Regulator of Social Housing

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Mr Adrian Waite

By Email Only to: adrian.waite@awics.co.uk

Dear Adrian,

Impact Housing Association: Regulation, Accountability and Mergers

Thank you for your letter of 10 June 2018 setting out your experiences as a shareholder of Impact and suggestions for us to consider. You will be aware that we do not comment on live regulatory cases but we do seek to learn from our approach in all cases and your comments will form part of this in due course. Notwithstanding that, I have sought to address the points you raise although some of the responses are by necessity, made in general terms.

The points you raised include:

1. When the regulator downgrades a registered provider to an unacceptable grade (G3 or V3) a report should be made publicly available making clear the principal reasons for the downgrade so that shareholding members, tenants and other stakeholders are fully aware of the situation.

2. When the regulator downgrades a registered provider to an unacceptable grade (G3 or V3) the Board should be obliged to call a general meeting of shareholding members that would consider the report of the regulator and the response of the Board; and at the same time all board members would have to submit themselves for re-election.

3. There needs to be a review of the accountability of registered providers. In my view this should involve the meaningful accountability of boards to tenants, other stakeholders and to the wider communities in which registered providers work. In the past I have suggested that any tenant who has held a tenancy for five years and who has not been in serious breach of their tenancy agreement should become a member of their registered provider. However, there may be other ways of ensuring that boards are genuinely accountable to members who are representative of tenants and communities and can carry out that role effectively.

4. The making of a voluntary undertaking to merge should be a decision for all shareholding members and not just the board.

5. Before a merger goes ahead that involves one housing association being absorbed into another, there should be a ballot of all tenants. For the merger to proceed it would be necessary that a majority of those voting, vote in favour of the merger.

6. Registered providers that propose to merge should be obliged to produce a full prospectus, like the offer documents that a registered provider must produce if it is involved in a stock transfer from a local authority, prior to the ballot taking place.

7. The Regulator, or another independent person, should be responsible for ensuring that any information provided to tenants is accurate, objective and balanced. Ideally, an Independent Tenants' Advisor should also be appointed.

By way of background, it is worth firstly setting out the basis on which we carry out our regulation. Further detail on our approach can be found in our publication Regulating the Standards. The regulator has a statutory duty to exercise its functions in a way that minimises interference and (so far as is possible) is proportionate, consistent, transparent and accountable. Mindful of our statutory duty to minimise interference and be proportionate, we have a co-regulatory approach. Boards of registered providers are responsible for ensuring that providers' businesses are managed effectively and that they comply with all regulatory requirements. We seek assurance that boards meet the requirements of our standards but do not prescribe how compliance should be achieved. This is a matter for individual boards.

Regulatory approach in cases of non-compliance

In line with our co-regulatory approach described above, the regulator expects providers to identify problems and take effective action to resolve them. If a provider takes responsibility for self-improvement and we conclude it has the capacity and capability to respond to the problems, we will work with it to achieve the necessary corrective actions. We assess the most appropriate course of action taking account of the particular circumstances of the provider, the level of risk and the potential impact associated with the provider, tailor the regulatory engagement accordingly and always take action which is commensurate with the materiality of the breach or failure. We give careful consideration to any remedial strategies proposed by the provider, including any relevant voluntary undertakings and whether we can conclude that it has the capacity, the capability and the resources necessary to resolve identified issues.

Impact

Impact Housing Association was placed on the Grading under Review section of the regulator's website on 27th March 2017. We do this where we have material concerns that a registered provider may not be compliant with our standards, whilst we conclude our investigations. We finalised our assessment and a revised Regulatory Judgement was published on 31st May 2017. This can be found here

The Regulatory Judgement set out the reasons for the downgrade and that the provider was working with the regulator to ensure it had the capacity and capability, and in conjunction with external advisers, the support to make the changes required to ensure its long term viability and to address the governance and financial viability issues identified in the regulatory judgement.

