in time or once a particular level of turnover has been achieved.

It should also be borne in mind that a number of the providers in the FPRP sector have very small scale operations (albeit with the ambition to grow and expand) and therefore requiring a higher set of registration criteria for this type of entity could be seen to be disproportionate.

trowers & hamlins

Response to —— August 2014

Consultation on Changes to the Regulatory Framework – Response arising from not for profit registered provider workshops

—— Pioneering —— Bahrain —— Construction —— Public sector —— Energy —— Real estate —— London —— Tax —— IT —— Dubai —— Manchester
nnecting —— Knowledge —— Pragmatic —— Malaysia —— Exeter —— Thought leadership —— **Housing** —— Agile —— Creative —— Connect ng —— Priv
Local government —— Manchester —— Environment —— Focused —— Islamic finance —— Projects —— Abu Dhabi —— Corporate finance —— Passionate
— Employment —— **Regulation** —— Procurement —— Expertise —— Specialist —— Planning —— Investment —— Committed —— Delivery —— IT —— Go
— P —— Corporate —— Infrastructure —— Value —— Development —— Private wealth —— Oman —— Governance —— Birmingham —— Corporate finance
— Dynamic —— Pensions —— Dispute resolution —— Insight —— Banking and finance —— Arbitration —— Diverse —— Regeneration —— Care —— Communic

Trowers & Hamlins LLP
3 Bunhill Row
London EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

Contact
Sharron Webster
Partner

d [redacted]
e [redacted]

Contact
Mike Gaskell
Partner

d [redacted]
e [redacted]

Contents

Section One

Introduction

This response to the HCA's "Consultation on Changes to the Regulatory Framework" published in May 2014 (the **Consultation Paper**) is based on comments and feedback arising out of workshops facilitated by Trowers & Hamlins LLP during July 2014.

The workshops were attended by representatives from the following RPs and other organisations:

Ability Housing Association
Accent Group
Acis Group
Adams Integra
Catalyst Housing
Chelmer Housing Partnership
Cottsway Housing Association
East Midlands Housing Group
Eastlands Homes Partnership
Equity Housing Group
Freebridge Community Housing
Great Places Housing Group
The Guinness Partnership
Housing and Care 21
Hyde Group
Impact Housing Association
The Industrial Dwellings Society (1885)
livin Housing
mhs Homes
Moat Homes
North Lincolnshire Homes
Octavia Housing
Origin Housing
The Peabody Trust
The Regenda Group
Rochdale Boroughwide Housing
St Christopher's Fellowship
St Vincent's Housing Association
Sentinel Housing Association
South Lakes Housing
Southern Housing Group
Valueworks
Venture Housing Association
Wandle Housing Association
Watford Community Housing Trust
WM Housing Group
Woman's Pioneer Housing
Wulvern Housing
Yorkshire Housing

The views recorded in this response do not necessarily represent the views of Trowers & Hamlins LLP or any of the organisations whose representatives attended our workshops, or of any particular proportion of those organisations. The comments noted in this response do not reflect every view expressed by attendees at our workshops, but are intended to demonstrate key themes which emerged from the discussion. Where there seemed to us to be a substantial divergence of views on a particular point, we have made reference to this.

We have divided these comments into topics by reference to the questions asked in the Consultation Paper.

We have also submitted a separate response arising out of discussions with for-profit registered providers and those interested in applying for registration.

Section Two

Governance and Financial Viability Standard (A6.1)

- RPs are keen for the Regulator to provide "intelligent regulation" – that is, regulation which responds analytically and intelligently to presenting issues, and works with RPs to provide solutions in potentially difficult situations. A concern was expressed as to whether the Regulator has been able to source sufficient capacity and sector experience to provide this level of regulation. Intelligent regulation will be key to operating the revised Regulatory framework.

- Generally, RPs expressed concerns regarding the Regulator's likely interpretation and implementation of the Regulatory framework in its revised form (whether or not this precisely matches the wording proposed in the Consultation Paper). Many RPs expressed frustration in their experiences of dealing with the Regulator, including apparent inconsistent approaches to presenting issues (whether between officers of the Regulator or over the course of time), seemingly harsh or inflexible interpretations of the Regulator's own framework, and/or the appearance of regulation by reference to unwritten rules. It was the clear feeling of many organisations attending our workshops that the Regulator must take steps to address its image within the sector in order to engender greater trust on the part of regulated organisations.

- There were concerns about the proposed amendment to the Governance and Financial Viability Standard which would require RPs to have governance arrangements to ensure that RPs "adhere to all relevant law". The following concerns were particularly prominent:

    - It is not clear what the Regulator considers to be "law" for these purposes. Clearly statute and case law would be included. Does this extend to requiring full compliance with all contracts, restrictive covenants attaching to land or other requirements which could be described as legal?

    - Many organisations felt that it is impossible for any business of any substantial size to be certain that it has adhered to all relevant law at any time.

    - There seems to be no scope within the proposed standard for RPs to take a view on risk. For example, in a range of situations it might be appropriate for an RP to decide to risk breaching a legal requirement and take out insurance against the consequences of doing so. The proposed revised standard would seem not to allow for this.

- Given the greater emphasis on timely and transparent reporting to the Regulator, RPs are concerned that there seems to be no concept of materiality to breaches of relevant law. The draft Code of Practice at Paragraph C1.3.2 refers to materiality and relates the concept to "serious detriment" which is a concept relevant to considering breaches of the consumer standards. However, this is not relevant to a breach of the economic standards and would appear not to offer guidance to RPs in this context.

- The increased emphasis on board skills was not thought to be problematic in and of itself, but some organisations are concerned as to how they might source appropriate skills. RPs are restricted in the amounts which they can pay board members and restrictions

relating to conflicts of interest often rule out board members who would otherwise be well suited to the role. Some RPs based in rural areas are also concerned about attracting the relevant skills due to small local populations and long distances.

- RPs with defined constituencies amongst their board members, in particular LSVT organisations, may be constrained in their approach to adopting skills based recruitment processes or appraisal mechanisms.

- The Regulator's proposed requirements relating to asset and liability registers and stress testing were not thought to be problematic in principle, but RPs feel that the Regulator must acknowledge the potentially significant resource implications of putting together the information needed to satisfy these requirements, in particular regarding asset and liability registers. Clarity is also needed regarding the Regulator's expectations of asset and liability registers and stress testing. What will be considered to be sufficient (at least as a minimum)? It was suggested it would be helpful if the Regulator published its minimum requirements for the information to be contained in the registers. It was also noted that the validity of stress testing would very much depend on the assumptions used for any stress testing – any business model can be "broken" depending on assumptions used.

- Attendees did not generally express strong views regarding the Regulator's proposed specific requirements relating to for-profit registered providers.

- There was a perception amongst some organisations that, in the draft revised framework, the Regulator is seeking to broaden Regulatory requirements such that, in any given situation, there will almost inevitably be a "hook" on which an RP can be caught. This is particularly true with reference to adherence to all relevant law. Some RPs have a perception that the Regulator is too willing to downgrade an organisation for what are perceived to be relatively minor breaches of standards and this could lead in future to a fatalistic attitude to possible downgrades.

- Regarding independence at subsidiary level, the Regulator needs a more sophisticated approach to when this is and is not appropriate and/or relevant.

- In regard to the proposed approach to groups with unregistered parents, the Regulator seems to demonstrating some suspicion towards such groups without demonstrating why this might be the case. It would be useful to have greater clarity regarding the Regulator's concerns here.

Section Three

Code of Practice (A6.2)

Some comments in the previous section also relate to the Code of Practice. This section includes comments not covered above.

- One general concern on the part of RPs was how the draft Code of Practice might be interpreted. Despite the explicit statement within the consultation that "the Code is not guidance and is not a tick list to ensure compliance", there was concern that it would end up being treated as though it is.

- A parallel concern was that the Regulator's statement that the Code "has a status in law" may be over-interpreted in future if it is not qualified. The status which the Code does have in law is clear, but there is a risk that RPs and the Regulator will take a different view as to what this status is. The Regulator also needs to emphasise its view on how the Code of Practice sits within the proposed revised framework.

- The proposed Code of Practice seems to repeat much of what is in the standard without adding a great deal in many cases. The effect of this is therefore to increase rather than reduce uncertainty.

Section Four

Proposed revisions to the disposals regime (A6.3)

- Organisations attending these workshops did not express strong views regarding the proposed changes to the disposals regime.

Section Five

Changes to the registration criteria (A6.4)

- The organisations attending our workshops are unlikely to be affected significantly by the proposed changes to the registration criteria. However, it was noted that new applicants may face significantly higher burdens than under the current regime in relation to registration.

Section Six

Proposed changes to the Rent Standard (A6.5)

- Many RPs regard the current rent framework as overly complex (and have the same view of the proposed revised Standard), although acknowledging that the Regulator's Rent Standard forms only a part of this.

- Some organisations, especially those operating in higher value areas, expressed a concern that the Regulator's proposed revised policies do not address the question of conversion of social rented properties to market rent (as is the case with the current policy). This is a possibility which many RPs are considering, in relation to maximising value of their assets. However, the Regulator has no published position on the issue and, as many organisations are aware, deals with this on a bilateral basis outside the scope of existing standards. Organisations in lower value areas were less likely to be concerned about this than those in London and the South. Some RPs felt that this might result in it being easier to dispose of properties outside the sector rather than convert the rent tenure and keep the asset within the sector. It was felt that the Regulator presumably had not intended such a result.

- The proposed relaxation of the Rent Standard in relation to HISTs is not expressed clearly, (although it is capable of being understood). Most RPs felt that this was an unnecessary addition to the Standard and, if they did choose to seek to implement it, doing so would be likely to impose a disproportionate cost in terms of resource. Because of this, most RPs did not feel that it would be good value for money for them to pursue this route.

Section Seven

Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively? (A6.6)

- The proposed revisions to Category 6 of the General Consent are an area in which RPs are particularly concerned about the balance between co-regulation and prescription. Many organisations were surprised by the level of prescription within the proposed revised Consent and felt this to be at odds with the Regulator's co-regulatory approach.

- If more specific consents will be required the consents team at the Regulator will need to be strengthened considerably to enable it to respond in the short timescales often required for charging as well as for other transactions.

- Many organisations expressed the view that the sector had to date borrowed on the basis that, although secured against specific assets, the uses of the funds were not restricted. Given the "all monies" nature of the security given and the inherent nature of many it was not realistic to try and attribute particular purposes to monies secured against particular risks.

- Some organisations thought that the proposed requirements regarding the granting of charges over social housing dwellings would be overly restrictive on RPs attempting to agree and then complete complex deals on time and with the requisite degree of commercial freedom. In particular, some RPs were concerned that the terms of the General Consent do not distinguish between assets which are used in the provision of social housing on the one hand, and other assets which subject to the same statutory restriction despite not being used for social housing purposes, on the other. A view was also expressed that the Regulator should consider drawing a distinction between grant-funded and non-grant funded assets for the purposes of the General Consent.

- A broader comment from many RPs is that the General Consent for disposals by way of charging is not an appropriate place for the Regulator to regulate the terms on which an RP borrows funds. For example an RP may have in place facilities (or put them in place) prior to needing to charge assets for them. If the Regulator subsequently determines that it will not give consent to charging properties in favour of such facilities then potentially the RP will have expended time and money putting them in place (including the payment of sometimes substantial up-front fees) only to find that it may cannot use the facilities (because it is unable to provide security).

- A further question was raised as to the skills and background of the Regulator's staff making these decisions. It was felt by RPs that the changes proposed stepped behind the Regulator's insistence in other areas that boards be appropriately skilled and responsible for decision making if an official at the Regulator can undermine their decision making by refusing a security consent application.

- It is not clear to RPs why the Regulator has adopted a negative attitude towards index linked finance, which can be an appropriate element of RP funding arrangements.

- Many RPs feel that the oversight which the Regulator will have of their stress testing arrangements under the proposed revised Governance and Financial Viability Standard

should be capable of satisfying the Regulator as to funding arrangements which RPs have agreed.

- The proposed approach to on-lending could incentivise RPs to adopt other, riskier funding strategies.

