



Quarterly Governance and  
Regulation D-Brief  
Issue 2

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## Welcome

Welcome to our quarterly D-Brief, focussing on governance and regulatory issues pertinent to registered providers of social housing (RPs).

Within this briefing we look particularly at:

- Codes of Conduct as a tool for developing business ethics, with a focus on the National Housing Federation (NHF) Code of Conduct 2022;
- How independent should your Senior Independent Director (SID) be?;
- ESG reporting – thinking outside of the “E”;
- Updated guidance issued on the Charities Act 2022; and
- A health and safety update, focussing on the consultation on electrical safety in social housing and the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022.

We also have our usual round-up of key updates, including progress on the Social Housing (Regulation) Bill.

## Upcoming events

We are co-hosting a number of upcoming webinars in the Autumn, including:

- 23 September - What’s next on the merger horizon? – a joint webinar with DTP – sign up [here](#)
- 29 September – Legal updates for the social housing sector – with the CIH (available for CIH members only) – details can be found [here](#)
- 11 October – The role of a housing association board member – with Campbell Tickell – sign up [here](#)

We’re also hosting a drinks event during the NHF Summit in Birmingham on Monday 12 September between 5pm and 8pm – please do email [party@devonshires.co.uk](mailto:party@devonshires.co.uk) if you’re attending the Summit, as we’d love to see you there!

# Codes of Conduct – a tool for developing business ethics

The NHF issued its revised model code of conduct (the **NHF Code**) in May. The NHF Code seeks to provide a template for an ethical working environment, on which an organisation's reputation can be developed. But why is this important, and what can organisations get from adopting a Code of Conduct?

When it comes to managing business risk, most organisations are concerned with two things: finance and reputation. Managing either poorly can bring down a business. Simply google "Gerald Ratner" to understand how the demise of a financially successful business was brought about by the use of a few ill-chosen words which seriously damaged the business's reputation. Although the adoption of a Code of Conduct can't singlehandedly avoid reputational damage, it will go some way towards avoiding such risks from happening.

All Codes of Conduct need to start with the Board agreeing the mission, vision and values of the organisation. It is then for the Chief Executive to interpret this into a complimentary organisational culture. From there the Code will develop, as will other matters like strategy, policy and practice. Ultimately, the Code of Conduct will become the ethical golden thread that runs through strategy, policy and practice and become a tool for reputational risk management.

One particular issue that regularly arises is that of conflicts of interest. This occurs when a person is able to influence a situation that will ultimately lead to their personal enrichment (or that of another person or organisation connected to them). It can occur at all levels of an organisation, to differing degrees. Although addressing conflicts of interest in a Code of Conduct can't eliminate problems arising, it will serve to bring the matter into the open and encourage people to keep

it at the forefront of their minds. A Code of Conduct will also encourage proactive declarations of interest (and reiterate their importance), which can allow potential issues to be managed before they become a reputational problem.

An interesting feature of the NHF Code is that it is written to apply to employees, non-executive board members, and involved stakeholders (e.g. customers) simultaneously. This means just one code can be applied across the organisation, which strongly suggests a "we're all in it together" approach. The single code approach also provides assurance to the Board that when it approves the Code, everyone will be accountable in accordance with it.

If you are struggling to start the code of conduct journey, or reviewing and revisiting your current code of conduct, then the NHF Code provides a good starting point.

If you would like more information about Codes of Conduct, Codes of Governance and related policy matters, please do contact me or another member of our governance and regulatory team.

**For more information, please contact Martin Lewis.**



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# How Independent Should Your Senior Independent Director Be?



The Senior Independent Director (SID) is not a new concept and has been included in various iterations of the UK Corporate Governance Code following the publication of the Higgs Review in 2003. That Review recommended that boards of publicly listed companies should appoint a SID. Over recent years we have also seen more and more housing providers appointing, or at least considering appointing, a SID.

## What is the role of a SID?

The UK Code of Governance states that the role of the SID is to “provide a sounding board for the chair and serve as an intermediary for the other directors and shareholders.”

Of course, this Code applies to a vast array of companies which will often have a wide shareholding, including investors, whereas it is common for housing providers to operate a “closed membership”, where the shareholders and board members are the same people. Given that the significant majority of housing providers are also charitable, the motivation and duties of their shareholders (or members) are also different – for example, for many community benefit societies their rules will provide that shareholders are to act in the interests of the community that the society serves. Therefore the role of the SID is nuanced, particularly in relation to acting as an intermediary for shareholders.

The NHF’s Code of Governance 2020 includes specific reference to the appointment of a SID and that any provider adopting the code should have “a dedicated senior board member (normally a vice-chair or senior independent director) with duties that include appraisal of the chair and assisting the chair to ensure the effectiveness of the board.”