I am satisfied that the regulator has been transparent about its findings and with the breadth of information provided to stakeholders as part of the publication. The regulatory judgement was widely reported in both the housing press and local news at the time.

General

The Housing Association sector is diverse, with over 1,500 registered providers operating with many different corporates forms: trusts, co-operatives, and charities as well as non- profit, and profit distributing registered providers. There are many different forms of membership policies. The regulator is purposefully not prescriptive in these areas reflecting that it must have regard to the desirability of registered providers being free to choose how to provide services and conduct business. This is important in respect also of the Office for National Statistics' view of the classification of the sector.

In terms of the board of management – the regulator has statutory powers which enable it to appoint new members to, or, in certain circumstances, to remove board members. If the regulator concludes that an entity did not have the capacity, the capability and all the resources necessary to do address issues identified as causing concern, it would consider using powers as described above. However, in the case of Impact it was not necessary, or proportionate to do so. It was of note to us that three new experienced board members joined the board.

Boards of registered providers are responsible for the effective running of their businesses and for meeting regulatory requirements. As stated above, the housing association sector is very diverse and there are a number of different models for accountability within it, shareholding being one example. As registered providers are independent, and diverse, businesses, it is not for the regulator to prescribe the detail of how accountability to tenants is best achieved.

Shareholders

In the case of Impact the constitutional change proposal to join the Riverside Group was voted on by shareholders; shareholders were asked to agree to a rule change to allow Impact to join Riverside Group at the AGM. We received assurance that the outcome of that consultation was positive. I understand there was only one vote against the change.

Tenant consultation

The Tenant Involvement and Empowerment Standard requires that "where registered providers are proposing a change in landlord for one or more of their tenants or a significant change in their management arrangements, they shall consult with affected tenants in a fair, timely, appropriate and effective manner. Registered providers shall set out the proposals clearly and in an appropriate amount of detail and shall set out any actual or potential advantages and disadvantages (including costs) to tenants in the immediate and longer term. Registered providers must be able to demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision."

Registered Providers utilise a wide variety of methods to engage with their tenants and under our co-regulatory approach it is not appropriate for the regulator to prescribe exactly how the outcomes required in the standard should be achieved, including what form consultations take. The format of this information is a matter for the boards of registered providers. As a result, the regulator does not have a role in approving the consultation materials. However, we expect that the requirements of the Tenant Involvement and Empowerment Standard to be met.

In the case of Impact and its merger with Riverside, we have assurance that tenants were consulted on the proposals as is the requirement in our Tenant Involvement and Empowerment Standard. I understand that the outcome of that consultation was that there was widespread tenant support with 91% of those who responded as being in favour of the proposal and no responses received that tenants were not in favour.

Harold Brown has, in earlier correspondence, explained that following the removal of the constitutional consents regime as part of de-regulatory measures which came into force in April 2017, registered providers no longer need to seek the regulator's consent before changing their objects, amending their governing document to make provision about the distribution of assets to members, becoming or ceasing to be a subsidiary or associate of another body, or restructuring (eg converting from a company to a registered society or vice versa; amalgamating; or transferring engagements). Given the co-regulatory approach described, and the removal of our consent powers, we consider that the evidence we have seen in relation to the consultation by Impact, does not indicate a breach of the TI&E standard.

Thank you for setting out your suggestions for areas we might consider changing in future. I hope that this letter has helped to set out the regulator's current position, both generally, and where appropriate, specifically to the case of Impact.

As you may be aware the Government has announced that it intends to publish its housing Green Paper soon. As part of this it has been talking to tenants, including about views on the role of tenant

involvement. Members of the public and organisations will be given an opportunity to respond to the content of the Green Paper once published. The forthcoming Green Paper on Social Housing may therefore provide a further opportunity for you to feed in views.

Yours sincerely,

Fiona MacGregor

Executive Director of Regulation

Regulator of Social Housing