Section Eight

Other proposed changes to the registration criteria (A6.7)

- The organisations attending our workshops are unlikely to be affected significantly by the proposed changes to the registration criteria. However, it was noted that new applicants may face significantly higher burdens than under the current regime in relation to registration.

Trowers & Hamlins' Consultation on Changes to the Regulatory Framework

In July 2014 Trowers & Hamlins held a series of workshops and other discussions with RPs across the sector to gather feedback on the HCA's "Consultation on Changes to the Regulatory Framework" published in May 2014. That feedback has been compiled and submitted to the HCA under cover of two other papers – one focusing on those issues relevant to for profit RPs and another focusing on issues more relevant to not for profit RPs.

This paper sets out Trowers' own response to various aspects of the Consultation Document.

A6.1 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?

Yes subject to our comments below.

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

Governance Required Outcome A requires registered providers "to deliver their aims … in a … transparent…manner". There is no definition of transparency. Greater clarity and guidance is needed for registered providers to be able to comply.

Governance Required Outcome A also requires registered providers to "adhere to all laws". This is obligation is expanded in the Code of Practice in paragraph A.1. The proposed change significantly extends the current standard. It is drafted clearly but, in practice, will cause anxiety for some of our clients.

Adherence to all law will not allow registered providers to consider the relevant law, carry out a risk assessment and then properly and reasonably decide to breach the relevant provision, paying compensation or for an insurance policy where relevant. Examples of this would be breaches of a restrictive covenant or a right of light in a development context or making payments in employment situations.

There could be an appropriate filter; perhaps having policies and procedures in place to consider all the law relevant applicable to the registered provider's business. Reference could be made to reasonableness, proportionality or materiality.

Annual certification of compliance with the Governance and Financial Viability Standard will increase the burden on a registered provider's annual assessment. Ensuring that there is a proper appraisal system in place so that there can be a regular and meaningful assessment of compliance may cause a significant expense for some associations. Whilst there is no requirement for external appraisal, this certification will place a greater burden on the chair of the board.

c Do the requirements in paragraph 1.2 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 businesses?

It is not clear exactly what the Regulator means by "independence". Further clarification is necessary as we have discussed whether the Regulator means complete independence, not being unduly influenced by another, being able to make independent decisions or being independent in case of a conflict.

Given the predominance of group structures in the sector, the concept of control needs to be maintained. It is right that a wholly owned subsidiary is under the control of its parent. Board skills are often relative to the position the organisation sits in the group structure and where the

The requirement for boards to be skilled may cause problems for LSVT associations where the traditional 1/3, 1/3, 1/3 model is appropriate and current transfers are going to ballot with traditional board structures. Skills often come at a later stage in board development. Local authority rights to nominate board members are protected in the transfer agreement, often together with a clause to prevent the composition of the board in the future.

d Do the requirements in paragraph 1.4 and 1.5 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?

The requirements for proposed requirements for stress testing will mean the sector's traditional methods will need to change.

The concept of assets and liabilities registers seems sensible but the Consultation and the Code do not prescribe what an acceptable register would look like. Further information or guidance on the minimum contents would be helpful so registered providers understand what information they need to include and ensure compliance.

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

The details of Section 2 in relation to unregistered parents will make such group structures unattractive. As far as we are aware, there are only a limited number of such groups and Section 2 will continue to make these unattractive notwithstanding the introduction of statutory provisions in the Housing and Regeneration Act 2008 which permit unregistered parents to be established. Please also see our comments on Category 6 to the General Consent in relation to unregistered parents.

A6.2 Code of Practice

a Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

We repeat the comments made under A6.1b above.

The proposed Code does not set out to be "a tick list to ensure compliance" but it may be useful to have more examples of what is expected of registered providers or what would be considered a successful outcome. Solicitors, for example, are regulated by principles and a Code of Conduct in an outcomes focused regime. The SRA's Code of Conduct says:

"The outcomes are supplemented by indicative behaviors. The indicative behaviors specify, but do not constitute an exhaustive list of, the kind of behavior which may establish compliance with, or contravention of the Principles."

A similar approach by the Regulator may be helpful to registered providers.

Paragraph C1.3.1 requires registered providers to inform the Regulator of "material issues". Clearer drafting in the second line of this paragraph might be "…indicate that there has been or *is likely to be or may have been* a breach" (our suggestion in italics). Guidance as to what is "material" in

Paragraph C1.3.2 refers to the Consumer Standard, bringing serious detriment into consideration of the Governance and Financial Viability Standard. The reasons for this are not made clear by the current drafting.

b Is the role of a Code clear and is it reasonable?

It would be useful if the role of the Code could be clarified. At paragraph 3.66, the consultation says that the Code "is not guidance" but at paragraph 3.67 says that it "has status in law". A registered provider need only have "regard to" guidance, not adhere to or comply with, as is suggested by the Code.

A6.3 Do the proposed changes to the disposals regime:

a meet the aim of protecting social housing assets and the value in it?

b balance this aim with registered providers being free to run their own businesses?

c are they reasonable?

Our only comment here is that the Regulator has proposed changes to the requirements on proceeds from sales under the preserved Right to Buy. It will essential to ensure that any calculations are net of any clawback payable to the local authority under Right to Buy sharing formulae.

A6.4 Do the changes to the registration criteria:

a Reflect the proposed changes to the governance and viability standard?

b Are they reasonable?

The new expectation expressed in paragraphs 5.11 and 12 will significantly change the current timetable for registration with the Regulator. Our answer to A6.2a in relation to more examples in the Code is relevant here. New applicants would benefit from more guidance or a list of minimum requirements to ensure they can comply with the Standard on application.

A6.5 Do the proposed changes to the Rent Standard:

a Reflect the Direction from DCLG?

b Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

We assume that the rent increases in April 2015 (with rent increase notices served in March 2015) will take effect under the current Rent Standard but this is not made clear in the draft. Clarification on that point would be useful.

We are grateful for the clarification in the proposed Rent Standard Guidance on "catching up" and the Guideline Limit in paragraph 2.2.

The Rent Standard does not allow registered providers any facility to convert to market rent, apart from rents for HISTs. Conversion could be used as an asset management tool, allowing, for example, market rent to be charged for a limited period to recoup costs. Currently, a registered provider could convert a social housing dwelling to market rent by either disposing with consent to

take it out of the sector completely or obtaining a Section 76 Direction. Has the Regulator dismissed conversion as a possible way to manage social housing assets?

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

The increased protection of social housing assets is clearly the goal of the new framework but we note that this has restricted use of the General Consent. This will mean more applications for specific consent, increasing the burden on the Regulator.

We welcome the updating of the Section 133 General Consent. We are conscious, however, that the two statutory provisions and regimes for consent (section 172 and section 133) are not identical. In particular, the exempt disposals under section 81(8) of the Housing Act 1988 do not relate to nor are mirrored by the exemptions in Section 173 of the Housing and Regeneration Act 2008. It would be useful if this was explained more clearly.

As currently proposed, the General Consent is confusing. It is generally operated by non-lawyers and is, at heart, a self-certifying process. For that reason, we suggest that Parts II, III and IV are made more prominent by bringing them to the front. It would be clearer then that registered providers need to comply with the other conditions as well as fall within one of the categories.

Our comments on the Categories are as follows:

Category 2 - This Category is restrictive. The third specific condition is unclear. It would be useful to have examples of the limitations on renewals or extensions.

Category 3 – We are unclear how this category will work in practice. Where the Social Housing Dwelling is disposed of to a local authority, the recipient authority is not a private registered provider under the Housing and Regeneration Act 2008 so will not need to get section 172 consent for a subsequent disposal. The proposed consent says that the unit must continue to be Low Cost Rental Accommodation or Low Cost Home Ownership Accommodation under the definitions of that Act unless it leaves the sector under sections 72 – 76. Disposal with consent under section 32 of the Housing Act 1985 is not covered. Does this mean that it can only leave the sector with a Direction from the Regulator under section 76?

Category 4 – The Category requires a CPO to be actually made. Would it be possible to widen it to include circumstances covered by section 161 of the Housing Act 1985?

Category 5 – It would be useful to have some clarification on what the Regulator actually wants to see from the "independent audit (which need not be an external audit and… a report on its use of this category". As noted in our answer to A6.2a, there may need to be caution because of Freedom of Information Act requests.

Category 6 – These proposed reforms look to be at odds with the "direction of travel" in the wider charity sector. The reforms in the Charities Act 2011 widened the category of obligations that a non-exempt charity could secure by way of a mortgage of land without regulatory consent. This now applies to any obligation (so would cover guarantees, performance bonds etc) and specifically refers to securing grant. This point is not covered at all by the General Consent either now or as proposed to be amended

We comment further as follows on the conditions to Category 6:

- **Specific Condition 1** - The change to make Category 6 unavailable to a registered provider whose parent is unregistered is perhaps unnecessary, given the controls elsewhere in the consent, particularly the tightening up around group members who are not non-profit RPs.

  From a practical point of view for charging teams, this can present real problems. Charging is time critical and property lists are altered right up to completion. If we have to go back regularly to the Regulator for amended specific consent, this could cause delays to transactions.

  Would it be possible to allow the use of Category 6 by those with unregistered parents who are formed before the date of the new General Consent?

- **Specific Condition 3** – The undertakings to be given on application for a letter of authorisation have changed. Could the Regulator confirm that new letters will need to be applied for and issued?

  The requirement in the current General Consent for any on-lending to an RP in the same group to be restricted to only those registered providers who are authorised to use the general consent has been deleted. It would be useful to understand the Regulatory rationale for this.

  Condition 3(b)(ii)(bb) requires on-lending to be "solely" for Social Housing. If a registered provider has a rolling on-lending facility in place, it can respond quickly to opportunities available to other group members, which may not necessarily consist "solely" of social housing. Could "solely" be changed to "primarily" (so it is consistent with a charitable registered provider's ability to invest in a mixed scheme consisting primarily of social housing)?

  The current General Consent for Section 171D has no conditions or requirements attached to it. The consultation suggests that it would be covered by Category 6 in which case it will be subject to more conditions. Why has this been done?

- **Specific Condition 4** – Rather than specific reference to indexation, the key point looks to be whether the deal in question makes sense for the RP We were not sure how this works for new security given to support new and existing loan facilities which have an embedded RPI-linked option which most of them currently have. Clarification is needed from the Regulator that these options will continue to be permitted. It also has the effect of restricting one of the types of funding available to registered providers. Is this appropriate in a consent which is stated to relate to property disposal?

- **Specific Condition 7** - please see our answer to Category 5.

- **Category 7** – We would prefer (a) to include "or seller" and "or sales period" as the previous version did. As now drafted, it will raise complicated discussions about who the "developer" is. Also as now drafted, granting security for overage will not fall within this category.

- **Category 8** – It would be useful to have clarification in relation to circumstances in which money from a local authority will be considered a "loan", not a grant under (b). The references to the NHS have been removed. Why is this? It will lead to more requests for specific consent.

- **Category 9** – There is a typo in this Category - "Rentcharge" is one word. As drafted, this Category will now exclude the use of rentcharges, for example, to enforce covenants, secure other payments, effect insurance of common parts/facilities. It is too narrow.

- **Category 13** - Best Consideration is a problem in a fast rising market. Why is this required? Charitable RPs should be allowed to dispose to a charitable beneficiary at a price they consider acceptable.

- **Category 14** – This Category is now restricted to "Legacy Social Housing". Why this restriction? Does this mean that non-legacy land would need specific consent? Or do you consider it will not be social housing?

- **Category 18 –** Please see the point about the independent audit raised in our comments on Category 5.

- **Category 20/21** - Category 21 relates to "primary" use but Category 20 to "sole" use – is there a reason for this inconsistency?

- **Category 22** - Could the category be broadened to include using the General Consent to release a registered provider's own covenants?

- **Category 24** - This category is not useful in practice as it refers only to granting options to other Private Registered Providers and not to local authorities or developers. Would it be possible to extend the list of grantees to those used in Category 8?

- **Category 27**- The drafting is not clear and it isn't obvious what this is trying to address. Is it flats where there is no management company?

- **Category 29** – This applies only to section 133 but it would be useful if it could be extended to cover section 172. There should be a definition of "London" as in the General Consent 2005.

- **Categories 30/32** – Could these two conditions be merged? Category 30 is very restrictive. There is a typo in first specific condition – line 2 should read "the transfer or lease".

