Altair

Cosmopolitan Housing Group

Lessons Learned

June 2014

DISCLAIMER

Altair Consultancy and Advisory Services Ltd (Altair) was commissioned by the Homes and Communities Agency (the Regulator) and Sanctuary Housing Group to conduct a comprehensive independent review (Review) of the events which led to the rescue of Cosmopolitan Housing Group (CHG). This Report is not intended to be a comprehensive review of all potentially relevant issues relating to the rescue. It is intended to draw attention to what Altair, in its absolute discretion and in carrying out the Review, consider to be the key findings and lessons to be learnt from the CHG case. The Report has been published at the request of the Regulator.

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1. Context for this report and methodology

1.1. In October 2013 Altair was commissioned by Sanctuary Housing Group (Sanctuary) to undertake a review of the events which led to the Cosmopolitan Housing Group (CHG) joining the organisation.

1.2. This "Lessons Learned" report was commissioned by the Regulator, working with Sanctuary and, with Sanctuary's permission has made use of the findings of the above review. To answer the questions within the agreed brief the authors were given access to documentation from CHG and its subsidiary bodies from 2003 which included minutes, board and committee reports and other documentation of relevance to the review. The Regulator has also provided access to its documentation, specifically relating to the time period 2011-March 2013. Altair has also interviewed a number of individuals who were involved during this period.

1.3. The aim of this review was to understand the issues experienced at CHG, identify the causes and draw out the key lessons to be learned from the case by the sector and the Regulator.

1.4. The report is split into sections which respond to the briefs that were agreed with Sanctuary and the HCA. We have examined:

- The historic context (looking back to 2003)
- Assurance, governance and controls within CHG 2003-2005
- The merger between CDHT and CHG
- Liquidity issues and financial covenant compliance 2012
- HCA case handling of the crisis

1.5. The lessons learned for the sector, Regulator and Government are set out as recommendations at the end of this report.

1.6. The report also includes a number of Appendices:

- Appendix 1 is a timeline of events in the critical period June 2012 to March 2013.
- Appendix 2 is a timeline of the key events from 2003 to 2013.
- Appendix 3 is an explanatory note with background information on the Cosmopolitan Group and the Regulator.
- Appendix 4 is a glossary of abbreviations.

2. Overview

2.1. In May 2012, the Social Housing Regulator (the Regulator) identified that Cosmopolitan Housing Group (CHG) was experiencing cash flow problems because expected funding for its development programme was not in place. This was the beginning of a crisis that, as it developed, brought the whole Cosmopolitan Group (the Group) to the brink of insolvency. The Group was rescued by the Sanctuary Group (Sanctuary) in March 2013.

2.2. This rescue protected:

- thousands of tenants who could have lost the protection provided by being part of a regulated sector, for example on rents
- a significant number of much-needed houses that may have been lost from the social housing sector
- tax-payers' money
- the jobs of many who worked for the Group and its subsidiaries in the North West of England
- the lenders from potentially significant losses.

2.3. The Regulator played a key part in enabling the rescue. This report, commissioned jointly by Sanctuary and the Homes and Communities Agency (HCA), focuses on the causes of the issues, examines how the crisis was handled and highlights lessons learned for the sector and Regulator.

2.4. Insolvency within the housing sector has been experienced once previously, but in a different pre-credit-crunch era when the environment was more benign. The inquiry into the insolvency of Ujima Housing Association in 2007 highlighted deficiencies in regulation which led to changes in the way regulation was applied. This should have meant that higher risk associations were monitored more closely. In the Housing and Regeneration Act 2008 the Regulator was given more graduated regulatory powers which would also offer different means of intervention for differing circumstances should organisations get into difficulty.

2.5. There are striking similarities in the causes of the problems experienced by both housing associations: weak governance and management, and an over-ambitious development programme which over-stretched their finances. The difference is that, through the hard work and effort of those involved in the rescue, Cosmopolitan Housing Association (CHA) did not become insolvent and the Regulator's statutory powers were not enforced.

2.6. However, it could be argued that, had routine regulation in the early 2000s been more effective, the crisis may have been prevented. It is clear that there was a lack of understanding of how the Group was structuring its finances and attendant risks.

2.7. The presenting issues which led to the near insolvency and forced the take-over included:

- Difficulties with an 'over-ambitious' development programme
- Liquidity issues and a number of crises which led to the Group implementing a variety of approaches to improve the cash position of the organisation

- Index-linked finance leases on student accommodation run by the un-registered subsidiary, Cosmopolitan Student Housing (CSH)
- The proposed funding for the development programme was index-linked. This would have exposed the business to a number of large index-linked funding deals which it appears, in hindsight, CHA could not have afforded
- The accounting treatment of some of these leases was wrong. They were classed as operating leases, not finance leases and, when correctly accounted for, led to a serious breach of banking covenants
- Parent company guarantees given against a number of leases which meant that the social housing assets of CHA were at risk
- An overly complex group structure.

3. Historic context

3.1. To understand the causes of the problems experienced in 2012, decisions made by the Group going back to 2003 were examined. This period (2003) is when the Group was first formed to separate student housing activities from the housing association through the creation of different subsidiaries, although properties were not transferred into the student subsidiary, CSH, until 2005. This was in line with Housing Corporation (HC) policy requiring that 'diverse activities' be removed from the main housing organisation. Prior to this, all activity continued to be managed and governed through CHA.

3.2. At this time CHA was already undertaking a significant amount of development, funding the development of student accommodation through sale and leaseback or lease and leaseback arrangements. The information provided to the Board in the form of development appraisals was very poor, presented on one sheet of paper. As an example, the 2006/08 bid information (bid of £20m for a programme of £62.5m) comprised three paragraphs and an appended sheet of scheme names.

3.3. There was evidence of poor services to tenants. The Audit Commission (AC) inspection in 2004 showed weaknesses in operations (specifically gas servicing) and scope for considerable improvement. Spending on repairs and investment in planned and cyclical maintenance was very low during this period.

3.4. Despite these indicators the Housing Corporation gave CHA green lights for all four areas of compliance (viable, properly governed, properly managed, development). The narrative for two of these state:

- ***"Viable***
  - *CHG (through one of its unregistered subsidiaries) has an ambitious 5 year development programme which will bring with it increased risk exposure. However, one of the group's strengths is considered to be the use of alternative and lower risk strategies to secure the expansion of student housing provision*
  - *CHA is currently developing its Asset Management Strategy. The Association needs to ensure that work on developing this strategy is completed and implemented as soon as possible.*
- ***Properly Managed***
  - *When compared to other local associations, […..], CHA demonstrates mixed results. Performance indicators on rent arrears and re-lets show decline between March 2002 and 2003 with all figures in the fourth quartile. There has also been a further increase in repairs and management costs. In contrast, figures for vacant stock, lettings and rent written off show improvements since March 2002.*
  - *CHA was inspected in November 2003. The inspection team concluded that the services delivered by CHA had scope for considerable improvement and its framework for delivering continuous improvement showed weaknesses. Furthermore, the inspection found little evidence of good performance over a period of time.*
  - *[……] the association acted quickly to put an action plan in place and was able to complete all of the recommendations and have its board sign off the plan in June 2004. As a result we have assessed service delivery as satisfactory."*

3.5. In 2005 intra-group agreements were entered into which stated that no guarantees would be given by any one subsidiary to support another. Yet CHA continued to act as guarantor for the leases when student properties were transferred from CHA into CSH. When a board member of CSH questioned whether the HC had given permission for this, the response from a director was that the liability to CHA was exactly the same as it had been when the leases were held by CHA and that it was always envisaged that CHA would be required to act as guarantor on assigning CHA's leases to CSH, but there would be no further guarantees for new schemes. Despite this, CSH entered into a number of lease deals after this date with CHA acting as guarantor.

3.6. In a report on the 2005/06 accounts to the CSH Board, it was stated that new accounting treatments had been introduced and agreed by the auditors because "some leases in the past were treated inappropriately. Leases were originally treated as operating leases, but due to a reversion option incorporated in the leases they should have been treated as finance leases."

3.7. It is unclear whether all of the operating leases (or which leases) were transferred to finance leases at this time and, if so, when further operating leases were taken on and why these were not treated as finance leases.

