Bevan Brittan

Housing Matters…

to you and Bevan Brittan!

Autumn 2023

The Building Safety Act 2022

Louise Mansfield discusses how to approach the new Building Safety Act requirements

Social Housing Regulation Act

Louise Leaver looks at consumer rights and protecting tenants

Asset data for registered providers

Jessica Church considers its relevance to treasury strategy

Considering a merger

Sarah Greenhalgh challenges boards to consider their strategies

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> The Bevan Brittan (social housing) team are very aware of the sector and passionate about it, which is fantastic and a key reason for working with them

Chambers, 2023

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Foreword

Welcome to our first edition of Housing Matters, our new publication where we look at some of the key topical issues affecting our housing clients.

Bevan Brittan has been supporting the housing sector over the last 30 years and we continue to grow (look out for exciting news of our expanding team in the next few weeks) and broaden our sector expertise in order to support our clients as they face challenges from all sides.

We start with an interview with **Louise Mansfield** discussing how to approach the new Building Safety Act requirements. Our look at the key themes in the Social Housing Regulation Act highlights the theme of consumer rights and protecting tenants, particularly the most vulnerable and **Julia Jones** and **Ellen Lloyd** set out your obligations in relation to victims of domestic abuse.

With all the additional challenges in financial pressure, we are seeing an increase in merger activity and **Sarah Greenhalgh** challenges boards to consider their strategies, whilst **Diarmaid O'Sullivan** offers top tips on how to do due diligence. Sticking with the theme of data, **Jessica Church** considers its relevance to treasury strategy and the importance of a joined up approach and **Bethan Lloyd** identifies opportunities to maximise subsidies for retrofitting.

Steve Eccles turns the spotlight onto the Renters (Reform) Bill and finally and with an eye to the future, **Nigel Bolton** considers what may be the next major challenge to face clients in terms of the changing demographic and pension provision.

We hope you enjoy reading Housing Matters!

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In conversation

The Building Safety Act 2022

In this edition, we chat with Louise Mansfield, a legal director in our Health and Safety practice, on the Building Safety Act 2022: what it is, what you need to know, and what you should be doing about it.

Can you talk us through the key requirements in the legislation and which aspects are most challenging for Registered Providers?

The BSA aims to secure the safety of people in or about buildings and to improve the standard of buildings and is intended to bring about the 'biggest improvements to building safety in nearly 40 years'. Some of the changes and requirements of the BSA will apply to all buildings, with the new Building Safety Regulator (part of the Health and Safety Executive) being tasked to secure the safety of people and the overall standards of all buildings. However, the key provisions for the housing sector are those which apply to "higher-risk" buildings, generally defined as buildings which are 18m or higher, or have seven or more storeys, and which have two or more residential units. Many of these provisions of the BSA are now in force with others due to come into force in October 2023.

Where should RPs start with all of this?

First of all, check whether you have any buildings that meet the "higher-risk" criteria. Establish how the building is constructed and whether there are any immediate risks and concerns around fire spread and structural failure. The type of information you may need for each "higher-risk" building includes: plans of the building, details of the construction and details of existing fire prevention measures.

We have been advising many RP clients where the buildings are old and the information is not readily available. In this situation, an assessment needs to be made about the extent and nature of the missing information and intrusive site surveys may be required.

> …"higher-risk" buildings, [are] generally defined as buildings which are 18m or more high, or have seven or more storeys, and which have two more residential units

> The key actions for occupied buildings now include… compiling a golden thread of information to evidence how a building is constructed…

What do RPs need to do if they have "higher-risk" buildings?

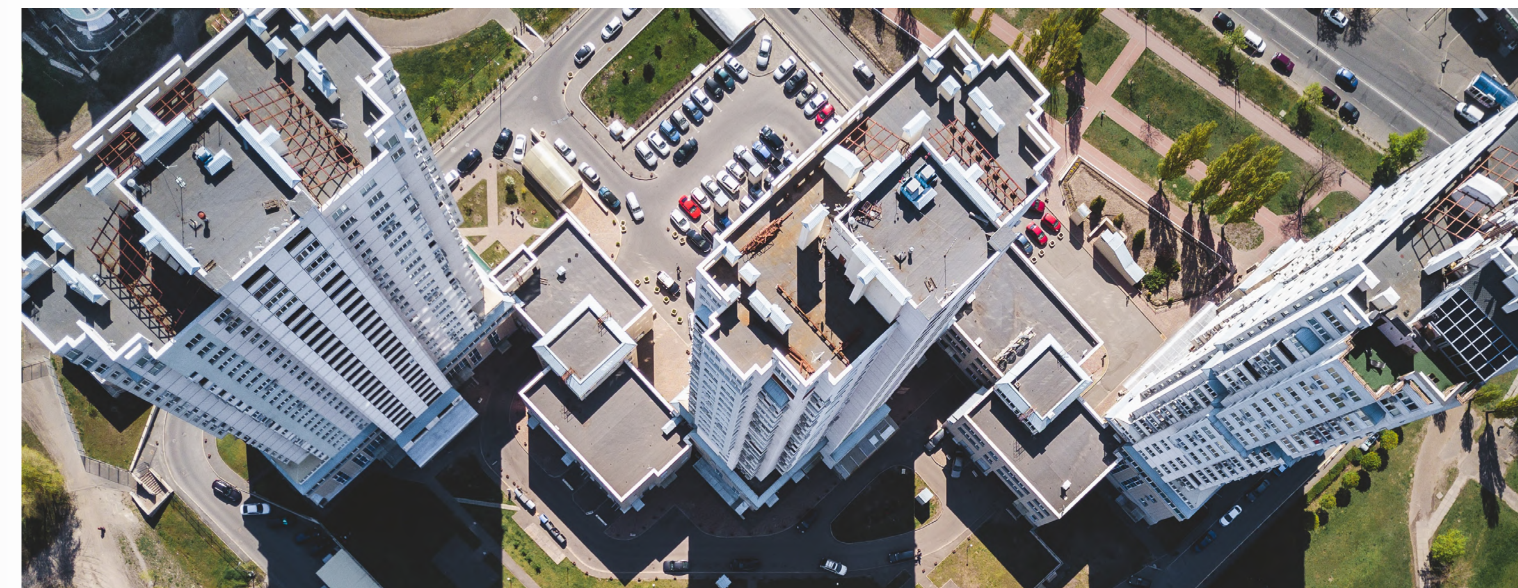
The BSA sets out requirements both during construction works and for occupied buildings.

