

HOUSING CORPORATION

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# THE REGULATORY CODE AND GUIDANCE

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August 2005

## FOREWORD

The Housing Corporation's Regulatory Code sets out the fundamental obligations of housing associations in meeting the Corporation's regulatory requirements.

The Code and its associated guidance were introduced in April 2002, published as part of *The way forward: our approach to regulation*. The Code and the approach to regulation that it introduced were the result of an extensive process of discussion and consultation. We now use the Code as a reference point for all our regulatory activity, including our registration criteria and our published assessments of larger associations.

Subsequent reviews have confirmed that the approach has been well received and is effective. Our overall approach to publishing regulatory documents is set out in *How We Regulate 1: Our regulatory documents* (February 2005), available from our website at [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk). A key part of that process is to publish the Code in this free-standing form.

Regulatory guidance is shown alongside the Code. In assessing an association's compliance with the Code, the Corporation will consider whether guidance has been followed or whether any alternative action taken by the association has achieved, or is likely to achieve, the same objectives.

The Code and guidance reflect our full range of powers as a regulator. Among those is a specific power under Section 36 of the Housing Act 1996

to issue housing management guidance, subject to consultation and subsequent approval by the Secretary of State. The Corporation may have regard to the extent to which such guidance has been followed in deciding whether to take action. That consultation and approval process was undertaken ahead of the publication of the Code in 2002; and the resulting elements of the guidance which are 'statutory' housing management guidance in that sense are denoted by an asterisk.

The Housing Act 2004 extended Section 36 to cover guidance on governance, effective management and financial viability. This provides an opportunity to remove a potential confusion and put the whole of the Code and guidance on a consistent footing. We shall do so in due course following any necessary formal consultation process.

We are therefore re-publishing the Code and guidance which have been established and used since 2002. This version has just two editorial changes:

- Our requirement on risk management (previously section 1.2) has been moved to within 'Properly governed' (new section 2.8) because this is more properly a governance issue;
- Section 3.4g on leaseholder sinking funds has been updated to be less prescriptive so that associations can consider the best way to achieve the desired outcome.

## THE REGULATORY CODE AND GUIDANCE

Housing associations must be independent (except where they are subsidiaries of other housing associations) and properly constituted not-for-profit organisations.

They must operate financially sustainable and efficient businesses and should be committed to, and primarily focused on, providing good and responsive housing and related services and amenities for those whose personal circumstances make it difficult for them to meet their housing needs in the open market. In doing so they will conduct their business according to the following principles, demonstrating their organisations are:

- 1** viable
- 2** properly governed
- 3** properly managed

Throughout, we use the term 'resident' to include all types of legal occupier (for example tenant, almshouse resident, leaseholder or licensee) of the association. A 'tenant' is a resident who pays rent and holds a secure, assured or a short hold tenancy or a licence to occupy accommodation.

# 1 viable

## CODE

**1.1 Housing associations must operate viable businesses, with adequate recourse to financial resources to meet their current and future business and financial commitments:**

1.1.1 based on a coherent and robust business plan;

1.1.2 fulfilling their loan-agreement covenants.

## GUIDANCE

- 1.1 a The association's business plan demonstrates its priorities and strategy for achieving its objectives including commitments to residents, lenders and rent restructuring requirements.
- b The association's business planning is informed by asset management information, which is reviewed regularly.
- c Accounts and returns are submitted on time and demonstrate that the association is, and will continue to be, solvent.
- d Financial policies and procedures are evident. They ensure that the governing body has sufficient and timely financial information to inform its decision-making processes.

## 2 properly governed

### CODE

**2.1 Housing associations must operate according to the law and their constitutions:**

- 2.1.1 maintaining their independence unless they are a subsidiary of another housing association;
- 2.1.2 complying with all statutory and regulatory requirements.

