

Learning from Regulatory Downgrades

Over the past 28 months the Regulator has issued over 50 governance rulings following downgrades for housing associations. This report seeks to explore why those downgrades have happened and the common threads that housing associations should be looking to learn from.

This report details the areas that the Regulator has highlighted in the Regulatory Judgments (RJs), backed up by direct quotations from those named RJ reports. In the overwhelming majority of cases the associations had agreed actions with the Regulator and were making progress in the areas identified in the RJ.

In this updated version I am pleased to see that a number of previously downgraded housing associations now have satisfactory governance rulings from the Regulator, and others, whilst still below the G1 rating, have made significant progress. This version also echoes some of the more explicit expectations set out by the Regulator in the revised Regulatory Framework and associated Code of Practice. The Code includes a requirement that *“Registered providers shall assess their compliance with the Governance and Financial Viability Standard at least once a year. Registered providers’ boards shall certify in their annual accounts their compliance with this Governance and Financial Viability Standard.”*

Introduction

About 15 years ago I read Julian Ashby's seminal "Learning from Problem Cases" – a study of why housing associations went into supervision. What I learned was the importance of sound governance both in housing associations and for housing regulation. When I became a senior housing regulator I started any speech on regulation with a clear recognition that good governance was key to tenant involvement and the services for which I was responsible.

Last year, in my role as Vice Chair of Wulvern, I started thinking about co-regulation and how boards could seek assurance that they were regulatorily compliant. I knew that the Regulator had become more active and had issued a range of rulings. But thinking back to Julian's work, I didn't know of anyone who had sought to capture it and use it to inform good governance in housing associations.

So I sat down and read all the recent governance rulings. I started to understand that there were common threads running through the RJs and that these threads would help boards, executives and others trying to ensure compliance, and effectiveness.

I am grateful for feedback and suggestions from Diane Jones, Executive Director (Finance & Risk) at Wulvern and Mick Warner, Deputy Director Regulatory Operations Homes and Communities Agency. I am particularly grateful to Janet Hale, Director of Pilkington-Hale Partnership, who assiduously checked the report and contributed many helpful changes.

This is an updated version of the original report and includes new information from regulatory downgrades during the past 10 months.

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Executive Summary

Under co-regulation it is boards that have the responsibility for ensuring that their landlords meet the regulatory standards. This report helps highlight a number of areas where boards, and the staff working with them, can learn from where others have failed.

This includes boards ensuring they are clear about regulatory requirements and that they are compliant with them and produce all necessary reports and statements (e.g. VFM) in an accurate and timely manner. They need to ensure that risk is well-covered and that they have effective internal controls.

Boards need to ensure that they meet their own Code of Governance and that they operate effectively. The Code of Governance helps ensure that boards are run properly. Too often in this report it appeared that hubris prevented boards from implementing basic rules to ensure compliance with their own agreed Code of Governance.

Finally, boards also need to ensure they operate effectively, establishing clear relationships with staff, seeking and taking expert advice, ensuring they provide robust challenge to the executive, work together effectively and are able to meet new challenges.

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A. Regulation and Boards

Under co-regulation, boards are responsible for ensuring the Regulatory Framework and Standards are met. This means understanding - and meeting - those requirements, as well as ensuring a professional approach to the Regulator and regulation. The Regulator consults formally, and informally, on changes to the Regulatory Framework and Regulating the Standards. Boards should keep abreast of such consultations and the impact of subsequent changes.

1. Keep up to Date

With the relatively swift changes from the Housing Corporation to the Tenant Services Authority and then to the Homes and Communities Agency, as well as the various amendments to the Regulatory Framework, boards need to ensure that they are working to the current version of regulatory requirements.

Gallions Housing Association Limited

In making its decisions, the board referred to regulatory requirements that have not been in place for some time as the basis of its decision-making. The board failed sufficiently to take into account the current regulatory framework and in particular the requirement that registered providers' governance arrangements should ensure they safeguard the reputation of the sector.

2. Tell the Regulator

It's important to tell the Regulator as soon as you become aware that things are wrong. Too often, landlords thought they wouldn't tell the Regulator about problems until they had tried to put them right first.

Failure to declare non-compliance of economic standards, including the Code of Governance, is also a breach of those standards.

Cottsway Housing Association Limited

The failure to notify the HCA, until January 2013, of the serious cash flow problems when these were first discovered and the failure to notify the HCA of the resignation of its Finance Director in late October 2012 represent failures to communicate with the regulator in a timely manner on material issues relating to non-compliance with the economic standards.

Your Housing Group Limited

In addition, once YHG became aware of deficiencies in its operations and likely breach of the standards it failed to communicate this in a timely manner to the regulator. Instead, it was the receipt of allegations that first brought the matter to the regulator's attention. Transparency and accountability is a key principle of the Regulatory Framework and is central to co-regulation. It is essential that providers run their businesses with a presumption of openness and co-operation with stakeholders, including the regulator.