3.8. In 2008, there was recognition that the financial capacity of CHA was a limiting factor and the board agreed to the creation of a Joint Venture (JV) with a finance company for the supported housing portfolio. This meant that there was further off-balance sheet funding. Ambition is evidenced by the numbers: a committed supported housing programme of 39 units (£5.2m) with a pipeline of a further 250 units and approximate costs of £42.9m. The deal was approved by the CHA Board in May 2008 and resulted in a JV being created between the finance company and CHA. The reports to support the proposal had limited detail on areas such as long-term cash flow forecasting, sensitivity and risk analysis. Although the Board minutes show discussion and questions on the deal, the minutes also document concerns from some board members on the level of detail they were required to consider in a short timescale.

3.9. The supported housing leases that were entered into were for 35-year terms, normally with a full repairing tenure, and the annual rental increase was 2% or RPI (whichever was greater). The papers presented to the CHA Board on the proposed arrangement with the finance company had:

- No long-term cash flow forecasting included in the report
- No sensitivity analysis to show the impact of changing levels of RPI
- Limited background information on the finance company although we have been informed that the finance company had provided background information on the company
- Identification of risks that were generic and limited (only three were identified; CHA's gearing ratio increases to a point where no further development activity is possible; CHA fails to maximise the opportunity to develop non-grant aided schemes; and CHA fails to achieve best value).

3.10. This was despite the deal being presented during one of the most turbulent economic climates in recent history. The information was inadequate for the Board to fully understand the risks of entering into the leases. The minutes of the Board meeting where the leases were discussed were not adequate for us to judge whether the reports to Board were challenged.

3.11. At the same time as these deals were being structured the Key Performance Indicators (KPIs) for housing management show that gas servicing was at 94%, re-let times were 64 days and there was low tenant satisfaction with repairs. Under-investment in repairs and maintenance continued.

3.12. The Regulator's view of CHG/CHA in this period appeared to be good.

3.13. A paper given to the CHA Board on a comparison with the global accounts remarked: *"Gearing levels demonstrate that CHA is more heavily geared than the sector as a whole. However, this should be seen in the context of feedback received from the HC in which they have responded to the capacity model return as highlighting that CHA has considerable additional debt capacity."*

3.14. In February 2009, CHA received a letter from the Tenant Services Authority (TSA) stating that *"CHA meets the expectations set out in the Regulatory Code in terms of financial viability. Our review of the 2008 long-term capacity model submission and other financial returns shows a broadly unchanged financial position."*

3.15. Within the 2008 self-assessment submission from CHA to the HC the entry on the above stated:

3.16. "There have been discussions held initially with the Board, and subsequently with the Housing Corporation, which has been subject to lengthy dialogue and subsequent approval, for the establishment of Supported Housing and Shared Ownership portfolios that enable off balance sheet diverse / non-grant aided developments and lever in additional finance to enable CHA to meet its growth objectives."

3.17. The paper containing this comment was written by CHA. We have been unable to find further information about the approval discussions with the HC. However, this statement implies that either the HC did not fully understand the deals that were being entered into, or they may not have been informed about the guarantees or the terms.

4. Assurance, governance and controls 2003 to 2005

4.1. The brief for this review required Altair to assess the assurance, governance and controls within the Group at this time and also to examine the routine regulatory work that was carried out by the HC over the period.

4.2. Our conclusions from the source documents we have seen are that CHG did not have any influence over the strategy or decision-making of CHA or CSH and had little or no means of gaining assurance on the risks that the organisation was being exposed to at this time. From the documentation we have been provided with, there was little information given to the CHA and CHG Boards on the non-social housing activities undertaken (other than in the form of minutes which, from the documentation we have seen, were not discussed), the financial risks were rarely discussed, and information was not requested. Our view is that the information provided to the CHA Board was insufficient to enable them to make an informed decision.

4.3. However, the Chair of CHA, the Board of CSH, the executive team comprising the Chief Executive, Development Director and the Finance Director and, it could be argued, the Board of CHA all knew or should have known that CHA was acting as a guarantor for part of the student housing business. Did they understand the risks associated with this?

4.4. As the minutes of the Boards went to CHG, our assumption is that the CHG Board knew or ought to have known of the existence of the guarantees as they are referred to in the minutes of the CHA and CSH meetings. There is no suggestion in the minutes of the CHG Board meetings that the Chair of CHA brought the matter up for discussion when he was clearly unhappy with the activities of CSH. We have been informed that there will have been discussion on this at the Boards of CHA and CHG, but the matter was not recorded.

4.5. During the period 2003 to 2005 the regulation of CHG and CHA does not appear to have been carried out with sufficient rigour. There is a question as to whether the regulation team understood the financial deals that were being struck: the HC did not appear to ask questions or challenge them. The standard response by CHG, that innovative deals would de-risk the organisation and enable further growth of the student business, was consistently accepted.

4.6. There is also evidence that services at that time were not good and that there was significant under-investment in the stock. Gas servicing was poor and the majority of these aspects were identified in the AC inspection report.

4.7. The Board of CHG appeared to be unaware of the extent of the financial risks that were being placed on the organisation through the many and complex financial arrangements that were being constructed. They should have been aware of these dangers. They also appeared not to have focused on service delivery aspects, or the statutory responsibilities they held. Despite this, the HC assessment gave CHG green lights across all of its categories. The assessment CHG received from the HC led them to assume that, in the eyes of the Regulator, the organisation was operating well.

5. The merger between Chester and District Housing Trust (CDHT) and CHG

5.1. In mid-2010, prior to the merger in December 2011, CHG were dealing with a number of issues. These included the requirement for obtaining further funding to continue its active development programme; concern over the gearing loan covenants which had been tight for some years (CHA's development programme was predicated on grant rates of 60% and gearing would be pushed up if rates fell below this); governance which was under scrutiny from the Regulator (TSA); and performance issues with its maintenance contractor. In the papers we have seen none of these issues were identified as reasons for or benefits of the merger.

5.2. There were key relationships between the Group and CDHT before formal discussions commenced that led to the merger.

5.3. The Deputy Chief Executive of CDHT was a board member of CHA. She joined the Board of CHA in 2006 and resigned from the Board in August or September 2010, the exact date of her resignation is not clear.

5.4. The merger appears to have been driven on both sides by the chief executives, with neither board initially appearing to be in control of the process.

5.5. There was conflict within the CHG Board over the merger proposals with at least one board member clearly unhappy. Issues we have seen raised in the papers provided to us include the pace of progression, lack of clarity as to whether this was really what CHG wanted or needed to do, and the recruitment process for the new Chief Executive for the Group and whether it should be advertised and be an open contest. Failure to appoint the Chief Executive of CDHT as the Chief Executive of the new Group had been presented to the CHG Board as a deal breaker, although we have not seen any evidence that this was stated to be a requirement from CDHT.

5.6. In late-October 2010, a number of CHG's board members sought independent legal advice from Devonshires regarding the process to date and this identified that good governance practice had not been followed.

5.7. The Regulator was engaged with CHG over the period of the merger process and was aware of some of the challenges described above. The concerns the TSA had in early 2011 included:

- Lack of implementation of actions from a governance review completed by Campbell Tickell, particularly regarding succession planning for boards
- Governance issues in relation to the CHA Board e.g. their late engagement in the merger process, the timing of and reasons for the resignation of the Chair
- The proposed appointment process, and its timing, for the new Group Chief Executive at such an early stage in the merger process
- The need to strengthen governance of the CHG Board
- Overall governance of the merger process.

5.8. In mid-2011, the process of the Chief Executive recruitment was undertaken with support from independent advisers. It is market practice to ring-fence the posts of the current chief executives and to interview them against a specific role description to assess whether they have the right skills and experience to lead the new organisation. In this case, the position was ring-fenced to the two existing Chief Executives. We have been advised that the panel reviewed the job description and person specification, which

they believed included all of the necessary skills and experience required for the role. From our experience the successful candidate should have had sufficient experience of: managing a complex group structure, running a student housing business, and the financial experience to understand the complexities of the funding arrangements that the Group had in place. We believe that the market should have been tested.

5.9. Due diligence for both organisations was undertaken. It is our view that there were gaps in the information provided by CHG to the legal advisers undertaking due diligence for CDHT. For example, there was no evidence that key documents on leases and guarantees were provided; the report provided to the CDHT Board identified that there was still some missing documentation. The financial due diligence highlighted areas that needed to be addressed by CDHT; these areas included sensitivity testing of the business plan and checking the accounting treatment of the leases.

5.10. The Board of CDHT was only presented with the Executive Summaries of the due diligence reports (although the full versions were available if requested). The Board and executive placed considerable reliance on the clean audit reports and the good TSA viability reports. A letter of representation was received confirming the factual accuracy of the financial due diligence and that there was nothing of a material nature that should have been provided. In addition, a comfort letter was received from the Chair of CHG confirming that there had been no changes to the Group's financial position since the last audit and all information of a material nature had been disclosed to CDHT.

