

Written evidence submitted by Professor Mike Raco and Dr Sonia Freire-Trigo, Bartlett School of Planning, University College London [RSH 091]

About us

We are academic researchers based at the Bartlett School of Planning, University College London. We are currently leading on a 3-year cross-national UKRI-funded project that is examining the planning and regulation of housing delivery in major cities¹. We have undertaken over a hundred interviews in the UK with public, private, and voluntary sector respondents from across the housing sector.

We are submitting this evidence as our research has involved in-depth work on the social housing sector and its regulation. It focuses on how different organisations and actors interpret and understand the role of regulators and how regulations across the sector impact on strategies and practices of delivery. We use our findings to address Qs 3, 4, and 11.

Q3. Is the current regime for regulating social housing fit for purpose?

- The limitations of the current regime for regulating social housing are a *symptom of wider changes in the delivery of social and affordable housing not a cause*. They result from the shift of responsibility for the delivery of housing to market actors and complex networks of third sector Registered Providers [RPs] and public quangos. The regime is inefficient because it is trying to regulate a sector that is required simultaneously to be both entrepreneurial and socially-oriented. In other words, regulators and regulatory systems are being asked to do too much. They are expected to overcome the structural tensions and even contradictions found in broader policy reforms.
- For decades, but especially since 2010, Housing Associations [HAs] and other RPs have been encouraged to develop their own streams of finance through the sale of market housing and/or Joint Ventures with house-builders and developers. The income is then used to cross-subsidise other activities. It is hoped that they will become more entrepreneurial and self-sufficient. They are encouraged to use existing assets and rents from tenants as a form of financial collateral to obtain finance on good terms from investors and use this for the building of new supply. Other macro-economic criteria have also had an influence. Governments and state regulators cannot become too interventionist in the activities of RPs as – according to international accountancy rules – their debts would be counted as contributing to the national debt². Regulation therefore has to be ‘arms-length’ so that the separation of RPs and HAs from government is formally maintained. However, this is not conducive to good governance or strategic planning for the sector as a whole. It means that the regulators have to apply a range of techniques, including soft pressure and persuasion, in order to influence what RPs do and what they should prioritise in the short-term – even if their actions run counter to the stated priorities of government policy.
- Given these broader trends, the breadth of regulation that the Regulator for Social Housing [RSH] is required to deliver is too broad and puts too much responsibility on Housing Associations and other RP Boards to meet multiple priorities. Regulation is principally co-ordinated across 3 fields of activity: housing delivery and supply; financial viability and corporate governance; and obligations to their existing and future residents (i.e. tenants and leaseholders). The latter also falls under the remit of the Housing Ombudsman [HO]. A number of HAs and RPs are now facing acute dilemmas between delivering more housing (in line with government policy to boost

¹ ‘WHIG - What is Governed in Cities?’ (<https://whatisgovernedincities.eu/>)

² In 2016/17 the contribution of Housing Associations to total public debt for the UK was £69.6billion. By 2017/18, with rule changes, this had fallen to £6.6billion, then to just £0.6billion the following year, even though the actual financial position of HAs showed no change (Office for National Statistics (2019) *Impact of the reclassification of housing associations into the public sector*, HMSO: London).

much-needed supply), whilst also ensuring that their financial viability ratings are not threatened by the danger of over-reach (in line with regulations concerning financial conduct and probity), and ensuring that they meet their social obligations to existing tenants (in line with the post-Grenfell principles outlined in the White Paper and standards set by the RSH). This is not an efficient way of regulating. It means that RP Boards, and those seeking to regulate them, are being asked to internalise and resolve wider tensions over housing policy and the delivery and purpose of social/affordable housing. In line with wider government policy, regulators are called on to adopt a ‘co-evolutionary’ approach to regulation, negotiating with providers to deliver outcomes. But expecting structural tensions to be overcome through local dialogue and negotiation is an inadequate approach.

- We set out the core tensions faced by Housing Associations and other RPs in Figure 1 below.

Figure 1: Fields of Regulation, Public Policy Requirements and the Regulatory Tensions Faced by Housing Associations

Field of Regulation	Public Policy Requirement	Regulatory Tension Faced by Housing Association
Housing Delivery and Supply	<ul style="list-style-type: none"> • Objective to deliver more housing supply in areas of strong demand; • Ensure that a wider range of affordable housing is available to citizens; • Meet housing needs by providing a range of tenures. 	<ul style="list-style-type: none"> • Generate sufficient revenues through (housing) market sales and rents to provide affordable housing without undermining financial viability; • Build more housing versus need to maintain/improve the quality of existing stock
Financial Viability and Corporate Governance	<ul style="list-style-type: none"> • Maintain the financial viability of Housing Associations; • Ensure that Housing Association credit ratings remain positive to ensure supply of affordable credit; • Direct Housing Associations to act in compliance with public and private codes of practice and corporate law codes 	<ul style="list-style-type: none"> • Build more units to generate income but in turn take on more financial risks; • Challenge of meeting short-term viability objectives and balancing with longer-term costs and regulatory demands (for decent and/or carbon-neutral housing); • Set up corporate good governance arrangements, whilst acting as a public organisation dealing with multiple (social and environmental) demands
Obligations to Existing and Future Tenants	<ul style="list-style-type: none"> • Ensure that residents’ rights are protected and that they are included in key strategic and operational decisions by Housing Associations; • Maintain affordable levels of rent for existing and new tenants; • Maintain welfare traditions by creating housing options for people in severe housing need 	<ul style="list-style-type: none"> • Finding adequate financial resources to meet social priorities whilst maintaining financial viability; • Using tenant income streams to re-invest in housing or use assets as collateral to borrow and spend more on market housing