Venture Housing Association Limited

The breach of covenant which took place on 31 March 2014 was reported to a member of the executive team at the end of May. It was reported to the Board on 21 July. The regulator was not informed of the event until 28 August. Furthermore the information that had previously been given to the regulator was, at best, misleading. Providers are required to communicate in a timely manner with the regulator on material issues that relate to non-compliance with the economic standards. A co-regulatory regime can only function on the basis of co-operation, self-reporting and transparency. This failure to disclose is an aggravating factor and has been taken into account in the regulator's judgment.

Aldwyck Housing Group Limited

During the course of this review [into internal controls] Aldwyck sought to restrict its scope and serious concerns about the extent of Aldwyck's co-operation with the review were expressed by the team undertaking the work. Despite being aware of these concerns before publication of the September judgement, Aldwyck failed to inform the regulator about them

3. Gas Safety

A failure to ensure that gas safety checks are timely, breaches 'serious detriment'.

While consumer regulation is not actively regulated, it undergoes a 'serious detriment' test. This covers gas safety checks for 6 housing associations. The recent regulatory notice on Blackpool Council showed that the regulator would indeed consider wider health and safety issues (and this was the first Regulatory

Notice for a local authority). This could be extended to cover other health and safety issues such as asbestos failure and legionella.

First Wessex

During the course of regulatory engagement, the regulator has identified evidence of failure to adhere to the Gas Safety (Installation and Use) Regulations 1998 which state that gas safety checks should be undertaken annually by a gas safe engineer. The necessary inspections were overdue in a number of cases. This is clear evidence of a breach of the statutory obligation to carry out gas servicing and thus of the Home Standard in respect of the requirement to meet all applicable statutory requirements that provide for the health and safety of the occupants in providers' homes. The breach exposed a number of tenants to the potential of serious harm for lengthy periods. Notwithstanding the actions FW has and is now continuing to take, the regulator is of the view that FW has failed to meet the Home Standard.

Your Housing Group Limited

The regulator has separately concluded that YHG has breached the Home Standard by failing to comply with the Gas Safety Regulations 1998 and that this breach had the potential to cause serious detriment. As a result of the failures the regulator has cause for concern over the effectiveness of YHG's risk management, internal controls framework, the accuracy of management information and its oversight arrangements

Blackpool Council

The regulator has received evidence of a breach of the Health and Safety at Work Act 1974 which led to tenants being exposed to the risk of serious harm. The Court concluded that the structural flaws in the balconies were present for a significant period of time and the provider failed to heed multiple warnings. This is clear evidence of a breach of the Home Standard in respect of the requirement to meet all applicable statutory requirements that provide for the health and safety of the occupants in providers' homes. The breach exposed a substantial number of tenants to the potential for serious harm for lengthy periods.

4. Hit HCA Deadlines

There are deadlines and they should be kept to!

Ensuring that reports and returns to the HCA are on time and accurate is a basic building block in the relationship with the Regulator. Boards can ensure that these returns are reported to boards and monitor their timeliness. Accuracy is essential for both the relationship and the integrity of the board

Luminus Group Limited

Routine financial returns provided to the regulator have not adequately presented the inherent risks associated with these funds. It is a regulatory requirement that registered providers should provide accurate returns and we expect a higher standard of information in future.

Johnnie Johnson Housing Trust

...failure to provide the regulator with its annual accounts on time resulting in a technical breach of covenants.

Nottingham Community Association Limited

We also require NCHA to review its processes for the submission of regulatory returns following the late submission of its 2012/13 fraud return.

5. The Rent Standard

The rent standard is economic regulation.

With the emphasis on governance and financial viability through the ratings, it's important not to forget that housing associations also need to comply with the rent standard.

East Thames Group Limited

ETG reported to the regulator in the autumn of 2012 that it was not fully compliant with the Rent standard in that just under 1,000 homes did not have rents at the required levels. When this was queried with the group it indicated that a larger number of homes were non-compliant, in part because it had misinterpreted relevant guidance. This did not give the regulator assurance about the accuracy of ETG's reported position or its overall application of the rent influencing regime guidance.

Network Housing Group Limited

Network has not fully complied with the requirements of the Rent Standard concerning 153 properties where, because of errors in base capital values used in calculations, rents were charged in excess of the maximum permitted by the standard for a number of years. A further 509 supported housing properties were charged rents in excess of NHG's policy. The issues have led the regulator to question controls within the group, and specifically the basis upon which the Board gained assurance on the accuracy of rents charged.

B. Hubris – the Threat to Good Governance

As with Julian Ashby's earlier report, governance remains key to the effective running of housing associations and there are a number of areas where compliance can be achieved very easily. However, for some landlords, rules are 'meant to be broken' - or ignored. Often, these are the same landlords who experience other difficulties as hubris clouds their vision of what their role should be.

6. Publish (Non)Compliance with the Code of Governance

Housing associations are able to choose an appropriate Code of Governance. Having chosen their preferred code, there is then a requirement to 'comply or explain'. Some associations have not explained at all, others have not given a satisfactory explanation for their non-compliance.

Metropolitan Housing Trust Limited

The group also failed to report fully on non-compliance with its chosen code of governance in its financial statements for the year ending 31 March 2011.

North Hertfordshire Homes Limited

NHH's statement of compliance with its chosen code of governance has not clearly identified the areas in which it is non-compliant. In future public disclosure will need to explain clearly the areas of non-compliance with the code.

