New Regulatory Framework for Registered Providers

The Homes and Communities Agency (HCA) has just published its long awaited revision to the regulatory framework which comes into force in April 2015.

What are the key messages that RP's can take from the new framework?

The HCA has made it clear that their primary purpose in making these latest changes to the framework is to:

- build of the existing co-regulatory approach;
- strengthen the requirements of RP's to manage risk within their organisation; and
- ensure that, in terms of good governance, they have the appropriate skills and capabilities to meet their objectives.

In drawing up these revisions to the framework the HCA has, "had in mind the need to balance its objective of protecting social housing assets with the need to be open to innovation and to new entrants to the sector". In addition the revisions reflect the lessons learned from the Cosmopolitan case as well as reflecting the more complex and diverse nature of the sector generally.

A new Code of Practice

The HCA has now introduced a code of practice which sits alongside the regulatory standard. It hopes that this new Code will help RPs to more fully understand what the HCA's requirements are in terms of the new governance and financial viability standard.

RP familiarity with the new Code is an expectation of the HCA. It does set out some good illustrative examples which will help RPs in ensuring compliance with the standard. However, the Code itself is not prescriptive on how an RP should comply with the standard itself, only that responsibility for compliance lies with the boards of RP's.

The revised Governance and Financial Viability Standard

- Adhere to all relevant law

The first change to the framework is that RPs must now "adhere to all relevant law". Replacing the word "legislation" with the word "law" in itself is only a small change but the effect is significant. The HCA now expects RP's to comply not only with legislation but also with any caselaw, common law as well as any statutory guidance. To meet this required outcome it will be for the RP board to take reasonable measures to assure themselves of their compliance.

- Annual review of business planning, risk and control framework

From April, it will no longer be enough that an RP simply has the above framework in place. It will be important that it actually reviews that framework and its effectiveness at least once a year. RPs must also carry out stress testing against identified risks. Before taking on any new liabilities they must ensure they fully understand any potential impact on current and future business and regulatory compliance. This means that some RP boards will have to carefully consider whether they have the requisite skill sets to ensure compliance here or whether additional resource or skills at board level are required.

- Asset/liability registers

In addition there is now an obligation on all RPs to maintain a thorough and up to date record of assets and liabilities. The HCA has not been prescriptive about what form those records should take. It has provided additional guidance in its new Code of Practice and it does expect RP's to be able to produce an overview of the asset/liability registers to them at short notice. What is clear is that for some RPs this may present a significant challenge, not only in terms of understanding what those assets and liabilities are, but also in terms of the resource required to ensure the registers are consistently up to date.

Putting together an asset register, which contains a sensible degree of detail may take time to complete but the benefits of having such a register in place go beyond simply regulatory compliance and will greatly assist not only asset management, but also when RP's are considering stock rationalisation or funding/charging exercises.

- Boards to certify compliance in annual accounts

The HCA have stated that RPs must take regulatory compliance seriously. This includes being transparent not only with the regulator but also with other stakeholders. To that end the regulator has also made it a requirement that boards certify regulatory compliance in the narrative report which accompanies their financial statements.

- Risk flow in group structures

The Code also contains some new guidance and stresses how important it is that boards fully understand where liabilities exist between different group members and how activity within one part of the group can impact on other entities. The HCA expects an appropriate methodology to be in place to model and communicate those risk flows. Boards in particular will be expected to have a comprehensive understanding of critical risks within their groups.

Changes to the General Consent

The HCA has made a number of changes to category 6 of the General Consent, (the category dealing with granting a security interest over social housing), those changes are:

- that RPs who have an unregistered parent can no longer make use of category 6. The reasoning behind this is essentially so the HCA can retain a degree of control, over charging exercises involving RP's which it would otherwise not have, over a group with an unregistered parent;
- that Category 6 of the General Consent is not available if the grant of the security interest secures, (or may in the future secure), index linked finance. The logic for the HCA retaining some control here is around the perceived potential risk for RPs around these structures;
- the HCA has decided not to go ahead with its proposed plans to extend the requirement for consent to on-lending to non RP members of groups, (which it was proposing in order to allow it to scrutinise cases where an RP might be taking a risk on social housing assets) The HCA has dropped the proposal principally because of the difficulties RPs would have had around differentiating the source of the lending. There was a feeling in the sector that this could lead to RPs having to seek specific consent on a large number of financing deals.

The HCA has also made technical changes to some of the other consents contained in the General Consent, for example, they have reduced the number of consents from 39 to 34. It will be important for those RPs who rely on the General Consent to understand the differences prior to 1 April 2015 to ensure any disposals are dealt with correctly.

Disposals Regime

There have been some changes to the disposals regime which in essence require for-profit RPs disposing of stock to place the proceeds of sale into a Disposal Proceeds Fund, (DPF). This only applies where the for-profit RP originally purchased the stock from a non-profit RP.

Preserved Right to Buy

There will be changes in relation to all future LSVT and stock transfer deals in that the proceeds from preserved right to buy transactions will be required to go into the DPF rather than the current arrangement whereby a local authority can negotiate claw back arrangements on those proceeds. The changes apply from any transfer completing after 31 December 2014 but will not be applied retrospectively.

Registration Criteria

The HCA has also introduced some changes to the RP registration criteria too, including:

- that all new RPs must comply with the governance and financial viability aspects of the Standard from the registration stage rather than just having to comply post registration; and
- the Code also sets out to assist those looking to achieve RP registration and who want to get a fuller understanding of what is/is not social housing activity, by setting out a range of activities which, in the view of the HCA, constitute non-social housing activities.

Finally the HCA has also confirmed that the format and presentation of the regulatory framework is due to change in March 2015. The regulatory standards for example, will be published separately and there will be a clearer distinction between what are the regulatory requirements and what is simply guidance.

The changes being made by the HCA are intended to enable the social housing sector to manage risk more efficiently, to protect social housing assets, to continue to attract private finance and to deliver new housing supply. The HCA expects good governance to be at the heart of all registered providers and the introduction of the new regulatory framework affords RPs the opportunity to review their governance arrangements to ensure they are fit for the future and in line with the new regulatory framework.

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