The role of a SID would therefore usually involve:

- working closely with the Chair, acting as a sounding board and providing support;
- acting as an intermediary for other directors/board members as and when necessary;
- working jointly with the Chair and Chief Executive to form relationships with stakeholders and shareholders;
- being available to shareholders, stakeholders and other non-executives to address any concerns or issues they feel have not been adequately dealt with through the usual channels of communication (i.e. through the Chair, the chief executive or finance director);
- meeting at least annually with the non-executives to review the Chair’s performance and carrying out succession planning for the Chair’s role; and
- in exceptional circumstances in which there are concerns about the Group Chair’s performance, providing guidance and support to the board to seek to resolve the concerns.

## The rise of the SID in social housing

The introduction of a SID caused some controversy when it was first proposed as part of the UK Corporate Governance Code, with critics claiming that it made governance cumbersome and increased procedural burdens as well as causing confusion over, and even potentially weakening, the role of the Chair.

However, over the years, the role of the SID has become generally accepted in the general corporate world and more and more housing providers are also following suit. Reasons for this have included with increased levels of diversified activities as well as the complex operating environment and challenges that housing providers now operate in.

### Internal or external?

A trend has emerged where housing providers have used the role of the SID almost as an alternative to the role of a vice-chair and as an important role in relation to succession planning for the Board. Some providers have commented that the individual appointed as a SID would be a natural successor to the Chair.

However, this raises some questions. It is agreed that the role of the SID can be useful in providing an independent check and balance on the board and that the SID can help to provide a layer of additional accountability, especially in regards to the Chair. However, if the person appointed as the SID is to be seen as the natural heir to the Chair, then how independent will they truly be? How are they able to maintain a level of independence from usual board proceedings to ensure they can provide that independent scrutiny?

Is the SID just another term for what we used to refer to as a vice-chair? Or does the function truly offer something different? If organisations want true independence, should they look to external recruitment of the SID to provide that external “fresh pair of eyes”, rather than appointing someone internally who will already be established on the board and have the natural “biases” that come with that?

On the other hand, many argue that the benefits of appointing a SID internally provide for continuity and having a better understanding of the organisation. It will also be interesting to see how the 6-year maximum term of office expectation introduced by the NHF Code of Governance will shape succession planning and recruitment of this role.

### Conclusion

It is clear that the SID will continue to be a familiar feature in the governance landscape for housing providers. However, it will be interesting to see how the sector will embrace and shape the role to suit each organisation's needs, balancing the need for independence alongside the benefits of organisational knowledge.

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## Thinking outside of the “E” on ESG

I was pleased to chair a session at the Housing 2022 conference in Manchester at the end of June, which focussed on learning from others in relation to ESG and governance.

### The Sustainability Reporting Standard

While it is not mandatory for housing providers to report against ESG criteria, the sector has led the way in creating its own reporting standard, the Sustainability Reporting Standard for Social Housing (the **Standard**), which was launched in November 2020. The Standard was developed to assist in promoting consistency and transparency in reporting against ESG criteria and over 120 organisations have already signed up to the Standard as either adopters or endorsers. This includes housing associations, lenders and investors and reflects a strong interest in achieving consistency in reporting on these areas.

Following the first round of reporting against the Standard, Sustainability for Housing (the organisation set up to promote and develop the Standard) issued its report, One year in, the story so far, in May 2022, to review the initial reports and feedback from the adopter community. As a result of the findings, updated guidance on reporting was issued (SRS Version 1.2) and it is proposed that a new version of the Standard will be published in 2023.

### Thinking beyond the “E”

Given the scope of investment required in the sector to achieve net carbon zero and, more imminently, EPC level C or above, there has understandably been a significant focus on the “E” element of ESG, particularly in relation to ESG-linked funding deals. However, there are opportunities linked to housing providers’ other key areas of focus to think more widely and

identify ESG priorities and opportunities. For example, we have seen some funding deals put in place with specific governance and social related focuses, such as Bromford’s £75m Revolving Credit Facility with SMBC in December 2020, which was linked to continuous improvement on gender pay gap reporting.

### Considering the “S” and “G” elements

The Governance area of the Standard focusses on four key themes:

- **Structure and governance** – looking at the legal structure of the organisation and its approach to governance, including its adopted code of governance, regulatory grading/status and any adverse regulatory findings;
- **Board and trustees** – this includes consideration of demographics of the board and how it compares to the demographics of the provider’s residents and board and management team turnover, as well as issues such as maximum tenure and succession planning;
- **Staff wellbeing** – including whether the provider pays the Real Living Wage and gender pay gap. The “enhanced criteria” (which providers are expected to work towards reporting against) also look at issues such as the average number of sick days taken by employees and how support is provided to staff to support their physical and mental health; and
- **Supply chain management** – this falls within the “enhanced criteria” and considers the creation of social value and environmental impact in relation to the procurement of goods and services.