Pierhead Housing Association Limited

During recent engagement it has acknowledged non-compliance regarding....failure to report both its level of

compliance and explanation for deviations from provisions of the Code.

Tower Hamlets Community Housing Limited

THCH's code of governance requires a public statement of compliance with the code, and a reasoned statement about areas where it does not comply. While the association has made such a statement, recent disclosures have been incomplete.

7. 9 Years Maximum

Terms of office are a maximum of 9 years, however the '9-year rule' is not an absolute rule and there may be reasons why, exceptionally, some board membership might exceed that period. However this must be discussed with the Regulator and put in the context of a sensible succession strategy. In most cases it isn't adequate to cite "continuity" as a reason for non-compliance, as a joint letter to chief executives from the HCA and the NHF in February 2014 made clear.

The Regulator will engage with landlords and agree sensible ways forward.

Yet ten landlords didn't agree sensible ways forward and in some cases had members with 20 or even 40 years board membership. What was revealing was that in most of these cases excessive length of membership resulted in poorer governance and too close relationships between board and staff.

The answer is simple - put a succession plan in place well in advance of hitting the 9-year rule.

Bournemouth Churches Housing Association Limited

BCHA does not have an explicit plan for board succession. Some members of BCHA's board have been in office in excess of the maximum nine years allowed by a provision of the code. As a consequence, the regulator considers the independence of the board could be compromised by a lack of challenge to long-standing practices and thinking, which may lead to risks to effective leadership and control.

Hastoe Housing Association Limited

Whilst there is on-going refreshment of the board, normal length of service remains at 12 years, and longer in exceptional circumstances.

Johnnie Johnson Housing Trust

...although JJHT has adopted the NHF code of governance, it does not comply with it regarding the length of service of some of its board members.

Orwell Housing Association Limited

Five members of Orwell's board, including the chair, have served terms of office significantly in excess of the maximum recommended by the association's chosen code of governance. The explanation provided to the regulator, which emphasises the importance of retaining the experience of certain board members, is not considered to be adequate in the context of Orwell's business strategy. The association has now introduced a nine-year maximum term of office for all new board members and provided the regulator with a voluntary retirement plan for existing members. However, the association's approach still means that Orwell will not achieve compliance with its chosen code until 2018. One longstanding board member will have served more than 40 years by the time they step down.

Tower Hamlets Community Housing Limited

Although there is turnover in board membership, THCH does not set specified limits on length of service for board members to promote regular refreshment, in line with the association's chosen code of governance.

Tuntum Housing Association Limited

Tuntum does not comply with the provisions of its chosen code of governance in relation to maximum terms of office for board members. The code specifies maximum terms of nine years but Tuntum has made rule changes which extend this to a 12-year maximum. The association currently lacks clear succession plans for the chair and other board members. In addition, the criteria used by the board for extending terms of office should be clearly specified. The regulator considers this weakens the board's ability to challenge the executive and review long-standing practices.

8. Board Skills

As housing associations diversify in their operations, boards face a growing range of issues on which they need expertise. Examples include development, marketing, finance, commercial activity and treasury management. This was an issue with nine landlords and often core to failings of their boards.

You need to ensure the board covers all the necessary bases, and not be afraid of change, including change in your governing documents, to ensure this happens. This is one of the reasons why board renewal and fixed terms of office (B 7 above) are important, the skills needed five years ago are not necessarily the skills that will be required in five years time.

Cambridge Housing Society Limited

Following resolution of breaches in its loan covenants in 2011, the society commissioned two independent governance reviews. The reviews identified weaknesses in governance including skill deficiencies on the board and a need to strengthen treasury and risk management, business planning, internal audit and the society's reporting framework.

Hastoe Housing Association Limited

Hastoe has not demonstrated that it has adequately assessed the skills of the board at the individual level to ensure they remain appropriate to effectively manage the risks associated with delivery of its plans.

North Hertfordshire Homes Limited

...self-assessment by board members in 2012 has identified some gaps in treasury management expertise, underlining the need to strengthen the knowledge and skills mix on the board. Due to its corporate structure and shareholding arrangements, NHH has been unable to address the reviews' recommendations by pursuing its preferred option of rebalancing the board by increasing the number of independent members. As a consequence, NHH has yet to develop effective strategies to take forward the reviews recommendations and strengthen its board.

Orwell Housing Association Limited

Orwell's business strategy involves complex partnership working and development within an increasingly challenging economic environment. However, Orwell has not demonstrated that it has adequately assessed the skills of the board as a basis for planning ahead to ensure that it will maintain the necessary balance and expertise to deliver its objectives and maintain compliance.

Pierhead Housing Association Limited

There have been a number of board member resignations. We have insufficient assurance that the board is adequately skilled to perform its role.

Plus Dane Housing Group Limited

[Need to]...implement a series of governance changes to strengthen the financial and commercial skills and expertise at board level

Tuntum Housing Association Limited

The regulator's previous judgement also required additional assurance from Tuntum in relation to board skills, succession planning and structured renewal to support its growth and increased risk appetite in the increasingly challenging operating environment. Tuntum has yet to provide a sufficient level of assurance in these areas.