The key actions for occupied buildings now include:

- **Identifying/appointing an "Accountable Person"/"Principal Accountable Person"** to have legal responsibility for ensuring that the spread of fire and structural risks in the building are understood and that the BSA is complied with.
- **Registering relevant buildings** with the Building Safety Regulator before 1 October 2023. Failure to register by this date will be a criminal offence, as will allowing unregistered buildings to be occupied.
- **Taking appropriate steps and actions to assess the building's risk** and to mitigate and manage these risks.
- **Compiling a golden thread of information** to evidence how a building is constructed and that it is safe from these risks (providing this evidence to the Building Safety Regulator if requested).

Identifying the Accountable Person and Principal Accountable Person has been difficult for many of our clients, as there are often complex ownership / management structures in places, leases and contracts that do not provide the necessary clarity (or do not reflect what has happened in practice), and the repair and maintenance duties sit with multiple parties. There can be situations where there is more than one Accountable Person, in which case the Principal Accountable Person must be identified to take overall responsibility.

Any future building work undertaken in relation to higher-risk buildings will have to be approved by the Building Safety Regulator. Evidence of safety must be provided at each of three gateway stages before building work can continue and before the building can be occupied. There are new duties on all parties involved in construction to ensure fire spread and structural safety requirements are met. Many of our clients have been concerned about which duties fall upon them and whether they have the required competence to manage them.



How does the BSA link with existing fire safety legislation?

The BSA works alongside existing fire safety legislation, namely the Regulatory Reform (Fire Safety) Order 2005 (FSO), which applies to commercial premises and the common parts of residential premises. The duties are not dependent on a building's height, so apply to all residential premises which have common parts, notwithstanding their height.

The FSO places duties on the 'Responsible Person' (which can be the same person(s) as the Accountable Person / Principal Accountable Person, or someone different) in relation to the overall fire safety of buildings (not just the risk of fire spread). For workplaces, the Responsible Person is usually the employer, and for residential buildings, the person(s) in control and anyone with duties for repair, maintenance or safety of common parts. Identifying the Responsible Person is also often difficult.

The FSO was amended in 2021 to clarify that the common parts of residential buildings include the structure and external walls of the building, including cladding, balconies and windows; and entrance doors to individual flats that open into common parts. It was updated again in 2022 by the Fire Safety (England) Regulations 2022 which came into force on **23 January 2023** to require Responsible Persons in multi-occupied residential buildings to take specific additional actions, depending on the height of the building including inspecting fire doors, providing information to residents and providing information to the fire service.

The key is having a detailed, up-to-date, risk assessment, completed by someone competent, and carrying out all remedial actions identified within reasonable (and justifiable) timescales.

What happens if we identify combustible cladding or other fire defects?

A fire engineer will need to be appointed to assess the risk, but in many cases the combustible cladding will need to be removed. The Government has new powers (which it has been very vocal in saying it will use) to force those that do not take action voluntarily to do so.

Where there are other fire safety defects, they will need to be assessed as part of a fire risk assessment of the building under the FSO, but in most cases remediation will be required. Prior to remediation work, temporary fire protection measures may need to be implemented, such as installing sprinklers, reducing building occupancy, or a waking watch.

There are a number of legal options to recover costs incurred in remediation works but these can take some time. The first step is to identify what issues exist and who is at 'fault' for those.

A number of developers have signed the developer remediation contract, committing to take responsibility for the remediation of life-critical, fire-safety defects on buildings over 11 metres high that were developed or refurbished in the last 30 years, which may be a good place to start.

The BSA also introduced new legal powers which may be useful depending on the ownership structure of buildings. These include remediation orders which require landlords to remedy defects by a certain time and remediation contribution orders requiring specified corporates (a landlord, a landlord "at the relevant time", a developer, or a person associated with any of them) to make payments to meet costs incurred in remedying defects.

Other existing legal remedies may also be possible including claims for breach of contract, claims under the defective premises act (which now have an extended 30 year limitation period) and negligence.

> You should assess your estates, review fire risk assessments, identify whether you have or are developing any higher-risk buildings

Are there any other challenges for RPs as landlords?

The short answer is yes. The BSA has introduced new tools to exchange information to be obtained in the context of building safety and service charges including:

- **Landlord's certificate** – must be completed within four weeks of certain trigger events. It must confirm whether or not the landlord met the contribution condition, whether it was responsible for the defect or associated with the person responsible and providing detailed corporate information. The sanction for not serving a valid certificate on time is that the landlord is deemed to be responsible for defects under the lease in question.
- **Landlord's certificate** to other landlords in the building.
- **Leaseholder deed of certificate** (or LDC) – a document designed to provide the landlord with information to ascertain whether a lease qualifies and whether the landlord can apply the service charge rules. Although the LDC is a leaseholder responsibility, the administrative burden is imposed on the landlord to notify and remind the leaseholder.

For landlords, these certificates are very challenging to deal with and we have found that awareness of provisions and requirements amongst RPs seems low.

In summary, you should assess your estates, review fire risk assessments, identify whether you have or are developing any higher-risk buildings – and if so, understand how those buildings are constructed and make sure they are registered with the Building Safety Regulator.

