The Highbury Group on Housing Delivery

Comments on the Homes and Communities Agency 'Protecting Social Housing Assets in a more diverse sector'; a discussion paper on the principles for amending the Regulatory Framework for social housing in England

June 2013

The Highbury Group comprises an independent group of specialists from the public, private and independent sectors with a membership drawn from housing, planning and related professions; it offers advice and makes representations to Government and other agencies on a variety of subjects, including responses to the recession, with the aim of maintaining and increasing the output of housing, including high quality affordable housing (see footnote for membership and objectives).

Summary

We agree with the HCA that the increased diversity of the sector's activities brings greater risk. We also believe that the changes in the financial environment since the crisis of 2008 and the general reduction in subsidy and benefit levels increases financial risk within the core social housing business – and not just from the non-regulated, non-social housing activities of Registered Providers (RPs). Indeed we are becoming increasingly concerned at some RPs becoming overly zealous in their pursuit of commercial goals and seemingly neglectful of the principal reasons for their creation.

We feel that the discussion paper places too much reliance on ring fencing. We believe that some of the proposals for grant recovery from for-profit RPs introduce concepts that will not help encourage the growth of a range of provider types. We also believe these proposals will not allow the sector to develop new models that may increase the availability of loan finance, and perhaps equity investment, for a full range of affordable housing products.

We are also of the view that insufficient attention is given in the paper to the impact on tenants if an RP should fail. To date tenants have been largely unaffected by failing RPs because rescue packages have been put in place to ensure that tenants' interests have been protected. However we are concerned that, given the risk that some RPs are now taking, this situation will not necessarily be maintained in future. The HCA needs to have contingency plans in place where tenants are so affected.

We are also concerned that the HCA has not chosen to review its consumer regulation activity at this stage. The HCA gives disproportionate attention to the governance and financial viability of RPs while the standard of services delivered by providers to their tenants is effectively ignored.

Ring fencing

The emphasis in the discussion paper on ring fencing techniques to protect the public assets of RPs gives cause for concern. Many RPs have sensible business structures and constitutional arrangements between business entities within a group to minimise cross default. But no ring fence brings complete protection of social housing assets – and ultimately the homes occupied by a provider's tenants.

Much protection comes from:

- Quality property maintenance
- Understanding market signals
- Investment and neighbourhood management strategies

And much risk of insolvency can come from:

- Overstretching an organisation's capacity
- Bad business judgements
- Malfeasance
- Government decisions on rent regimes, welfare benefits and care payments
- And from unknown risks – the uncertainties that RPs face

At best ring fencing closes off parts of the fields of business from each other but there must always be parts that are left open to run the business and maximise synergies. Even a complete separation of non-social housing activities from the social housing landlord business does not provide full protection of the social housing asset, and may well reduce the range and quality of services available to tenants.

Level playing field for not-for-profit and for-profit providers

The HCA discussion document suggests different treatment for grant recovery for not-for-profit RPs as for for-profit RPs. This difference could restrict the future evolution of the sector and may rule out any models that seek to increase equity investment input. We should not rule out the possibility of future growth of for-profit social housing businesses controlled by their investing shareholders.

A for-profit provider may present a greater risk for taxpayers' funds if only because the regulator can only give directions that relate to the social housing part of the business. Yet exposure of Social Housing Assistance (grant) to insolvency caused by the non-social housing part of the business is a real concern whether the provider is not-for or for profit.

If grant can be protected in other ways then it would be desirable that there should be a level playing field for not-for-profits and for-profit providers

Definition of Public Benefit Value

The concept of Public Benefit Value introduced in the HCA, in the context of grant recovery from for-profits, has potential. It could be a useful social version of Economic Value Added. But as presented in the discussion document, it has substantial weaknesses.

The first is that "Public" is too loose a word. Much of the work of RPs is supported by an aggregation of SHA (which is clearly public given central government definitions), discounted land value, S106 contributions, internally generated resources (RP equity), and charitable donations. The latter is clearly not public funding. In between there is a spectrum of definition for what is defined as public.

For instance, S106 contributions are arguably not "public resources". They are a performance obligation secured on land to make a development acceptable to the local community. In many ways the local planning authority is only acting as agent. The benefit of the Community Infrastructure Levy, however, is for a wider community and is thus closer to a strict definition of "public". It is closer in form and substance to a type of taxation.

Equity within an RP is a mix of funds, some generated solely as a result of the above inputs, but some also from the endeavours of the RP itself. The latter are clearly private resources.

The problem with the HCA description of Public Benefit Value is that it encompasses all forms of subsidy. The HCA should not be a clearing house for all subsidies on disposal irrespective of the provider of the subsidy. HCA should control SHA recycling and recovery but should not have direct financial control over subsidy generated through stock transfer contracts, S106, discounted land, charitable funds or internal financing. Each of these will have their own recovery mechanisms and/or mortgagee-in-possession protection where appropriate. Will the HCA indemnify an RP from action by another party? The suggested Public Benefit Value definition as it stands could be viewed as a form of central government capture.