- **Old Categories 27, 30, 38 and 39** -These have been deleted. They are frequently used in practice and it would be useful to have them reinstated.

Our comments on the General Conditions in Part II are as follows:

- **General Condition 1** – As noted in our answer to A6.1c, it is difficult for registered providers to certify that they "shall adhere to all relevant legislation". We repeat our suggestions for an appropriate filter in relation to this condition.

- **General Condition 3** – This condition is modified for various categories of consent. Modification (a) in, for example Category 20, requires a minuted board opinion that the value is less than £10,000. Could this not be delegated? It seems inconsistent when the decision to dispose can be delegated under General Condition 4. Modifications (b) and (c), again in Category 20, are limited to nil or nominal consideration and granted to specified entities. Would it be possible to allow the registered provider to certify that the disposal does not impact on the social housing asset?

Our comments on the definitions used in Part III are as follows:

It would be useful if full statutory definitions could be included for ease.

"Vacant" - The definition of "vacant" is unhelpfully narrow and is different from the normal legal use which can lead to misunderstandings. Land can be vacant (normal usage) but not "Unoccupied" for example when there is no-one living in a dwelling but where the tenancy has not been terminated. Will there be guidance on the meaning of "no Dwellings have been built"? Does this mean ever or will there be a cut-off?

"Best Consideration" - It would be useful if "in the circumstances" could be added to the end of the definition. This would bring the definition into line with the one normally used by local authorities.

"Officer" – The term "officer" is often used in the sector to mean executives or other employees. The definition used here excludes anyone who is employed. Please could you clarify?

"Private Finance Facilities" - The definition no longer includes performance bonds, guarantees, indemnities and letters of credit. This looks like an unnecessarily blunt instrument. Perhaps there is a general misunderstanding of the two types of guarantee which are (i) a straight guarantee of another entity's liabilities and (ii) guarantees issued by a bank/insurer as a trade instrument for a particular project? Could the Regulator clarify why guarantees of type (ii) have been excluded. There may be existing facilities in place with a guarantee/performance bond option so any new security given for this would not be covered.

"Valuer" – The proposed definition does not follow your current guidance at 3.12(a) and (b) and it would be helpful if the definition was amended to include these paragraphs.

"Private Finance Provider" - In relation to lending between otherwise unrelated RPs, we feel that it is right that specific consent should be obtained. It is not clear, however, why local authorities have been excluded from this definition. Local authority financing can potentially be attractive to registered providers and we have worked on a number of such projects recently.

A6.7 Do the other proposed changes to the registration criteria:

a Contribute to the Regulator better meeting its fundamental objectives?

b Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

We have no specific comments here.

Two Saints Limited

We welcome the opportunity to respond to your proposed new regulatory framework.

Our Board considered your proposals earlier this week, along with a report on the lessons learned from the Cosmopolitan failure – and we support your proposals, which we believe are clear and will bring stability.

We have all learnt from the near failure of Cosmopolitan but are pleased that you are proposing to continue with co-regulation, as all providers are different - and most are managed extremely capably and need the flexibility and autonomy to run their businesses as effectively as possible for the benefit of some of the most vulnerable people in society.

Steve Benson
Chief Executive, Two Saints Limited,
35 Waterside Gardens, Fareham, PO16 8SD.
Telephone: [redacted]
www.twosaints.org.uk

Vale of Aylesbury Housing
homes for living, communities for life

Vale of Aylesbury Housing Trust (VAHT)

Response to 'Consultation on Changes to the Regulatory Framework'

1. Brief Background to the Vale of Aylesbury Housing Trust.

The Vale of Aylesbury Housing Trust (VAHT) is a Large Scale Voluntary Transfer registered provider operating within the Vale of Aylesbury in Buckinghamshire.

The Trust was formed in July 2006 following the transfer of 7,250 tenants and 600 leaseholders' homes, around 2,400 garages and 40 commercial properties from Aylesbury Vale District Council.

In our Offer Document we promised to invest £105 million improving the standard of all our residents' homes and by 2010 this promise was achieved.

2. Overall Conclusion

In broad terms the Trust welcomes the proposed changes and appreciates that the HCA has altered its approach following feedback from the original discussion paper published in 2013, particularly with regard to the ring-fencing of social housing from other activities. However, we do have some concerns which are detailed below.

3. Response to the Consultation Questions

A6.1 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?

Yes. We agree that co-regulation is the correct approach and understand the need to strengthen the requirement for registered providers to ensure that the Board manages risks appropriately to protect social housing assets.

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

In general terms, yes. The Standard does however require registered providers to adhere to all relevant 'law' which is a change to the previous wording of all relevant 'legislation'. Whilst this change seems reasonable in that it gives recognition to the importance of common law from Court rulings, we do not agree that statutory guidance issued by bodies such as the Charity Commission should be regarded as 'law'.

Also, there is a requirement in paragraph 1.8 to certify compliance with the Standard in the annual accounts, but this may not be the best place for this certification. We support the need for open communication on any issues of non-compliance with the

Regulator, but there may be occasions when it is beneficial for the reputation of the organisation/sector to have a more private disclosure of any issues/emerging issues. Non-compliance would inevitably require explanation in the accounts which could be misconstrued or misunderstood by the reader. Also there is a risk that such a disclosure would need to involve commercially sensitive information which would then become widely known.

c) *Do the requirements in paragraph 1.2 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 free to run their own businesses?*

Yes, we agree that given the increasing diversity and complexity of the activities that registered providers undertake, it is paramount that they have the skills and capability to manage their businesses.

Whilst the Code emphasises that registered providers should have independent Board members, this does present a constant challenge for LSVT's such as us, as they usually have a proportion of Board members who are appointed externally from other organisations such as Local Authorities.

d) *Do the requirements in paragraph 1.4 and 1.5 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?*

Yes, the requirements set out in these paragraphs are sensible and we would expect that registered providers already incorporate most of these provisions into their business planning cycle.

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

Although we are not one of the specified classes of registered provider outlined in this section, we agree with the aims and content included here.

A6.2 Code of Practice

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

We agree that the Code of Practice does assist in understanding how compliance with the Standard can be achieved. However, we do have a concern that the Code will be seen as a set of rules with the equal force as formal regulation. This would be contrary to the principles of co-regulation.

b) *Is the role of a Code clear and is it reasonable?*

Whilst the aim of the Code is to provide further guidance on achieving compliance with the Standard, the advice that is contained within the Code will need to be disseminated in a way which does not create the perception of it being a set of rules.

A6.3 Do the proposed revisions to the disposals regime:

a) *Meet the aim of protecting social housing assets and the value in it?*

Yes. We agree with the aim of preventing social housing assets from leaking from the sector.

b) *b) Balance this aim with registered providers being free to run their own businesses?*

Yes. However, any required consent must be achievable in a timely manner for this to occur.

c) *(c) Are they reasonable?*

Yes.

A6.4 Do the changes to the registration criteria:

a) *Reflect the proposed changes to the Governance and Viability Standard?*

Yes.

b) *Are they reasonable?*

Yes. We agree that any new applicants should meet the Standard from the outset.

A6.5 Do the proposed changes to the Rent Standard:

a) *Reflect the Direction from DCLG?*

Whilst we do understand that the new Rent Standard reflects the direction from the DCLG, as an LSVT we are disappointed that rent convergence has been removed. The ten-year index-linked rent settlement does provide certainty for the future but it is the case that the removal of rent convergence could potentially have a significant impact on a number of more recent LSVTs which have rents that have not converged.

Rather than have rent waivers for LSVTs faced with a breach of covenants, it would seem more sensible to have a blanket waiver in place for registered providers that have properties that have not yet reached rent convergence. In our case, although there will a reduction in our rental income as a result of the change, the impact is not material to the business. It will however result in differential rents continuing well into the future and 'target' rent levels will not be met for some properties for many years.

b) *Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?*

Yes.

A6.6 Do you agree that the proposed changes to the General Consent allow the regulator to protect social housing assets more effectively?

Yes.

Viridian Housing
Colwell House
376 Clapham Road
London SW9 9AR
T 0330 123 0220
F 020 3202 3601
DX 53257 Clapham Common
Textphone 0330 123 0221
viridianhousing.org.uk

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency – The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

12 August 2014

Dear Sirs

Consultation on changes to the Regulatory Framework

Thank you for the opportunity to comment on the proposed changes to the Regulatory Framework. Viridian Housing would comment as follows:

1.a) Overall does the proposed Governance and Financial Viability Standard meet the Regulator's economic objectives which require the protection of social housing assets?

Overall the Governance and Financial Standard emphasises the Regulator's objectives of requiring providers to place greater emphasis on managing risks and ensuring the protection of social housing assets, given the significant changes to the sector in the last few years, especially with regard to the diversification of activities, new funding streams, the emergence of new profit-making providers and the lessons to be learnt in relation to the rescue of Cosmopolitan Housing Group. However, we do consider that some of the proposals adversely, and in some cases, unnecessarily, increase administrative and other burdens in the sector, reduce the co-regulatory principle and may stifle providers' ability to continue to develop affordable homes and invest in communities in the future.

1.b) Does the proposed Governance and Financial Viability Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Subject to the comments below, the Standard itself is relatively concise. We would however urge the Regulator to reassess the necessity for some of the provisions as set out below to help maintain a more reasonable balance between reducing administrative burdens and the Regulator's aim to require protection of social housing assets. Further comments regarding the Code of Practice are set out below.

1.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?

The emphasis on skills and capabilities to effectively manage the range of activities carried out by providers is reasonable and appropriate. However, given the adoption by providers of a Code of Governance against which providers comply or explain areas of non-compliance to stakeholders, including the Regulator, it is considered that the additional requirements are unnecessary and do little other than add an additional administrative element further reporting requirements. We would comment similarly in relation to the requirements on independence, as, for example, the National Housing Federation's Excellence in Governance Code already encompasses provisions relating to conflicts of interest and Board composition.

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

The expectations in relation to risk management, emphasis on risks specifically relating to social housing assets and mitigating strategies, are reasonable and prudent.

It is considered that the provisions relating to stress testing in the Code are helpful, but very prescriptive and whilst capturing a number of examples, could become a tick list of areas to consider, rather than clearly placing the requirements and parameters explicitly in the hands of Boards.

It is pleasing to note that the prospect of registered providers having to consider their own demise via a living will has been abandoned. However, the expectations relating to assets and liabilities and the need for enhanced and comprehensive asset registers and associated records, appears to require much of the same work. Given that elements of recovery planning are built into risk management arrangements, it may be considered that the additional requirements may be viewed as running contrary to the spirit of co-regulation and the previous aim of the Regulator to reduce burdens wherever possible.

With regard to how the risk of commercial type activity is monitored one option for the regulator to consider is banding such risk into say high, medium or low depending on its ratio to turnover, loans or levels of surplus.

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

We are pleased to note that the ring fencing proposals for all not-for-profit registered providers have been abandoned. If retained, this would have had a significant negative impact on the non-profit sector, potentially limiting development and new supply and may have triggered a review of lending agreements and possible re-pricing of loans.

Whilst the ring fencing proposal has been retained for for-profit providers and will place additional burdens upon them, Viridian agree with this proposals and consider that they are

reasonable in order to protect social housing assets and ensure that they are not placed at undue risk.

With regard to the provisions relating to registered providers with unregistered parents, we agree that effective mechanisms should be in place to ensure that such parents will give appropriate support and assistance to enable a registered provider to meet the Regulator's Standards.

2.a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
b) Is the role of a code clear and reasonable?

The proposed Code is detailed and prescriptive but, if intended as an illustrative example, assists providers to understand how compliance can be achieved. However, whilst we understand that the Code is not intended to be a set of rules, nor a checklist to ensure compliance, the power given to the Regulator to issue a Code, gives it status in law. In addition, the Regulator has stated that it will have regard to the Code when assessing compliance. Our concern is that the Code will become a prescriptive tool over time, sacrificing the freedom of the principle of co-regulation. A guidance or best practice document, rather than a Code, would be a less restrictive approach.

3. Do the proposed revisions to the disposals regime:
a) meet the aim of protecting social housing assets and the value in it?
b) balance this aim with registered providers being free to run their own businesses:
c) are they reasonable?