The Social element of the Standard is based around five key themes:

- Affordability and security – including affordability of rents, tenure types and how housing providers are trying to reduce the effect of fuel poverty on residents;
- Building safety and quality – this includes the percentages of homes with valid gas safety checks and Fire Risk Assessments and meeting the Decent Homes Standard;
- Resident voice – including how resident satisfaction is measured and complaints (including learning from complaints);
- Resident support; and
- Place-making and place-shaping activities.

A number of these criteria link strongly to current areas of focus for providers, being driven by legislative and regulatory change and wider sector issues. For example, with recent high-profile news and media coverage linked to poor social housing conditions, it is likely that we will see a greater focus from investors on issues such as governance arrangements, quality of stock data and complaints data. In addition, the cost of living crisis and rising energy prices has meant that providers have been working with their residents to try to help with these issues, including, in some cases, implementing hardship funds.

How providers engage with residents and are able to hear the resident voice is clearly an area of regulatory focus at the moment with the proposals under the new Social Housing (Regulation) Bill. As part of the session I chaired, I was pleased to be joined by Fayann Simpson OBE, board member at Sustainability for Housing and chair of the L&Q resident services board. She highlighted some of the particular initiatives she had been involved with at L&Q, both in terms of ensuring that residents' voices can be heard, but also in working with residents to design ESG priorities and report on ESG performance. This demonstrates how ESG can be used as more than just an investor-reporting tool, and as a positive engagement mechanism with residents.

### **A wider opportunity**

As mentioned earlier in this article, it is expected that there will be further revisions to the Standard next year. Brendan Sarsfield, Chair of Sustainability for Housing, was also a member of the panel and identified in particular the need for the Standard to reflect housing

providers' priorities around equality and diversity. The "one year on" report also highlighted some areas where there is work to be done on reporting – for example, only 69% of providers who reported confirmed they pay above the minimum wage and are committing to pay the Real Living Wage. This is likely to be an area where supporting explanation will be invaluable, to allow providers to explain their operating models.

However, providers have a real opportunity when looking at setting ESG priorities and reporting on performance to be considering initiatives and key areas of business focus beyond just those linked to environmental issues. This could provide an opportunity for providers to highlight positive governance and social measures they have worked on (and potentially to seek funding deals with KPIs linked to those objectives). Designing ESG criteria and reporting on them could also provide a useful tool for engaging with residents on their priorities, and further strengthening the landlord-tenant relationship, particularly where they are linked to areas of importance for residents, such as fuel poverty.

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# Updated guidance - the Charities Act 2022

The Charity Commission has issued guidance on the changes being introduced by the Charities Act 2022 (the Act) that are planned to come into effect in autumn 2022.

Our previous briefing in [March](#) looked at the changes that we consider to be of greatest relevance to our clients, with our briefing in [May](#) summarising the implementation plan for the proposed changes. We set out a short summary of the updated guidance below:

## Ex gratia payments

Sometimes trustees are requested to make a “moral” payment from their charity, or to waive the charity’s right to receive funds or property. This can happen when a charity receives a legacy and the donor subsequently changes their mind. The powers introduced by the Act will:

- permit charities to process requests for “small” amounts without applying to the Commission; and
- allow trustees to delegate the decision-making for ex gratia payments to other individuals or groups within the charity.

The guidance sets out a table (reproduced below)

indicating the thresholds whereby charities are permitted to process requests for “small” amounts.

Gross income of charity (for last financial year)	Maximum individual payment amount allowed without Commission authority
£0 to £25,000	£1,000
£25,001 to £250,000	£2,500
£250,001 to £1m	£10,000
Over £1m	£20,000

## Fundraising appeals

This part of the Act deals with scenarios where not enough or, conversely, too much money has been raised as a result of a fundraising appeal.

The Act intends to reduce complexity surrounding what trustees need to do in these situations. The changes include:

- removing the requirement for some charities to wait six months for donors to ask for a refund;
- implementing a simpler process for obtaining the Commission’s authority to replace the need for the

- Commission to make a scheme; and
- if the donations that can be spent on new purposes (different to the purposes funds were originally raised for) are less than £1000, trustees can act without the Commission's involvement, provided they comply with the new legal requirements.

The full Act can be found [here](#).

Please do get in touch with your usual contact, or any other member of the team with any questions about how the Act may impact charities within your organisation.

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## Health and Safety Update – electrical safety and carbon monoxide alarms

### Consultation on Electrical Safety in the Social Rented Sector

Through the Levelling Up White Paper and the Social Housing White Paper, the Government is seeking to ensure that social housing has satisfactory electrical safety and uniformity with the private rented sector. A Government consultation is currently running until 31 August 2022.

Two policy proposals have been put forward by the consultation:

- A. Mandatory checks on electrical installations for social housing at least every 5 years.
- B. Mandatory Portable Appliance Testing (PAT) on all electrical appliances that are provided by social landlords as part of a tenancy.

