



‘Tackling the challenges’ event

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Deregulation: implications for governance, risk
and assurance

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What I will cover

- Deregulation – what is it, why is it happening and what does it mean
- How deregulation impacts on governance, risk and assurance
- Discussion
- Some concluding observations



What is deregulation?



- Key measures embedded in Housing and Planning Act 2016
- Took effect from 6 April 2017
- One of greatest changes to regulation for many years (or is it???)
- Removal of the consent requirements for constitutional changes
- Removal of the consent requirements for disposals
- Introduction of a requirement for the regulator to be notified of constitutional changes and restructures, and of disposals
- Removal of Disposals Proceeds Fund
- Applies to ALL registered providers, regardless of size



Why deregulation?



- One single reason – ONS re-classification
- To ensure Registered Providers (RPs) get reclassified out of the public sector and back into the private sector - and off government's balance sheet
- Re-classification is about removing a certain degree of what is perceived as government control
- Deregulation is NOT happening because government thinks it's a good thing!
- HCA will still have plenty enough power to prevent 'train crashes'
- In reality, only about 10% of regulation is being 'deregulated'
- Timing for ONS decision remains unknown



What does it mean?



Notifications requirement:

- To allow HCA to maintain its register
- To alert it to unusual behaviour
- To understand trends

Through quarterly returns:

- *Vacant disposals out of the sector*
- *Tenanted disposals within the sector*
- *Any disposal from a non-profit RP to a for-profit RP*
- *Non standard private finance disposals*
- *Guarantees and indemnities*

Immediate (within 3 weeks of activity):

- *Tenanted disposals out of the sector*
- *Last social housing unit*
- *More than 5% of stock (Small RPs only)*
- *All finance disposals (Small RPs only)*



Changes to Tenant Involvement and Empowerment Standard:

- Tenanted disposals will require notification in future, strengthening the consultation requirement that:
 - *consultations are fair, timely, appropriate and effective*
 - *should set out any actual or potential advantages and disadvantages*
 - *RPs demonstrate to affected tenants how they have taken the outcome of the consultation into account when reaching a decision*
- Disposal of tenanted stock out of the sector is HCA's biggest concern

Consultation closed on 22 March



Freedoms:

- Freedom to run your business unfettered
- Removes form filling exercises and 'onerous' stages in various processes
- For LSVTs, 'golden share' goes, and likely restrictions on maximum number of local authority nominations to Boards (24%?)

Responsibilities:

- Onus is now on Boards to make these key strategic decisions for themselves
- Boards take on more risk (reputational, charitable, political) to manage themselves



What deregulation means for governance, risk and assurance



Governance:

- Boards will need to make decisions in key strategic areas without the ‘safety net’ of HCA consent
- That second tier of ‘checking’ has gone
- For some Boards, this will be uncomfortable
- Governance will need to be excellent – skills, taking responsibility, providing challenge, making informed decisions, exercising controls and managing risk
- The role of the Board just got even more important
- Adherence to your Code of Governance and HCA Governance Standard
- BUT.....resist the temptation to become too operational
- How good is your governance? How do you know?



Risk:

- Risks of making poor decisions will increase
- Risks will increase around finance, development, asset management, strategic direction, fraud and reputation
- Risks will be heightened if governance is not very sound indeed
- Risk that a Board will decide to do something 'stupid' becomes very real
- You need a watertight approach to risk management and mitigation
- You should be assessing, analysing and reviewing risk each time you meet
- How good is your approach to risk management? How confident do you feel that you're in control?



Assurance:

- For smaller RPs, contact with the HCA will be even more limited
- Less opportunities for regulator to seek and gain assurance
- This means Boards need to be self-assuring
- Ultimately the buck stops with you – you're personally responsible as a Board director
- So you surely want to be well assured
- Assurance comes from:
 - *Executive*
 - *Internal and external audit*
 - *Internal controls, scheme of delegation*
 - *External reviews/advice*
 - *Your own self-assessment and self-knowledge*
- Where does your Board stand on all of these? How confident are you that you're getting all the assurance you need?



Discussion



Some concluding observations



- How excited should we be about deregulation? Is it a panacea or not? Do the benefits outweigh the disadvantages?
- How ready are some Boards to take on this responsibility themselves? How good is governance across the sector?
- Will other 'regulation' simply fill the gap left (notifications regime, Charities Commission, lender requirements etc.)?
- How will RPs use their new freedoms – e.g. active asset management, more/faster mergers, de-registration?
- Will removal of local authority 'control' disincentivise future stock transfers? New lease of life for existing LSVTs?
- How will lenders respond? Re-pricing to accommodate extra risk?
- How soon will an RP do something 'stupid'? And what will happen then?