Regulator of Social Housing

Regulatory Notice
September 2018

Registered Provider

Pathfinder Housing Association Limited (L4474) is a not for profit registered provider with charitable objects set up to provide housing for key workers and Ministry of Defence serving and ex-serving personnel in London and the south east. The provider was registered in July 2006. In June 2017 the provider changed its name from London & District Housing Association to Pathfinder Housing Association Limited (Pathfinder).

The provider previously managed around 100 units of social housing in London. These were acquired through s106 planning agreements with a number of London boroughs. Pathfinder currently has one remaining social housing asset which is vacant and a small number of head leases. These are subject to a court order requiring disposal to a registered provider.

Regulatory Finding

The regulator has concluded that:

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

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

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

The Case

The regulator received a number of referrals from London boroughs including following the outcomes of civil court actions taken against Pathfinder and a number of other parties by the London Borough of Southwark.

The regulator's investigations into the referrals have revealed that Pathfinder had failed to act with due diligence and it has identified concerns about the outcome of the activity it entered into for the acquisition of social housing assets.

The civil case went into mediation and a settlement was reached regarding assets originally acquired by Pathfinder through section 106 agreements with London Borough of Southwark.[1] This attracted substantial adverse publicity over the activities of a registered provider.

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

Pathfinder entered into arrangements to acquire the legal interest in the social housing units and hold the beneficial interest on trust for the third parties which provided the monies for the purchase.

Our investigation found that Pathfinder could not demonstrate that it had identified and managed conflicts of interest as a result of connections between the registered provider and the third party entities providing the monies for the purchase of social housing assets and held for them on trust.

When entering into the arrangements with third parties Pathfinder relied on legal advice taken by the third party and cannot demonstrate that it appropriately considered the risks of the arrangements. This is expected of a registered provider.

[1] Section 106 agreements (based on that section of The 1990 Town & Country Planning Act) are private agreements made between local authorities and developers and can be attached to a planning permission.

The regulatory standards require that registered providers assess, manage and where appropriate address risks to ensure the long term viability of the registered provider, including ensuring that social housing assets are protected.

The Governance & Financial Viability standard also requires registered providers to have an effective risk management framework in place. We have found that Pathfinder did not identify and manage risks associated with the activity it was undertaking. There has been reputational damage and financial cost which Pathfinder failed to adequately identify or manage in a way that has ensured the delivery of the registered provider's objectives.

Pathfinder transferred its social housing assets in other London boroughs when the litigation commenced. Assets were transferred to entities with connections to both Pathfinder and to the beneficial owner with no evidence of consideration of how this met the charity's objectives. Loss of social housing assets and failing to deliver its objectives is a significantly adverse outcome for Pathfinder.

The board has not demonstrated that it recognises the seriousness of Pathfinder's situation. In its engagement with the regulator the provider stated that it had not ruled out entering into similar arrangements in future and that it intended to follow the approach to due diligence previously taken.

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

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

The regulation of social housing is the responsibility of the Regulation Committee, a statutory committee of the Homes and Communities Agency (HCA).

References in any enactment or instrument to the Regulator of Social Housing are references to the HCA acting through the Regulation Committee.

Homes England is the trading name of the HCA's non-regulation functions.