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Social Housing (Regulation) Act 2023

A digest of the reforms

Five years on from the Social Housing Green Paper and over two years on from the Social Housing White Paper, this key piece of legislation received Royal Assent on 20 July 2023.

The Social Housing (Regulation) Act 2023 significantly enhances the Regulator of Social Housing's (RSH) role in regulating the consumer standards. During its journey through Parliament, it also became a 'patchwork' of reform, plugging various gaps and picking up on some wider topical issues.

Many of the provisions are not yet in force and are subject to further regulations made by the Secretary of State. However, it is anticipated that most aspects of the Act will take effect on **1 April 2024** when the proposed new consumer standards come in.

The key reforms include the following.

1. Removal of the "serious detriment" test

This will enable the RSH to use its monitoring and enforcement powers in relation to the consumer standards without the need for it to be satisfied that there is (or was) actual or potential risk of significant detriment to residents.

The RSH must still exercise its functions in a way that is proportionate and minimises interference. However, this change brings consumer regulation on par with economic regulation on a proactive rather than reactive basis. This is a huge change in remit for the RSH, whose role has been focused around economic regulation for a significant period of time. It will also be a huge change for local housing authorities who have until now not been subject to inspections in relation to their compliance with the regulatory standards.

2. Enhanced focus on transparency and safety

The Act amends the RSH's fundamental objectives to reflect these two focus areas. It enables the RSH to set standards around the provision of information, and enhances requirements around tenant safety. For example, it incorporates:

- Awaabs Law – requiring the Secretary of State to set out new requirements for landlords to address hazards such as damp and mould within a fixed time period. Consultation is expected on this within the next six months, with a view to the requirements taking **effect in summer 2024**.
- A requirement for you, as providers of social housing, to have a health and safety lead.
- A duty to ensure that tenants whose safety is threatened are offered alternative accommodation by their landlord on equivalent terms to their existing tenancy (or co-operate with other landlords to do so). This reflects a focus on protecting victims of domestic violence and also a recognition that landlords need to adapt their processes to protect their most vulnerable residents.
- A new 'Access to Information' scheme for residents.
- New requirements to provide information to residents based on financial metrics (e.g. management costs, executive remuneration).
- A power for the Housing Ombudsman (HO) to issue its Complaint Handling Code on a statutory footing, which it has indicated will take **effect in 2024**. The Act also gives the HO the power to instruct you to measure their service against HO guidance on issues such as damp and mould and to change policies, to help drive improvements following complaints from tenants.

3. Addressing gaps and 'vulnerabilities'

The Act clarifies that the RSH may make re-designation decisions from non-profit to for-profit based on your business model (e.g. capturing lease-based providers where business plans do not stack up against obligations in leases). Other changes in this area include:

- Requiring you to notify the RSH where there is a change in subsidiary status (which is already a regulatory requirement at the moment) and to notify if there are certain changes to the board which indicate a change in control.
- Introduction of the 'look through' power first floated in the White Paper – broadening out the circumstances in which the RSH can request information from third parties to enable it to follow information relating to funds or assets once they have left the regulated sector. A failure to provide the information, or provision of false or misleading information, will be an offence.
- This is specifically aimed at tackling fraud or misuse of sector funds and will enhance the effectiveness of the regulation of the economic standards.
- Closure of other gaps relating to re-registration decisions on conversions from companies to community benefit societies; confirmation as to how the provisions apply to limited liability partnerships. It also confirms how you should be treated in the interim period following a re-structure whilst you await the outcome of their re-registration decision.

Interestingly, the Government's response to the Levelling Up, Housing and Communities Select Committee inquiry into the Regulation of Social Housing rejected the recommendation from the Committee to expand the RSH's role in monitoring mergers. The Government referred to the Office of National Statistics' re-classification risk as rationale for this. Instead, it refers to the notifications regime and existing enforcement powers as being satisfactory to oversee such transactions.

4. New Consumer Standards and Inspections

The RSH's new proactive role will be supported by new consumer standards and an inspections regime, which are expected to take effect **from April 2024**. The consultation on the revised standards closed on **17 October 2023**.

For private RPs, inspections will be linked to their current in-depth assessment. For local authorities, this will be an entirely new regime and experience. The RSH has now issued its consultation on its new regulatory approach and enforcement powers which we will be considering and collating responses to before the deadline of **16 January 2024**.

5. Increased enforcement powers

These include:

- Performance Improvement Plans or 'PIPs' – these bridge the gap between the current use of voluntary undertakings by the RSH and the use of other enforcement powers. PIPs will relate to breaches of the consumer and economic standards, or where providers have failed to comply with transparency requirements. Tenants can request copies of PIPs and, where there is a failure to comply, compensation may be payable to those who suffer as a result.
- Removal of the cap on fines for non-compliance (so they are now unlimited).
- The right for the RSH to undertake surveys on properties directly (including the power to obtain warrants for access and undertake emergency repairs where there is a serious risk).
- Widening enforcement powers relating to registered charity, local authority and for-profit providers.
- Increased powers for the RSH to remove officers of providers, where encountering unreasonable resistance.
- Adjusting the grounds upon which the RSH can hold an inquiry.

6. 'Professionalisation' of the sector

The Act gives the RSH power to set standards on the competence and conduct of all staff 'involved in the provision of housing management services'. The Government's response to the Select Committee recommendations also confirms that the revised consumer standards will set mandatory qualification requirements for senior housing managers and executives (as defined in the Act).

The Social Housing Act itself sets out that senior housing executives will be required to have a foundation degree or Level 5 qualification, and senior housing managers will be required to have a Level 4 qualification in housing management.

These requirements will extend to any organisation managing properties on behalf of you, including arm's length management organisations (ALMOs) and tenant management organisations (TMOs), through implied terms in those contracts.