**2.2 Housing associations should be headed by an effective board with a sufficient range of expertise – supported by appropriate governance and executive arrangements – that will give capable leadership and control.**

**2.3 Housing associations must maintain the highest standards of probity in all their dealings:**

- 2.3.1 acting to maintain the good reputation of the sector, and not bringing it into disrepute;
- 2.3.2 fostering positive relations with stakeholders;
- 2.3.3 conducting their business so they are accessible, accountable and transparent to residents and other stakeholders;
- 2.3.4 only entering into relationships with other organisations when the rights and obligations are clear to all.

### GUIDANCE

- 2.1 a The association demonstrates its independence by conducting its affairs without undue reference to or influence by any other body, unless it is part of a group structure where operating arrangements between group members are documented.
- b Membership policies and governing body composition do not compromise the association's independence.
- c Individual governing body members act in a personal capacity and not as nominees/representatives of any other body, unless the constitution so provides.

- 2.2 a Effective governance arrangements can be framed around the following questions:
  - To what extent does the governing body perform its key governance roles well?
  - To what extent does the governing body work well together?
  - To what extent does the governing body comprise appropriate people?
- b The governing body is diverse, reflecting the communities the association serves, and has a range of skills, experience and up-to-date knowledge.
- c Organisational and management structures reflect the association's business objectives.
- d The governing body meets regularly. It ensures that the association acts within the terms of its constitution and relevant legislation.

- 2.3 a A code of conduct for the governing body and staff, together with a payments and benefits policy, is in place. Sound procurement practices are in place and contractual arrangements or partnerships with other bodies are clearly defined and documented.
- b The association maintains a dialogue about its strategic objectives with its key stakeholders.

## CODE

### 2.4 Housing associations must protect public investment:

- 2.4.1 using their social housing assets only for social housing purposes;
- 2.4.2 ensuring that their social housing assets are not placed at risk by non-social housing activities.

### 2.5 Housing associations must seek and be responsive to residents' views and priorities:

- 2.5.1 reflecting these interests in their business strategy;
- 2.5.2 giving residents and other stakeholders opportunities to comment on their performance;
- 2.5.3 enabling residents to play their part in decision-making;
- 2.5.4 providing opportunities for residents to explore, and play their part, in how services are managed and provided.

## GUIDANCE

- 2.4 a Any material changes in activities are considered by the governing body, contained in the business plan and – where necessary – reported to the Corporation.
- b Public funding invested in the association is protected by, and non-social housing activities are managed within, the association's risk management framework.

- 2.5 a\* The association is effectively accountable to its stakeholders. Current information about its activities is widely available to residents and other interested parties.
- b\* Residents, housing applicants and others have ready access to an effective complaints and compensation policy, administered effectively. Independent Housing Ombudsman recommendations are actioned.
- c\* The association considers a range of methods and opportunities to consult and obtain feedback from residents. It seeks to make an agreement, developed in partnership with residents, setting out how they will be involved, consulted and informed and how this will be resourced, measured, monitored and reviewed.
- d\* Where they so wish, residents are supported, enabling them to obtain the knowledge and skills to play an effective part in investment in, and management of, their homes and neighbourhoods. They are encouraged and supported to explore options.

\* Areas that comprise statutory housing management guidance.

## CODE

**2.6** Housing associations must deal with the Corporation in an open and co-operative manner, notifying any anticipated or actual breach of the Code or anything that might significantly affect associations' ability to fulfil their obligations under the Code.

**2.7** Housing associations must demonstrate, when carrying out all their functions, their commitment to equal opportunity. They must work towards the elimination of discrimination and demonstrate an equitable approach to the rights and responsibilities of all individuals. They must promote good relations between people of different racial groups.

## GUIDANCE

**2.6 a** Any areas where the need for improvement is identified are considered by the governing body and actions agreed with the Corporation.

**b** Annual and other returns are made promptly to the Corporation and other regulators.

**2.7 a** The association is fair in its dealings with people, communities and organisations with which it has relationships and takes into account the diverse nature of their cultures and backgrounds.

**b** The governing body has adopted an equalities and diversity policy that covers all aspects of equalities and includes race, religion, gender, marital status, sexual orientation, disability or age.