5.11. The resulting post-merger action plan, submitted as part of the business case, did not contain all of the recommendations within the financial due diligence report. It is significant that those which were missing related to the treatment of the leases within CSH, and that sensitivities on the business plan for all entities within the Group should be carried out.

5.12. The business case did not make an outstanding argument for the benefits of the merger for CDHT residents and service users. It is unclear when reading the document what benefits there would be to CDHT tenants, apart from the possibility of more development (but this was not specified to be within Chester and District) and access to sources of private finance through JVs. Access to the Group's strong contacts with care providers was also cited as a benefit.

5.13. The potential benefits to CHA residents were:

- £22m re-investment in repairs and maintenance (not all would be for CHA stock)
- Provision of in-house repairs service (from TrustWorks) to the tenants of the Group
- The Group to benefit from CDHT's experience in performance improvement
- CDHT's sophisticated and well-established resident involvement strategy which could be shared with the Group.

5.14. The TSA asked the right questions upon receipt of the business case for merger, but there is no evidence of follow-up to the answers that were provided: some were less than adequate. The TSA did require the newly merged group to undertake a governance review (urgently) and that actions on co-regulation and the adoption of a transparent recruitment and selection processes for a new chair and board members be included in the post-merger action plan.

5.15. The TSA did see the merger as 'solving a problem'. This, in itself, has happened on many occasions when an organisation perceived to have difficulties has merged with an entity understood to have the capacity to resolve those difficulties. However, through

the process and ultimately the business case, the Regulator needs to have assurance that the merger partner is suitable and has the capacity and skills to manage the situation effectively. Partner selection (through a competitive process) and due process, including appropriate governance, for merger are also part of the Regulator's requirements. There was evidence of financial weakness within the Group but this was not the primary concern.

5.16. We also believe that there should have been more attention paid by the TSA to the 2011/15 bid and the impact this would have on the merged organisation. The TSA was basing its decision on the Affordable Housing Programme (AHP) bid in the context of routine regulatory engagements having shown the Group to be financially strong. In hindsight, this was the wrong starting position and influenced the TSA's approach to reviewing the bid. The size of the bid from CHA in relation to the size of organisation should however have triggered another review by the TSA of the programme being proposed.

5.17. It is clear that the Regulator did not fully appreciate the risk profile of the Group pre-merger: routine regulatory engagements had not picked up any potential viability issues. This in turn affected the approach taken by the Regulator to the merger. If viability issues had been identified within the Group at an earlier stage, potentially there may have been a greater focus on the financial aspects of the merger with CDHT.

5.18. We should add for the sake of completeness that, at the time of the review, the TSA was in the final stages of merging with the HCA, a process which, it was clear from our interviews, was utilising a significant amount of its resources.

6. Liquidity issues and financial covenant compliance 2012

6.1. The liquidity problems experienced by CHG first became apparent during May and June 2012 and were identified as a result of discussions with the HCA regulation team about the proposed lease and leaseback deal which was intended to fund CHG's AHP 2011–15 development programme. In total there were three liquidity crises in July 2012.

6.2. Following these crises, CHG commissioned a number of external reviews, co-optees were appointed to the Board, and additional external resources were provided in-house to support the development and finance team. CHG also agreed a Voluntary Undertaking with the HCA.

6.3. Although these issues crystallised in summer 2012, the causes of them can be dated back a number of years and can be summarised under the following areas:

- Treasury, funding and financial health of CHG
- Development programme 2011 – 15, both grant and non-grant funded
- Complex funding/delivery vehicles
- Problems with governance and control.

6.4. CHA had very little balance sheet capacity and, for a number of years prior to the liquidity problems, had operated with limited headroom in its gearing capacity. Any future development carried out at below 60% grant funding would have had a negative impact on CHA's lender gearing covenants.

6.5. CHG's treasury policy did not have a formal requirement for the organisation to hold cash reserves. When the liquidity problems began to develop, CHG was therefore reliant on accessing emergency cash funding from other sources.

6.6. An independent financial health check completed in July 2012 demonstrated a 3% surplus before tax for CHA and was compared to "one large London association that has a corresponding figure of nearer to 30%". It also forecast that the interest cover ratio would be tight, forecast to be 1.12 in 2012/13 and 2013/14 compared against a minimum target of 1.10. It was also noted that there was not any specific monitoring of liquidity by the Finance Department or the Board.

6.7. Early in 2011, a paper on 'Future Funding Streams' (written by the Group Development Director) was presented to the CHG Board which outlined that significant delivery of new housing could only be achieved using an alternative funding vehicle which would not impact on the gearing covenant. We have not seen any evidence that demonstrates involvement from the Finance Director in this paper.

6.8. In April 2011, the CHG board agreed the bid for grant funding under the AHP 2011-15 programme. CHA's bid was approved by the HCA in August 2011, with £10m of grant funding (and £10m of Recycled Capital Grant Fund) to build 553 new homes. CHG's total development programme (i.e. grant funded and non-grant funded properties) would see 1,152 units developed over five years, through a capital programme worth a total of £140m. The non-grant funded development programme was due to be funded 100% by third-party financing arrangements.

6.9. The CHA Financial Forecast Return (FFR) that supported their bid confirmed only £13.6m undrawn facilities; this should have prompted the HCA to query delivery of the required funding for the full programme at the time of the bid submission.

6.10. The TSA began to query the funding of the 2011-15 programme in January 2012 and whether CHG had considered other funding options.

6.11. In March 2012, the CHG Board agreed that the finance lease funding deal be implemented. The TSA sought further information to support two disposal consents they had received from CHG. In May 2012, the HCA expressed concerns over the quality of information being provided to the Board, and sought further assurance by requesting a long-term analysis or cost/benefit assessment of the finance lease approach compared with traditional funding methods, along with other relevant information.

6.12. The implementation of the development programme appears to have begun relatively quickly with the CHA Board meeting on 1st May 2012 approving the first scheme before the finance lease funding deal was approved by the HCA and fully in place.

6.13. It was at this point that the liquidity problems at CHG began to develop rapidly. CHG had already begun to incur costs on the development programme, previous cash flows had highlighted a potential liquidity squeeze, but HCA consent had still not been provided on the finance lease deal. During May 2012 the HCA received assurances from CHG that no further expenditure would be incurred for which it did not have sufficient funding, but this appears not to have been followed. We have also had sight of a Review of the Development Department carried out in 2012 by an independent advisor which identified control weaknesses.

6.14. The extent of the liquidity problems at CHG became apparent during May and June 2012. However, the liquidity issues do not appear to have been fully drawn to the wider Group Board's attention until the meeting on 10th July 2012 when the Chief Executive presented a paper, 'Cosmopolitan Action Plan', which outlined the liquidity issues facing CHG and identified the external advisers who would support and their briefs. The CHG Board responded by putting in place a range of actions.

6.15. Appendix 1 is a timeline of events which sets out how CHG and the HCA tackled the immediate liquidity issues. This includes a wide range of specific actions such as: seeking to extend overdraft facility, sale of properties from CHA to other housing organisations, seeking additional funds from other lenders, agreeing a £1m credit line facility with The Riverside Group (TRG), stopping non-essential repairs work etc.

6.16. One of the actions for addressing the liquidity issues was the sale of properties. However, it became apparent during that process that, because most of CHA's assets of any value were already used as security for loans, it was difficult to find properties with any real value which could be sold immediately. It also appears that there was some resistance from CHG in accessing the £1m credit line from TRG.

6.17. Finally, we have not identified any documentation to confirm that CHG specifically informed the Regulator of the material liquidity issues that were forecast to affect its viability during June/July 2012.

7. HCA case handling of the crisis

7.1. Use of the Voluntary Undertaking, co-optees and consultants

7.1.1. We were asked to assess the Regulator's engagement in the process, the effectiveness of the Voluntary Undertaking, and the use of co-optees and consultants as opposed to using their regulatory powers of appointment.

7.1.2. At the end of July 2012, following the three liquidity crises, the Regulator had significant concerns in a number of areas:

- The accuracy of the information it was receiving, specifically the weekly cash flows
- CHG's recognition of the risks to the business and their understanding of the liquidity issues
- The CHG's executive team's real understanding of the business.

7.1.3. Appendix 1 presents a timeline of the key events during this period. As can be seen, there were significant time pressures to dealing with the various liquidity crises and each crisis required significant effort from both CHG and HCA for the issues to be overcome.

