



VIEWS

January 2019

Regulation – the impact

– *Sam McGrady, Director, DTP*



Here at DTP we have been keeping a very close eye in recent years on changes to social housing regulation: what it means for the sector, what impact it's having and how registered providers should best respond.

In previous blogs, we've reported that many organisations have been quick to downplay the significance of the changes. The government may have moved to a system based on 'light touch' regulation, but that isn't to say registered providers (RPs) are under any less obligation to be viable, efficient and well run. The government still wants the sector to play its part in delivering the homes the country needs, and it wants to see evidence that providers are acting in the best interests of tenants and communities.

Take mergers, for example. There has been no 'free for all' just because the regulator now only requires notification after the event. The same applies to decisions around asset management and stock portfolios: you may only have to notify retrospectively, but due diligence, a sound business case and due regard to reputation are still required.

All of which isn't to say there aren't examples of poor performance when it comes to governance and viability. And in its Regulatory Judgements on these matters, the Regulator of Social Housing (RSH) has been no less willing to step in and downgrade if it sees evidence of shortcomings. We're not necessarily seeing more downgrades – but I think we are seeing the regulator shift its focus slightly.

Not surprisingly, deregulation has meant an increased stress on governance – certainly from the evidence we have been gathering. Also worth noting: most of the downgrades to G2 or worse have come as a result of In-Depth Assessments (IDAs). There are cases of self-reporting of failure, and in some cases whistleblowing, but the IDA remains the main source of governance downgrades in particular.

The government's new Value for Money standard may also start to have an impact in the near future. The replacement of annual self-assessment with seven new metrics common to all providers, means a new emphasis on this in an IDA. Failures in any one of these areas can result in a governance downgrade.

New themes are also emerging in the lists of Regulatory Judgements being published by the RSH. Again, some of this can be traced back to deregulation in my view.

Firstly, risk has assumed even greater importance. In one recent high profile example of a downgrade, a provider was downgraded for failing to develop a proper business case for transferring stock to a 'for profit' provider, and to fully assess the risks involved. Of course, prior to deregulation this would have required consent from the regulator before the decision was taken. Not any more, and we may well see more of these type of downgrades from the regulator.

Running in parallel to this is a renewed emphasis on reputational risk. When making an important strategic decision, boards need to be constantly asking themselves: how does this look to the outside world?

Another area which is seeing greater scrutiny is internal controls in relation to non-social housing activity. This might include commercial subsidiaries, development subsidiaries or joint ventures. The regulator is increasingly interested in where control lies for these activities in an organisation. And it wants evidence that a provider has understood and put in place measures to manage the risks involved.

Stress testing is emerging as another theme of growing importance. This might be of 'bigger picture' factors beyond an RP's control – for example, Brexit, a further rent cut, economic recession, or falls in house prices. Or it might be of things which are unique to a particular provider: say an increase in its rent arrears or rising void levels.

The regulator wants to see clear evidence that RPs have credible plans in place to deal with these eventualities should they arise. And to reiterate: not having them can result in a downgrade.

The final theme which is emerging is around health and safety, which has gained significant profile as a consequence of the Grenfell tragedy. In short, greater demands are being placed on boards to demonstrate that they have the right policies and procedures in place to keep tenants safe. And it's all about the data: do you have the information to back this up, whether its electrical testing or fire risk assessments?

All of this underlies the importance of improving our approach to governance and risk management, and for boards to assume greater responsibility and to up their game when it comes to skills and competence. The good news is we are seeing more evidence of collaboration and co-production in my view, with boards increasingly aware of what they are there to do. There's less adversarialism between boards and executive teams. Yes boards are there to challenge the executive when required, but they are also there to support them.

Ultimately, the regulator is just looking for evidence of good business practice – that you are running a tight ship and an effective social business. That's not unreasonable, and in some respects, despite the new themes which are emerging, the process remains a good opportunity to make improvements and to undertake a thorough analysis of your strengths and weaknesses.

Given the important part which IDAs play in all of this, I'll be sharing some specific advice and guidance on these in my next blog.