We welcomed the current regime which allows associations to raise funds without the Regulator's consent, provided they had been given permission by the Regulator. However, the changing circumstances where all social landlords must seek specific Regulator approval to take a loan against social housing stock, including index-linked loans, finance which is loaned to a subsidiary non-social housing company and lending between providers, whilst enabling the Regulator to protect social housing assets, may create an additional administrative burden on social landlords.

4. Do the changes to the registration criteria:
a) reflect the proposed changes to the Governance and Viability Standard?
b) are they reasonable?

The changed requirement for new applicants for registration to demonstrate compliance with both elements of the Governance and Financial Viability Standard as part of registration would contribute to the Regulator better meeting its fundamental objectives, especially in relation to for-profit providers. However, the indication that the assessment of compliance will be on the basis of the stage that the applicants business is at when it registers, is somewhat unclear and suggest that the Regulator may take a flexible approach, which may become inconsistent over time and dilute the registration criteria.

5. 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?

Viridian welcome the certainty that an index-linked ten year rent standard provides The Standard enables associations to plan for future development and also helps give stakeholders and, in particular, lenders and investors, confidence and certainty going forward.

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Please see the comments above in relation to question 3.

7. Do the other proposed changes to the registration criteria:
a) contribute to the Regulator better meetings its fundamental objectives?
b) express the requirements of registered providers in a way that is clear and succinct?

Please see the comments above in relation to question 4.

We look forward to receiving the response to the consultation. In the meantime, if you have any queries in relation to the above, please do not hesitate to contact us.

Yours faithfully

Hattie Llewelyn-Davies
Chair of Viridian Housing

wdh
Wakefield and District Housing

OneCALL: 0345 8 507 507
Email: onecall@wdh.co.uk
Website: www.wdh.co.uk
Follow us on Twitter @WDHupdate
Text Relay calls welcome

Our reference: LS/MH
Your reference:

14 August 2014

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
7th Floor
Maple House
149 Tottenham Court Road
London
W1T 7BN

Dear Tim,

Consultation questions

Thank you for the opportunity to feedback on the consultation proposals for the regulatory framework for Registered Providers. WDH does not have any specific comments on questions 1 through 4 but wishes to place on record the comments for question 5 below.

5. Do the proposed changes to the Rent Standard:

a) Reflect the direction from DCLG?

WDH has previously and continues to express serious concerns regarding the implementation of this policy. The removal of the target rent adjustment unfairly prejudices Housing Organisations, like WDH, where historic rents where very low. As a consequence of historic low rents the distance travelled on the journey to target rent is greatest and, in many instances in Wakefield, has not been completed. As a result of this policy, £1m annual income will be lost that has been anticipated and this will impact directly on the capacity to deliver much needed new homes.

Furthermore, the changes contradict specific guidance for previous stock transfer arrangements where legally binding contracts with host Local Authorities and transferring tenants are currently in place.

b) Express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

The requirements are clear and succinct, although there is no clarity regarding how households with higher income levels will be known to Registered Providers or what the HCA expectations are for this group of customers.

Please contact me should you require any further details on the points raised.

[redacted]
Executive Director - Resources

Walsall Housing Group Ltd

100 Hatherton Street
Walsall
WS1 1AB

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency – the
Social Housing Regulator
Maple House
Tottenham Court Road
London
W1T 7BN

Please reply to: Gary Fulford
Direct Line: [redacted]
e-mail: [redacted]

18 August 2014

Dear Tim

Consultation on Changes to the Regulatory Framework

I attach our response to the questions raised by the consultation paper and for ease of reference we have commented in italics below the questions we wish to comment on.

In our response to the discussion paper last year, we voiced our concerns about the proposals to ring-fence non-social housing activity. We are pleased that the HCA has taken on board the sector's comments in this area and dropped these proposals from the consultation paper. Our social housing activity is supported by the regeneration work we undertake to deliver our corporate vision, "Dedicated to the success of our people and places"; there was a danger that the previous proposals could have curtailed this type of "ancillary" activity.

We reiterate our view that the regulatory regime needs to rely more explicitly on intelligent engagement and discussion with each registered provider. In this way the regulator can be assured that the activities we and others are undertaking have been well considered and complement our mainstream activity.

whg is committed to the principles of co-regulation and we are pleased to note that the HCA remains committed to this principle as well. We understand the need for greater amplification of the regulatory process given recent events in the sector but would hope that this will be carried out in a spirit of understanding of the diverse nature of our businesses.

Yours sincerely

Helen Lane
Governance Manager

Questions

1. 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?

Yes. We totally agree with the requirement to protect social housing assets and appreciate the need for the HCA's proposals to focus on the management of risk in order to do this.

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

Yes

c) Do the requirements in paragraph 1.2 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 businesses?

We agree that boards need to have the required level of skill and capability to manage the complexity of a provider's business. whg is currently undertaking a review of its governance model and organisational structure so that they are fit for purpose to support the evolution of the group and deliver our 10 year Corporate Plan. This will include ensuring that we have the right skills and capability for the type of activities we undertake.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

The revised requirements represent a welcome shift in emphasis from the suggestions made by the HCA last year that providers should be required to structure themselves to ring-fence non-core activities.

In the light of recent difficulties experienced in the sector, it seems entirely sensible that providers should develop comprehensive asset registers to identify all the liabilities associated with their assets and activities. We are pleased that the HCA acknowledges that existing assets should not be retained at all costs but recognises that providers should have the flexibility to manage their assets appropriately and in a planned way.

We are in the process of raising private finance through a bond issue and have recently reviewed our asset register as part of this. We have started preparing for the more detailed requirement to undertake stress testing across a range of risks. The proposed guidance will be helpful.

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

2. Code of practice:

a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
b) Is the role of a code clear and reasonable?

Additional clarification of the standard is welcome and the content seems sensible. However, we would want to be assured that the Regulator does not treat the Code as having the same regulatory force as the standards themselves.

3. Do the proposed revisions to the disposals regime:

a) Meet the aim of protecting social housing assets and the value in it?

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

c) Are they reasonable?

We agree with the aim of preventing social housing assets from being put at risk of "leaking" from the sector. The proposed revisions to the disposals regime seem reasonable, but the HCA needs to ensure that it has the appropriate resources to turn applications for specific consent around promptly.

4. Do the changes to the registration criteria:

a) Reflect the proposed changes to the Governance and Viability Standard?

b) Are they reasonable?

5. 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 focused as possible?

We believe so.

The proposed changes to the Rent Standard and the ending of convergence will have a negative impact on some stock transfer providers' business plans. Many LSVTs were subject to rent guarantees and consequently may have a significant proportion of properties that are not yet at target rent level. This has a direct impact on their capacity to raise finance and to build new homes to contribute to meeting the Government's house building targets. It would be helpful if registered providers with more than 20% of their

properties below target rent could still be allowed to implement the £2 supplement until 90% of their properties are at target rent.

The flexibility to charge market rent to high income social housing tenants will have a very limited impact in our area of operation where both market rents and incomes are relatively low. This is true for large parts of the country and impacts on providers operating in these areas.

Consultation on changes to the Regulatory Framework

Response of Waterloo Housing Group

Introduction

Waterloo Housing Group welcomes the opportunity to respond to this consultation. We hope that our response is of use in taking forward the important issues highlighted in this consultation paper.

Our specific response to each consultation question is as follows:

A6.1 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?

Yes. The revised Standard is both clear and seems proportionate. The proposed revised Standard would seemingly help to address some of the risks highlighted by some recent cases (e.g. Cosmopolitan) and crucially maintain the confidence of key stakeholders such as lenders.

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

Yes. It strikes the right balance between stressing key measures to minimise risks and protect social housing assets, while at the same time recognising the diversity of the sector itself and the importance of adopting a co-regulatory approach.

c) Do the requirements in paragraph 1.2 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 businesses?

See answer above. Read together with the draft Code of Practice the requirements are clear and recognise that the size and risk profiles of providers differs considerably.

We recognise that there is a need to strike the right balance between setting clear expectations to protect social housing assets and minimise risk, but at the same time ensuring that diverse businesses are effectively being run by their boards. We think that the revised Standard strikes the right balance on the whole.

d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes we agree that the requirements make good business sense and are proportionate. It is essential that providers have a clear, documented, current record of their assets and liabilities, and agree it is right that the format of such records of assets and liabilities is the responsibility of providers themselves, due to their diversity and complexity.

We also agree that it is entirely right and reasonable to expect that providers undertake robust stress testing of key risk scenarios as these are clearly essential to the running of any good business.

We also agree that it is right that the overall framework is owned, reviewed and approved by boards at least annually. The approach outlined recognises that the diversity and complexity of the sector varies and reflects co-regulation in practice.

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

Yes. These requirements read clearly (together with the related draft Code of Practice) and are important in recognising the increasing diversity of those organisations that are registered providers and addressing this in a reasonable way that minimises risk to social housing assets.

A6.2 Code of Practice
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

Yes. It is useful in helping providers to fully understand what is expected of them in terms of a co-regulatory approach, and amplifies those areas where it is useful to give some explanation to support the Standard.

We also think broadly that it is written in a way that recognises that providers do differ in terms of size and complexity, so avoids the risk of being overly- prescriptive in terms of allowing providers to run their own businesses. It is important that the draft Code of Practice does not substitute a genuine co-regulatory approach however, and note that it is recognised that the size and risk profiles of providers differs considerably, and that it is not proposed that the Code takes the form of the former Housing Corporation Best Practice Guidance Notes.

b) Is the role of a Code clear and is it reasonable?

Yes. We agree that the role of the Code is set out clearly and that the provisions of it are proportionate and reasonable as outlined above. It is important that confidence in and the reputation of the sector is maintained and the Code helps amplify key requirements, whilst recognising the diversity of providers' business models.

A6.3 Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?

We agree that the provisions outlined meet the stated aim of protecting social housing assets, and in particular their latent value. They are proportionate and appropriate given the emergence of for-profit providers. We note that for non-profit providers, the Regulator is not proposing to place any further restrictions on use of disposal proceeds by non-profit registered providers.

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

Yes, we agree that the proposals seem proportionate, balancing broadly the need to protect social housing assets, while at the same time allowing providers to run their own businesses- and in the case of for-profit providers to be able to make a profit. We note that the proposal to require profit making providers to place net proceeds in a DPF, only applies where the stock was held previously by a non-profit or local authority registered provider.

An alternative option however, may be to extend the current requirements applicable to non-profit providers to for-profit providers, but with an additional requirement for the latter to spend any additional proceeds on charitable or public-benefit purposes to be defined.

c) Are they reasonable?

We broadly agree that the proposals are reasonable for the reasons outlined above. We note also the proposed requirements on proceeds from sales under preserved Right to Buy for stock transfer landlords.

A6.4 Do the changes to the registration criteria:
a) Reflect the proposed changes to the governance and viability standard?

The broad changes to the registration criteria to require applicants to demonstrate that they meet the requirements of the Governance and Viability Standard in respect of both governance and financial viability are clear and reasonable. It was perhaps inconsistent originally to have to meet one aspect- financial viability- but only have to demonstrate a "reasonable path" to meeting the governance requirements. The revised Standard is balanced and proportionate so it is not unreasonable to expect that applicants can demonstrate that they meet these key points at registration.

b) Are they reasonable?

For the reasons highlighted above, we consider that the requirements are reasonable and proportionate, not least given the Standard's specific expectations have been combined.

A6.5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG?

Although we recognise that not all providers will welcome the loss of the previous rent flexibility by ending upward convergence of rents by means of adding up to £2 a week, the revised Standard nonetheless reflects the expectations outlined by DCLG following the announced Government changes in rent policy.

b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes. We recognise that the revised Rent Standards and related Guidance clearly outline both the requirements of providers, and give them- and other stakeholders- a degree of certainty moving forward.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Broadly yes, the proposed changes in particular to category 6 clearly are a proportionate response to the need to minimise risk and protect social housing assets. We recognise that the other proposed changes improve consistency and harmonise consent requirements between different legislative regimes. It is important however that those transactions that are low-risk and routine business for RP's that will require the Regulator's consent are considered and processed relatively quickly.

A6.7 Do the other proposed changes to the registration criteria:
a) Contribute to the Regulator better meeting its fundamental objectives?