7.1.4. At an internal meeting to discuss CHG, the Regulator debated whether it should use its enforcement powers (as detailed in Chapter 6 of the Regulatory Framework 2012) which include: the appointment of a manager, the appointment of officers, the issuing of an enforcement notice, making a recommendation to HCA Investment, or (not a power) accepting a Voluntary Undertaking. The decision taken at the meeting was to accept a Voluntary Undertaking and this is discussed later in this section.

7.1.5. The framework states that the triggers for the Regulator to use its powers are:

1. *"Where the registered provider has failed to meet a standard.*
2. *Where the affairs of the registered provider have been mismanaged in relation to social housing."*

And that the powers are most likely to be exercised when it considers the provider:

- *"is facing critical financial viability problems that require urgent action to remedy*
- *is failing to address serious deficiencies in the delivery of services where there are reasonable grounds to suspect there has been or there is a risk of serious detriment to some or all of a provider's tenants*
- *requires additional leadership and/or staffing resources to deliver essential organisational change"*

7.1.6. There were a number of factors that influenced the decision, but the primary one was that enforcing its powers would cause a breach of lender covenants. This could have led to the strong possibility that the Group's banks would re-price the loan book and might even have sought immediate repayment.

7.1.7. The second influencing factor came through the specifics of the Regulatory Framework 2012 Annex B which covers the enforcement powers given in the Housing and Regeneration 2008 Act updated to reflect the provisions of the Localism Act 2011.

7.1.8. The framework states: "The regulator is not required to use its regulatory powers before exercising its enforcement powers. However, the regulator's general approach is to

apply the most appropriate and least intrusive power available taking into account proportionality, the statutory duty to minimise interference and the seriousness of the issue under consideration.

The regulator will keep the use of its powers under regular review, and may decide to exercise them if the circumstances of the case make it necessary to do so. The regulator may use its powers either singly or in combination depending on the circumstances and issues of the case."

7.1.9. There are a number of areas that were influential on the regulation team when discussing and making the decision on the use of statutory powers.

a) The Localism Act 2011 has within it a stand-alone duty to 'minimise interference'. This duty needed to be considered, how the provision should be interpreted, and that it may be open to challenge.

b) To appoint a manager, the 2008 Act requires the organisation to be issued with a warning notice setting out the grounds on which the action is proposed and allow a specific time for the organisation to make 'representations' to the Regulator. This notice would be of not less than 28 days. Within the notice period the Regulator has to indicate whether it would accept a Voluntary Undertaking.

c) The warning notice would undoubtedly have caused further disruption, was open to challenge or appeal, and waiting 28 days was too long a period, especially as one of the requirements is that the Regulator has to indicate whether it would accept a Voluntary Undertaking.

7.1.10. At that meeting it was concluded that if officers were appointed this would be seen as a loan default event for CHG and therefore lead to a potential repricing or repayment of loans. The Act[1] states that the provider will be notified by letter, but does not state a notice period or that there would be a time period for representations from the provider; therefore, this could have been effected almost immediately. Unlike the appointment of a manager, there is no mention of a right to appeal through the High Court.

7.1.11. Taking this into account, and with Campbell Tickell already in-place advising the Board and sourcing high-level financial skills (including an Interim Finance Director), it was concluded that the Regulator would consider accepting a Voluntary Undertaking which contained satisfactory actions if this were offered by CHG.

7.1.12. The use of powers was kept under review by the Regulator throughout the period from July 2012.

7.1.13. The Voluntary Undertaking was agreed with the Regulator in mid-August 2012 and had two main provisos:

1. Not to dispose of any material assets without the HCA's prior approval
2. Not to enter into any new material financial commitments without the HCA's approval.

7.1.14. The Voluntary Undertaking was supported by an additional action plan, which had also been discussed with the HCA, and included the following points:

1. CHG would strengthen the Board with four co-optee appointments
2. CHG would strengthen the executive team with finance and development skills

[1] The Housing and Regeneration Act 2008 as amended by the Localism Act 2011

3. Control of the development programme would be increased (i.e. no new commitments entered into)
4. Accuracy in cashflow forecasts to be improved with stress testing and validations
5. A short-term continuity/contingency plan would be created
6. A strategic review would be commissioned
7. Working relations/communications with the HCA would be maintained.

7.1.15. CHG did put the action plan in place but, at an early stage, the Regulator had concerns that the Voluntary Undertaking was not being adhered to. The Regulator appears to have been concerned that: there was no real focus on controlling cash and the organisation continued to commit spending; control of development did not happen immediately; cashflow accuracy continued to be an issue; and there was concern over the strategic review as it seemed to be exploring only an independence option for the Group.

7.1.16. However, there were points that were completed; four co-optees joined the board, an Interim Finance Director was appointed, and a development specialist was brought in.

7.1.17. The Recovery Panel, a subset of the CHG board, was working through options when the issue of reclassification of the finance leases first arose. This immediately changed the outlook for CHG.

7.1.18. On 28th September 2012, the Regulator had a meeting with CHG and their consultants where it was confirmed that there were problems with a number of the student leases and that some had guarantees against CHA housing stock. This had implications for CHG's loan covenant compliance and the auditors were unwilling to sign off the accounts as a going concern. The combined view was that CHG did not have an independent future and urgently needed to merge with a strong Registered Provider (RP).

7.1.19. The risk profile of this case had significantly changed and, on 4th October 2012, the HCA began planning to implement its procedures in case there was the need for a moratorium should the merger option fail or if the banks called in their loans. CHG was now in breach of its covenants with the failure to submit its accounts; the cause of this being that there was *'the possibility that the parental guarantees given in respect of some leases (of student accommodation) have been incorrectly excluded from loan covenant calculations, and that appropriate treatment would mean that Cosmopolitan Housing Association would breach the terms of its lending agreements (by breaching its gearing covenant)'.*

7.1.20. Our view is that the use of the Voluntary Undertaking and the acceptance of four co-optees to strengthen the Board as part of the Voluntary Undertaking indicated that the Regulator was confident that co-optees would be able to exert the influence required over the Board which would lead to a change and strengthening of the governance.

7.1.21. This process has always worked previously and there was no reason, at the time of the appointment of the co-optees, to believe that it would be any different from previous cases. The use of the Regulator's enforcement powers would have had an immediate effect on the status of CHG in the eyes of the lenders which could have caused further severe problems for the organisation.

7.1.22. At that point (pre-lease issue discovery) we believe the decision to appoint co-optees was correct.

7.1.23. The use of consultants as opposed to an appointed manager was part of the rationale of the acceptance of the Voluntary Undertaking.

7.1.24. Campbell Tickell played a vital role throughout the process, giving continuity and specialist advice. Its role, which expanded from undertaking the governance review to strategic adviser, ensured that the difficult conversations took place, facilitated meetings, and assisted where there were blockages in negotiations.

7.1.25. At this time, the liquidity issues had highlighted just how fragile the organisation was in terms of its financial capacity and the longer-term issues associated with the high quarterly lease costs. The short-term fixes to overcome the liquidity issues were just that: short-term. It is our view that this should have been identified earlier on and a corporate restructuring specialist should have been brought in at this time.

7.1.26. However, the Housing and Regulation Act 2008 and the Localism Act 2011 restrict the freedom of the Regulator to use its powers. Giving 28 days' notice to a provider, which is then open to challenge (appeal), would not have enabled the Regulator to appoint a manager to deal with the issues as they were presenting; CHG may have become insolvent during this period as focus and energy would have been diverted if an appeal had been launched.

7.1.27. The position of the lenders was also a critical factor and this probably overrode consideration of the 28 days' notice period. As it happened, when covenants were breached, the lenders did not act, but the Regulator was not to know this at the time. One interviewee stated:

7.1.28. "The framework is designed for a pre-credit-crunch era. The intention of the 2008 act was to give the TSA a suite of graduated powers, now using most of them precipitates what we are trying to avoid – financial collapse."

7.1.29. We believe that the Regulator should be able to influence the appointment of a manager. In Scotland the appointment of a manager is also part of the Regulator's tool kit and defined in the Housing (Scotland Act) 2010 (Sections 57, 58 and 59) without the restrictions or notice periods that are defined in the Housing and Regeneration Act 2008. The intervention is usually made following a period when the organisation has been under regulatory scrutiny and has already undergone some form of improvement plan. As in England, the use of statutory powers does have the effect of breaching loan covenants. The appointment is also reflected in an updated Regulation Plan that is published on the Scottish Regulator's website.