East End Homes Limited

EEH has not yet provided sufficient assurance to the regulator that its governance arrangements ensure that the skills of its board are aligned with the association's range of activities and associated risks.

9. Annual Appraisals

Having got your board in place there should be an annual mechanism for appraising their effectiveness and identifying areas for personal development and any gaps in board skills.

It is surprisingly common to find associations which operate an "alternate years" or even a triennial appraisal process.

Hastoe Housing Association Limited

Board members have been subject to individual appraisal every three years

Tower Hamlets Community Housing Limited

The regulator has concluded that THCH needs to strengthen board assessment and renewal processes to ensure that its board will maintain the skills and expertise required, both now and in the future, to deliver its business strategy.

10. Board size

Less is more.

Make sure your board is 12 or less. There's a strong body of research published showing that boards that are too big are less effective. It can be hard for larger

boards to admit that they are too big and, even harder, that some board members will have to go.

The Regulator will want to know if an oversize board has a plan to achieve compliance, and within a reasonable timeframe.

Bournemouth Churches Housing Association Limited

The size of BCHA's board exceeds the maximum specified in its code of governance. It has no plans to achieve compliance and the regulator does not have assurance that it has carried out a robust assessment which adequately supports any case for non-compliance.

Hastoe Housing Association Limited

The size of Hastoe's board exceeds the maximum specified in its code of governance. The regulator does not have assurance that in retaining a board of this size, it has adequately considered whether it could better utilise its committee structure to support and enable a smaller strategic board to operate effectively.

Tower Hamlets Community Housing Limited

The size of THCH board exceeds the maximum specified in its code of governance. The board has 16 members, of whom eight are elected tenants. This structure has constrained skills-based recruitment to the board. In retaining a board of this size, THCH has not adequately considered whether it could better utilise its committee structure to support a smaller, strategic board.

East End Homes Limited

The size of EEHs board exceeds the maximum specified in its code of governance. The board has 18 members, of whom eight are residents. This structure has constrained skills based recruitment to the board.

11. Review Your Governance

There should be a regular cycle of reviewing the board and its governance arrangements to ensure that they remain fit for purpose. And, as with many of the matters included in this report, it can be useful to commission (and take note of) external advice (see E 20 below).

Johnnie Johnson Housing Trust

there has been no external input or challenge in reviews of board effectiveness.

Pierhead Housing Association Limited

Despite evident problems Pierhead has not undertaken a review of its governance arrangements since October 2010. It has not done any work to assure itself on its level of compliance with its chosen code of governance.

12. Board Payment

Board payment should be proportionate – and published.

There are too many occasions outside housing when people awarding themselves money has caused reputational damage. The same applies within social housing – excessive board member payments will be damaging for that landlord (and the sector more widely). Board payments should be published on a named basis too – allowing for transparency and accountability and identifying differing payment levels for different board roles.

Bedfordshire Pilgrims Housing Association Limited

BPHA's code of governance also states that where board members are paid, the agreed payment levels must be appropriate to the organisation's size, complexity and resources. The regulator lacks assurance that in reaching a decision to increase payments to non-executive directors to levels above sector norms, the board gave adequate consideration to remuneration in relation to BPHA's size and complexity. In addition, the regulator does not have sufficient assurance that BPHA is meeting the provision of its code that where board members are paid, payment should be linked to specific duties against which performance can be assessed.

BPHA did not satisfy the provision of its code that where board members receive remuneration, details of these payments should be published on a named basis.

Updated Regulatory Judgment

There are two areas where assurance is still outstanding. bpha's code of governance states that board pay levels must be proportionate to the organisation's size, complexity and resources. It also states that board payment must be linked to specific duties against which performance can be

reviewed. bpha is currently reviewing its board pay and performance policies in line with a board refreshment programme.

New Charter Housing Trust Limited

NCHT has not made a transparent disclosure about compliance with its chosen code of governance or details of payments made to board members.

C. Value for Money Statements

The very public downgrading of 14 associations in February 2014 for failing to meet the VFM standard, plus the letter notifying the vast majority of housing associations that they were at risk of non-compliance, was a wake-up call for the sector. There are two simple steps outlined below that will deal with the recent downgrades. Landlords will also want to look at recent best practice and advice from Housemark. The board should also ensure that assets, costs and evidence are covered in their VFM statements – the HCA has provided more explicit guidance on what is required for statements to be published before the end of September 2014.

13. Publish

There were 7 cases where landlords had failed to publish a VFM statement. In all cases these landlords published when they had been contacted by the Regulator, showing that they had done the work. The failure to publish earlier was a sign to the Regulator that the board wasn't doing enough to ensure all regulatory requirements were met in a timely manner (see A 4 above). Surprisingly one more landlord has recently received a downgrade for failing to publish despite the sector wide awareness.

14. Publish Openly

There were a further 9 cases where the landlord has not done enough to publish the VFM statement. The audience for these statements is not only tenants, important as they are, and hiding the VFM statement away didn't convince the Regulator.

