



Memorandum of understanding

May 2007

Memorandum of Understanding

Section 1 Who are we and what do we do?

The Charity Commission (the Commission)

1. The Commission is established under the Charities Act 1993 (“the 1993 Act”) as affected by the Charities Act 2006 (“the 2006 Act”). Without prejudice to its specific powers and duties, its general function is to promote the effective use of charitable resources by encouraging the development of better methods of charity administration, by giving charity trustees information or advice on any matter affecting their charities and by investigating and checking abuse.

The Housing Corporation (the Corporation)

2. The Corporation has a range of functions designed principally to finance, regulate and facilitate the proper performance of housing associations in England and pay grants to unregistered bodies. It is a public body corporate with a constitution and powers laid down in the Housing Act 1964, Housing Association Act 1985 and the Housing Acts 1988, 1996 and 2004. A detailed schedule of the Corporation’s statutory functions can be accessed at www.housingcorp.gov.uk
3. The Corporation’s Regulatory Code and Guidance sets out the fundamental obligations of housing associations in meeting the Corporation’s regulatory requirements. The Code and guidance reflect the Corporation’s full range of powers as regulator including the specific power under Section 36 of the Housing Act to issue guidance on governance, management and financial viability.

Section 2 What is the agreement for?

4. This document sets out how the Corporation and the Commission propose to work together both in formulating the policy to which our organisations work, and in designing and implementing our regulation operations.
5. Many housing associations, 744 associations in 2006, are registered charities and are therefore regulated by both organisations. This agreement does not affect housing associations that are not registered charities.
6. The principal purpose of this agreement is to minimise the administrative burdens on that group of housing associations by working collaboratively, sharing information, eliminating duplicative or wasteful tasks, and identifying and resolving conflicting regulatory requirements for housing associations, as far as the law permits.

7. This agreement is expected to be an interim agreement. Our joint commitment to this agreement is a step in our joint preparation for implementation of the part of the 2006 Act which will designate the Housing Corporation as the principal regulator for housing associations within the context of charities legislation.
8. Both organisations will jointly review the effectiveness of the operation of this agreement in advance of a revised memorandum of understanding which will be required when the relevant part of the 2006 Act is implemented. We will take this opportunity to assess the extent to which we have achieved the objectives set out in this document, taking account of the views of housing associations regulated by both organisations. We will use that assessment to inform any revised agreement.

Section 3 Working together

A. Maintaining the registers

9. Both organisations are required to maintain registers; a statutory register of charities (the Commission) and housing associations (the Corporation). This section of the agreement relates to the processes that are necessary to maintain the respective registers and related information requirements.
10. Once registered with the Commission and the Corporation, associations are required to submit annual returns, audited accounts and keep both the Corporation and Commission informed on key information such as registered names, addresses and names of governing body members. This information is required by both organisations in order to maintain their registers. Both organisations publish detailed guidance on registration, deregistration, processes that require sealed consent and information requirements.
11. Most of the processes that are part of maintaining the registers are defined in statute and so there is limited scope to streamline, however we will actively seek to work more efficiently and effectively within the existing legislative framework by:
 - providing each other with regular and timely information to assist both organisations to maintain their registers;
 - both organisations will alert each other to anticipated changes in the nature and volume of workloads in registry processes as early as possible;
 - both organisations will facilitate communication by having an identified person to assist liaison in this area of work; and
 - both organisations will establish joint working arrangements and joint guidance where appropriate to provide clearer guidance to housing associations of the requirements that they have to fulfil. Any joint working arrangements and guidance will streamline processes where at all possible.