7.1.30. This solution, without the requirement for a notice period, would have been far more useful to the Regulator in the context of CHG's circumstances.

7.1.31. However, in Scotland, the Scottish Housing Regulator (SHR) encourages organisations to appoint a consultant, classed as a 'special manager', when an organisation is in trouble and under regulatory scrutiny. The scope of the work and the brief for the special manager is agreed with the SHR. A distinct difference between consultants appointed in England to assist organisations in trouble and the special manager in Scotland is that the special manger has a direct line of communication with the SHR, acts as a conduit for information and keeps the Regulator updated. This enables the executive and the board to focus on recovery, and the requirements from the Regulator are filtered through an independent consultant.

7.2. Merger and moratorium planning

The Riverside Group merger negotiations

7.2.1. In mid-September 2012 the Regulator, at one of its regular internal meetings minuted that the Voluntary Undertaking was not being met. It also believed cash flow forecasting was still poor and there were potential liquidity problems especially at month and quarter ends when lease payments were due (although there was sufficient cash in the bank, as long as a payment was received in time to cover September month end and ensure the overdraft limit was not breached). In addition it believed, there was pressure on gearing, covenants and end of year accounts.

7.2.2. During these internal meetings in September the regulation team revisited the question of statutory powers because of its perception that CHG continued to fail to keep to the terms of the Voluntary Undertaking. The regulation team pulled back from this because:

- The use of statutory powers would breach loan covenants
- It was felt too early to look again at the appointment of officers because the co-optees had not been in place long (it may have been considered unnecessary, unreasonable and disproportionate)
- The 28-day notice for the appointment of a manager was potentially too long.

7.2.3. However, within days of the mid-September meeting, the issues with the CSH leases surfaced. On 26th September 2012 CHG's Board agreed that it should seek a merger partner as it had received confirmation that the leases had been wrongly accounted for within the CHG's accounts, the consequence being that CHG had breached its loan covenants.

7.2.4. From this point, the work of the HCA developed into two strands: moratorium planning and keeping the banks and ratings agencies updated/assured, and the case management of CHG and the merger process. With such a high-risk situation the work on CHG became a priority for the HCA and resource was made available to ensure that it could plan for the moratorium and deal with day-to-day issues and crises. The Director of Regulation led the work and made sure that, within both workstreams, what needed to be done was done. The Regulation Committee was kept updated throughout the period. As the CHG case progressed and became more serious, the HCA engaged with government officials on a regular basis to ensure they were fully apprised of the issues.

7.2.5. The process to select a merger partner was agreed by the Recovery Panel during a meeting preceding the Board meeting on 26th September 2012. The Board of CHG had received a letter from the Regulator which laid out the failings of CHG's progress against the Voluntary Undertaking, the continued lack of assurance on the ability of the organisation to cope with the cash requirements due at the end of September and December, that the Regulator was reviewing its decision on the use of their powers, and that a new Regulatory Judgement was being drafted stating that CHG had failed to meet the Governance and Viability Standards.

7.2.6. The Recovery Panel took note of the contents of the letter and agreed that CHG should seek a merger partner and recommended expressions of interest be sought from 5-6 RPs against the following criteria:

- Have the necessary funds in place to deal with the current financial issues faced by CHG

- Be sensitive to and empathise with the local focus of CHG, in particular CDHT
- Ideally have a federal structure in order for the subsidiaries to maintain their identity
- There was also a wish to seek a partner that had a footprint in the North West.

7.2.7. Following this meeting the CHG Board agreed to seek a merger partner.

7.2.8. There has to be a question as to whether the Board of an organisation that had experienced severe liquidity issues and which had now breached its loan covenants, placing it in a perilous situation, should set criteria such as these. The imperative was to find a rescue partner that a) had the financial strength and b) the relevant experience of the failing business (which in CHG's case covered the spectrum of social, supported and student housing).

7.2.9. The Regulator's role, unless statutory action has been enforced, cannot be directive. The Regulatory framework states that their action must be *'proportionate and interference should be minimised'*. At this time, they had to rely on the strongly worded letter that had been sent to the CHG Board by the Director of Regulation and the influence of the co-optees and its advisers to ensure that the CHG Board made appropriate decisions.

7.2.10. Even if statutory action had been taken and officers appointed to the board, the legislation states that they have to be in the minority unless certain conditions apply. To remove officers from the board requires an inquiry, which takes time.

7.2.11. Three expressions of interest were subsequently received (The Riverside Group, Symphony Housing Group and The Regenda Group) but two of the RPs withdrew from the process due to the timescales, the complexities of the issues, fear of cross-contamination to their Group, and concerns over capacity to take on the debt and the risks involved.

7.2.12. If a 'beauty parade' is meant to test the market and identify suitable partners, this did not achieve its aim. The net should have been cast wider and those organisations with the financial capacity, the relevant experience of the failing business, and the capability to act fast and take on CHG should have been approached. This should have been done in the first instance, but at the very least, when there was only one expression of interest.

7.2.13. On 3rd October, the Director of Regulation sent a letter to the Chief Executive of CHG. The letter stipulated that the CHG Board, in making the decision on a merger partner, had to take the following into account in their deliberations:

- *"That the Board had a responsibility to its tenants, the communities it served and to the sector as a whole to make the right decision to safeguard all the social housing assets in the parent and its registered subsidiaries."*
- That the organisation could act with speed given the urgency of the situation and the boards of these organisations had endorsed the proposal
- That the prospective partner would have the governance, management and financial capacity to deal with CHG's problems
- That there was sufficient strength in the business case being made
- There was capacity to resolve the immediate liquidity issues.

7.2.14. The letter would have left the CHG Board in no doubt of its responsibilities. The fact that there were different boards and legal entities made the process more complicated.

7.2.15. TRG was the only proposal remaining and the Board accepted their proposal on 5th October 2012. It does not appear that they sought to look at other providers. Following further due diligence, the TRG Board agreed to proceed with merger negotiations on 11th October 2012 having recognised the position of CHG and realising the impact that a failing organisation would have on the sector.

7.2.16. CHG held a further board meeting on 13th October 2012. TRG fitted the criteria that CHG had set out: it was felt that TRG could deal with the issues presenting. The timescale was set to try to achieve the merger by 31st December 2012. A standstill agreement, which included a £1m facility between the two organisations (that was never used), was entered into.

7.2.17. At the meeting on 5th October 2012 the CHG Board also received advice from Devonshires on their responsibilities as Board Directors and the potential for personal liability. The Board were also advised that at the beginning of each meeting the Board should consider whether the organisation was solvent and therefore viable. This process was continued until CHG merged with Sanctuary.

7.2.18. The speed and intensity of the work needed to complete the merger commenced immediately after the Board meeting and continued through to January 2013. It is difficult to convey the quantity of what was required, especially as the majority of the information was not there or in a state that could be used. Advice from multiple sources was required to structure a deal that would be acceptable to TRG and the Regulator, and protect the social housing assets of CHG while not putting TRG at risk.

7.2.19. Discussions with the secured lenders were critical. TRG took the lead with these and brought them to a successful conclusion. These discussions were aided by the Regulator who played a key role, facilitating understanding and putting the 'sector view' forward.

7.2.20. Due to the high-risk position of CHG, the HCA insisted that they should have an alternative solution in reserve, i.e. another RP that would take the place of TRG should they withdraw from negotiations. This became known as 'Plan B'. In October Sanctuary wrote to the Regulator indicating a willingness to step-in if required. Sanctuary reiterated this willingness on a number of occasions throughout the remaining period of negotiations with TRG. Sanctuary formally wrote to the CHG board on 3rd January 2013 setting out details of their offer and the action plan and timetable which would enable CHG to join Sanctuary by the end of March 2013.

7.2.21. The area that caused the most concern related to the position of the CSH finance leases. Twelve of the sixteen leases had guarantees against CHA in the event of a breach by CSH. By the end of December 2012 discussions with the leaseholders of CSH were not complete. To progress this PwC were commissioned in early January 2013 to undertake further work in this area. Their draft report was scheduled to be discussed by the CHG Board on 25th January 2013.

7.2.22. This was overtaken by the withdrawal of TRG from negotiations on 24th January 2013 and the acceptance of Sanctuary's offer by the Board of CHG on 25th January 2013.

Planning for a possible moratorium

7.2.23. The previous occasion when a moratorium had been used was for the failure of Ujima, before the credit-crunch era (2007). The procedures in place for Ujima were not applicable in 2012/13.