In essence we recognise that the other proposed changes try to address and clarify a small number of issues such as the overlap with charitable requirements for those organisations that also hold charitable status. They therefore seem balanced and reasonable, as well as providing additional clarity for providers.

b) Express the requirements of registered providers in a way that is clear and succinct?

The revised registration criteria as outlined clearly explain what is required of charitable, non-charitable and Charitable Incorporated Organisations in terms of constitutional requirements.

If you do have any queries about our response please contact the author below.

Andrew Bush

Group Head of Policy and Communications

Waterloo Housing Group

Tel [redacted]

Email [redacted]

Watford Community Housing Trust – Response to 'consultation on the changes to the Regulatory Framework'

Background to the Watford Community Housing Trust response

Watford Community Housing Trust (the Trust) is a housing association providing homes and services to over 21 local communities throughout Watford and Three Rivers. We are committed to working closely with residents and surrounding communities to ensure we deliver high quality homes and services. We own and manage nearly 5000 affordable homes including general needs and sheltered housing properties.

The Trust was set up in 2007 as a stock-transfer organisation and in September 2012 we fulfilled the commitments made at transfer including the improvement of our properties to the Decent Homes Standard. As a social landlord the Trust is a relatively young organisation and is striving to establish itself as making a difference in the community.

We are a Community Gateway organisation. This means that we place tenants and community empowerment right at the heart of everything we do. Tenants and leaseholders can become legal owners of the Trust by becoming members, thus enabling them to get involved in decision making and vote on important issues.

Our aim is not just to be a social landlord but to offer a range of services that add social value and encourage community cohesion. We want to create better homes and friendlier communities together with our residents.

The Trust is a member of PlaceShapers Group who believes that is it crucial to remain truly accountable at the local and regional level by engaging properly in our local communities.

We hope our response demonstrates our understanding of the Regulator's key concerns. In general the Trust welcomes the new outlined approach and we are pleased the HCA has listened to the concerns raised after the original discussion paper was published last year.

Governance and Viability Standard

Q1 a) Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?

The Trust understands and agrees that the proposed Standard will enable better protection of social housing assets as a whole and welcomes the HCA abandoning its 'ring-fencing' proposal by putting a strengthened emphasis on the Board to manage risk and protect its assets accordingly. We agree with co-regulation being the right approach going forward and we also agree with the emphasis on the Board to manage risks appropriately to protect

social housing assets. This means ensuring the right skills are recruited, developed, audited and applied. The Trust also agrees with ensuring that social housing assets are not put at 'undue risk' and maintaining a risk register, stress testing the business plan and understanding the impact of current and new liabilities are tools necessary to do so.

Q1 b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Overall we agree that the Standard is as succinct and outcome focused as possible and rather than a complete re-write we agree with most of the amendments made. However, there seems to be an emphasis on business issues affecting the wider economy rather than risk management focused on the social housing sector. While we agree that it is important to ensure that the Trust and other registered providers are able to cope with various demands of financial crisis, we believe it is necessary not to lose sight of the core functions of social housing. The Standard should be clearer about risk management being applied to all parts of an organisation.

Furthermore the Standard requires RPs to comply with all relevant law which is a change to the previous wording of all 'relevant legislation' and it is important that the two are not being mistaken. Therefore the Trust would suggest reverting to the previous wording as otherwise statutory guidance from any statutory body could be seen as law.

Q1 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 free to run their own businesses?

The Trust agrees with this section of the standard as the sector's increasing diversity will pose greater demand on the Board and Executive Team. We already carry out an annual skills audit and recruit ensuring we close skill gaps to achieve the right composite of the Board. The Standard emphasises the need for independence which the Trust agrees with and decisions need to be made to the best interest of the Trust and our residents. Having a skilled and capable Board and Executive Team enables greater protection of assets but will also support registered providers being able to run their own business.

Q1 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 free to run their own businesses?

Yes, the requirements in paragraph 1.5 and 1.6 meet the aim of protecting social housing assets and allow for RPs to freely run their own business.
The Trust understands and supports the need of keeping an asset register including liabilities. It is an essential part of risk management and the Trust agrees with the greater emphasis on Boards to ensure that social housing assets are not put under 'undue' risk to

maintain the organisations viability. However, there is a need to enable all RPs to dispose of their assets to enable best use of stock and provide the right amount of social housing meeting the needs of our residents. The Trust welcomes the more detailed guidance on stress-testing and scenario planning to ensure that appropriate strategies are in place. Taking into account the economic climate it is important to be prepared to weather the 'Perfect Storm'. The HCAs proposal however focuses on the wider economy affecting business especially referring to financial crisis. The Trust believes that it is important to ensure core services and risks relating to social housing provision are not forgotten. We would therefore welcome further amendments to the standard to ensure RPs consider their operating environment as a whole and maintain focus of tenant priorities.

Part of risk management and scenario-planning needs to be the impact of taking on new liabilities and the Trust agrees with the Regulator's requirements outlined in paragraph 1.5.

Ensuring that the RPs act in furtherance of our their own interests and objectives rather than to provide personal or professional benefits to third parties is a point the Trust agrees with, especially in line with being a non-for-profit organisation.

Q1 e) Are the requirements for specific types of registered providers in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

This does not apply to the Trust as we are neither profit making, part of a group structure nor have an unregistered parent.

Code of practice

Q2 a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?

Whilst the Code of Practice gives clearer guidelines on how compliance can be achieved the Trust is concerned that the introduction of a Code does not align with the principles of co-regulation and will hinder RPs to freely run their own businesses. The HCA has outlined that the Code is not to be seen as a set of rules. However, so far in practice any guidance and advice from the Regulator has been seen as equal force to formal regulation and introducing a Code does remind of 'best practice guidance notes' from the Housing Corporation or KLOEs from the Audit Commission. The Trust believes that the content of the Code is reasonable and helpful but we also believe that it would be better to be disseminated via other channels.

Q2 b) Is the role of a code clear and reasonable?

While it is clear that the code is supposed to provide further guidance on adhering to the Governance and Financial Viability standard the practical implementation of it poses some

concerns as outlined above. The Trust agrees that the content of the Code is indeed reasonable, but there are probably better options of providing this sort of advice and the Trust is wary of the Code and Standard being applied in the same measure to enforce formal regulation.

Disposals

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

Most of the changes to the disposals section of the framework do not apply to the Trust as a non-for-profit organisation. The main changes are in regards to for profit providers and group structures with registered and unregistered parents.

However, the Trust agrees that in order to retain housing stock with in the sector restrictions need to be put at disposals that might allow for stock to be removed from social housing without re-investing profit to build new properties. We agree that sales proceeds should not be distributed as a profit but argue that the HCA setting direction on how spend that fund might not be the best way to achieve consistency between different types of RPs.

Q3 b) Do the proposed revisions to the disposals regime balance this aim with registered providers being free to run their own businesses?

The Trust understands that changes made to category 6 of the General Consent aim at doing just that but gaining consent from the Regulator must be achievable in a timely manner, as it would otherwise influence the free running for a business.

Q3 c) Are the proposed revisions to the disposals regime reasonable?

Yes, as long as the points made under Q3a and Q3b are taken into account.

Registration criteria

Q4 a) Do the changes to the registration criteria reflect the proposed changes to the Governance and Viability Standard?

Yes.

Q4 b) Are the changes to the registration criteria reasonable?

Yes, the Trust agrees that any new applicants should meet the governance criteria from the outset.

Rent Standard

Q5 a) Do the proposed changes to the Rent Standard reflect the direction from the DCLG?

While the Trust understands that the new rent standard reflects the direction from the DCLG we are disappointed to see that rent convergence in effect has been removed. We welcome the certainty that a ten-year index-linked rent settlement provides but feedback on the removal of rent convergence has not been taken into account and this could potentially have a significant impact on a number of younger LSVTs.

We understand that rent waivers can be applied for where housing associations feel that the end of rent convergence could lead to a breach of covenants and not being able to meet loan facilities or expenditure. However, whilst this doesn't apply to the Trust it could still be detrimental to the running of our business. The DCLG have said that rent convergence has been in place for almost 15 years and this would have given landlords enough time to reach target rent levels. However, that does not apply to LSVTs which transferred after 2000, as in the Trust's case which has been in operation for seven years and therefore has not had the opportunity to reach target rent levels. Convergence would be reached c2017 as per original transfer plan.

Furthermore the current consultation paper refers to providers needing to be allowed to honour existing legal commitments. The Trust transferred in 2007 and promises made at the time state that rent convergence would be applied until target rent levels will be reached. This is an existing legal commitment and should be honoured so automatic rent waivers should be applied to all LSVTs in the same situation as the Trust.

We have had previous discussions with the HCA and have email confirmation that the Trust has an automatic rent waiver by virtue of the HCA's approval of the registration report given that it contained details of the proposed convergence plan.

Q5 b) Do the proposed changes to the Rent Standard express the requirements of private registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposed changes to the rent standard are clear and succinct in most parts though the statement on allowing providers to honour existing legal commitments needs to be more detailed and should clarify which types of legal commitments are being referred to. The Trust believes that this should apply to HCA approved registration reports and allow existing LSVTs to apply rent convergence until target rent levels have been reached.

In principle the Trust agrees with the option of charging market rent to social housing tenants with high income on a self-declaration basis. However, due to the limited number of tenants this will apply to this might not be cost-effective to implement and the Trust is concerned about the possible role housing associations might have to play in following up and issuing

sanctions on those tenants that might not declare. This will be an additional strain on resources with only limited positive impact due to the number of affected tenants. Therefore an optional approach of adopting increased rent charges to high income tenants is welcomed.

Consultation On Changes To The Regulatory Framework

Response From West Kent Housing Association

Email: statutoryconsultation@hca.gsi.gov.uk
13 August 2014

Established in 1989, West Kent Housing Association was one of the first large scale voluntary transfers of local authority housing. We were the first 'excellent' housing association in the country and the first Gold Investor in People in Kent. We have always put our residents first and have an enviable reputation for helping people and communities flourish. We operate only in Kent and Medway. Our core purpose is to provide homes for those who struggle to afford them in the open market and to nurture the communities around those homes.

West Kent is a member of PlaceShapers - a network of over 100 community-based housing associations

1 Governance and Financial Viability Standard:

1a) Overall does the proposed Standard meet the Regulator's economic objectives which require the protection of social housing assets?

Yes - we think that the proposed Standard meet the Regulator's economic objectives.

We welcome the continued commitment to a co-regulatory approach to regulation. We note the continued emphasis on the responsibility of boards to ensure that their organisations remain well governed and financially viable.

1b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes, generally.

We note the requirement to adhere to all relevant legislation has been widened to all relevant law. This takes into account not only legislation but also common law and statutory guidance, such as Charity Commission guidance.

This is very wide ranging and we have concerns about how it would be interpreted in practice. Boards already have a duty to comply with the law, should take reasonable steps to do so and should not knowingly do anything that is against the law. However, sometimes you can only establish whether you have complied with the law by going to court. Housing management is the primary function of all associations and inevitable brings with it involvement with the courts. Sometimes a judge will decide that, in their judgement, what an association is proposing to do or has done, does not comply with the law. Does this mean that they have breached the regulatory requirement?

In recent years West Kent has been involved in a test case in the Appeal Court which defined what was proportionate. Following the Supreme Court's decision in the 'Pinnock case', proportionality had become a common defence in many possession claims. We won the case. But we could have lost it. We believed we had acted

proportionately and had taken appropriate advice, but could only find out retrospectively whether we had in fact complied with the law.

1c) Do the requirements in paragraph 1.2 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 businesses?

Yes.

1d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?

Yes – we think the balance is reasonable.

1e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Yes.

2 Code of Practice

2a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?

Yes - the proposed code is useful additional guidance and clarification of requirements.

2b) Is the role of a Code clear and is it reasonable?

Yes. We note that the Code makes clear that when certifying compliance with the Governance and Financial Viability Standard, registered providers should ensure that they consider compliance with regulatory standards in the round. And that as the Code is not guidance, so certification of compliance with the Code is not required.

3 Do the proposed revisions to the disposals regime:

3a) Meet the aim of protecting social housing assets and the value in it?
3b) Balance this aim with registered providers being free to run their own businesses?
3c) Are they reasonable?