D. Risk, Internal Controls and Sound Financial Planning

Managing risk is now central to the work of landlords and core to the role of effective boards. Ensuring that there are effective internal controls in place safeguards staff, tenants and board members.

15. Do Risk Properly

Fourteen of the 29 non-VFM cases involved poor coverage of risk. It is essential for the business to have a robust risk framework in place, monitored and used to drive mitigation and improvement.

Cosmopolitan Regulatory Judgment

The group's approach to risk was based on an over-simplification of presenting issues, coupled with too little scrutiny of new deals taking place after the merger. This, alongside an inadequate control environment, especially in relation to the development function, exposed the group to unacceptable levels of risk. In particular the board's decision to fund its investment programme through a sale and leaseback arrangement was based upon a wholly inadequate analysis of risk and a rudimentary sensitivity analysis, coupled with a failure to consider alternative plans. ..the group failed to effectively manage the risks to delivery of its plans.

Family Housing Association (Birmingham) Limited

The risk management framework is weak and risks identified do not clearly link to the achievement of business objectives. It is apparent that key business and financial risks have not been properly identified, prioritised or controlled, resulting in uncertainty about the delivery of the corporate plan.

Johnnie Johnson Housing Trust

There are deficiencies in the management of risk at strategic and operational levels, board oversight and renewal and the operation of internal controls. The Trust's risk management strategy does not provide the appropriate level of detail on JJHT's strategic approach to risk and there is insufficient reflection of treasury management risk within its risk maps. Other risk management issues include a failure to properly mitigate an identified telephony systems security risk leading to infiltration of the telephone system and financial loss.

Luminus Group Limited

The risk management strategy does not provide the appropriate level of detail on the organisation's risk appetite and there is insufficient reflection within the group's risk maps of recent treasury management issues.

Metropolitan Housing Trust Limited

Although it has operated appropriate risk management and assurance processes, Metropolitan's decision-making on key risks and its ability to respond in a timely way to known problems has been weak. The board was weak in its response to a number of key risks which materialised at the same time, at variance with the organisation's risk tolerance and capacity.

Orwell Housing Association Limited

The regulator has identified weaknesses in the operation of Orwell's strategic planning and control framework in identifying and managing risks to the delivery of the association's objectives. The board does not currently have sufficient oversight and assurance in all areas of Orwell's business. Consequently the impact of key risks on the delivery of Orwell's wider strategic aims is not adequately mitigated and managed. This was exemplified when a significant risk concerning consortium liabilities materialised which was not adequately assessed by the board or the Audit and Risk Committee. Risk management needs to be further integrated and embedded across the organisation.

Plus Dane Housing Group Limited

Some recent decisions on growth opportunities have not been considered within an appropriate strategic framework or demonstrated adequate attention to the protection of social housing assets. The regulator does not have sufficient assurance that Plus Dane has adequately considered the range of risks it faces or that its risk appetite is based on appropriate analysis of existing exposures.

Saffron Housing Trust Limited

A recent independent review of the procurement and management of the group's photo-voltaic programme identified that Saffron had not operated effective risk management in its oversight of the activities of Crocus, the subsidiary. Risks regarding the unregistered subsidiary were not fully reported to or adequately mitigated by the parent board.

Swan Housing Association Limited

Nearly all the risks cited in the current business plan are development-related. There is insufficient reference to wider

sector risks, in particular the state of the housing market which represents a real challenge to the delivery of the group's business plan, with the development of social housing units reliant upon income generated from open market and shared ownership sales.

Tuntum Housing Association Limited

Aspects of Tuntum's risk management need to be improved to support continued compliance with our governance expectations. We have insufficient assurance that the board has clear oversight of the key risks to the delivery of its strategic objectives. The association's risk map does not adequately identify whether controls have mitigated identified risks to an acceptable level. Nor does it update the board on the action to manage exposures.

16. Financial Planning

When planning for the future boards will need to ensure that plans are robust and well founded.

Cosmopolitan Housing Group Limited

Family Housing Association
(Birmingham) Limited

Future financial plans included aggressive and ambitious funding assumptions which proved optimistic

Family's financial planning has demonstrated serious failings, including the development and adoption of a corporate plan which it does not have the required resources to deliver.

Metropolitan Housing Trust Limited

The group's financial planning has reflected serious weaknesses, including unrealistic efficiency targets which were not predicated on an appropriate evidence base or supported by adequate delivery plans. Consequently a total of £47.2m of savings were removed from financial plans over the years 2012/13 to 2014/15 and the group was not able to achieve its 2011/12 budget. Anticipated efficiency savings have been considerably reduced in the revised business plan.

17. Internal Controls

It's important that there are robust internal controls, ensuring the business is well run and the organisation's money is handled properly. Central to this is the correct use of

(externalised or internalised) Internal Audit, which gives assurance that the organisation's internal controls are effective.

Cottsway Housing Association Limited

The breakdown in internal processes and controls resulting in failure to charge properties to support required loan drawdowns, which in turn raised liquidity issues for the association, represents a failure to maintain a robust and prudent business planning and control framework.

Cosmopolitan Housing Group Limited

The group failed to ensure effective controls to protect assets and public funds.