7.2.24. The TSA began its life in 2008, as the Housing and Regeneration Act passed into statute. The moratorium process that had been used in 2007 was not reviewed or updated to take account of the changing economic environment as a result of the credit crunch; it could be argued that this should have happened in 2009/10. Prior to the transition to the HCA, a project was started on Major Financial Failure, but this had not been completed when the CHG failings arose. The HCA did not have any updated (TSA-developed) planning in place for a moratorium, for example, the means by which it could use its powers to agree proposals for the future ownership of stock with secured creditors. If these types of proposals were not agreed within a tight timescale normal insolvency process would apply.

7.2.25. Therefore, the work on the moratorium needed to continue in parallel as the work with TRG and then Sanctuary progressed. Trowers & Hamlins and KPMG were brought in to assist the HCA. One of the key requirements is access to accurate data via a dataroom. CHG's data was insufficient for this process to be carried out effectively. The ownership of assets and associated debts and charges was not easily extracted from the information that was available and, in some cases, the information was not available or was wrong. These inaccuracies would put the process of an orderly takeover by another association in jeopardy and would also put any moratorium at risk and be subject to challenge from unsecured creditors.

7.2.26. The resource requirements for planning a moratorium and managing the day-to-day regulation activity of CHG were significant but, by January 2013, the planning was well advanced and the Regulator's view was that it could have been implemented. However, the 28-days' time limitation would have hindered the ability of the Regulator to satisfy all the requirements of the Housing and Regeneration Act 2008; the more reasonable time period within the Housing (Scotland) Act 2010 is 56 days.

7.2.27. The key risks associated with a moratorium are:

- 28 days is a very short timescale to agree detailed proposals for the future of the stock. There is a provision for an extension but this needs to be agreed by all the secured creditors.
- All secured creditors need to agree to the deal. If any one did not agree this could create significant problems for other creditors and the Regulator.
- The Localism Act 2011 had added the requirement that the Regulator takes account of unsecured creditors. It became clear to the Regulator that running a moratorium with this duty, where there was the possibility of loss for unsecured creditors, would be complex and with some uncertain outcomes which could have distracted it from its key role.
- The need to act quickly may have been seen as a 'fire sale' and therefore the ability to obtain the best price may not have been possible. This additional requirement in the Localism Act 2011 would not have achieved the safety net that it was meant to provide.
- The moratorium would have only applied to CHA. It would not apply to CHG as, although a Registered Parent body, they had no assets and therefore would not be

included in any moratorium process. Legal advice on the position of CDHT identified that there were no cross-defaults between CHA and CDHT and therefore insolvency in CHA would not automatically cause a default in CDHT, and CDHT would as a result probably not be part of the insolvency process. However, CHG and CDHT were both potentially an important part of any proposed solution.

7.2.28. A further issue identified by the Regulator was that in the event of an insolvency of an RP where a public bond (no bond was in place at CHG) had been issued (or multiple bonds) the range of creditors would be different from the traditional funders where the relationship with the RPs and the Regulator has always been strong. To gain agreement for an extension to a moratorium period with a newer diverse group of investors may be more difficult. The Regulator has not had to deal with this grouping in this way before and therefore the approach and reaction is unknown. This will increase the risk should the moratorium powers be used. Bond financing is not the only new or novel type of financing now being used by RPs, and each additional variety of funding could present further complexities for the sector to deal with in a rescue situation.

7.2.29. A provision to enable a period of administration to be in place for a RP would provide a longer period for it to sort out its affairs prior to insolvency. An added advantage would be that an administration is linked to the organisation whereas a moratorium is linked to assets. This should be considered as a future regulatory power.

7.3. Transfer from TRG to Sanctuary

7.3.1. The transition from TRG to Sanctuary had to be handled carefully to avoid CHG becoming insolvent. Sanctuary had consistently provided the Regulator with assurance that it would step in should TRG withdraw from negotiations and, following a meeting with the Regulator in late December, it had begun to work up proposals for CHG. This was extremely important as, from the Regulator's perspective (and insolvency law), there had to be a clear transition plan that demonstrated that CHG would be able to continue to trade with support from another party if necessary. This would include the availability of an unsecured loan should it be required by CHG. Sanctuary confirmed to CHG that they were prepared to replace TRG in the event that TRG withdrew from negotiations. Contained within the letter was the outline offer to CHG.

7.3.2. TRG Board withdrew from negotiations with CHG on 24th January 2013 and the CHG Board accepted Sanctuary's offer to join the Sanctuary Group at the board meeting on 25th January 2013.

7.3.3. The team from Sanctuary started work with CHG staff and executives on 26th January 2013 and, in this situation, the ability to mobilise a team to proceed with the merger planning at pace was vital. At the start of the process Sanctuary simplified the proposed acquisition structure, as detailed in the PwC report, in order to complete the transaction within the necessary timescales.

7.3.4. This proposal meant that CHG would become a subsidiary of Sanctuary, the student accommodation would be managed by Sanctuary Management Services, the supported housing portfolio by Sanctuary Supported Living, the properties within CHA would continue to be managed locally and, for a period of time, CDHT would become a separate subsidiary of Sanctuary.

7.3.5. As a stock transfer organisation, a key stakeholder of CDHT was its sponsoring local authority Cheshire West and Chester (CWAC). CWAC's consent was required to any change to CDHT's constitution and, in particular, its nomination rights onto the CDHT Board. Relinquishing these rights was another critical issue which needed progressing and there was continuing dialogue between the HCA and Sanctuary on the issue. The

speed of resolution by CWAC was fundamental to the success of the deal but, for a future rescue involving a different local authority, the same result could not be guaranteed.

7.3.6. Throughout February and March, the Regulator and Sanctuary worked closely to ensure that potential problems were averted and solutions found. Having a good, constructive and open relationship was important to ensure that the process moved forward and the merger was completed in eight weeks.

7.3.7. CHG joined the Sanctuary Group on 27th March 2013.

7.4. Summary of the case handling during the period July 2012 - March 2013

7.4.1. The Regulator's case handling of the crisis can be described as intense. This was a situation that the Regulator had not found itself in before (the previous insolvency was in a different era, pre-credit crunch, and did not involve significant unsecured creditors) and it needed to manage its way through the complexities of a failing organisation, insolvency law, and planning for a potential moratorium while keeping the merger with TRG and then Sanctuary on-track.

7.4.2. Overall the case handling was good. There are a number of positive areas worthy of comment:

- The entire team worked well and had a coordinated approach to the management of the situation
- The review of the use of statutory powers was carried out at each internal meeting and Regulation Committee meeting. Initially, the position of the banks was the primary reason behind the decision not to use statutory powers. But their use was also severely hampered by the legislation; this was eventually the deciding factor on not using them. However, following the discovery of the problems with the leases, which led to a breach of covenants, had the legislation allowed the immediate appointment of a manager, an insolvency practitioner could have been appointed to manage the organisation through the following months
- The informal liaison and formal communication with HCA Investment appeared to strike the right balance, and the Regulator has confirmed that this worked well
- Behind-the-scenes consultation and negotiations with a variety of stakeholders by the Regulator was important. In situations like this it is important that the Regulator has a network of contacts which enables it to help provide stability during a period of uncertainty
- Ensuring that 'Plan B' (the Sanctuary option) was run in parallel with 'Plan A' ensured that, at the critical point, Sanctuary was ready to step in
- The transition between TRG and Sanctuary was handled extremely carefully and well with a high degree of professionalism. The ability to mobilise a skilled team to undertake the work required is important in these situations.

7.4.3. However, some things could have been done differently:

- While the working relationship of the co-optees with each other was good, with the remainder of the CHG Board and the HCA it could have been better. There was inconsistent attendance and therefore there is some doubt as to whether the organisation gained the maximum benefit from the co-optees

- The information provided by CHG was not of a quality to give assurance to the Regulator and, in September 2012, the Regulator clearly did not feel that it was being given the information it required. There was little it could do about this except issue strongly worded communications

- The revised Regulatory Judgement could have been issued much earlier (see following section)

- Planning for the moratorium had to be run in parallel with the negotiations with TRG. This meant additional resourcing requirements to ensure all activities were adequately covered

- The regulatory review meetings held by the Regulator with CHG and its advisers were held in London. It has been questioned whether these resulted in any added value. Meeting with the CHG executive team each week could be seen to have taken important resource away from dealing with the issues. The HCA's view is that the meetings were required to keep pressure applied to CHG to deal with matters in hand

- The CHG case required significant input from the HCA to deal with the various issues. At the time, a large proportion of the HCA's hierarchy was dealing with the CHG rather than other cases. This is not a sustainable approach to take and leaves the question of resourcing if more than one rescue were to be ongoing at the same time.

