



PUBLIC MINUTES
of the Regulation Committee meeting
held on Monday 25 July 2016 at 10 am
Marsham Street, London

Present

Julian Ashby Chairman
Ceri Richards
Sarah Wall
Simon Dow

In attendance

Fiona MacGregor Director of Regulation
Mick Warner Deputy Director Operations
Isabella Freeman Head of Legal
Jack Lee Asst. Director Investigation & Enforcement (Governance)
Ros Poulson Registrar (items 7 & 8)
Althea Houghton Head of Registration Policy & Consents (items 7 & 8)
Jim Bennett Asst. Director Regulation Strategy (item 9)
Rob Dryburgh Asst. Director Analysis (item 10)
John O'Mahony Asst. Director Regulatory Framework & Performance (item 11)
Sandy Pacek Head of Performance Management (item 11)
Harold Brown Asst. Director Investigation & Enforcement (Finance)

Christine Kitchen Asst. Board Secretary

01/07/16 There was a confidential session between members and the Director of Regulation.

1 Welcome and apologies

02/07/16 There were apologies from Richard Moriarty, the CEO and Jonathan Walters.

2 Declarations of Interest

03/07/16 There were no new declarations of interest.

3 Minutes of the last meeting – 20 June 2016

04/07/16 The confidential minutes were APPROVED, subject to a minor change to 19/06/16.

05/07/16 The public minutes were APPROVED.

4 Matters Arising

06/07/16 Members NOTED the items.

5 Committee forward look

07/07/16 Members were content with the forward planner and accepted there might be changes. There was a discussion on the format of the workshop session scheduled for September and members were content on the proposals.

6 Regulation Director's update on key issues

08/07/16 **Policy update:** The Director of Regulation reported that there has been limited policy activity as a result of the EU referendum and Cabinet reshuffle. Members were aware of the appointment of Sajid Javid as Secretary of State and Gavin Barwell as Housing Minister. It was still too early to have a view on what their views/priorities will be for housing.

09/07/16 **EU Referendum – effects on funding:** Members were advised that there was no sign of there being a change in the lending/refinancing markets and deals were completing, and markets remain calm. Falling gilt and swap rates increase MtM exposures, but there is no evidence to date, of any providers failing on MtM. It is less easy currently to get a view on exposures to sales. Anecdotal feedback from providers is that there has been some slowdown in London and the South East. FFR's and Quarterly Surveys have now been submitted which will provide some more recent data, but indications are that RP's have done stress testing. There was a discussion on the level of funding the largest developing organisations might need and where they would go for funding. It is evident that providers are having conversations with lenders and banks and the US markets are still open to investing in the UK.

10/07/16 **Welfare Reform:** Members noted the update on the LHA caps, the position of supported housing and the announcement from the new DWP SoS about the autumn announcement on the treatment of supported housing and LHA caps. Members noted the extension of the roll out of the Universal credits, It is important that the delay does not cause providers to lose focus on this area of risk.

11/07/16 **Regulation 2016:** Members noted the projects awaiting formal sign-off or on their way through to Committee. Members discussed the remit of DCLG to develop the rules in relation to special admin.

12/07/16 **Internal audit:** all audits are on track and the action from the stability checks audit has been completed and submitted to IA. The three actions on IDAs will also be achieved by the due date of end of Q4.

13/07/16 **Media and Stakeholders:** the recent RJ's issued received media coverage as did the update of RTS which focussed on VFM in IDAs. There has been a lot of stakeholder engagement via various speaking engagements and roundtables. Soft consultation on the proposals for notifications has been well received.

