



# NED Network briefing

21 June 2021

Set up by [HACT](#) and [PlaceShapers](#), with the support of [Anthony Collins Solicitors](#) and [Badenoch + Clark](#)

## Mind the Gap - what can Board Members learn from Regulatory downgrades?

### A discussion led by Mick Warner

(Former Director at the Regulator of Social Housing)

Regulatory downgrades can signal deeper and longstanding issues within an organisation that were not addressed in time. A downgraded association will learn from the experience, but regulatory action can also be used by others to understand their own potential issues that might be present.

## Emerging themes in causes for regulatory downgrades

### 1. People and relationships

- Most regulatory downgrades appear to be about **financial mismanagement** and “governance issues”. In reality, however, downgrades are often rooted in **issues between people**, such as decisions they make or fail to make, or a lack of skills, expertise and experience.
- Both the business of housing associations and the regulatory environment have become more **diverse, complex and risky** recently. An issue is whether people originally recruited remain appropriately skilled and capable of undertaking materially different roles or operate in a changed environment – occasionally they are unable to keep up with the change.
- Boards and executive teams need to **work together**. Sometimes the Board may be too operational in its outlook or the executive starts to carry out the role of the Board, perhaps because one party is not carrying out its role effectively.
- A feature in some downgrades are where there are long standing executive or Board members with **extensive influence** which causes issues. Boards must make sure the organisation remains open to new skills and ways of thinking. Diversity requirements, reviewing the CEO’s role and the six-year rule may help to achieve this.

### Risk

- **Risk management** features heavily in regulatory downgrades, particularly in areas of



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- development and health & safety. Boards must make sure they can manage risks as they materialise and must not become reliant on a third party whose actions they cannot control.
- When assessing risk, Boards must have assurance that the information they are using is **accurate and complete**. There can be over-reliance on representations from senior management and desktop surveys. Boards may need to consider putting resources towards getting assurances about the data they rely on from an **independent third party** who has no vested interest and/or ensuring there are site visits so that the condition of housing is assessed in person. This could include making arrangements to find out what tenants are concerned about through scrutiny panels and ensuring that these feature higher up on Board agendas.
- Housing associations that **diversify their activities** must understand the risks in those activities (such as development and market sales) and not assume the risks are the same as social housing. If the association does not have the **financial or human capacity** to deliver the activity or cannot manage the risk, it should not undertake it. Boards should consider whether the activity corresponds with the core work of the association and, if not, whether that is appropriate or wise. Being overambitious and increasing expenditure beyond capacity is a common error and can be a recipe for disaster.
- In the last few years, there have been a number of **regulatory downgrades** where associations were in the process of a merger or large restructure. Some of these may have been caused by the diversion of resources from the core work to other projects instead. Boards must make sure that resources are appropriately allocated, particularly during internal restructuring.

### 3. Culture of organisations - what are the red flags?

- **Red flags** could include large **pay offs, over-influence and control by the executive** where the Board is not setting its own agenda, lack of transparency and/or high people turnover at Board or executive level.
- Instead of responding to **complaints or whistleblowing** defensively, housing associations should take them as an opportunity to learn. Independent advice from someone who does not have a vested interest in the organisation is important here. Boards should also look at data regarding complaints. A large number may suggest an operational problem, while zero complaints could suggest a culture where people cannot speak freely. Whistleblowing is often the result of issues being left unaddressed for a long time, where openness and learning is not encouraged.



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- Boards must create a culture where staff and tenants feel their **concerns are listened to** and addressed.

#### 4. Relationship with the Regulator

- Housing associations should keep a **good, ongoing and transparent relationship** with the Regulator as they are a key stakeholder. Once they are aware of a material issue or non-compliance, they should work out what it is and devise a plan of action. They should then report it to the Regulator in good time and focus on addressing the issue and its root causes. During this process it is important for Boards to obtain independent advice from a person or organisation that does not have a vested interest.
- Associations **should not commit to an overly ambitious timetable** to the Regulator but should be mindful of what can realistically deliver. Governance and culture changes can take time.
- There are times **when things are so serious** that the **provider should inform the Regulator immediately**, rather than analysing the situation and coming up with a plan e.g. a H&S issue leading to the death or serious injury of a tenant or a liquidity crisis.

#### Mick ended the session by advising Board Members to:

- Remember their responsibility to the association and get the assurances they need to enable them to manage risks appropriately.

**Peter Hubbard and Safra Murad**

*Anthony Collins Solicitors LLP*

## Next meeting

### How can Board members lead resident engagement?

In conversation with Yvonne Davies, Board Member for Cobalt HA and Steve Biko HA, and Managing Director of Scrutiny & Empowerment Partners.

5 July 2021, 4.00-5.00 pm

**Book your place:** <https://us02web.zoom.us/meeting/register/tZwpu2tpzkrHtbWruJHbYM6wuKgovIA6EbU>