Social Housing Grant redefined

We conclude this part of our response with an idea. We suggest that existing social housing grant could be redefined as an equity share of each existing dwelling, thus providing the maximum protection of the taxpayers' input.

The equity share would be secured with HMG becoming a Tenant in Common, with the RP and possibly others (for example discounted land providers) and occupiers under shared-ownership. The Land Registry would record the share owned by HMG and by the RP. A trust deed - probably a Trust for Land - would:

a) Allocate the rights and responsibilities for letting, rent collection, operating costs, and other owners' liabilities to the RP.
b) Set out the conditions that must be met before any Tenant in Common could trigger an open market sale (vacant or tenanted).

The share percentage would be assessed according to a nationally negotiated methodology which recognised that the current historic grant "deflates" and/or will be "used up" over time on the one hand and that the share amount is likely to inflate in nominal terms with house prices on the other hand. An approximate 24% historic cost amount might equate to a 10% equity share, or less, in present value terms. This would achieve:

1. A concrete protection of the SHA already provided to the sector.
2. Remove the need for complex, risk based, assessments by the regulator of RPs' business structures and ring fences, leaving RPs to assess their own risks (to their own equity) and to more freely manage their business.

3. Pump potential additional equity into the sector with which to support new housing supply at, likely to be lower, future grant rates.
4. A focus on adding value. RPs that were efficient operators, maintained the social housing asset, and pursued investment and neighbourhood management strategies, that maximised the taxpayers' value held, would be the preferred providers.
5. A part could pump prime or underwrite a Dutch model credit guarantee fund if this was thought desirable by associations.
6. Government would hold an investment, rather than treat grant as an expense, which could be sold on at a discount, or used as security, to raise funds.

Consumer Regulation

We acknowledge that the current discussion document addresses important concerns about the increased financial risks affecting RPs in the present operating environment. But we remain disappointed that the HCA appears to pay little attention to its role as regulator of the sector's consumer standards.

We understand that no cases of 'serious detriment' have been accepted by the HCA since the new regulatory framework was introduced and that the various powers available to the HCA under the Housing and Regeneration Act 2008 to address under performance by RPs have rarely – if ever – been used. To our knowledge no inspection of a RP has been commissioned by the HCA even though this technique is used extensively elsewhere in the public sector – particularly in health, social care and education - to examine under performance and help ensure service standards are maintained at an acceptable level – both at an organisational level and across an entire sector. We believe as a minimum that the HCA should monitor the Housing, Health and Safety Rating systems of RPs to ensure that tenants are adequately protected from the basic hazards in their homes.

We have also seen extensive changes in the handling of complaints in the social housing sector with the creation of the single Housing Ombudsman service in April this year. We believe that the HCA should set out more clearly how its regulatory framework operates within this new complaints handling regime. After all tenants in the social housing sector are likely to turn increasingly to the Ombudsman service to resolve service delivery issues as the HCA continues to focus on the governance and financial viability of RPs.

We therefore call on the HCA to formally report on the operation of its consumer regulation activity since the Regulatory Committee was established within the agency. This will (hopefully) provide the reassurance that tenants need that their interests are being protected by the new regulatory arrangements.

Footnote

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies aimed at maintaining the output of housing including affordable housing.

It comprises the following core members: Duncan Bowie - University of Westminster (convener); Stephen Ashworth – SRN Denton ; Julia Atkins - London Metropolitan University; Bob Colenutt - Northampton Institute for Urban Affairs ; Kathleen Dunmore - Three Dragons ; Michael Edwards - Bartlett School of Planning, UCL; Deborah Garvie - SHELTER ; Stephen Hill - C20 Futureplanners ; Roy Hind - Bedfordshire Pilgrims HA ; Angela Housham - Consultant ; Andy von Bradsky - PRP ; Seema Manchanda - L B Wandsworth; Kelvin McDonald - Consultant ; Tony Manzi - University of Westminster; James Stevens – Home Builders Federation ; Peter Studdert – Planning consultant ; Janet Sutherland - JTP Cities; Paul Watt - Birkbeck College ; Nicholas Falk- URBED; Catriona Riddell – Planning Officers Society; Richard Donnell – Hometrack; Pete Redman – Housing Futures; Richard Simmons - University of Greenwich; Roger Jarman – Housing Consultant; Richard Bate – Green Balance; Richard Blyth, RTPI

The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of individual members or of their employer organisations. .

The key purpose of the group is to promote policies and delivery mechanisms, which
* increase the overall supply of housing in line with need
* ensure that the supply of both existing and new housing in all tenures is of good quality and affordable by households on middle and lower incomes.
* support the most effective use of both existing stock and new supply
* ensure that housing is properly supported by accessible infrastructure, facilities and employment opportunities

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