



VIEWS

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Certainty in short supply on housing regulation

– *Angela Lomax Director, DTP*



The only thing which would seem to be certain about the future of housing deregulation is that things are uncertain. At this stage in proceedings, we have precious few of those Donald Rumsfeld 'known knowns', quite a lot of his 'known unknowns' and maybe even some 'unknown unknowns'. In other words: there are things we know, things we know we don't know, and even some things we don't even know that we don't know!

Following royal assent for the Housing and Planning Bill, we can take little for granted. We know the direction of travel, but I'd be reluctant to place any bets on the fine details of what our post de-regulated world will look like.

What we do know is that the government wants Registered Providers (RP) off its books – in a reversal of the ONS decision last October to reclassify them as public bodies.

But when it comes to the detail, things are... 'fluid'. For example, the approach to Large Scale Voluntary Transfer Organisations, with their significant local authority involvement (the 'golden share' in the organisation), is now being further developed with quite different views being voiced on what this might look like in practice.

And hasn't just been the government and a rebellious House of Lords feeding uncertainty. Some RPs themselves are raising the prospect that a post-regulated world could see them take a great leap into the unknown and become de-registered. Some providers are taking a good look at themselves, what they do now and what they want to do in the future and thinking about the best form of organisation and the most appropriate form of regulation to enable them to deliver it. But, we still don't really know what a march to de-registration might mean for the status of grant and other public funding provided to RPs who may no longer be RPs.

I certainly don't envisage a Doomsday Scenario of mass deregistration. I think a majority of boards will be keen to remain providers of social housing for people in need. However, I can see some choosing to adopt a hybrid model, where parts of their business could be de-registered and offer greater freedoms and flexibility while others remain firmly registered. Such models will require careful governance arrangements.

Could the latest planned grouping of L&Q, Hyde and East Thames offer another foretaste of what's to come? This proposal will build 100,000 homes in London and the South East in the next decade and have assets worth £30 billion. They have the potential to pose a real challenge to the Barratt Homes and Taylor Wimpeys of this world.

So, in this climate of uncertainty, RPs could be tempted to sit back and wait until the dust settles before deciding what to do. I think that would be a mistake.

RPs should now be thinking about what they want to do as an organisation – what their strategic objectives are and how they can best achieve those. What would be the best organisational form which could deliver that? Now that the Housing and Planning Bill is an Act – they need to be in a good position to align those things.

And then there are the implications for boards and governance. The HCA has issued its consultation on registration criteria and use of powers. Again, my advice is don't use this period of uncertainty to put off until tomorrow things which could be done today. Yes, deregulation has the potential to relieve RPs of some onerous and restrictive bureaucracy, but in some respects it puts the spotlight on boards and will raise the expectations of them. While the proposals on the consultation suggest that deregulation might mean RPs may not have to ask the HCA for permission to do certain things – Boards will still have to let them know what they plan to do and be accountable for how they do it and the outcomes.

Similarly, while the HCA once acted as a useful check on an RP's plans – that's no longer the case. That role will now fall fully on boards and could mean we see ever higher expectations on them in terms of skills and performance. (See my earlier blog on tips for better boards).

Deregulation, whatever form it takes, could also put more emphasis on risk management. Again this has potential implications for boards. There may well be more demands for accountability and transparency – with the expectation that they may have to provide an audit trail for funders or the regulator.

De-regulation might also mean more emphasis on the board when things go wrong. Here, exit strategies and recovery planning – often neglected – could become more important, alongside the board's role in developing them. And here too, Audit and Risk Committees might come into their own; taking on responsibility for compliance for key areas of the business once overseen by the regulator.

So that's my take on what we know and what we don't know – and how we can begin to plan ahead. As for those unknown unknowns – only time will tell.