7. A more joined up approach informed by lived experience

The Act requires the RSH to set up an Advisory Panel which includes those that the RSH views as representing the interests of lenders, local authorities, tenants and landlords (as well as representatives from the Great London Authority, Homes and Communities Agency and the Secretary of State). The role of the panel is intended to inform the RSH on a 'wide range of matters' – including key sector issues and risks.

In addition, the Act also requires the RSH and HO to co-operate and to prepare, publish and regularly review their Memorandum of Understanding (setting out how they work together) and to consult each other when making changes to their respective schemes or standards.

8. Energy efficiency

The Act was amended during its passage through Parliament to include an additional fundamental objective for the RSH to ensure that homes are energy efficient.

Requirements for the Secretary of State to publish a strategy on reducing energy demand for social housing properties and a power for the RSH to set standards as to the energy efficiency of accommodation, facilities and services provided in connection with social housing were proposed by the House of Lords and then subsequently rejected in the Commons.

> The Act is a landmark moment in social housing regulation

What next?

The Act is a landmark moment in social housing regulation. There is a huge amount of detail in these reforms and more to come. We are working with our clients to help them digest these changes.

This includes:

- **Reforms Tracker** – helpful for undertaking your gap analysis, our tracker compares the changes between the current and proposed new consumer standards with a clear explanation of the differences and actions to take. This will be updated as new details emerge.
- A range of tailored in-person or online **training** for your teams and Board.
- Training programme.
- Providing collective submissions to any consultations.
- 'Digest' series of short videos covering key themes of the reforms.

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Considering a merger?

A business critical consideration

The housing sector is facing unprecedented challenges at the moment. High inflation and increasing interest rates; building safety costs; net zero targets; sustained pressure on residents' household finances, to name but a few!

These challenges also come alongside an increasing number of emergent 'left-field' risks that can have a huge impact on the business almost overnight: the pandemic; damp and mould (perhaps not so left field); data breaches; contractor insolvencies; and fraud.

In this context, board time and focus is precious, and being agile and adaptable is key. This involves critically analysing your existing risk management and mitigation strategies. A fundamental part of any risk mitigation strategy should be consideration of closer working with other organisations – and perhaps merger.

Why is this 'business critical'?

Considering the above, ask yourselves the following questions:

Could a merger help us to better further our strategic objectives and achieve our core purpose?

This is fundamentally about delivering for residents and becoming stronger to 'weather the storm'. Business cases for recent mergers have evolved away from a focus on growth through development and cross-subsidising core purpose activity. They are focused much more on improvements to existing homes, strength of repairs service and delivering on environmental sustainability goals. There is a need to identify clear, demonstrable benefits for existing (as well as new) residents in the short to medium term.

> ...board time and focus is precious, and being agile and adaptable is key

Could a merger help us to address some of the risks associated with our strategy and financial position?

The current economic climate has exposed the risks associated with reliance on cross-subsidy and debt finance. More organisations have been graded 'V2' across the sector to reflect financial constraints and sector credit ratings are under pressure – emergent risks may also require you to make decisions quickly.

Consider:

- At what point might it be necessary for us to merge – and what are the triggers and timeframes?
- What kind of merger partner would help us to manage these risks? For example, if one of your key risks relates to over-exposure in a particular area such as building safety remediation costs, you may want to find an organisation with the suitable infrastructure / expertise / size to deal with and absorb this risk.

What initial steps should we be taking?

If the board hasn't discussed plans around merger recently, then this should be a focus for an upcoming meeting. You may want to start with an open discussion about what this might look like – is it an active or reactive plan? What would the objective be? Would we be willing to rescue another organisation? Is there an imperative in our business that suggests this is a short, medium or long term requirement?

It is likely that further work would be required to be able to answer these questions, but starting the journey is important. You can then decide next steps – this could include discussions with engaged residents and lenders, for example. If you would consider rescuing another organisation, devise your 'redlines' and put in place plans to be able to react quickly in that situation. This might involve ensuring you have suitable delegations to enable initial conversations to take place; precedent documents prepared; due diligence packs ready to go.

Remember…

This is not necessarily about formulating a specific plan to merge (although that might be an outcome). The key thing is an ability to articulate issues such as your appetite, triggers and redlines. In the current climate this is a conversation that organisations can no longer afford to put off.

If you would like help in formulating these discussions with the board, understanding the implications of merger or planning for a merger process (active or reactive) please don't hesitate to get in touch with us.

Creating dynamic organisations

In 2022, a multi-disciplinary team at Bevan Brittan provided a range of legal advice over a nine-month period, to Peabody and Catalyst on their merger.

The newly combined organisation is now responsible for 104,000 homes, creating one of the largest organisations in England and Wales and providing homes for 220,000 residents across London, Kent, Sussex and the Home Counties.

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How to plan for an effective due diligence exercise

Remember you are being assessed not just on the information you are providing but the availability and quality of that information

Effective legal due diligence (DD) is an essential ingredient to any well organised deal – whether you are actively considering a merger as part of your own risk mitigation planning, you are looking to acquire or sell all or part of a business, or perhaps you are looking to enter into a significant joint venture with a third party.

Whichever is the case, here are our six top tips to make sure that you are getting the balance right between your "need-to-knows" and "nice-to-knows" in every DD exercise.

1. Transparency

The DD exercise can be a long and resource intensive journey. Before you even begin, it is worth taking some time with your proposed partner to discuss anything material that is going to be revealed under the DD exercise. Be open and transparent. The DD exercise is going to bring these issues to light at some point and we recommend getting the skeletons out of the closet as early as possible. It will allow both sides to focus their questions around what is being done to mitigate any problems and identify any deal breakers early in the process.

2. Timetable

DD can be overwhelming. Proper planning can help mitigate this and a well-considered timetable is vital with milestones for each stage. When are you going to provide the information? What teams need to input? When are you going to digest the reports that your advisers provide? Have you left enough time to clarify any information or investigate any issues? A dedicated internal due diligence team with a project lead is a must.