Gallions Housing Association Limited

Its internal controls and assurance framework has also failed to ensure adherence to all relevant legislation.

Housing 21

H21 lacked a sufficiently robust internal control framework during a period of significant change in the organisation. Eight internal audit reports provided only limited assurance and one, no assurance, resulting in a significant number of recommendations.

Johnnie Johnson Housing Trust

JJHT has been slow to react to identified shortcomings in its control systems and reluctant to seek external advice or support. When it has received advice, it has been slow to implement it.

Luminus Group Limited

Additionally, some processes and arrangements lack rigour and do not allow for proper scrutiny by the board – for example, there have been weaknesses in the way in which the board obtains independent assurance from internal audit work.

Metropolitan Housing Trust Limited

Failure to deal effectively with known serious control weaknesses and whistleblowing over procurement and contract management have led to poor outcomes in this area and have resulted in avoidable losses for the organisation. The audit committee and board failed to take timely action when key exposures were identified in assurance reports.

Nottingham Community Housing Limited

Weaknesses in NCHA's internal controls framework were identified by investigations into irregularities in the purchase of goods over a sustained period. In particular, weaknesses were found in NCHA's electronic purchasing system, managerial reporting and management oversight of the operation of day to day controls.

Swan Housing Association Limited

Investigations concluded that grant of approximately £50 million (out of a total allocation of approximately £124 million) had been claimed in advance of the relevant conditions being met on the ground. The motive for the early claiming of grant and the falsification of documents to cover this up was to preserve and enhance the association's reputation as an effective developer. There were widespread control failures within the development department and the organisation failed to identify these.

Of particular concern is the fact that no internal audit work was carried out in relation to the development department after 2005. The board accepted explanations by managers as to why this was not necessary alongside the external compliance audits required by the HCA. As a consequence the development department was allowed to operate almost in isolation, with a resultant lack of control.

Having been alerted to the findings of the 2011 compliance audit, the board's response to an initial review into the early draw down of grant was inadequate.

Viridian Housing

These weaknesses in aspects of Viridian's internal control environment were identified following a series of anonymous allegations in October 2012. Viridian commissioned an independent audit investigation in response to the allegations, which related to part of the group's commercial operations. The investigation into Viridian's commercial operations found evidence of failings in procurement procedures and controls, failures to disclose conflicts of interest, evidence of poor compliance with budgetary systems and of weaknesses in records retention.

Internal control weaknesses had been identified previously in an internal audit report into Viridian's commercial operations in 2011. Management action to address these

issues in the intervening period was insufficient and they persisted. Evidence indicates that Viridian's executive did not have sufficient control over this area of activity.

There were deficiencies in the recording and monitoring of declaration of interests, leading to the letting of a maintenance contract which may not have represented optimal value for money for Viridian. This absence of effective controls to prevent an undeclared personal interest was inconsistent with the regulatory expectation that registered providers should safeguard the reputation of the sector.

Aldwyck Housing Group Limited

The review found further failures of internal control in that the management and authorisation of some cheque payments and expenses did not comply with Aldwyck's governing documents and provided only limited assurance across a range of other controls. Aldwyck has not been able to provide sufficient assurance to the regulator that its internal controls are fully effective and needs to evidence that it has successfully responded to recent recommendations by its internal auditors.

E. Operation of the Board

As well as meeting basic rules on good governance, boards need to establish and maintain proper working relationships with staff, ensure meetings are well run and seek and take notice of external advice.

18. Chief Executives

In a nutshell: Don't give your departing chief executive a big severance package.

Three landlords have been downgraded for such packages, failing to put it place challenge from the board, consideration of VFM and potential reputational risk. This highlights the need for appropriate challenge from the board outlined earlier and the dangers of excessively long terms of board membership.

In particular, regularly review your employment policies and executive contracts well away from the emotion created by the departure of a hard working stalwart.

Gallions Housing Association Limited

The Gallions board has failed to demonstrate that it has operated an appropriate control framework, and to act in a transparent and accountable way. These failings are evident in a series of decisions relating to the remuneration and compensation for redundancy of an outgoing executive.

Great Places Housing Group Limited

The board of GPHG has exercised weak governance when agreeing executive contracts and severance payments to an outgoing executive. The roles of the remuneration committee and board in scrutinising and agreeing matters of executive pay was not clear and as a result proposals were not effectively scrutinised and challenged. The lack of challenge was compounded by close working relationships formed as a result of the long service of a number of board members.

Severn Vale Housing Society Limited

The board of SVHS did not demonstrate adequate control or effectively assess risks in its consideration of the early retirement of the Chief Executive. The organisation's early retirement policy had not been revised since the transfer date of 1998 and the board had not identified the risks of operating a significantly out of date policy. In failing to review this policy the board exposed the organisation to early retirement requests with the potential to result in significant cost and reputational risk. There was insufficient challenge by the board of the proposed level of compensation and no consideration of whether this complied with regulatory standards and the board's own code of governance.

19. Clear Relationships

Four landlords had issues in this area so be clear about the respective roles of board members and executives. You need to have a good working relationship based on those clearly defined roles, don't delegate too much to staff and be particularly clear about roles where chief executives are also board members. It also means been precise about delegation to Board working groups.