We have no comments on these proposed changes.

4 Do the changes to the registration criteria:
4a) Reflect the proposed changes to the governance and viability standard?
4b) Are they reasonable?

We have no comments on these proposed changes.

5 Do the proposed changes to the Rent Standard:

5a) Reflect the Direction from DCLG?

Yes.

5b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Yes.

6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Yes.

7 Do the other proposed changes to the registration criteria:
7a) Contribute to the Regulator better meeting its fundamental objectives?
b) Express the requirements of registered providers in a way that is clear and succinct?

We have no comments on these proposed changes.

Frank Czarnowski
Chief Executive
West Kent Housing Association
101 London Road
Sevenoaks
TN13 1AX
[redacted]

Wigan and Leigh Housing's Response To The HCA Consultation: Consultation on Changes to the Consultation Framework

Question 1 - 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?
b. Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
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 businesses?
d. Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
e. Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

Response.
We agree with the move to merge specific expectations on governance and financial viability, as this removes duplication and gives clarity to the Regulatory Standards.

The move to refocus on risk management rather than ring fencing, as outlined in the original discussion document, is entirely appropriate and a more proportionate way of ensuring housing providers protect social housing assets.

We agree with the emphasis on robust risk management and stress testing at a strategic level, and the need to continue to strengthen Boards to have the necessary skills. Risk management is already a key element of how Boards run the business, but the proposed changes to the Standard give this greater emphasis. We agree that Board's should confirm their compliance with the Standard on an annual basis and feel that being assured of compliance with all the Regulatory Standards, economic and consumer, is a fundamental part of this.

Question 2 - Code of practice:

a. Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
b. Is the role of a code clear and reasonable?

Response.
The Code is clear and reasonable, and we support the principle of giving information to housing providers to help them achieve compliance with the Standard. This will be of particular benefit to new and smaller providers.

We do note that the aim of the document is that of a guide and not as a regulatory requirement. As it is a non-regulatory document, we suggest that this type of guidance should more appropriately come through other established channels that promote good practice within the housing sector, rather than from the Regulator. We note that the Regulator is committed to co-regulation and feel that guidance documents developed within the housing sector would be more conducive to this principle.

Question 3 – The proposed revisions to the disposals regime:

a. Meet the aim of protecting social housing assets and the value in it?
b. Balance this aim with registered providers being free to run their own businesses?
c. Are they reasonable?

Response.
It would seem entirely appropriate that some restrictions are introduced for profit making providers in order to protect social housing assets, to be more in line with existing rules for non profit providers who must reinvest surpluses. Again, we note the Regulator's aim to balance these requirements with allowing organisations to have freedom to run their business.

Question 4 - The changes to the registration criteria:

a. Reflect the proposed changes to the Governance and Viability Standard?
b. Are they reasonable?

Response.
We agree with the proposed change that requires applicants to meet the revised Governance and Viability Standard, which is a higher level than the current requirement to demonstrate the organisation is simply on the path to comply with the governance requirements. In view of the increased emphasis on strong Boards and robust governance and risk management, this higher standard is entirely appropriate. There will be a need for some proportionality depending on the individual organisation.

Question 5 - 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 focused as possible?

Response.
This is already subject to consultation by the DCLG, requiring separate response, to which we have responded. However, in relation to the current consultation by the HCA, we agree that the revised Rent Standard reflects the direction of the DCLG.

WIRRAL Methodist HOUSING ASSOCIATION

Oswald House
42 Hamilton Street, Birkenhead CH41 5AE
Tel: 0151-647 5471
Fax: 0151-647 5178
Email: admin@wmhaltd.org.uk

Chief Executive: Alun L. Hughes, F.R.I.C.S.

Wirral Methodist Housing Association is dedicated to working in the community to provide homes and services that improve the quality of life for all.

Tim Sullivan – Regulatory Framework Manager
Homes & Communities Agency
Maple House
149 Tottenham Court Road
London
W1T 7BN

ALH/SVH/5628

11 July 2014

Dear Tim

Consultation on Changes to the Regulatory Framework

I write with comments about your proposals. These are of a specific minor technical nature rather than of general direction and I hope these may be used to clarify, as well as improve the current content. They relate to "Annex 3, Rent Standard Guidance" and specifically eligibility criteria for, "exemptions for social rent and the Rent Standard".

3.23 Specialised Supported Housing

The explanation for this in its current form, implies that such property is part of a strategic planned approach by the R.P. and the local authority or health authority.

This reference clearly derives from Housing Corporation Circular 05/03 and it appears (but not entirely clear) that it is proposed to widen the scope of this exemption through the second set of bullet points, below. It would help if the final document made that clear.

If however, it were to be the case that the second set of bullet points is intended to replace the first, I should like to make the following point.

This Association was involved in the procurement of schemes to help people with special needs without SHG before introduction of rent controls. The introduction of these controls at the time put in jeopardy the financial viability of such schemes and this Association and others lobbied the Housing Corporation for some 'slack' on this matter to reflect the fact that there was no public subsidy.

The argument was acted upon at the time and this led to a HC Circular 05/03 being issued. The consultation paper as it stands does not fully explain the context for the development of such schemes in that they involve, "high levels of private finance".

I hope you will therefore see that it would be helpful for the existing criteria to be maintained and not least because such schemes as we have provided have not necessarily been funded by, "charges or mortgages against the property" specifically but from working capital maybe indirectly on mortgages raised on other parts of our stock.

3.2.4 Temporary Social Housing

The description given for this is clearly drawn from HC Circular 05/03 also but in drawing specific attention to non grant funded TSH schemes it overlooks the fact that, the Regulatory Framework at 3.2a identifies, "temporary social housing/ short life leasing schemes for the homeless" as exempt.

I am not aware myself of the schemes to which the non grant funded TSH exemption relates but it may be helpful to avoid confusion if a distinction between the two types (and the applicability of exemption to both) were included?

Finally

A small point, the reference on Page 2 to valuation guidance should read Royal Institution (not Institute) of Chartered Surveyors. Similarly this should be corrected in terms of the title on Page 33. References in Appendix 3 appear to have been correctly attributed.

I hope you will find these comments of assistance in the final drafting of your proposals? I suspect that you, like myself have a long memory of how these things originate but 'youngsters' may not have knowledge of the source documents and may not fully understand the depth unless it is spelt out. If you have any queries, please do not hesitate to contact me.

Alun L Hughes FRICS
Chartered Building Surveyor
Chief Executive

A response from Magenta Living to the HCA document 'Consultation on changes to the regulatory framework.'

Question 1 - 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?**
b) **Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**
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 businesses?**
d) **Do the requirements in paragraph 1.5 and 1.6 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?**
e) **Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?**

Magenta Living response – We largely believe that the proposed Standard contained within the consultation document does meet the Regulator`s key economic objective of protecting the asset that is social housing. We do recognise that the Regulator faces a difficult dilemma in terms of whether to be specific, prescriptive and adopt more of a process driven approach to regulation versus the desire to allow individual organisations a degree of freedom to follow more innovative business ventures, whilst obviously placing a clear emphasis on a thorough risk assessment, by adopting a more laissez-faire stance to regulation. We believe that the middle ground sought by the Regulator is appropriate and is sufficiently clear and tries to be outcome focussed wherever possible.

Magenta Living is concerned however that the proposed new regulations leave registered housing providers at a greater risk of being downgraded by the regulator for potential inadvertent or minor breaches of law. The issue we have is not with the principle of being law abiding per se, but we are concerned about the actual wording used in the consultation document. It is extremely difficult for any reasonable Board to be 100% certain that the law is being followed in all circumstances as, for example, a legal dispute can ultimately lead to a court ruling that a housing provider hasn`t been following the law even though they felt assured that they were.

Magenta Living understands that the Regulator is seeking to ensure that complex housing organisations that face a changing and more challenging operating environment require Executives and Boards with a wide range of current and complimentary knowledge, attitude and skills. It is up to individual housing organisations to ensure that they 'plug' any identified skill gaps and make sure that they only enter new, unchartered business areas based on a

full risk appraisal and relevant advice, assistance, challenge, support and thorough monitoring.

We believe it is entirely appropriate that all registered housing providers maintain a thorough, accurate and up to date record of their assets and liabilities and particularly those liabilities that may have recourse to social housing assets. We agree that this should be broken down by business streams and ensure that social housing assets are clearly identified. This will support and aid both effective risk management and any potential interventions that may be required by the regulator in the extreme example of a failure situation.

The Regulator should be fully aware however that a potential unintended consequence of this, if taken to the ultimate degree or extreme, could be that housing providers with unpopular stock could consider 'pulling out of an area' if the stock in a particular neighbourhood is expensive to manage, experiences limited demand and ultimately makes a high negative contribution to overheads and debt repayment. This could reduce choice and leave little prospect of turning that neighbourhood around. The social angle and contribution to *all* current communities and neighbourhoods cannot therefore be overstated.

Magenta Living endorses the need to carry out detailed and robust stress testing of business plans against identified risks and combinations of risks. These need to be undertaken across a range of scenarios and appropriate mitigation strategies then put in place as well as ensuring that registered housing providers understand and manage the likely impact on current and future business and regulatory compliance before taking on additional business opportunities.

Magenta Living is pleased that the Regulator has identified the most commonly occurring different scenarios for group structures and we believe that the wording is sufficiently appropriate for each circumstance highlighted.

Question 2 - Code of practice:

a) **Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?**
b) **Is the role of a code clear and reasonable?**

Magenta Living response – Magenta Living welcomes the principle of a 'code of practice' that is designed to offer 'amplification' or 'explain and elaborate' on the content of the regulatory Standard, although, it is recognised that it should not be seen as a form of tick box guidance. However, the Regulator needs to be aware that when challenged, housing providers need to be able to revisit simple 'standard' guidance in order to ensure compliance with the Standard i.e. there is always the potential for misunderstanding to occur when having two separate sources against which to compare position, approach and performance, particularly when the code has a status in law but it is the Standard rather than the Code that the Regulator will seek assurance on, and enforce against. We agree with the National Housing Federation that past

experience suggests that advice from the regulator is treated by all as being of equal force as formal regulation. The HCA may therefore wish to consider combining the code into the Standard.
That said, we believe that the role of the code is both sufficiently clear and reasonable and does offer some welcome assistance to registered providers about what compliance with the code should look like on a day to day basis.

Question 3 - Do the proposed revisions to the disposals regime:

a) **Meet the aim of protecting social housing assets and the value in it?**
b) **Balance this aim with registered providers being free to run their own businesses?**
c) **Are they reasonable?**

Magenta Living response – Magenta Living is pleased to read that the Regulator is most interested in scrutinising applications for disposals where the balance of benefit against the regulator's overall objectives may be more 'finely struck.' We understand that at issue is the balancing of the ability of registered providers to be flexible against the protection of the social housing asset.

We as an organisation agree with the aim of preventing social housing assets from 'leaking' from the sector or being put at risk of being lost. Having considered the detail of the changes in the consultation document on the disposals regime we feel that the proposals are reasonable and do sufficiently protect social housing assets and the value contained in it.

Question 4 - Do the changes to the registration criteria:

a) **Reflect the proposed changes to the Governance and Viability Standard?**
b) **Are they reasonable?**

Magenta Living response – Magenta Living appreciates that the Regulator`s intention is to set entry requirements that support more social housing by providers who are both viable from a financial perspective and managed well. If they 'pass' these requirements they should therefore be able to satisfy the new regulatory Governance and Viability Standard. We believe that the updated registration criterion is both reasonable and reflects and mirrors the proposed changes to the Standard.

Question 5 - 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 focused as possible?**

Magenta Living response – Magenta Living does believe that the new Rent Standard accurately reflects DCLG direction and is quite clear. However, we would have liked the opportunity to share what the potential consequences of

the changes are on this organisation but the Regulator is not consulting on this.

If any further information is required about this response please contact Mark Armstrong, Assistant Director, Strategy and Regeneration at magenta Living on [redacted] (direct number) or 0808 100 9596 (switch board).

wm housing group

Registered Office:
Barnsley Hall
Barnsley Hall Road
Bromsgrove
Worcestershire
B61 0TX
Tel: 01527 556 400

15th August 2014

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency
Maple House
149 Tottenham Court Road
London
W1T 7BN

Dear Sirs

Consultation on Changes to the Regulatory Framework

Thank you for the opportunity to comment on the proposed changes to the Regulatory Framework . We would comment as follows:

1.a) Overall does the proposed Governance and Financial Viability Standard meet the Regulator's economic objectives which require the protection of social housing assets?

