



VIEWS

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Deregulation – a ‘Big Whimper’? or a ‘Big Bang’?

– *Sam McGrady, Director, DTP*



It's nearly nine months since social housing's very own 'Big Bang' – the introduction of a series of deregulation measures aimed at, well, let's be honest, removing housing association debt from the government balance sheet.

The reforms were billed by some as the biggest change to the regulatory system in many years. But has it been more of a 'Big Whimper'? In one sense, yes: the new rules haven't ushered in a new era of unfettered, deregulated, completely freed up social housing. However, that isn't to say there haven't been implications – not least for decision making, governance and risk.

As I suggested in a blog just before the changes were introduced in April 2017, the removal of the requirement to gain the consent of the regulator for disposals and mergers didn't mean that such decisions could now be taken lightly. Careful consideration of such proposals would still be essential even if the requirement in future would only be to notify the Regulator of Social Housing (RSH) – not to get its permission.

In one sense the reforms worked: the government got the ONS to reverse its public body decision in November last year. But in reality, only about 10 per cent of social housing regulation had been suddenly 'deregulated' – and the then HCA (and now the RSH) carefully retained enough power to prevent 'train crash' decisions. The requirement to notify also ensures the regulator can maintain its register, understand trends and identify any unusual behaviour.

Every quarter it will want to know the following: vacant disposals out of the sector; tenanted disposals within the sector; any disposals from a non-profit RP to a for-profit RP and guarantees and indemnities. It will want more immediate notification (within three weeks) of any tenanted disposals out of the sector and any sales which represent the last of a provider's social housing. For smaller RPs it will also require similarly quick notification of the disposal of more than 5% of stock and any finance disposals.

The rule changes also tighten tenant involvement and empowerment, with a greater requirement on RPs to meaningfully consult on any disposals of tenanted stock. This reflects the fact the disposal of tenanted stock out of the sector remains the RSH's biggest concern when it comes to the deregulatory measures.

On the one hand, the changes give RPs greater freedom and flexibility, and for smaller RPs in particular contact with the RSH is now even more limited. The most obvious positive implications are for active asset management. Providers of social housing are, in theory, now better able to make quicker decisions about their stock which make the most sense from a business point of view.

But with new freedoms comes new responsibilities. Key strategic decisions now lie in the hands of boards. The buck stops there and it gives a new dynamic to the board / executive team relationship. It is vital boards have the skills and expertise to make good decisions and are ready to take on the risks involved. You might have to fill in less forms but the RSH safety net has, if not disappeared, been made smaller. In some respects you are on your own (though lenders will still have a view, of course!)

This may have taken boards out of their comfort zone, but it may also present new opportunities. Many are rising to the challenge: taking responsibility, robustly challenging proposals, exercising control and managing risk.

Checks remain, including adherence to codes of governance (now arguably more important) as well as the RSH's Governance Standard and the scrutiny In-Depth Assessments bring.

Internally, audit trails have assumed a new importance, as well as a renewed focus on robust long-term business planning, strategic direction, fraud prevention and reputation protection. Joining the dots between appetite for risk, business planning and stress testing is now essential.

Ultimately, what we've seen is a shift away from the HCA and now the RSH, external assurance to internal assurance. Just because you don't have to assure the RSH you're making the right decision, it doesn't mean you don't have to assure yourself. It's increasingly about self assessment and self knowledge.

Questions remain: are boards ready to take on these new responsibilities, manage the risks and become better asset managers? How will lenders respond? Will we see more and faster mergers? When will an RP do something really stupid? (And that probably is 'when' not 'if').

The jury remains still out and we'll be watching closely in the coming months to see how things develop. Whether deregulation turns out to be a 'Big Bang' or a 'Big Whimper' will eventually be revealed.