If the timetable is not working then be prepared to adjust accordingly during the course of the exercise. Ultimately, the most important thing is ensuring the transaction is the right one for you. A rushed exercise will not deliver the value and outturn that you want.

3. Scoping

The main aim of due diligence is to gain a general understanding of the other party's business, so that the board can make an informed decision as to whether it should enter into the transaction, and if so, on what terms. The most successful exercises we have worked on have been where the parties have spent time working out what their priorities are and how these might best be dealt with. It might seem obvious, but all DD exercises, though similar, have their own particular focus and set of objectives. Returning to these objectives throughout the course of the DD exercise will help to keep things on track.

Involve your advisers in these conversations – they will be able to give you an idea of focus areas from similar transactions, highlight key risks and offer suggestions to achieve your aims. We regularly advise merging parties as to what they should, and should not, include in their scope. If it is a merger due diligence exercise, seeing the business case early can help advisers focus their review. Equally, it is vital for advisers to dovetail their scopes and avoid duplication as some issues may involve legal, financial and commercial issues.

4. Information gathering

Once you have scoped, now comes the tricky bit – answering the questions. As part of the scoping stage, you will have agreed the questions that both you and the other side will answer. This should involve coming to a consensus around the level of detail that is required.

Be open and transparent and be clear with your answers and avoid 'information dumping' – don't leave it to your proposed partner to find the answer for you if it is hidden in an email chain or a document folder. This will increase costs significantly and is likely to lead to additional questions being asked. Remember you are being assessed not just on the information you are providing but the availability and quality of that information.

You should have an agreed process in place to deal with follow up questions. This is where deals have a tendency to come off track. Many of the responses you receive will raise more questions than answers. Some may have gaps in them where more information may be helpful to complete the picture. Before you seek this information, you should ask if it is needed (and if so, when is it needed), or just nice to know?

5. Reporting

Consider how you will bring all of this together. Check you are happy with the report format including executive summary and identification of tasks and timetable. Leave enough time for your advisers to swap their reports so that they can make sure they are consistent and any 'cumulative' risks can be identified. Some organisations also ask the other side to respond to points, to give them a final opportunity to address risks / concerns identified.

Finally, consider how you would like the report to be presented and whether your advisers will attend the meeting(s). Allow your board members ample time to digest the report and submit their questions in advance, as these reports can cover a lot of ground and you want your advisers to be as prepared as possible.

6. Post-Due Diligence

Once your board has reviewed the DD reports there are further decisions to be made. Try to think of the DD exercise as akin to having a full business audit. You have gained (and shared) a lot of information about your proposed partner and your own business. So what do you do with this information? Keep a list of issues that have been identified during the DD exercise – this might be inputted into your integration plan, for example. Be warned, this list can be quite extensive at what is usually a busy time for your organisation, so be ready to prioritise. Finally – make sure you follow through on the actions and report back to the board accordingly.

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The value in good asset data for registered providers

We have over recent months heard much announced about the crucial importance to Registered Providers (RPs) of access to robust and accurate data to support strategic decision making and management of risks, not least from the Regulator of Social Housing (RSH) and the Housing Ombudsman (HO).

The importance of good quality asset and financial data is key to delivering successful outcomes across all the moving parts of a housing association. The HO has recently launched a call for improved evidence on record keeping, principally to deliver a high quality service to residents but also to horizon scan and identify a broad range of human and financial risks. The Social Housing Regulation Act gives rights to residents to demand information and data as part of new tenant satisfaction measures and the CIH and NHF have both called for improved data standards.

So let us examine more closely the two key areas where good asset data management is having a positive impact of "Value for Money" in the delivery of strategic objectives, and also represents values of transparency and legitimacy required by the regulator.

> Good knowledge and information management (KIM) is crucial to any organisation's ability to perform and achieve its mission. Without good KIM, a landlord could be severely hamstrung in delivering its core social purpose efficiently and effectively, providing value for money as a modern, forward-looking organisation
>
> **Housing Ombudsman May 2023**

1. Treasury Strategy

Inflationary pressures and a high interest rate environment are impacting on interest cover and operating margins and therefore strong treasury management, with a focus on maximising the value of social housing assets is a strategic priority for many associations. It is essential to have the accurate data at hand and in one place to support this strategy. RPs need to know what the quality of their stock is, what security is available to fund and at what value?

Irrespective of the fact that long term debt issuance on the capital markets has slowed and been replaced with shorter term funding, many of our clients are establishing 'rolling charging' or pre-charging programmes to be in a position to maximise opportunities when the capital market activity picks up. The groundwork on preparing and improving the quality of asset data now will pay dividends in term of securing maximum valuation down the line. It is equally as important to honestly understand what critical data is missing as it is to understand what is already held. In the current climate, valuers are being asked more questions by funders on stock data, with greater requirements for additional certifications focused on the impact on the fabric and use of buildings.

Comprehensive pre-charging checks, verifying asset lists and carrying out asset data health checks are crucial in determining valuation at the point of charge. Carrying out and recording in an interactive data portal a 'RAG analysis' of asset data to understand what additional information is required to perfect security and maximise valuation is a good place to start, as well as tackling 'challenging schemes' which may have been pushed to the side in times of plenty. We have helped clients to uplift portfolios up to 80% higher than EUV-SH valuation in some parts of the country by collating complete and accurate asset data at pre-transactional stage, with minimal loss or undervalue of security on charge

Creating roles and responsibilities for maintaining accurate asset data across different parts of the business can be carried out as part of risk register management and improvements to 'Asset and Liability Registers', but can also assist strategic decision-making. Having a correct register with ongoing monitoring can feed into almost every wide ranging function of the business, as well as good treasury management.