Overall the Governance and Financial Standard emphasises the Regulator's objectives of requiring providers to place greater emphasis on managing risks and ensuring the protection of social housing assets, given the significant changes to the sector in the last few years, especially with regard to the diversification of activities, new funding streams, the emergence of new profit-making providers and the lessons to be learnt in relation to the rescue of Cosmopolitan Housing Group. As detailed below however, we do consider that a number of the proposals adversely, and in some cases, unnecessarily, increase administrative and other burdens in the sector, reduce the co-regulatory principle and may stifle, constrain and even prevent providers' ability to continue to develop affordable homes and invest in communities in the future.

1.b) Does the proposed Governance and Financial Viability Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

Subject to the comments below, the Standard itself is relatively concise. We would however urge the Regulator to reassess the necessity for a number of the provisions as set out below to help maintain a more reasonable balance between reducing administrative burdens and the Regulator's aim to require protection of social housing assets. We comment further on the Code of Practice below. We would additionally suggest that the reference to associations adhering to "all relevant law" is changed to enable associations to comply if they have taken reasonable steps to follow the law, as a more reasonable regulatory requirement.

fax: 01527 556 401
email: general.enquiries@wmhousing.co.uk
www.wmhousing.co.uk

WM Housing Group Limited
Tenant Services Authority Reg. No. L4185
an industrial & provident society
Registered no: 28654R

1.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?

The emphasis on skills and capabilities to effectively manage the range of activities carried out by providers is reasonable and appropriate. However, bearing in mind the adoption by providers of a Code of Governance against which providers comply or explain areas of non-compliance to stakeholders, including the Regulator, we consider that the additional requirements are unnecessary and do little other than add an additional administrative element in further reporting requirements. We would comment similarly in relation to the requirements on independence, as, for example, the National Housing Federation's Excellence in Governance Code already encompasses provisions relating to conflicts of interest and Board composition.

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

The expectations in relation to risk management, emphasis on risks specifically relating to social housing assets and mitigating strategies, are reasonable and prudent.

We consider that the provisions relating to stress testing in the Code are helpful, but overly prescriptive and whilst capturing a number of examples, could become a tick list of areas to consider, rather than clearly placing the requirements and parameters explicitly in the hands of Boards.

We are pleased to note that the prospect of registered providers having to consider their own demise via a living will has been abandoned. However, the expectations relating to assets and liabilities and the need for enhanced and comprehensive asset registers and associated records, appears to require much of the same work. Given that elements of recovery planning are built into risk management arrangements in any event, we consider the additional requirements to not be in the spirit of co-regulation and previous aim of the Regulator to reduce burdens wherever possible.

We also note that the proposals would enable the Regulator to require providers to give the Regulator an overview of assets and liabilities and records including valuation and stock conditions at short notice, which again seems to be a step backwards into the previous inspection regimes.

We are also concerned that the requirements will have a disproportionate impact on associations who are less well advanced in comprehensive asset registers and, given the short notice, such providers may not be given an appropriate period of time in which to properly plan and collate the required information. Overall, the much more prescriptive approach is, we believe, in this instance unnecessary and leaning too far towards the previous extensive living will requirement.

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

We are pleased to note that the ring fencing proposals for all not-for-profit registered providers have been abandoned. If retained, this would have had a significant negative impact on the non-profit sector, potentially limiting development and new supply and may have triggered a review of lending agreements and possible re-pricing of loans.

Whilst the ring fencing proposal has been retained for for-profit providers and will place additional burdens upon them, we agree with the proposals and consider that they are reasonable in order to protect social housing assets and ensure that they are not placed at undue risk.

With regard to the provisions relating to registered providers with unregistered parents, we agree that effective mechanisms should be in place to ensure that such parents will give appropriate support and assistance to enable a registered provider to meet the Regulator's Standards. However, the proposal that registered providers with unregistered parent entities shall ensure that agreements to support the activities of the parent or group that may have a material negative impact on the social housing assets of the registered provider are not entered into, is over burdensome and, we suggest, unnecessary. The proposal will have an impact on those parents' ability to use the social housing assets to support other parts of the business and may impact on their growth and future activities. The sector is well advanced in relation to intra group arrangements and additional requirements in this respect appear to go against the Regulator's objectives and co-regulatory/ minimised interference approach.

2.a) Does the proposed Code assist registered providers to understand how compliance with the Standard can be achieved?
b) Is the role of a code clear and reasonable?

The proposed Code is detailed and prescriptive but, if intended as an illustrative example, assists providers to understand how compliance can be achieved. However, whilst we understand that the Code is not intended to be a set of rules, nor a checklist to ensure compliance, the power given to the Regulator to issue a Code, gives it status in law. In addition, the Regulator has stated that it will have regard to the Code when assessing compliance. Our concern is that the Code will become a prescriptive tool over time, sacrificing the freedom of the principle of co-regulation. A guidance or best practice document, rather than a Code, would be a less restrictive approach.

3. Do the proposed revisions to the disposals regime:
a) meet the aim of protecting social housing assets and the value in it?
b) balance this aim with registered providers being free to run their own businesses:
c) are they reasonable?

We welcomed the current regime which allows associations to raise funds without the Regulator's consent, provided they had been given permission by the Regulator. However, the changing circumstances where all social landlords must seek specific Regulator approval to take a loan against social housing stock, including index-linked loans, finance which is loaned to a subsidiary non-social housing company and lending between providers, whilst

enabling the Regulator to protect social housing assets, will create an additional administrative burden on social landlords. In addition, depending on the Regulator's capacity to quickly analyse proposals at a given time, the proposals could prevent deals, and ultimately the investment and new supply in the sector, taking place. This will be particularly the case for providers with non-registered parents, who will lose the ability to use Category 6 and have no recourse but to apply for specific consent.

In the spirit of lighter touch regulation, this more in depth micro management seems to be unhelpful and a step backwards.

4. Do the changes to the registration criteria:
a) reflect the proposed changes to the Governance and Viability Standard?
b) are they reasonable?

The changed requirement for new applicants for registration to demonstrate compliance with both elements of the Governance and Financial Viability Standard as part of registration would contribute to the Regulator better meeting its fundamental objectives, especially in relation to for-profit providers. However, the indication that the assessment of compliance will be on the basis of the stage that the applicants business is at when it registers, is somewhat unclear and suggest that the Regulator may take a flexible approach, which may become inconsistent over time and dilute the registration criteria.

Given that the Regulator has had no registration applications from Charitable Incorporated Organisations (CIO) since their inception in early 2013, we question the necessity for the CIO criteria, but, until legislation is amended to enable the Regulator to specifically regulate CIOs, we understand and welcome the criteria which may encourage further investment and new supply in the sector in the future, although we note that there has previously been reluctance for lenders to lend to CIOs.

5. 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?

We welcome the certainty that an index-linked ten year rent standard. The Standard enables associations to plan for future development and also helps give stakeholders and, in particular, lenders and investors, confidence and certainty going forward.

We are however concerned that the Government has decided to pursue the proposal to end rent convergence, which for association with historically low rent levels, including stock transfer associations, will disproportionately affect their ability to move towards target rent; may mean their ability to plan for the future at this late stage may cause revisions to their business plans and could constrain their ability to continue to develop affordable homes and invest in communities.

We note that the Regulator will consider waivers but, as this is still to be finalised, there may be inconsistencies in approach and concern that this leaves associations "in limbo" in any interim period. We would suggest that a more appropriate approach, given the time scales,

would be for rent convergence to continue until 2016, to give associations more time to properly consider and plan for the changes.

6. Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

Please see the comments above in relation to question 3.

7. Do the other proposed changes to the registration criteria:
a) contribute to the Regulator better meetings its fundamental objectives?
b) express the requirements of registered providers in a way that is clear and succinct?

Please see the comments above in relation to question 4.

We look forward to receiving the response to the consultation.

If you have any queries in relation to the above, please do not hesitate to contact us.

Kind regards

Yours faithfully

Pat Brandum
Group Chief Executive

yarlington
building communities

Ref: GBC/CM/HCA

28 July 2014

Homes & Communities Agency
Fry Building
2 Marsham Street
London
SW1P 4DF

Dear Sirs

Re HCA Consultation on Regulatory Framework

We write in response to the HCA's recent proposals concerning the Regulatory Standards. Having given consideration to the consultation papers we consider the proposals are clear, comprehensive and that there are no surprises. On the whole we endorse the proposals and as a Registered Provider, rated G1 and V1, we adhere to much of the proposals already, nonetheless, please find below our responses to your consultation questions.

Governance & Financial Viability Standard:

1.(a) Yes, the proposed Standard does meet the Regulator's economic objectives. We understand that the wording of the Standard is to change to "adhere to all relevant law". Whilst it is understandable that the HCA has to broaden the scope to protect public assets, extending the terminology to "all law" may be detrimental to some Registered Providers, however, if the HCA takes a commonsensical approach to this requirement then this should not have an impact.

(b) Yes, the proposed Standard expresses the requirements of Registered Providers in a way that is clear, succinct and outcome focused.

(c) We feel that the requirements on skills, capability and independence do indeed meet the Regulator's aim of protecting social housing assets and at the same time allows registered providers the freedom to run their own businesses. We understand that as the sector becomes more commercial the Regulator needs to ensure adequate

protection of the assets. At the same time, however, the change in culture is fundamental and Registered Providers do need to be afforded the flexibility to run their businesses how they see fit, e.g.. having to become more commercially minded to compensate for the decrease in grants.

(d) We concur with paragraphs 1.5 and 1.6 on risk. In light of the recent downfall of Cosmopolitan we understand the need to be fully aware of all risks and to maintain an asset liability register. We agree that there should be such a register and we support the notion that Registered Providers should have the freedom to decide the format of the register. We fully agree that stress testing is essential to ensure the long-term viability of an organisation and we support the notion that the Regulator will allow registered providers the opportunity to design their own stress testing. We also agree with the notion that Registered Providers shall not enter into arrangements that may inappropriately advance third parties.

(e) We understand the rationale for profit making Registered Providers to keep their social housing activities as separate legal and operational entities to ensure the protection of social housing assets.

Code of Practice:

(2) We feel that the Code of Practice will be beneficial so as to allow for clearer guidelines and elaborate furthermore on the requirements of the Standards. Many registered providers, as best practice, already carry out many of the requirements contained within the Code and therefore it is merely formalising the expectations and requirements that are already being conducted in the running of many organisations. We would however encourage that it should not be overly prescriptive.

Disposals Regime:

(3) The proposals in relation to the disposals regime meets the aim of protecting social housing assets and the value in it. We understand that the assets are those of the tax payer and as such the profits need to be protected and reinvested into social housing. We do feel that the proposals are reasonable and allow for registered provider the flexibility and freedom to run their businesses.

Registration Criteria:

(4) We fully support the notion of applicants having to meet the Governance and Viability Standards at the point of registration. We feel that this reflects the high standards that should be required within the sector and promotes the paramount understanding of compliance from day one.

Rent Standard:

(5) The proposals are in line with the recent approach taken by DCLG and we agree that this is the correct approach going forward. We also agree that the requirements for private registered providers are clear and succinct.

Yours faithfully

Caroline Moore
Company Secretary
[redacted]

Yorkshire Coast Homes Response to HCA Consultation:

Changes to the Regulatory Framework

Background

Yorkshire Coast Homes (YCH) is a not-for-profit registered provider operating across the North Yorkshire Coast; managing 4'500 properties of which 1/3rd are designated sheltered. The association was formed through a positive vote by Scarborough Borough Council tenants in 2003. YCH currently employs 213 members of staff, alongside providing further work experience and employment opportunities through its social enterprise subsidiary, The BEACH.

Yorkshire Coast Homes is a member of the Placeshapers group, and therefore has agreed to the response provided by them to this consultation. The responses below reflect the views of YCH and are in addition to this Placeshapers response.