7.5. Regulatory Judgement

7.5.1. CHG's Regulatory Judgement at G4/V4, issued in December 2012, was within the first batch of Regulatory Judgements issued from the Regulator since April 2012. This gap appears to be another consequence of transition. The development and approval of the format of the Regulatory Judgements appears to have taken almost nine months. Within this time the sector relied on the previous ratings from the TSA which, in CHG's case, was clearly over-optimistic and wrong. The Regulator has confirmed that a Regulatory Judgement (G3/V3) should have been issued in July 2012 and the downgrade to G4/V4 issued in October 2012.

7.5.2. In our view the December Regulatory Judgement issuance was too late; Regulatory Judgements and their predecessors are used within the sector (and by the traditional lenders) as a measure of good governance and financial strength.

7.6. The protection of social housing assets and moratorium

7.6.1. One of the key roles of the Regulator is to try to ensure that social housing assets are protected. Had CHG become insolvent then it would have been very difficult to protect all of the social housing assets owned by CHA. The fallout may also have had ramifications for the assets owned by CDHT, being in the same group structure.

7.6.2. The Regulator, during this entire period, focused on this issue.

7.6.3. Risks to the successful conclusion of a moratorium and the transfer of social housing assets to another registered provider include:

- Running out of time. This could be caused by one or more of: providers having insufficient time to formulate bids; there being insufficient time for all secured creditors to agree proposals; or one or more secured creditors failing to agree to an extension of the moratorium.

- Proposals being unacceptable to one or more secured creditors

7.6.4. In these circumstances, the normal insolvency process would commence, assets would move outside the regulated sector, and as a result regulatory requirements (for example the Rent Standard) would not apply and assets may be sold to recover losses

7.6.5. There was also the chance that the moratorium would have been challenged by unsecured creditors which may have put the assets at risk and added further complication and delay to the process.

7.6.6. As part of its day-to-day role as regulator, we believe HCA should identify organisations which have the financial, technical and human resource capability and capacity to assist in rescues at short notice.

7.6.7. The Regulator must also understand how the sector is moving and regulate appropriately. It must have the right skill base, individuals who can operate at the right level, and capacity to take on cases such as this. Arguably, if the issues with CHG had been addressed by the Regulator when they initially arose, the crisis may have been avoided.

8. Recommendations for the sector and the Regulator

8.1. Recommendation 1: skills and resources

Our recommendations for boards of RPs

8.1.1. Governing bodies must analyse the skills they require to meet current and future business needs and refresh skills at board level if necessary – even if length of service has not been completed

8.1.2. When organisations enter into transactions (which may include those that involve taking on debt) boards must:

- Ensure that expert advice is called upon in a timely manner and that there is a good understanding of what the organisation is trying to achieve
- Carry out rigorous due diligence on investors
- Actively monitor covenant compliance.

8.1.3. The board should ensure there is a strong second tier of management and a good succession plan so that the organisation will continue to operate effectively should the executive team be focused on other urgent issues such as mergers, service failure or other significant issues.

It is recommended that the Regulator

8.1.4. Must have sufficient resource and a skill-base that reflects the needs and requirements of regulating an ever more diverse and complex sector:

- Ensuring proper scrutiny and understanding of 30-year plans
- Understanding current financial (and other) transactions and the associated risks
- Understanding the impact on social housing assets should a non-registered entity get into difficulties.

8.1.5. Undertakes the further planning that is needed to provide the skills and, importantly, the capacity resource it will need should a large organisation get into difficulties.

8.1.6. Ensure that it has the planning in place with adequate resources should it have to deal with an RP insolvency.

8.2. Recommendation 2: information requirements

Our recommendations for boards of RPs

8.2.1. Boards must make it a requirement that the organisation has an accurate list of its asset base which must include which assets are linked to a specific transaction and the associated party (and where they sit within a group structure if relevant). This will ensure that the board has visibility of the level of charged assets, and free assets available for future charging. This should be updated at least annually.

8.2.2. The treasury policy should include the following requirements:

- The board must be provided with the accurate short-term cash position (13 weeks) plus the 24-36 month position
- Organisations must have at least three months of available secured facilities and cash as well as comply with all good practice such as CIPFA guidelines.
- The treasury strategy and associated reporting must document all off-balance sheet forms of funding.

8.2.3. Sufficient, timely, and accurate information must be provided to the correct governing body and cascaded up if appropriate in order that it is able to understand properly the risks associated with its decision-making.

8.2.4. Boards must undertake a rigorous annual assessment of compliance with regulatory requirements.

8.2.5. The principles of co-regulation must be understood by all board members and the Regulator alerted at an early stage if issues arise.

It is recommended that the Regulator

8.2.6. Monitor the implementation of the updated regulatory framework (currently out for consultation) that will require all organisations to hold a list of assets. This must include which assets are linked to a specific transaction and the associated party (and where they sit within a group structure if relevant).

8.2.7. Review the usefulness of the current FFR (as it does not currently identify the true capacity of the organisation). In the short term this may mean the information is supplemented with the background financial model that supports the FFR.

8.2.8. Use all of the information available to it to ensure that a balanced view of the RP is obtained.

8.2.9. Make it a requirement that:

- The board of an RP review and sign off the financial reporting to the Regulator
- The organisation inform the Regulator if free cash appears to fall below a three month time-horizon

8.3. Recommendation 3: risk management

Our recommendations for boards of RPs

8.3.1. Within a group structure the Group Board must have a clear understanding of the activities of its subsidiary bodies.

8.3.2. Group Board members must understand the risks of unexpected financial failure on it and its wider group and the impact this would have on its relationships. The Group Board also needs to have an understanding of the consents it will require in order to organise an orderly rescue.

8.3.3. All boards should identify where there are key risks to corporate knowledge retention.

8.3.4. There must be a mechanism to record key business processes and decision audit trails. This is critical where there are single points of reliance for key business processes; these need to be identified and managed.

8.3.5. All board members must take responsibility and bring to the attention of the Group Board any issues that may arise within subsidiaries and/or committees.

8.3.6. All boards need to understand the full (organisation-wide) impact of their collective decisions and make sure that scenario-testing is carried out to identify those circumstances that would 'break the business'.

8.3.7. Boards need to take responsibility and understand the risks and the organisation-wide exposure to major contracts and the impact on the organisation were that contract to get into difficulties.

8.3.8. Key internal controls and data must be independently tested and validated on a regular basis.

8.3.9. Board minutes should reflect debate held at board meetings.

8.3.10. Boards should take steps to ensure that, where there is any change to its business, it has the right skills and capacity within its management team.

It is recommended that the Regulator

8.3.11. Ensures that its risk model is reviewed and updated to reflect the sector risks and that the information it uses is accurate. This will provide assurance on the decisions it makes about the risk profile of the organisation and that regulation is based on the risk exposure and the diversity of the organisation; not merely on size.

8.3.12. Regularly tests its own ability to respond to a major housing organisation getting into difficulty by undertaking its own scenario-testing.

8.3.13. Continues to update its Regulatory Framework and supporting methodology in response to the external environment and risks identified by the entire sector.

8.3.14. Has sufficiently skilled resource to analyse and understand the risk profile of organisations so that it can ensure that Regulatory Judgements reflect the true position of the RP. It needs to make sure that the triggers for further regulatory questioning/involvement are set at the correct level and that there is an appropriate escalation process.

8.4. Recommendation 4: mergers

Our recommendations for boards of RPs

8.4.1. It is the responsibility of the board to determine the strategic drivers for a merger, the appropriate criteria for partner selection, and the potential benefits for current and future customers.

8.4.2. In commissioning due diligence, the board must ensure that:

- It is scoped correctly, covering all aspects of the organisation and focuses on both the bigger picture and detail of all perceived risks
- It is completed
- All information requested by advisers is provided
- Recommendations have a timescale attached to them and are followed up within the specified period.

8.4.3. All new executive roles must be defined and agreed by the relevant committee supported by independent advisers and a robust recruitment process undertaken which considers the skills required by reference to those demanded in similar posts in the wider market.

8.4.4. The board must continue to have a focus on the operational performance of the organisation during merger negotiations.