	(e.g. homeless and vulnerable groups)	
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- The growing financialisation of RPs adds to the complexity of the regulatory environments that cover the sector. Most notably it has expanded the role of *private regulation* in shaping the activities of RPs and this has had a knock-on effect on the role and purpose of public regulation. Decisions are now being taken in the *shadow of the market* – that is with a constant eye on how credit-rating agencies and financial lenders view the riskiness of Associations’ activities. As of 2020, 39 Housing Associations are rated by Moody’s³ and 6 by Fitch⁴. Any shift in their ratings threatens to undermine the financial viability models that have been carefully pieced together but are always subject to changing market conditions or policy/regulatory demands.
- Ever-present private regulation also has a direct impact on the purpose and function of public regulation. It means that the core audience for regulatory decisions and outcomes is increasingly the financial markets and what potential investors ‘see’ in terms of market opportunities and returns. This is in contrast to the traditional role of public regulators, working to (non-market) public interests and concerns, and adds a further layer of complexity to the decisions that they have to make. In short, it is increasingly unclear *for whom* regulatory assessments are being done. Should they prioritise the needs of potential market investors? Or the efficient functioning of Housing Associations and other RPs? Or the needs of their residents both now and in the future? Or a mix of these audiences?
- The collective impacts of these regulatory changes are profound. It is beginning to *encourage greater conservatism* across the sector and a retreat into ‘safer’ and less risky activities such as the maintenance of core assets. The more an Association tries to expand its house-building programmes, the more ‘risky’ and the less viable its plans become. This is being compounded by new regulatory demands, as set out in the White Paper including: the financial costs of a stronger push towards tenant participation; RPs being told that they have to retrofit their housing stock to be compliant with sustainability planning and reduce carbon emissions; and the financial costs associated with post-Grenfell modifications in the construction and design of housing. These long-term requirements sit uneasily with a regulatory environment that prioritises financial viability.
- One additional danger is that in cities such as London, with rapidly-growing housing and land prices, RPs may be encouraged to dabble with investments that generate higher market returns but provide less affordable housing, thereby reinforcing a wider affordability crisis rather than solving it.

Q4. How clearly defined are the roles of the Regulator of Social Housing and the Housing Ombudsman?

- The roles are quite clear in general, but not so much in relation to powers of enforcement. The Social Housing White Paper proposes new powers for both the RSH and the HO to address systemic problems found in RPs more quickly. However, it is unclear how differences of opinion between the two bodies will be resolved. It is also unclear how efficient it is to have two public bodies overseeing questions of compliance over the well-being of tenants, even if each of them have a different approach – bottom up, in the case of the HO; and top down, in the case of RSH. Finally, RPs are expected to cover most of the cost from increasing the capacity of both the RSH and the HO. This will put further strains on many RPs who are already struggling to meet the cost of implementing the new policy requirements mentioned above – i.e. upgrading the safety and energy efficiency of their housing stock. All these extra costs combined could result in a further reduction of genuinely affordable housing units – i.e. social housing units - from the sector as a whole.

³ https://www.campbelltickell.com/wp-content/uploads/2021/03/Moodys-UK-HA-Issuer-Briefing_25Feb2021.pdf

⁴ *Inside Housing* (2020) Full list: 45 housing associations have credit ratings affirmed, accessed at: <https://www.insidehousing.co.uk/news/news/full-list-45-housing-associations-have-credit-ratings-affirmed-68414>

Q11. What challenges does the diversification of social housing providers pose for the regulatory system?

- The emergence of for-profit organisations increases the inherent tensions of a sector that is trying to deliver on social objectives (i.e. affordable homes) while at the same time being asked to be less dependent on government funding and operate in a corporate-like manner. There is a danger that for-profit firms are likely to target the most profitable types of affordable housing (shared ownership primarily) and contribute few units of genuinely affordable housing. They may also become direct competitors of not-for profit RPs such as HAs and Council-owned Housing Companies for state funding (from Homes England and GLA). This competition between for-profit and not-for profit could therefore result in a lower output of social housing units from the sector as a whole, both due to the re-directing of funds, and the diminished capacity of HAs and Council Housing Companies because of less state funding being available.

Recommendations for Reform

- It needs to be clearer what regulation is *for and what its primary purpose is*. There is much evidence of regulators undertaking their duties in good faith and seeking to ‘co-produce’ outcomes with RPs. However, as noted above, the challenges regulators, and the sector as a whole, faces are more structural. At present there are multiple and ever-changing gravitational pulls on both regulators and the regulated. They are subject to policy objectives that push in different directions simultaneously. It is becoming increasingly difficult to maintain a strategic outlook in such circumstances or to maintain a focus on core public policy priorities.
- *Housing should be provided beyond the market as well as through it*. Ideally, the system of social and affordable housing provision should be reintegrated into the structures of local (or even regional) government and/or government-led housing authorities. Rather than relying on networks of Providers, policy would be more effective if overseen by housing authorities with the power and resources to raise finance and provide housing that meets defined needs. Where local authorities have set up Housing Companies again the evidence is mixed as they are confronted by the same core tensions of being both in and against the market.
- If government agencies were to be more proactive direct providers, then Housing Associations and other RPs could be encouraged to address locally-defined needs and opportunities, as many of the smaller ones still do, and be discouraged from becoming more financialised. Imagining that the housing crisis can be solved by greater reliance on market finance is something of a fantasy – by creating more dependence on markets, policy only succeeds in importing market failures directly into public policy fields.
- If policy is to address longer-term concerns, especially relating to climate change, then Housing Associations and other RPs need to be properly funded to undertake their task, working with tenants. Asking them to generate more of their own income as a prelude to the delivery of public policy/regulatory requirements is fraught with the difficulties as we have outlined above.

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