As part of this strategy, Treasury teams are looking at existing funding and security data with a focus on over-secured facilities and releasing value in readiness for the anticipated market upturn. We are seeing increased activity in security being de-allocated from facilities to be held as unallocated security within Security Trusts. Understanding where historic information is held, such as old loan agreements, Security Trust Deeds and Certificate of Titles can really be helpful when it comes to making effective Treasury decisions about whether value might be released by looking at poorly performing facilities.

Another aspect is looking at accurate data to support ESG funding opportunities and having the correct information to support a comprehensive sustainability financing framework to present to ESG investors. Having the data to evidence compliance with ESG metrics and ongoing KPIs required by Sustainability Linked Loans or Green Bonds is obviously critical. Being in a position to quickly access robust ESG data to avoid claims of 'greenwashing' is critical for those raising any kind of green finance.

It is also worth mentioning that modular build units are increasing as an asset class across the sector, and it is important for you to keep a detailed record of MMC data to support future funding. Lending requirements are an evolving picture but what is clear from the very few completed funding transactions in the market is that holding the correct data is absolutely essential in terms of chargeability and valuation. We are working with several RPs to collate the correct details such as the manufacturer, installation and construction data, lifecycle maintenance and the required warranty and assurance data to ensure maximum valuation on charge.

> …many RPs are moving away from holding disparate data sets in a web of systems across different portals to support various activities towards a joined-up data strategy incorporating universal definitions so data can be efficiently understood across the organisation

2. Stock Rationalisation and Mergers

Another area of increased activity in the current market is a notable and significant upturn in stock rationalisation and mergers.

Asset management teams are looking at ways to release cash and offload poorly performing stock to produce value for money. In order to do so, it is critical to have access to up to date and comprehensive data sets and to be able to access this quickly to take advantage of deals on the horizon in a fast moving and volatile market. Advance preparation can minimise pre-bid delays, reduce professional fees and increase the prospects of securing a good price. Incomplete and missing stock rationalisation data can be detrimental or even fatal to the bids process, especially for niche portfolios where valuation can be difficult to determine unless the valuer has access to all the correct information at the outset. It may be the case that stock is sold outside of the sector and, in such cases, regulatory scrutiny of board decisions underpinned by robust data is critical.

The amount of asset data required for a stock rationalisation is wide ranging and collating data from different systems held by separate parts of the organisation can be cumbersome and a significant burden on internal resource which could be deployed elsewhere. A good data strategy will also enable you to trust in the quality of your asset data and to approach the market with confidence on price, transactional costs, warranties and timescale.

Similarly, mergers face the same challenges and data is key to determining whether the merging RPs are a good fit across a wide range of operations in terms of the management of risk, decisions, people and homes. Evidencing how an RP operates based on measured and tested data, is key to the process. Merger decisions are usually based on an objective of improving performance, delivering efficiencies and value for money. Stock condition data is particularly important to understanding future investment needs in terms of retrofit, net zero commitments, building safety and what the future funding and security landscape will look like in terms of leveraging finance.

The direction of travel is unequivocally clear. In response, many RPs are moving away from holding disparate data sets in a web of systems across different portals towards a joined-up data strategy incorporating universal definitions so data can be efficiently understood across the organisation. As part of digital transformation, RPs are also employing analysts to monitor data quality and drive value from data, in addition to signing up to housing sector data standards. An integrated data system and data driven culture can assist boards to identify trends, improve performance, raise finance, deliver strategic objectives and, most important of all, to improve the lives of residents.

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Placing a spotlight on the Renters (Reform) Bill

The Renters (Reform) Bill is working through the Parliamentary process and in terms of delivering a real shake-up of residential tenancy law, it does not disappoint. The Bill proposes to do away with assured shorthold tenancies altogether, with all tenancies becoming periodic assured tenancies. The abolition of the divisive "no fault" section 21 procedure is at the heart of the Bill, in which the Government strives to achieve the perfect balance between giving renters greater security of tenure and the ability to put down roots, whilst also allowing landlords to end tenancies and get their properties back quickly in appropriate circumstances.

When the Bill was first introduced, we issued a Spotlight Series of five articles, each one focussing on a different aspect of the Bill:

- Spotlight on: an overview of the Bill
- Spotlight on: New grounds for possession
- Spotlight on: Supported and Temporary Accommodation
- Spotlight on: Tenancy structure reform and the abolition of S21 'no fault' evictions
- Spotlight on: rent controls, tenant redress, regulation of landlords… and pets

It was confirmed in the King's Speech on 7 November 2023 it was confirmed that the Government remain committed to enacting the Bill. However, its progress is stalling, seemingly as a result of some policy disagreements within the Government and because it is felt that the main provisions of the Bill cannot be introduced until substantial reforms to the court system are introduced (bearing in mind that one of the Bill's stated aims is to halve the length of time it takes a landlord to secure an eviction in anti-social behaviour cases). Those improvements will include designing a new digital system for possession cases (with an initial investment of £1.2m earmarked to start the design of that system). It looks possible that the Bill may be enacted in full, but with the implementation date of the main provisions being delayed until the courts are better ready to cope. How long that delay will be remains to be seen, and it is quite possible there will be a general election in the interim that may have an impact. The King's Speech also indicated that the Government recognises that the Bill doesn't cater adequately for the private sector student rental market, and intends to amend the Bill to introduce a new possession ground for student landlords to rely on though the detail of that is awaited.

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Public subsidy for energy efficiency projects for affordable homes

Category 1 is the broadest of the three categories within the scheme and the one most likely to be of interest to Registered Providers. This category is designed to help decarbonise over 30 million homes... and lower their energy usage

As progress towards Net Zero gathers momentum, analysis is often required to ensure that public subsidies for energy efficiency measures are compliant with the subsidy control rules. As Registered Providers, you may be interested in the Energy Usage Streamlined Subsidy Scheme which has been set up under the Subsidy Control Act 2022.

The streamlined route enables subsidies to be given more quickly and easily for a range of purposes, including for projects to retrofit energy efficiency measures and low carbon heating into social and affordable homes.

