

ADRIAN WAITE

10th June 2018

Ms. Fiona MacGregor,
Executive Director of Regulation,
Regulator of Social Housing,
Fry Building,
2 Marsham Street,
London.
SW1P 4DF.

Sent by email to: Fiona.macgregor@rsh.gov.uk

Dear Ms. MacGregor,

Impact Housing Association: Regulation, Accountability and Mergers

You will be aware that Impact Housing Association was downgraded for governance and viability by the regulator in 2017 and has now agreed to merge with the Riverside Group.

I was on the Board of Impact from 2009 to 2015 and was Chair from 2011 to 2015. Since 2015 I have continued as a shareholding member and in that capacity have had the opportunity to follow the series of events that have led from the in-depth assessment through to the merger being agreed. In my view the process was not satisfactory, and I would like to share with you my thoughts and to make some suggestions for a changed approach to regulation, accountability and mergers in future.

Regulation

When Impact was downgraded in May 2017, I was surprised that the regulator made very little information available about their reasons. Impact also chose not to divulge any information. This left shareholding members, tenants and other stakeholders ignorant of the reasons for the downgrade. In my view this approach lacks transparency and so my first suggestion is that:

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.

The regulator decided to downgrade Impact for governance and made clear that they considered that the Board was not 'fit for purpose'. In view of this I do not think that it was appropriate for the Board to avoid reporting the regulatory judgment to shareholding members, to continue in office and to take strategic decisions including making a voluntary undertaking to merge with another organisation. My second suggestion is that:

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.

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Accountability

Since the downgrade, the Board of Impact does not appear to have been accountable to anyone. In May 2017, the Board provided the annual general meeting with information about the downgrade that I found misleading (for example, stating that the finances were 'strong and stable') and following that there was no further formal engagement with the shareholding members until the annual general meeting in June 2018 when they were presented with a merger with the Riverside Group as a 'fait accompli'. When I was Chair, it was Impact's policy to maintain a membership of sixty people who would be representative of the local community, but the present board has allowed this number to decline to thirty. Of those, only eleven attended the annual general meeting in June 2018. Some board members even failed to attend.

In my view these arrangements did not provide adequate accountability for the board. It also appears to me that many registered providers could be in a similar position. The question: "To whom should housing association boards be accountable?" is one that I think needs to be asked and answered.

My third suggestion is that:

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.

Mergers

I was surprised that a Board that the regulator had decided was not 'fit for purpose' could enter a voluntary undertaking to merge without seeking the consent of the shareholding members.

I was surprised at the lack of information that was made available to shareholding members, tenants, stakeholders and the wider community about the merger. For example,

- Board members sought expressions of interest from a select group of registered providers but were not prepared to identify which associations they were or the criteria that were used to select them.
- Board members were not prepared to state what the criteria were that were used to select the preferred merger partner.
- The offer from the successful partner included many vague statements but very few specific commitments.
- Shareholding members were not shown the Business Case, Heads of Terms or Inter-Group Agreement.
- In my view, the consultation with tenants was flawed in that it lacked objectivity and balance and contained misleading statements such as one that the merger would not result in a change of landlord.

My final suggestions are therefore as follows:

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.

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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.

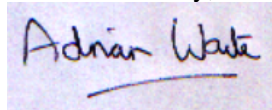
Conclusion

I hope that you find my thoughts and suggestions useful. I would be happy to expand on them if you wish.

If you could let me have your thoughts on the matters that I have raised, I would be grateful.

This letter is copied to the people listed below for information.

Yours sincerely,



Adrian Waite

Copies to:

- James Brokenshire MP, Secretary of State for Housing, Communities & Local Government – james.brokenshire.mp@parliament.uk
- Dominic Raab MP, Minister of State for Housing – dominic.raab.mp@parliament.uk
- John Healey MP, Shadow Secretary of State for Housing – john.healey.mp@parliament.uk
- Lord John Shipley, Liberal-Democrat spokesman for Housing – shipleyj@parliament.uk
- Rory Stewart MP, Member for Penrith & the Border – rory.stewart.mp@parliament.uk
- David Orr, Chief Executive, National Housing Federation – david.orr@housing.org.uk
- Terrie Alafat, Chief Executive, Chartered Institute of Housing – terrie.alafat@cih.org