**c** Specifically in relation to black and minority ethnic (BME) people, the policy incorporates targets associations should set in the following areas:

(i)\* Lettings: are proportionate to BME housing need, or census data where this information is deficient, in the area where the association has homes. An association specialising in particular client groups establishes different targets based on ethnicity data available for such groups.

(ii)\* Tenant satisfaction: is at least as high as for non-BME tenants.

(iii)\* Dealing effectively with racial harassment: the association establishes targets for reporting, victim support and satisfaction, and action taken against perpetrators.

(iv) Governing body membership: the proportion of BME new appointments and re-appointments to the governing body is the same as under 'Lettings' above.

(v) Staffing: new appointments and promotions achieve the same levels of representation, at all levels of the organisation, as under the application of the 'Lettings' criteria.

(vi)\* Representation in tenants/residents associations: reflects the ethnic mix of the association's tenants in the relevant area.

(vii) Employment performance of suppliers, contractors and consultants: as a criterion for award of work or contracts and a condition of doing business, associations should pass on requirements in respect of staffing, customer satisfaction and dealing with racial harassment (set out above) to their consultants, contractors and suppliers.

\* Areas that comprise statutory housing management guidance.

## CODE

- 2.8 Housing associations must operate a framework that effectively identifies and manages risks:**
- 2.8.1 identifying all major risks that might prevent them achieving their objectives;
- 2.8.2 with the necessary arrangements to manage risks and mitigate their effects.

## GUIDANCE

- 2.8 a The association's risk management framework highlights key risks and how they are to be managed.
- b The governing body regularly reviews activities and policies and all new business decisions and there is a clear case for the proposed or existing direction of the association.
- c Approved terms of reference for the governing body and other committees and delegated authorities for staff are in place.
- d There are internal control systems. Their effectiveness is regularly reviewed by the governing body and reported in the annual report.

## 3 properly managed

### CODE

3.1 **Housing associations must set rents which move towards target social rents and are, on average, below those in the private sector for similar properties and which reflect size, property value and local earnings.**

3.2 **Housing associations must have management arrangements, resources, skills and systems which are appropriate to their circumstances, scale and scope of operation, and ensure that their activities:**

3.2.1 are adequately monitored;

3.2.2 are undertaken efficiently and effectively;

3.2.3 are backed by proper systems of assurance for internal control.

3.3 **Housing associations must aim to deliver continuous improvements and value for money in their services:**

3.3.1 using Best Value techniques, challenging what they do and how they do it, making comparisons with others, consulting people affected by their services and establishing whether they are providing the service, either directly or through a third party, at competitive standards and prices.

### GUIDANCE

3.1 a\* Rents are set in accordance with the rent restructuring formula.

b\* All residents have information about their landlord's rent policy and rent levels across the association's stock and in the relevant local authority area. All residents have information about their service charges including costs that their charges cover, how charges are budgeted and increases calculated.

\* Areas that comprise statutory housing management guidance.

3.2 a\* The governing body receives regular reports on all areas of the association's performance. The association benchmarks its performance against other associations and organisations.

b All lettings and sales are recorded in the Continuous Recording of lettings system (CORE).

c\* Services can be demonstrated to be relevant and accessible to customers and potential customers.

d\* There are clear contractual arrangements, and reporting and review mechanisms for the use of partners or agents.

\* Areas that comprise statutory housing management guidance.

3.3 a\* Service provision is subject to challenge and change. The wishes of residents, and others, are balanced against available resources within a clear and transparent framework, according to the principles of Best Value. Progress in working towards improvements against a range of national and local performance indicators will be publicised by the association.

b\* Housing services and supporting functions are reviewed to ensure continued relevance.

\* Areas that comprise statutory housing management guidance.

## CODE

**3.4 Housing associations must develop and manage good-quality homes that seek to meet people's needs and preferences now and in the future, ensuring that:**

- 3.4.1 the homes their residents live in are well maintained and in a lettable condition;
- 3.4.2 maintenance is carried out effectively and responsively and in ways that reflect residents' preferences;
- 3.4.3 necessary investment in the future of their stock is made a key priority;
- 3.4.4 standards of new development provision are met.