When a public authority proposes to give a subsidy, it must ordinarily assess whether the subsidy complies with seven subsidy control principles and, where relevant, additional principles relating to energy and the environment. This can be an onerous exercise and can often slow down the decision-making process. Where the Scheme applies, an individual assessment of the subsidy is not required and the public authority needs simply to check that the subsidy falls within the terms of the Scheme. This provides a quick and simple way to demonstrate that the subsidy control rules have been complied with.

The Scheme covers subsidies within the following categories:

- **Category 1**
  Subsidies for Energy Demand Reduction Projects
- **Category 2**
  Subsidies for Green Heat Networks
- **Category 3**
  Subsidies for Green Skills Training

Category 1

Category 1 is the broadest of the three categories within the Scheme, and the one most likely to be of interest to you as Registered Providers. This category is designed to help decarbonise over 30 million homes, as well as non-domestic buildings, and lower their energy usage.

An Energy Demand Reduction Project is a project involving the installation of any of the following measures in buildings:

- Energy efficiency measures (such as upgrading of insulation or double glazing).
- Low carbon heating measures (such as installation of a heat pump or connection to a low carbon heat network).
- Additional energy infrastructure (such as installation of solar photovoltaic (PV) or the installation of energy storage for on-site generation).

Subsidies in these three areas can be given together or separately, up to a specified percentage of the eligible costs of the project. The percentage is 40% of eligible costs for large enterprises, 50% for medium enterprises and 60% for small enterprises, but subject to an overall cap of £3 million per project. Other public subsidies for the project may need to be counted towards these limits, even if those other subsidies are not given under the Scheme. The eligible costs which can be met by the subsidy are the capital costs of the project (such as construction costs and the costs of equipment) and personnel costs for those working on the project (other than business-as-usual staffing costs).

Where the affordable housing project involves the installation of low carbon heating, the eligible costs which can be subsidised are limited to the additional costs of installing the low carbon heating over and above what it would have cost to install the type of heating system which would have been installed in the absence of the subsidy.

The beneficiary of the subsidy must be the owner or occupier of the building and, if the owner and occupier are separate persons, appropriate arrangements must be in place to ensure the project can proceed to completion and only the intended beneficiaries will benefit from the subsidy. Thought will therefore need to be given to whether the subsidy is intended to benefit your or your tenants, and appropriate arrangements put in place to reflect this.

An energy audit of the building must have been conducted by an accredited energy assessor prior to the subsidy being given and the subsidy must relate to the installation of measures identified in that energy audit. The costs of the energy audit can be covered by the subsidy.

There are some important limitations to be aware of:

- The project must not require or otherwise involve the use of fossil fuels.
- The subsidy cannot be given for the costs of a measure required by law (such as compliance with building regulations or health and safety legislation).
- Measures to improve the fabric energy efficiency of the building should be considered before the installation of low carbon heating.
- The installation of additional energy infrastructure must be for the purpose of achieving reduced energy demand in the building concerned, and not for the purpose of achieving profit or other financial advantage (for example, a solar farm would not qualify).
- The scheme cannot be used to give a subsidy for a project which has already started unless the public authority has authorised the recipient to start the project before the subsidy is given and is of the view either that this is needed in order for the project to be viable, that the project is being widened or accelerated or that the work being carried out before the subsidy is given is limited to specific scoping or commercialisation work.

Whilst it is for the public authority which gives a subsidy to a Registered Provider to ensure that the subsidy control rules are complied with, you have an interest in ensuring compliance too, since you will bear the financial risk of having to repay any subsidy which is found not to comply. In the case of a subsidy given under the Scheme, as a Registered Provider, you should check that the subsidy meets all the conditions under the Scheme. Provided the conditions are met, the subsidy will not be vulnerable to challenge as an unlawful subsidy.

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Domestic abuse in housing

…you as RPs hold a supportive role in respect of your tenants and should employ professional curiosity where domestic violence may be occurring

How should you be supporting victims?

Domestic abuse is a significant issue in the UK presenting a real challenge for you as Registered Providers, on how best to meet safeguarding duties towards adults and children. Domestic abuse predominantly happens in the home and can also involve other residents and neighbours.

The legislative background

The latest legislation seeking to tackle the epidemic of domestic abuse is the Domestic Abuse Act. This was brought in to provide a comprehensive framework for addressing domestic abuse, including measures to increase support for victims and hold perpetrators accountable. One important aspect of this framework is the role of housing providers (Local Authorities (LAs) and Registered Providers (RPs)) in supporting victims of domestic abuse. Victims often face challenges in accessing safe and secure housing or may need to move quickly to safety. The Act introduced new duties on LAs with the aim of ensuring that all victims and their children can access support in safe accommodation. Victims often face challenges in finding secure housing or may need to move quickly to safety.

As the primary statutory obligations are with the LAs, you as RPs hold a supportive role in respect of your tenants, and should employ professional curiosity where domestic violence may be occurring. The Act provides a clear steer to all social housing providers that they should adopt working practices which recognise, identify and address domestic abuse in all its guises and you may wish to consider updating your policies and procedures so as to adopt the definition of domestic abuse (which includes a wide range of behaviours including controlling and coercive behaviour) provided by the Act. This may become particularly important in relation to (i) internal policies and procedures for addressing anti-social behaviour; and (ii) tenancy terms and conditions prohibiting violence and domestic abuse.

Coercive control was first described as an offence under s76 of the **Serious Crime Act 2015 (SCA)**:

Under the SCA a person had committed an offence if:

- The perpetrator repeatedly or continuously engages in behaviour towards another person that is controlling or coercive
- At the time of the behaviour, the perpetrator and victim are personally connected
- The behaviour has a serious effect on the victim, and
- The perpetrator knows or ought to know that the behaviour will have a serious effect on the victim.