Metropolitan Housing Trust Limited

The issues set out above [which related to Governance, financial management and risk management] were

exacerbated by poor management of governance processes such as the lack of proper delegations to the finance committee, clear roles for executives on the board and failure to take appropriate action after reviewing compliance against the code of governance, and the effectiveness of governance arrangements.

Pierhead Housing Association Limited

Relationship difficulties at senior management and board have led to disputes which have diverted the leadership's attention away from directing and controlling the organisation's business.

Saffron Housing Trust Limited

There was....inappropriate delegation of key expenditure by the board to the executive. This was compounded by management failures to comply with requirements of the Audit Committee.

Equity Housing Group

However the working group's remit had grown to have an oversight role on the group's treasury position without being formally constituted as a committee with appropriate terms of reference and delegations or appropriate board oversight.

20. Take Expert Advice

There will be times when boards cannot have all the skills they need within the set of board members to provide adequate expertise and advice when considering courses of action. It is right to seek external advice in these situations and use that to support decision-making. It is also important that, having sought advice, boards should heed it and act accordingly.

Gallions Housing Association Limited

The board failed to take timely legal advice and did not make best use of the advice which it received.

Great Places Housing Group Limited

It did not always recognise the need to seek independent expert advice and did not always make the best use of advice it did receive

Johnnie Johnson Housing Trust

JJHT has been slow to react to identified shortcomings in its control systems and reluctant to seek external advice or support. When it has received advice, it has been slow to implement it. JJHT reviewed its governance structure during 2013 and new arrangements are now in place. However, no external advice was taken in regard to this review

21. Run Board Meetings Properly

Board meetings should be run properly - and minutes should be taken. This is a fundamental matter of record keeping.

Saffron Housing Trust Limited

There was inadequate management of governance processes, including a lack of written documentation relating to contract management, failure to minute meetings...

22. Structures and Subsidiaries

It is essential to have a firm grip on complex structures and subsidiaries.

Obviously this is driven, in part, by the Cosmopolitan experience but also by the increasingly diverse nature of the sector in setting up subsidiaries for tax efficiency and/or creating new lines of income. Boards should be aware that there are potential risks in complex structures and that the Regulator will be sensitive to both the overall impact of that risk and potential impact on social housing run by the landlord. In "Protecting social housing assets", published in April 2013, the Regulator consulted on regulating where there were subsidiaries. Their thinking was partially updated in the Regulator's summary of responses to the consultation in October 2014.

There have also arisen concerns about Registered Providers operating within a Group structure and how these need to ensure they are able to protect social housing assets.

Cosmopolitan Housing Group Limited

In particular, the pre-merger group had entered into obligations with non-regulated members of the group putting social housing at risk, but lacked effective mechanisms to identify and manage the exposures.

Metropolitan Housing Trust Limited

The parent board has exercised insufficient control and support in relation to CPH, where this resulted in an

undeliverable master plan, inappropriate procedure agreement between MHT and CPH, unclear governance arrangements and reduced stakeholder confidence.

One Housing Group Limited

OHG is involved in a wide range of activities and has ambitious growth plans. The nature of these activities and the associated risks heighten the importance of regular board scrutiny of group activities. Whilst the group has recently been successful in delivering planned outcomes and its financial position has improved, the regulator needs further assurance that the level of oversight by the board is of the standard necessary to ensure this continues.

Heaton Housing Association Limited

Heaton reported losses by HCHAL, and reduced margins from operating activities in 2012/13. Heaton is taking action to address these problems with a recovery plan. While there are indications that the benefits of the recovery plan are starting to be realised, there is not yet sufficient evidence of the recovery plan's ability to deliver sustained improvements over the longer term, given weakness in the systems of internal control and Heaton's ability to manage key exposures.

Gentoo Sunderland

We do not have sufficient assurance that the board of Gentoo Sunderland is able to fully perform its role of protecting its social housing assets in the context of it being a subsidiary of a diverse group which is involved in a material level of commercial activity. It has not evidenced that its membership has the right level of skills or experience to influence financial and treasury decisions taken at group level involving its assets. Additionally the structural mechanisms through which it influences those decisions are not as effective as they could be.

North Lincolnshire Homes Limited

Evidence from attending a board meeting and reviewing board papers has not provided sufficient assurance that the board fully understands its role in relation to meeting the regulatory standards. This is in the context of it being a subsidiary member in an otherwise non-regulated group.

23. Robust Challenge

Central to the relationship between the executive and the board is the willingness of boards to provide robust challenge.

This is referenced above at D 18 in the context of chief executives' severance packages, however this is not the only circumstance in which boards must be robust in challenging the ambitions of the executive.

Cosmopolitan Housing Group Limited

Additionally, the level of challenge of officers by board and sub-committees has been inadequate, and assurances have not been adequately tested.

Family Housing Association (Birmingham) Limited

The board has been ineffective in challenging the executive team about the quality of the information it has been receiving and in providing effective challenge of unrealistic assumptions contained in the business plan.