7 Direction on Notifications for Constitutional Changes and Disposals

- 14/07/16 The Registrar introduced Althea Houghton to the members and gave them an overview of the paper and advised the Committee that they were being asked to agree the approach to notifications and information gathering where this has been changed from previously presented or it has not previously been brought to Committee and agreed. Committee were also being asked to agree the draft directions and delegate sign-off of the agreed draft directions and decisions instruments to the Chairman in consultation with the DoR. She advised members that since the paper was written there have been a series of soft consultations with CML, G15, Placeshapers, the Small Providers Panel, NHF Company Secretaries group, Advisor Panel and all feedback has been in the main, supportive of what we are proposing. The queries raised by providers are regarding what the Regulator will do with the information when we get it, which will be after the event.
- 16/07/16 **Proposed regulatory requirement:** Members discussed the proposals on constitutional changes and the changes with the scope of the notification requirements. The Committee had previously agreed that early notification on planned restructures was preferable. The proposal for inclusion of this requirement for early information in Regulating the Standards is being offered as the preferred way forward, as it will link to the governance standard and the need to meet all regulatory requirements. Committee AGREED the proposed approach of making early information on restructures a regulatory requirement in RTS.
- 17/07/16 **Restructures:** Members discussed the point about giving providers an informal, "in principle" view on meeting the registration criteria as a registration decision cannot formally be given until the new entity is in existence. The proposal therefore is to indicate our view to registered providers if sought that as long as the restructure completes as expected, and the governing document is as reviewed by the regulator, the new entity would be registered once it has been registered with the FCA or Companies House and meets the necessary registration criteria requirements for restructures. It would be made clear that any such informal view is not binding on a future decision. Committee AGREED it was happy for an informal view to be given on restructure registrations.
- 18/07/16 **Changes to governing instruments (other than restructures):** the requirement for the Regulator to be notified of all changes to governing documents was discussed. The changes to the governing instruments the Regulator needs to be aware of were discussed. The proposal to require certification from the provider that they had made one of the changes discussed and that this is supplied within 15 days of the change being made and proposed periodic review of providers' governing documents, as part of an IDA, was acceptable to the Committee. Members were also content with the method of addressing this for small providers. Committee AGREED the proposed approach to changes to the governing documents (other than restructures).

- 19/07/16 **Company Arrangements and reconstructions & Dissolution:** the Committee AGREED with the proposal to make it a regulatory requirement that providers give the Regulator early information on any proposed company arrangements and reconstructions and Dissolutions, which will be done through Regulating the Standards (RTS) as with restructures.
- 20/07/16 **Draft Direction:** Committee had considered the draft direction and were advised that this was still under review. Committee AGREED the principles of the direction and delegated approval of the final direction to the Chairman in consultation with the DoR. In addition, Committee asked that the draft direction is tested with sector lawyers.
- 21/07/16 **Proposals on Disposals:** Committee noted the HPA requirements for all disposals of social housing dwellings and the provision for the regulator to issue directions on the content and timing for notification of disposals. Some of the individual categories have been previously discussed and Committee AGREED the approach proposed to notifications.
- 22/07/16 **Draft Direction:** Committee had considered the draft direction and were advised that this was still under review. Committee AGREED the principles of the direction and delegated approval of the final direction to the Chairman in consultation with the DoR. In addition, Committee asked that the draft direction is tested with sector lawyers.

8 Regulation of Tenanted Disposals to unregistered entities

- 23/07/16 Committee was invited to discuss the paper to inform further work on how to mitigate risks to the regulator's ability to discharge its objective to ensure actual or potential tenants have an appropriate degree of choice and protection from tenanted disposals outside the sector. They considered the proposals set out in the paper in respect of data and reporting, tenant protection, option appraisals and regulation of breaches of standard.
- 24/07/16 Committee recommended that we should consider putting something in RTS about notifications. Committee also agreed that we should reinforce to providers the need for tenant consultation, and notification to us at point of consultation. There should continue to be soft consultation with the sector and the Regulator should use opportunities to engage with them on this as much as possible.
- 25/07/16 On tenant protection, Committee were in favour of strengthening consultation requirements in Tenant Involvement and Empowerment standard to require transparency with tenants and providers demonstrating how tenants' views have been considered. There was a discussion on the implication for providers that were fully registered charities who will need to comply with Charity Commission regulations in respect of beneficiaries. Committee AGREED with the Consultation option set out in the paper.
- 26/07/16 On regulation of breaches of standard, Committee's initial view was that we should continue to use our current approach (influence board behaviour by highlighting breaches via Regulatory Notices (RNs)) and continue to take a proportionate approach to enforcement action.
- 27/07/16 Summing up, Committee asked Executive to provider further reports either to the future Committee meeting or in workshop sessions.

9 Consumer Regulation Review 2016

28/07/16 Members were advised that this was an annual review which sets out the approach and action taken to consumer regulation. The Committee were being asked to agree the document and delegate the final sign off to the Chairman in consultation with the DoR. It is proposed that it would be once again published in September.