It is important to remember that behaviour which is controlling may also be an offence under other statutory provisions; for instance, threats to injure, threats to damage property, assault and harassment are all offences in their own right as well as potentially being examples of coercive control.

Other key provisions under the Act include the following:

- Children are recognised as victims in their own right
- There is a legal duty on LAs to fund support for survivors in 'safe accommodation'
- A guarantee that all survivors will be in priority need for housing, and will keep a secure tenancy in social housing if they need to escape an abuser, and
- LAs are required to develop and publicise a local domestic abuse strategy that outlines the steps they will take to provide safe accommodation to victims of domestic abuse.

Social Housing Regulation Act 2023 (SHRA)

It is also important to note that the **Neighbourhood and Community proposed standards** under the SHRA specifically focus on domestic abuse. It is highlighted that you should make tenants aware of the appropriate support and advice available including from third party organisations. The proposed standards state that you also need to consider the skills of the staff supporting tenants and consider any appropriate specialist training. The standards emphasise that you should take a victim centred approach to assist tenants experiencing domestic abuse and appreciate the different needs of tenants including those with protected characteristics such as disability and race.

What steps can you take?

Identifying domestic abuse

RPs should have policies in place and take an active role to identify domestic abuse. It is not uncommon for victims to encounter many incidents of abuse before disclosing. You should be alert to the fact that this may be the first time that the victim is disclosing abuse and that during the planning period for the victim to find a place of safety, this will often be the most dangerous time for them and indeed any children they have. Separation of an abuser and victim is a well-recognised time of heightened risk.

Every contact you have with a tenant is an opportunity to show professional curiosity as to their general wellbeing and welfare. This should include taking a history of social circumstances and assertively asking questions around domestic abuse as a standard safeguarding question. Generally individuals should be seen alone so they can talk freely without others influencing and controlling any information sharing or disclosure. If there are children of the family there should be a direct question around their welfare and safety.

You should also have procedures in place to keep all information on victims secure and should not disclose information about a tenant to anyone outside of the organisation without consent. The Neighbourhood and Community proposed standards under the SHRA also highlight the need for sensitive information relating to domestic abuse to be handled in compliance with the relevant legislation.

Multi-agency working

A positive and meaningful response to a disclosure around domestic abuse including coercive control requires multi-agency working. You will need to work closely with other agencies (including domestic abuse services, police, LAs, health services and other support services) to ensure that the victims of domestic abuse receive the support they need.

The police will have dedicated domestic abuse/ public protection police officers to advise. They can help the victim make choices and also some offences can proceed even when the victim wishes not to go to Court. Any matters of concern raised around a child must be reported into children's social care and safeguarding immediately. If the victim is hospitalised there must be active steps taken as to whether the children are being safely cared for.

Homelessness

Under s117 (1) of the Housing Act 1996 it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to violence or domestic abuse against an individual, or against a person who would normally or reasonably be expected to live with them. Additionally, under s.189 of the Housing Act, a person who is homeless as a result of being a victim of domestic abuse automatically has a priority need for housing.

There are various accommodation options for victims of domestic abuse and consideration needs to be given as to what will be the most appropriate option on a case by case basis. This could include safe temporary accommodation, emergency accommodation or refuges.

RPs clearly have a very important role to play in ensuring that victims of domestic abuse receive the support they need, including safe accommodation, advice and support services. Preventing and addressing domestic abuse requires collaboration with other agencies and developing clear policies and procedures to ensure the necessary support is provided to victims at the earliest stage possible.

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Social housing provision in a changing demographic of home ownership

The pensions perspective

> Failure by yourselves as Registered Providers to plan for this changing demographic now, will put you at a disadvantage in the future as the burden on social housing stock will only increase

A recent Pensions Review undertaken by the Institute for Fiscal Studies (IFS) reveals demographic changes to the homeowner landscape and the rise of renting will place new pressures on social housing demands and the need for adaptive housing and mobility aids. Failure by yourselves as Registered Providers to plan for this changing demographic now, will put you at a disadvantage in the future as the burden on social housing stock will only increase.

The historic positon in the UK has been that approximately two thirds of retirees are mortgage free home owners, which gives them lower housing costs entering retirement and more disposable income, and who fund adaptive changes to housing in later life themselves. In comparison, for those renting privately and through social housing, the cost of renting remains high and offers comes with a reduced retirement income, a likely lower standard of living and the possibility of a greater reliance on housing benefits.

The IFS suggests that we can reasonably expect to see the number of individuals reaching retirement age living in rented accommodation, doubling over the next decade. Currently, 10% of those born in the 1960s live in private rented accommodation, compared to 6% of those born in the 1950's and less than 5% of those born in the 1930s and 1940s.

The increase in individuals at retirement age who are privately renting, alongside other pension related developments, are likely to have a significant impact in a number of areas:

- A greater number of individuals retiring without the substantial asset of home-ownership. They will not only face the costs of renting but, with a pension that may not keep pace with the rate of rental increases and therefore they will face being priced out of the private rental market
- Fewer individuals will be able to rely on their generous final salary scheme pensions, as we witness a greater number of individuals entering retirement with much smaller defined contribution pensions
- Tenants may struggle to pay for their housing aids independently without additional support, as more people are likely have to rely on their state pension owing to rental payments, insufficient retirement funds and the general increase in the cost of living, and
- Your social housing stock will be increasingly unable to support the greater demand of homes suitable for an aging population. Requirements may include the need for stair lifts, alarm systems, wet rooms, mobility aids and more general adaptive measures as well as the need for assisted living.

The overall impact of this changing demographic is likely to be significant for the social housing sector.

The Local Government Association predicts that between 2014 and 2039, over 70% of projected household growth will be made up of households with someone aged 60 or older, many of whom are likely to be single occupants. This coupled with the increased number of retirees having the additional burden of paying rent with smaller retirement funds, suggests that increasing reliance will be placed on local councils and RPs to ensure that homes are made suitable for an aging population.

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