24. Accurate Information

To provide robust challenge, boards need to ensure they have access to adequate and accurate information. It is not sufficient to rely on the executive to provide the information necessary, as the examples below demonstrate that they do not always succeed in doing so.

Cosmopolitan Housing Group Limited

The quality of reporting to board was inadequate.

...

The quality of information reported to board in support of decision-making has been poor.

...

Officers failed to bring to the members' attention the increasing pressures on liquidity until a point where the business was reliant on an overdraft that it was at risk of breaching. Cash flow forecasts were inconsistent, sometimes incomplete or inaccurate and failed to highlight material changes.

Family Housing Association (Birmingham) Limited

The executive has not provided the board with accurate or adequate information to enable it to oversee and control the business. Financial information presented to Family's board has been found to be incorrect.

One Housing Group Limited

Reporting to the board has not been sufficiently frequent and detailed enough for the board to be clear about current performance and issues arising across all of the group's business.

25. Co-operative Board Relationships

To operate effectively board members need to be able to work together successfully.

Aldwyck Housing Group Limited

However, there has since been evidence of dissension among board members which has exacerbated concerns about governance. As a consequence the regulator has concluded that it does not have sufficient assurance that Aldwyck currently has the capacity and capability to exercise effective control over the provider's affairs.

26. Governance and new challenges

And whilst skills are important to meet new challenges, such as new growth, it is equally important to ensure that boards ensure that all areas are robustly monitored.

Equity Housing Group

The 2014-17 business plan reflects a step change in EHG's aspirations and risk appetite which it recognises and describes as an "ambitious growth programme." The board has failed to enhance its governance and risk management arrangements to ensure appropriate oversight and control during this period.

In particular the board did not ensure appropriate arrangements for the oversight and monitoring of the group's treasury position. In June 2014 this resulted in only six months of available funding and a requirement to renegotiate a gearing covenant with funders to enable the group to increase facilities in order to deliver its plan. In doing this EHG was in breach of its treasury management policy which requires loan facilities to be drawn on demand equivalent to 12 months net capital expenditure. The board was unaware it had breached its treasury management policy

Venture Housing Association

At the end of August 2014, Venture notified the Regulator of the breach of a liquidity covenant in a loan agreement which had taken place in March 2014 and again in June 2014. In terms of governance, allowing the organisation to reach this point represents a wholesale failure of control on the part of the Board and executive. The provider did not have adequate systems in place to monitor covenant compliance, despite being warned in an audit management letter in 2013 that a certain level of cash balance was needed to ensure compliance with the liquidity covenant. Neither did it adequately anticipate its financial requirements and take steps well ahead of time to put facilities in place. This is a failure of business planning and control at the most basic level.

Concluding Comments

This report seeks to collect the key messages from the Regulator contained in their Regulatory Judgments.

Following the 26 steps outlined in this report will help all boards meet the requirements of the Regulator, and more importantly, ensure they run their landlord associations effectively.

	STATUS	DATE	
Abbeyfield Society	RJ	February 2014	G2 V1
Aldwyck Housing Group Limited	RJ	November 2014	G3 V2
Bedfordshire Pilgrims Housing Association (bpha) Limited	RJ	May 2014	G2 V1
Blackpool Council	RN	January 2015	Local Authority
Bournemouth Churches Housing Association Limited	RJ	August 2013	G2 V2
Broadacres Housing Association Limited	RJ	July 2013	G2 V1
Cosmopolitan Housing Group Limited	RJ	December 2012	G4 V4
Cottsway Housing Association Limited	RJ	September 2014	G2 V1
East End Homes Limited	RJ	April 2014	G2 V2
East Thames Group Limited	RJ	October 2014	G2 V2
Gentoo Sunderland	RJ	January 2015	G2 V2
Equity Housing Group Limited	RJ	September 2014	G2 V2
Hastoe Housing Association Limited	RJ	August 2013	G2 V2
Heatun Housing Association Limited	RJ	March 2014	G2 V2
Housing 21	RJ	August 2013	G2 V2
Johnnie Johnson Housing Trust	RJ	February 2014	G3 V3
Joseph Rowntree Housing Trust	RJ	December 2014	G2 V1
Luminus Group Limited	RJ	July 2013	G2 V1
North Hertfordshire Homes Limited	RJ	May 2013	G2 V1
North Lincolnshire Homes Limited	RJ	January 2015	G2 V1
One Housing Group Limited	RJ	March 2013	G2 V1
Orwell Housing Association Limited	RJ	July 2013	G2 V1
Plus Dane Housing Group Limited	RJ	August 2013	G3 V2
Saffron Housing Trust Limited	RJ	June 2013	G2 V1
Severn Vale Housing Society Limited	RJ	February 2014	G2 V1
Swan Housing Association Limited	RJ	October 2014	G2 V1
Tower Hamlets Community Housing Limited	RJ	September 2013	G2 V2
Trident Housing Association	RJ	January 2015	G2 V1
Tuntum Housing Association Limited	RJ	November 2013	G2 V1
Venture Housing Association Limited	RJ	October 2014	G4 V4
Viridian Housing	RJ	April 2013	G2 V1
Your Housing Group Limited	RJ	February 2014	G3 V1

This list does not include the VFM downgrades.