The Consultation is seeking views on whether:

- i. these proposals are the best course of action to protect social housing residents; and
- ii. owner-occupier leasehold properties within social housing blocks should also be subject to mandatory checks of electrical installations every 5 years in order that the efforts and financial contributions of social landlords in those blocks are not undermined.

Details of the consultation and how to respond can be found [here](#).

It should be noted that the current wording of the Social Housing (Regulation) Bill would (if implemented) amend

section 122 of the Housing and Planning Act 2016 and enable the Secretary of State to put in place regulations that impose duties (such as electrical testing every 5 years and PAT testing) on registered providers of social housing.

Keep a look out for our further updates on this important issue!

### Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (CO Regulations)

The CO Regulations will come into force on 1 October 2022 as a result of the Government's commitment to ensuring residents are protected from the risks of fire and carbon monoxide. A consultation was held earlier this year which sought views on extending the existing requirements for carbon monoxide and smoke alarms. There was strong support for the proposals in the consultation. Once the CO Regulations come into force, relevant landlords must:

1. Ensure that at least one smoke alarm is installed in each storey of their homes;
2. Install a carbon monoxide alarm in any room used as living accommodation where a fixed combustion appliance is installed; and
3. Repair or replace smoke and carbon monoxide alarms when informed by the tenant or their representative that they are faulty.

Failure to comply with remedial notices (which will be issued and enforced by the local housing authority) in relation to these new requirements will result in a fine up to £5,000.

For the avoidance of doubt, a 'relevant landlord' for the purposes of the CO Regulations is any landlord of a residential premises which grants one or more persons the right to occupy a premises as their main residence. This definition is subject to some exclusions, such as student accommodation, care homes and hospitals, but will include registered providers of social housing.

Guidance on the new requirements, who they apply to and how they are enforced can be [found here](#).

We understand from our conversations with the Regulator of Social Housing (the RSH) on this issues that concerns around non-compliance with these requirements are already on the RSH's radar and it is expecting a large number of self-referrals in relation to non-compliance.

If you would like any guidance or support on the implications of the CO Regulations for your organisation, please do get in touch.

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A photograph showing a person's hands holding an open book on a table. A white cup is visible on the left, and a pair of glasses is in the foreground. The background is softly blurred, showing a person's face and a plant.

## Quarterly round-up

### **Naming and shaming “failing” social landlords**

Last week, the Department of Levelling Up, Housing and Communities (DLUP) began naming and shaming “failing” landlords, publishing a list of 20 registered providers of social housing who have had findings of severe maladministration made against them since September 2021. This follows on from announcements made earlier this year as part of the Government’s social housing sector reforms.

In an updated policy statement DLUP warned that “[t]he Department will highlight poor practice by landlords including on its social media platforms. This will include published findings by the Housing Ombudsman of severe maladministration, and judgements of the Regulator of Social Housing that consumer standards have been breached.”

### **Social Housing Regulation Bill – progress through Parliament**

The Bill has passed the Second Reading stage in the House of Lords and is at Committee stage, with the next sitting on 6 September. A number of amendments have already been proposed to the Bill, including that ensuring energy efficiency should form part of the RSH’s regulatory objectives.

### **Levelling Up, Housing and Communities Committee – report on the Regulation of Social Housing**

The Levelling Up, Housing and Communities Committee published its first report in July following the parliamentary committee’s enquiry into the regulation of social housing.

The [report](#) contains a number of recommendations, which in some cases appear to go beyond the remit of the committee’s enquiry, including:

- A call on the Government to introduce funding specifically for regeneration and to deliver on its commitment to increase the supply of homes for social rent;
- That the Government present a fully-funded plan for ensuring the one-for-one and like-for-like replacement of every home sold under the Right to Buy;
- That as part of the review of the consumer standards, the RSH should require providers to routinely audit the condition of their stock;
- That providers should ensure their board and senior management teams better reflect the diversity of their communities (and for the RSH to incorporate this requirement into the revised consumer standards); and
- In order to reverse the trend of some providers “becoming too remote”, that the wording of the Tenant Involvement and Empowerment Standard be strengthened to require providers to deliver genuinely local and tenant centred housing services.

Perhaps the most damning finding of the report is that the current “systemic failure” test applied by the RSH is “*the most passive interpretation of its statutory duty imaginable and has resulted in providers that are responsible for serious mismanagement affecting dozens of tenants nonetheless being found compliant with the standards*”. The report calls for the RSH to reconsider its interpretation of its statutory duties and to abandon the

“systemic failure” test.

It will be interesting to note how the findings of the report impact on the progression of the Social Housing (Regulation) Bill through the parliamentary process and its amendment during this process.

For more information, please contact a member of our Governance and Regulation team.



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