**3.5 Housing associations must provide good-quality housing services for residents and prospective residents:**

- 3.5.1 by seeking to offer a choice of home, while giving reasonable preference to those in priority housing need;
- 3.5.2 by offering the most secure form of tenure compatible with the purpose of the housing and the sustainability of the community;
- 3.5.3 with agreements that clearly set out residents' and landlords' rights and obligations;
- 3.5.4 by being responsive to the individual characteristics and circumstances of residents;
- 3.5.5 by using lettings policies that are fair and reflect the diversity of their client groups;
- 3.5.6 by providing high standards of customer care.

## GUIDANCE

- 3.4 a Permanent housing is sustainable, demonstrated by a commitment to effective protection of the environment and prudent use of natural resources.
- b\* Housing stock is maintained in a lettable condition that exceeds statutory minimum requirements.
- c\* Progress in achieving the Decent Home Standard is monitored.
- d\* There is a responsive repair service that meets legal and contractual obligations and is efficient and effective. It has published service standards and is sensitive to the needs of vulnerable residents.
- e\* All equipment and building components meet required legislative and regulatory standards.
- f New developments comply with 'rethinking construction' principles, as advised by the Corporation.
- g Sinking fund payments made by leaseholders are held in accordance with any relevant leases.

\* Areas that comprise statutory housing management guidance.

**3.5 a\*** Services are shaped around customers' needs.

- b\* Housing Corporation Resident Charters are provided to applicants and residents.
- c\* Legal repossession of a property is sought as a last resort.
- d\* Strategies are in place to tackle antisocial behaviour.
- e Residents who exercise a purchase right receive timely written information about their property.
- f\* Vulnerable and marginalised residents are provided with appropriate responsive housing services. Support and care arrangements (including liaison with other agencies) are in place, where appropriate.

\* Areas that comprise statutory housing management guidance.

## CODE

**3.6 Housing associations must work with local authorities to enable the latter to fulfil their duties:**

3.6.1 to the homeless and people in priority housing need;

3.6.2 to the vulnerable and those covered by the Government's Supporting People policy.

**3.7 Housing associations must demonstrate that their strategies and policies are responsive to their economic and social environment and link into regional and local housing strategies.**

## GUIDANCE

3.6 a\* Lettings and sales policies are flexible, non-discriminatory and responsive to demand, while contributing to the need to be inclusive and the need to ensure sustainable communities.

b\* Associations are able to demonstrate their co-operation with local authorities in homelessness reviews, in the formulation of homelessness strategies, and in the delivery of local authorities' homelessness functions.

c\* When requested to do so by the local authority and to such an extent as is reasonable in the circumstances, associations provide a proportion of their stock to local authority nominations and temporary accommodation to the homeless.

d\* Criteria are adopted following consultation with local authorities for accepting or rejecting nominees and other applicants for housing.

e\* Applicants are excluded from consideration for housing only when their unacceptable behaviour is serious enough to make them unsuitable to be a tenant and only in circumstances that they are not unlawfully discriminating.

f\* Lettings policies:

- are responsive to local authority housing duties;
- take account of the need to give reasonable priority to transfer applicants including applicants from other associations;
- are responsive to national, regional and local mobility and exchange schemes;
- are demonstrably fair and effectively controlled.

\* Areas that comprise statutory housing management guidance.

3.7 a\* New homes meet long-term priority needs in the area in which they are developed.

b\* The association co-operates and contributes to local authorities' strategic enabling role.

c Associations will be able to demonstrate their contribution to the objectives of neighbourhood renewal and regeneration either directly or through partnership, particularly when working in deprived areas.

d The association demonstrates a commitment to sustainable development and works towards incorporating economic, social and environmental objectives in its activities.

\* Areas that comprise statutory housing management guidance.