29/07/16 Members discussed providers self-reporting and Committee AGREED that the impact on our consideration of compliance with Standards should be signalled more strongly in the document. The document was AGREED and final sign off delegated to the Chairman. Members complimented the team on the production of a very well drafted document and asked for their thanks to be passed to Angela Holden.

10 Sector Risk Profile

30/07/16 Committee were invited to discuss the paper to inform further work in this area and agree the process for preparing the 2016 Sector Risk Profile. Members were reminded that this has in the past been published at the NHF Conference in September, and the same was being proposed for this year.

31/07/16 Committee considered the proposals set out in the paper. The proposal to broaden the scope to include strategic risks to Boards, in light of de-regulation was discussed by members, who were in favour of this and the structure of the report which will include more graphs, charts and maps to illustrate risks and include some of the sector financial forecasts from the Global Accounts.

32/07/16 Committee AGREED the proposed scope and the structure of the SRP for 2016 and in addition asked for the following to be considered for inclusion before the final was sent to the Chairman for sign-off:

- Include something on reputational risk – including in relation to how providers behave following loss of consent powers – especially in respect of tenanted disposals.
- Consider including something on Brexit/uncertainty and on mergers – probably in the strategic risks section.
- Consider what and how much detail to include on types of counter party risks.
- Underline risks of novel and contentious funding structures in the context of loss of consents.
- Consider splitting risks between the things that can “happen” that RP's need to be able to withstand/stress test for, and the things they directly control as Boards.

33/07/16 Committee discussed the process for drafting and clearing the publication which would be during the summer. Members were happy to receive the document for comment w/c 22 August and AGREED to delegate the final sign-off to the Chairman.

11 Performance and Risk Report Q1

34/07/16 The Committee noted the performance and risk report. Members were advised that all Business Plan targets were green (on target), and committee noted the one target which had been completed. Two metrics had been flagged as Amber:

- 35/07/16 **Data Quality** – an issue with reporting in the quarterly survey had arisen, where 29 providers did not complete the annual counterparties information. There has been a follow-up with them on this and the option for additional validation to be added to the form is being explored. There had also been data quality issues with the information on rent provided by 24 providers. These have also been followed up with the providers.
- 36/07/16 **Appraisals** – the level of returns of appraisals to HR from Regulation was 46% against a 100% target. Members were advised that this was due in the main, to the pay dispute with the unions and as a result a number of staff did not attend their appraisal meetings or complete their forms. As the dispute has now been resolved, it is envisaged that all appraisals will be complete by the time of the next report to Committee.
- 37/06/16 Committee NOTED that the review of the risk register had recently been carried out by the Risk review Group. The impact of the recent EU referendum had been considered and no major changes had been made. The two priority risks have had their controlled score reduced to risk appetite as a number of controls have moved to high effectiveness.
- 38/06/16 Members thanked the AD RP&F for a clear and concise report

12 Operations Update

- 39/07/16 DDRO reported that there had been nine regulatory judgements and five new narrative judgements were published in June. Members noted the changes to gradings for Circle Anglia, Ongo, Salix, Watford Community and Yorkshire.
- 40/07/16 Thirty nine providers had been considered at stocktake panels following the completion of the IDA's. Eight of those had taken place since the previous Committee report.
- 41/07/16 Members noted the merger activity amongst providers. They were advised that the proposed merger between Sanctuary and Housing & Care 21 was no longer proceeding. There are two new potential mergers being discussed – First Wessex/Sentinel which would have 28,000 homes and Asra/Paragon which would have 24,000 homes. Members asked if for future reports, we could list providers stock based on existing parties as well as that of the merged organisation.

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13 Investigation and Enforcement update

- 43/06/16 The Committee were sighted on cases which were of concern and NOTED the issues in each case. There was a discussion in respect of Derwent Housing Association who have been placed on the GUR list, following an IDA . The issues related primarily to governance, including transparency with the regulator, weaknesses in its internal financial controls and assurance and risk management frameworks. As a result the I&E team has carried out more investigative work.

44/07/16 Members were advised that a range of remedial steps have been taken by Derwent.

46/07/16 Members considered the other cases .

13 Any Other Business

47/07/16 There were no other items for discussion.

Date of Next Meeting: Monday 26 September 2016.