B. Collecting information and data

12. Both organisations collect data to assist them in carrying out their regulatory tasks. This section of the agreement relates to that data which is regularly collected from all housing associations regulated by the two organisations, usually on an annual basis.
13. The information which each organisation collects is designed to assist it in monitoring the activities and key features of housing associations which relate to the specific interests of each regulator. For this reason, the information is often different. However, it is sometimes similar, and, occasionally, it is the same.
14. We will actively review our data requirements (and check any changes which we propose to those requirements subsequently) to ensure that we meet the following objectives:
 - the Housing Corporation needs to be able to identify those housing associations on its register which are also registered charities. The Charity Commission needs to be able to identify those registered charities on its register which are also housing associations. This is necessary to ensure that we can exchange data efficiently, and assists in removing duplication from our requirements;
 - the two organisations will not separately ask the same questions of the same organisations unless there is no reasonably practicable alternative. Where we identify such requirements, we will find the most efficient way of eliminating that requirement; and
 - in a number of areas, the two organisations will ask for information in a similar way or in similar areas (for example, financial information), but to meet different regulatory needs. It is more difficult to remove these requirements without impairing our ability to carry out our regulation. We will endeavour to identify improvements which reduce the burdens of these questions as far as we are able to, and will actively consider suggestions for regulated bodies as to how we may do this (see subsection 6 below)

C. Regulating associations

15. Both organisations are committed to the Better Regulation principles. In particular, both organisations operate a regulatory regime which is risk-based (although the design of each approach is different), and adapt the type and degree of their direct regulatory engagement to their assessment of risk.
16. We can achieve more in delivering better regulation by working collaboratively, as far as the law permits us to. We will work collaboratively in the following ways:
 - By recognising each others particular expertise in areas of charity and social housing law;

- By operating from the premise that the Housing Corporation will become the ‘principal regulator’ of the ‘exempt’ RSL sector (RSLs that are charitable Industrial and Provident Act Societies) when the relevant regulations have been made under the 2006 Act;
- For the relevant associations, the Corporation will supply the Charity Commission with:
 - i. its risk assessment of those associations as it is periodically updated;
 - ii. Housing Corporation Assessments (HCAs) and Annual Viability Reviews (AVRs);
- Establish channels of communication for operational regulators in both organisations in order to avoid or minimise duplicative engagement;
- For the relevant associations, the Charity Commission will supply the Housing Corporation with details of possible causes for concern about charitable RSLs that have been identified by its relevant operational units;
- Sharing other information and assessments including thematic reviews of the housing association sector which will assist both organisations in understanding regulatory risk and sector performance.

17. This approach should improve regulation by:

- ensuring that there is a common understanding of each other’s risk assessments, and improving each organisation’s intelligence by pooling their information;
- avoid and, preferably, eliminate, duplication of direct regulatory engagement (visits) by providing material which satisfies identified areas of regulatory risk already available to the other regulator (e.g. if the Charity Commission has concerns about financial viability, it is likely that many of the questions will already be addressed within AVRs).

18. In order to achieve this, both regulators recognise that, whilst they cannot fetter their own discretion in carrying out their regulatory function and making regulatory judgements, they both have regulatory systems and organisational competencies which can assist each other in carrying out their respective tasks.

19. It also requires regulation staff in both organisations to both seek and to offer what they think is relevant information when it might be reasonable to do so, and to respond positively and promptly to requests for such information.

D. Supervision and use of statutory powers

20. Both organisations have statutory powers that they can exercise where there are serious concerns about the performance of charities (the Commission) and housing associations (the Corporation). This section of the agreement relates to the operation

of each organisation's supervisory regime and how they will facilitate clear and timely communication, without fettering each other's powers.

Housing Corporation supervision

21. Where the Corporation places a housing association under enforcement-level supervision the Corporation will notify this fact to the Commission in writing at the same time that it advises the association of this action. Such notification will include an overview of the concerns which have led to supervision and information about the strategy being proposed for dealing with those concerns.
22. The Commission will provide the Corporation with any comments it wishes to make within seven days of receipt of the notification, and, in particular, the Commission will advise the Corporation of whether it believes that there may be any aspects of the case which impact on its own statutory responsibilities.
23. The Corporation and the Commission will nominate one person each who shall be given responsibility for liaison between the two bodies during the course of implementing the strategy for resolution of the case.