Our response to the consultation questions follows:

1	**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?** Yes, the proposed standard will help protect social housing assets and create more transparency across not-for-profit and for-profit providers.
b)	**Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focussed as possible?** Potentially, although there is some concern as to how the regulator will quantify and define what is meant by "appropriate" with reference to the items in paragraph 1.2. on "skill, independence, diligence, effectiveness, prudence and foresight", as these items are all ambiguous, and open to interpretation.
c)	**Do the requirements in paragraph 1.2 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 businesses?** Yes; however there is some concern that these items are open to interpretation and ambiguous and consequently that these paragraphs will be difficult to measure.
d)	**Do the requirements in paragraph 1.4-1.5 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?** Yes, increasingly the sector is looking to diversify and deliver broader objectives to support its tenants and communities; therefore the introduction of these items within the framework is welcome. In addition the code of practice does clearly define these

elements and provide further clarification on the standard.

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

Yes, the introduction of these items helps create transparency across the sector.

2	Code of Practice

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

Whilst the code of practice is a useful addition and helps provide clarification and guidance around certain points, there is a suggestion that the regulator won't be assessing directly against the code. Some clarification on what expectation the regulator has of Registered Providers with regards to how the code of practice will be used would be welcome, alongside clarification on potential impacts of failing to meet the guidance in the code of practice as opposed to the actual regulatory standard.

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

In general the code of practice is clear and reasonable.

3	Do the proposed revisions to the disposals regime:

a) **Meet the aim of protecting social housing assets and the value in it?**
b) **Balance this aim with registered providers being free to run their own businesses?**
c) **Are they reasonable?**

Yes

4	Do the changes to the registration criteria:

a) **Reflect the proposed changes to the governance and viability standard?**
b) **Are they reasonable?**

We have no comments on the changes.

5	Do the proposed changes to the Rent Standard:

a) **Reflect the Direction from DCLG?**
b) **Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?**

The Placeshapers response succinctly covers all of the necessary points with regards to these changes, however we have concern over the loss of flexibility on the charging of rents at target levels leading to an increased likelihood of affordable rents being used to help fund future developments, and the potential increases to housing benefit that this may create.

The introduction of high-income social tenants to the framework is welcome and could help alleviate some problems faced with hard to let properties in some of the national park areas we operate in.	
6	**Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?**
We agree that the proposed changes will allow the Regulator to protect social assets more effectively.	
7	**Do the other proposed changes to the registration criteria**
a) Contribute to the Regulator better meeting its fundamental objectives? **b) Express the requirements of registered providers in a way that is clear and succinct?** We have no comments on these proposed changes.	

Yorkshire Housing response to the consultation on changes to the Regulatory Framework

Yorkshire Housing is a large housing association, with around 15,000 affordable homes. We believe that a strong and effective regulator is of significant benefit to our sector.

A6.1 Governance and Financial Viability Standard

a) We are satisfied that the proposed Standard meets the Regulator's economic objectives.

b) The proposed Standard is clear, succinct and outcome focussed. Our only comment is on the requirement to "ensure registered providers adhere to all relevant law". I am not sure that quoting (the television programme) QI will be entirely persuasive, but it illustrates the problem.

The Companies Act (2006) is the longest act in history; it is so complex that most British companies unwittingly break the law six times a day"
© 1,227 QI Facts to blow your socks off, published by Faber & Faber

There is a danger that Boards will become overly bureaucratic and risk averse if this requirement is taken to its literal extent. We recommend the wording is amended to:

"Governance arrangements shall ensure ***as far as possible*** *registered providers:"…..*

c) We are happy with the requirements in paragraph 1.2, although we will expect the Regulator to ensure it is assessing "foresight" rather than "hindsight".

d) We are happy with the requirements in paragraphs 1.4 and 1.5. The requirement for an asset register, stress testing and a thorough understanding of liabilities are all reasonable and will be more effective than the previously proposed "living will". There will be a need for the Regulator to allow time for registered providers to deliver on this requirement, particularly the asset register. Although most registered providers will have good asset information, it is unlikely to be 100% accurate.

e) We believe the requirements for specific types of registered providers are reasonable.

A6.2 Code of Practice

a) The proposed Code is helpful and we welcome confirmation that the Code will not be taken as prescriptive.

We note the requirement to certify compliance in our annual accounts and accept that this both adds to transparency for our stakeholders and simplifies regulation by avoiding the need for a specific regulatory report. The Directors Report and OFR already include information about governance, risk management and internal controls, so we believe that a statement confirming compliance should be relatively simple to add.

However, the Code could usefully expand on the requirement, for example indicating the amount of evidence that will be expected. This would be particularly useful given recent experience over compliance with the Value for Money Standard. Our strong preference would be for keeping the compliance reporting in the accounts at a high level.

b) Under section A2, the Code refers to the importance of the sector's reputation, particularly in relation to low lending rates. We agree that this is very important. However, there is also pressure on the sector to become more commercial and innovative, which will not please everyone. Indeed, some of the recent publicity around high surpluses – which will be seen as good news for lenders – has resulted in negative press about the sector. If the primary concern in this section is the cost of funds for registered providers, it would be helpful to make this clear.

A6.3 Revisions to the disposals regime

We agree that changes need to be made to protect the value in social housing assets sold by for-profit registered providers and are happy with the proposals.

A6.4 Changes to the registration criteria

a) We agree with the proposal that newly registered providers should be able to demonstrate compliance with the Governance and Viability Standard at the point of registration.

b) We are happy with the proposals regarding the objects clauses for newly registered providers and believe they are reasonable. We assume there is no intention to require currently registered providers to change their constitutions – if that is required, plenty of notice will be necessary to allow for the timing of Annual General Meetings.

A6.5 Changes to the Rent Standard

a) We are happy that the proposed changes reflect the Direction from DCLG.

b) We are happy that the requirements are clear and outcome focussed. In particular we are pleased that the provision to charge higher rents for tenants with higher household incomes is expressed as a permission rather than as a requirement. The practical reality is that it will be rare for us to identify such households and rarer still to apply a higher rent.

A6.6 Changes to the General Consent

a) We note the intention of these changes is to require contact with the Regulator over funding arrangements which are perceived as more risky and we agree with that principle. However, funding markets change quickly and new instruments are being created so the current proposals may not provide sufficient cover to achieve that principle.

Having said that, we do not want to return to the position of requiring consent for charging any property to any loan, and we

know that including any non-specific clause within the General Consent will simply result in funders' lawyers asking us to get consent in all cases. The proposals therefore are probably a reasonable compromise, but may need to be reviewed and updated more regularly.

Tansy Hepton
Director of Resources
Yorkshire Housing

14 August 2014

Tim Sullivan
Regulatory Framework Manager
Homes and Communities Agency – The Social Housing Regulator
Maple House
149 Tottenham Court Road
London
W1T 7BN

18 August 2014

Dear Tim

HCA Statutory Consultation on Proposed Changes to the Regulatory Framework May 2014

Your Housing Group (YHG) welcomes the opportunity to comment on the HCA's proposals and are pleased to see that the general approach of the HCA has been to broaden the regulatory expectations in relation to governance and viability, learning from recent cases, whilst not unduly restricting the non-social housing activity undertaken by Registered Providers (RPs).

We welcome the balance set out in the consultation paper in providing assurance to the HCA within a non-prescriptive framework which allows RP's to individually set out how they deliver those standards and their business in a way that meets the needs of local communities and stakeholders. In addition, YHG is committed co-regulatory principles and is reassured by the continued theme of co-regulation in the consultation document. Our responses to the individual questions raised in the consultation document are set out below.

A6.1 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?
b) Does the proposed Standard express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?
c) Do the requirements in paragraph 1.2 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 businesses?
d) Do the requirements in paragraph 1.4 and 1.5 on risk i) meet the Regulator's aim of protecting social housing assets ii) balance the aim of protecting social housing assets with registered providers being free to run their own businesses?
e) Are the requirements for specific types of registered provider in Section 2 reasonable given the Regulator's aim of protecting social housing assets?

We have no concerns with the requirement to undertake an annual certification of compliance with the regulatory Standards and consider this to be good governance practice. We also note

and endorse the requirement to communicate with the regulator in a timely and accurate manner.

We have no issue with the prevailing requirement for RPs to ensure that they remain viable and we are in agreement with the specific new requirement that social housing assets should not be put at risk. We welcome the approach taken by the HCA that the assurance provided by RP's in this respect will be tailored to their individual circumstances, is outcome focussed and that the HCA's requirements are not prescriptive. YHG considers that this must be a judgement of the board having regard to the operating environment in which it works. All decisions made have some element of risk and we welcome the opportunity to enter into dialogue with the HCA in respect of the stress and sensitivity testing undertaken in respect of our existing business plan, options appraisal for new opportunities and the management of risks within our broader operating context.

We consider that the requirement for each RP to hold an asset register detailing accurate and up to date records of assets and liabilities is sensible and recognise the role of this register in risk and business management. We are pleased to note that the regulator will be reasonable, proportionate and non-prescriptive in the format of this register.

We do not consider that the proposed obligation for all RP's to adhere to "relevant law" to be reasonable. Given the scope of "relevant law" relating to an RP's activities, it would be very difficult for any RP to make a categorical statement that all law was fully complied with. We would suggest that the HCA might change this wording to allow an RP to provide an assurance that relevant law is complied with to the best of their belief having made reasonable enquiries.

We support the focus on RPs ensuring they have access to the right skills and capability on their board and the emphasis on the board being appropriately independent to carry out its business. We welcome the ability for YHG to continue to operate through a common board and the freedom for RP's to decide on the number of independent members sitting within the board framework.

We consider the expectations of parent companies within a group to maintain the viability and compliance with the Regulatory Standards of itself and that of all registered providers within the group to be reasonable. We note and agree with the new requirement that the parent should, where necessary, step in to ensure regulatory compliance of registered providers within the group.

A6.2 Code of Practice
a) Does the proposed Code assist registered providers to understand how compliance with the standard can be achieved?
b) Is the role of a Code clear and is it reasonable?

We consider the proposed Code of Practice to be a useful addition to the regulatory guidance "package" but would be keen to ensure that this is presented as a non-prescriptive guide.

A6.3 Do the proposed revisions to the disposals regime:
a) Meet the aim of protecting social housing assets and the value in it?

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

We support the general proposals that for-profit RPs who subsequently dispose of social housing assets that have originally been purchased from a not for profit RP should to place the sale proceeds into a disposal proceeds fund for use for the development of new social homes. We consider this to be effective protection of the value within social housing assets and sensible recycling of public funding.

A6.4 Do the changes to the registration criteria:
a) Reflect the proposed changes to the governance and viability standard?
b) Are they reasonable?

We feel the proposed changes accurately reflect the spirit of the required standards and are reasonable. We consider it sensible that new applicants must fully meet the governance and financial viability standards at the point of registration.

A6.5 Do the proposed changes to the Rent Standard:
a) Reflect the Direction from DCLG?
b) Express the requirements of registered providers in a way that is clear, succinct and as outcome focused as possible?

The proposed changes to the Rent Standard (moving from RPI plus 0.5% and convergence to CPI plus 1%) effectively implement the 2013 spending review and the Direction from DCLG. The proposals are clear in their expectations of providers and provide helpful clarity to our business planning for the future.

YHG welcomes the principle of flexibility within the proposed approach to charge differential rents to high income social tenants. We consider that there is more debate necessary to ensure that this approach fits with the values and ethos of YHG and also recognises that there are currently very few examples of tenants in our homes where this might actually apply. Obviously this may be more relevant to a larger number of tenants in Greater London.

A6.6 Do you agree that the proposed changes to the General Consent allow the Regulator to protect social housing assets more effectively?

We agree that the proposed changes to tighten the approach to the General Consent in the circumstances set out are sensible in that they will ensure protection of social housing assets. Our concern is that the process for consent should be efficient and streamlined. An over-bureaucratic or lengthy process will result in the inability of RP's to manage their business effectively. We would require assurance from the HCA that the process will be subject to an agreed timescale and resourced appropriately.

Yours sincerely

Brian Cronin
Group Chief Executive

homesandcommunities.co.uk
mail@homesandcommunities.co.uk
0300 1234 500

Homes and Communities Agency
Fry Building
2 Marsham Street
London SW1P 4DF

The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.

Publication date: January 2015