Charity Commission investigation

24. Where the Commission believes that it has good reason to use its power to conduct an investigation into any aspect of the affairs of a housing association it will notify this fact in writing to the Corporation. Such notification will include an overview of the concerns which have led to a possible investigation.
25. The Corporation will discuss the concerns with the Commission in the light of its own regulatory engagement with the association, and will seek to agree with the Commission a course of action to deal with those concerns. Any investigation is likely to be undertaken by the Corporation as the principal regulator for housing associations. The outcome of any investigation will be made available to both organisations.

E. Policy/liaison

26. Both organisations have co-operated in developing policy and guidance in areas of shared responsibility for many years. This has been effective because both organisations work together in an open and constructive way.
27. In order to ensure that we regularly review current policy we will have standing meetings at least every six months to identify areas that we need to work jointly on.
28. Where we are engaged in policy work which impacts on both organisations, the lead individual responsible for that work in each organisation will also be responsible for ensuring that they establish with their counterpart at an early stage their respective responsibilities and how they will deliver the necessary work, identifying the way in

which each organisation will approve such work (e.g. Board or executive level), and the timetable for doing so.

29. In order for this to be effective, we will provide information on our respective structures, and individual staff responsibilities in relevant areas of our organisations, and update these as they change.
30. We recognise that the prospective implementation of the 2006 Act will require both organisations to engage in additional liaison and joint working to ensure that we are able to implement the Act effectively. We will develop a programme of work to ensure that the regulatory framework for regulation of exempt charities meets statutory requirements, and that regulatory staff are competent to apply these. We will involve the National Housing Federation at an early stage.

F. Designated points of contact

31. In order to ensure that matters are handled at the appropriate level, and that developing policy considerations are taken fully into account, contact between the Commission and the Corporation should be established between designated points of contact (see Appendix 1). Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

G. Responding to housing associations

32. This section is about complaints from housing associations, but distinguishes between complaints that should be routed through the Commission or the Corporation's own complaints procedure and complaints that are about how both organisations interact.
 - Complaints about the Commission should be managed within its own complaints procedures and likewise for the Corporation. This is necessary as each organisation needs to maintain separate responsibility and accountability for complaints about the services of each provider.
 - The second category is about complaints, feedback or suggestions concerning how the two organisations interact. Information falling into this category is likely to result from a review of individual complaints or a joint review of complaints. Each organisation will notify the other of information that they receive about concerns relevant to their responsibilities where the organisation with the information considers it should notify the other organisation. The two organisations will ensure that there is a timely exchange and analysis of information falling into this category. Where appropriate and if possible, the two organisations will take a joint approach to resolving issues raised.
 - The National Housing Federation (NHF) as the trade body for housing associations will act as recipient for general suggestions on how the Commission and the Corporation interact (to be discussed with the NHF).

H. General

33. Whilst it is intended that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this Memorandum prevents the making of arrangements to meet specific exceptional needs.
34. Any disagreement arising from the interpretation of this Memorandum will be referred to the Chief Executives of the Commission and the Corporation, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The Memorandum will be amended if necessary to reflect the agreed outcome of the referral.



Memorandum of Understanding between the Charity Commission for England and Wales and the Housing Corporation

SIGNED:

On behalf of the Charity Commission

A handwritten signature in black ink that reads "Andrew Hind".

.....
Andrew Hind, Chief Executive

Date: 2 May 2007

On behalf of the Housing Corporation

A handwritten signature in black ink that reads "Jon Rouse".

.....
Jon Rouse, Chief Executive

Date: 10 May 2007

Appendix 1

Area of liaison	Charity Commission	Housing Corporation
Development of Policy and Legal Framework	Director of Policy and Effectiveness and Director of Legal Services	Director of Regulation/Head of Regulation Policy
General approach to Operational Liaison	Head of Charity Services	Head of Regulation Policy
Initial contact at Individual Casework Level	Head of Charity Services	Registration Policy Manager
Contact for Supervision/ Investigation/Statutory action.	Head of Compliance	Head of Supervision