It is recommended that the Regulator

8.4.5. In consenting to a merger must:

- Gain assurance that the process is robust and appropriate
- Have a clear indication on how the merged organisation will meet the governance, viability and value for money standards
- Where there are perceived difficulties with one organisation, gain assurance that the merger partner has, at both executive and non-executive levels, the skills, capacity and resources available to manage the merger and post-merger integration
- Follow up constitutional and due diligence queries in a timely manner.

8.5. Recommendation 5: in a crisis

Our recommendations for boards of RPs

8.5.1. The board should support the Chief Executive/Executive team to bring in relevant expert advice at an early stage. It is critical that the strategic issues are identified and understood and that the board works proactively to help resolve them.

8.5.2. Within the co-regulatory environment, the board has a responsibility to work constructively with the HCA.

8.5.3. The Chair should pull together a core group of board directors with the required skills and time available to deal with a crisis, and the appropriate delegation, ensuring:

- Efficient decision-making process
- Timely communication back to the main board
- There is a robust audit trail for decisions
- There is a Plan "A", "B" and "C".

8.5.4. Be alert to the likelihood that the board may need strengthening. Seek advice and liaise with the HCA and ensure new members/co-optees have time available and the required skills to deal with issues.

8.5.5. Review their current indemnity for members and co-optees.

8.5.6. Make sure that relationships with funders/investors/key stakeholders are good as they will be part of the solution.

8.5.7. Where a merger is required, consider first and foremost the certainty that the proposed partner will be able and willing to complete within the required timeframes (leaving a considerable cushion) in order to protect residents and services.

It is recommended that the Regulator

8.5.8. Learns from the strain on resources that occurred as the Cosmopolitan crisis unfolded. The Regulator needs to have access to the right level of resource and skills to deal with another crisis of the same or greater magnitude.

8.5.9. Reviews the process of appointing co-optees. Co-optees' skills need to be matched to the presenting situation, they need to be fully briefed and understand the time and commitment expected of them.

8.5.10. Is clear and directive on the information required from the organisation - what and when.

8.5.11. In a crisis, if a merger is required, the Regulator should make its views known regarding expectations on compliance with the standards post-merger (day 1).

8.5.12. Ensures that the model used to assess the latent capacity of organisations is kept under review and updated as the sector changes to ensure that it has a complete picture of those organisations with capacity, free cash, capability and the ability to move quickly to assist RPs who get into serious difficulties.

8.5.13. Reviews the outcomes and process at the end of a regulatory engagement and update processes/procedures/the regulatory framework if necessary.

8.6. Recommendation 6: future regulation

In a crisis the Regulator requires the ability to act without the current constraints caused by the current legislative framework and the regulatory framework.

8.6.1. Consider updating the framework to give the Regulator more influence over the appointment of consultants (akin to the special manager position used in Scotland). They should be:

- Appointed by the board but with a reporting line to both Chair and Regulator
- Have the skills and time required to deal with the presenting issues
- Act as a conduit between the organisation and Regulator
- Be independent of the organisation and Regulator.

The Regulator should seek to gain assurance about the response it would receive from funders should it use its regulatory powers.

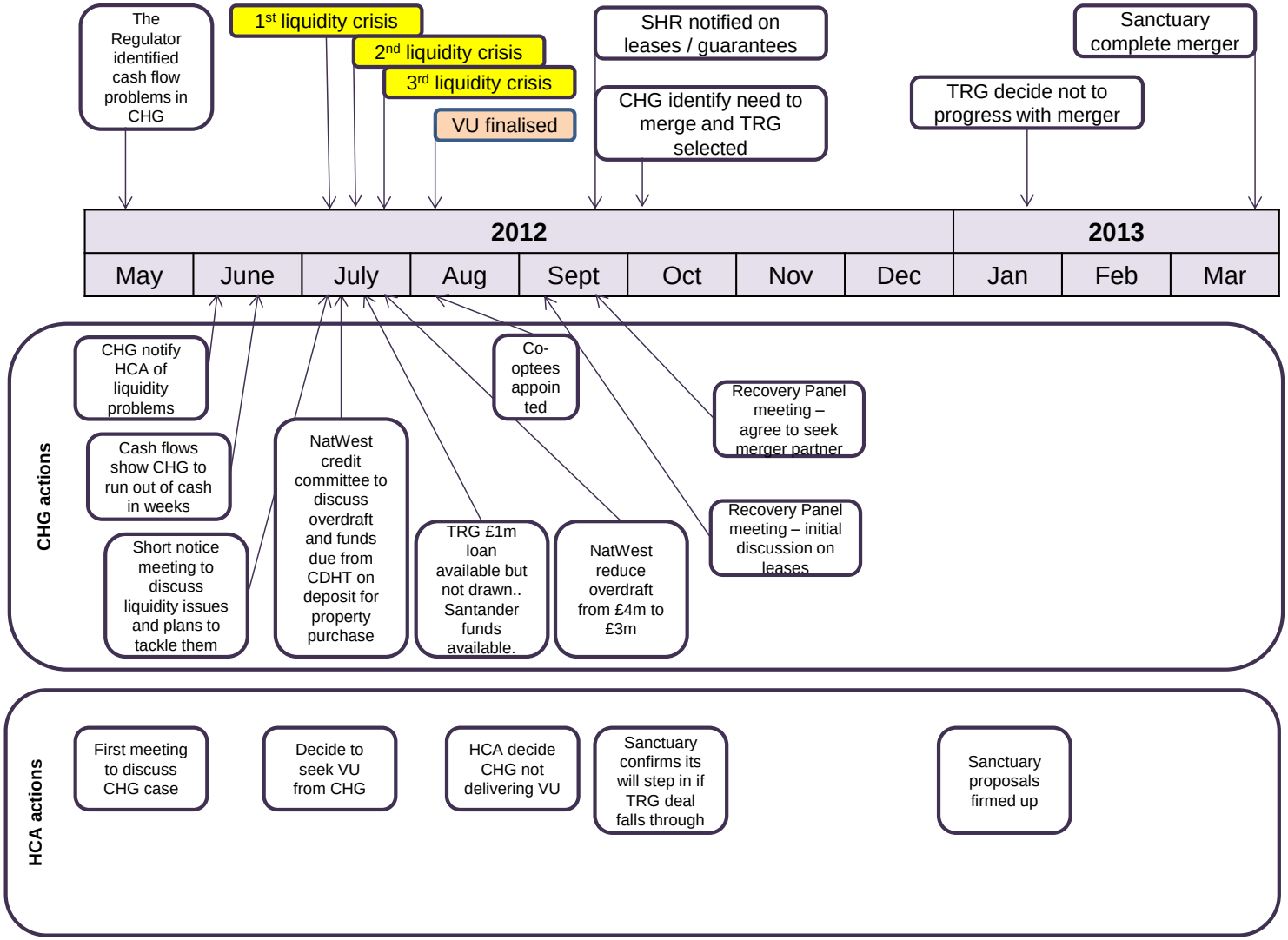
It is recommended that the Department for Communities and Local Government

8.6.2. Review the legislative framework to enable the Regulator to use its powers.

- It should have the ability to use its powers for the appointment of a manager without the enforcement notice with the statutory time-constraint (28-day enforcement notice period)
- There should be an increased time period for the moratorium process (to 56 days) **and/or** a change in the process to allow for a period of special administration instead of a moratorium

8.6.3. Review the legislation on the appointment of more than a minority of officers onto the board unless certain criteria are met. Where time is critical the Regulator needs to be able to appoint additional officers (the removal of officers can only happen following an inquiry). However, the issue regarding ‘shadow director’ needs to be overcome.

Appendix 1 - Timeline of events of the critical period June 2012 – March 2013



Appendix 2 – Cosmopolitan Housing Group – Timeline of key events

Regulator	Date	Action / event	Comments
Housing Corporation	**2003**		
	April 2003	Cosmopolitan Housing Group (CHG) formed through creation of a group structure which separated the student housing and housing association functions of the business.	
	November 2003	CHG inspected by the Audit Commission.	Inspection showed there *'the services provided by CHA has considerable scope for improvement….and the inspection found little evidence of good performance over a period of time'.* In response to the inspection, CHG implemented an action plan to tackle the identified issues.
	2004		
	June 2004	CHG's action plan to tackle the issues identified in the November 2003 inspection was completed.	Action plan signed off by Board.
	October 2004	Assessment of Cosmopolitan Housing Association (CHA) released by the Regulator.	Assessment gave CHA four green lights.
	2005		
	2005	Intragroup agreements entered into by members of CHG.	Agreements states stated that no guarantees would be given by any one subsidiary to support another.
	2006 and 2007		
	Not reviewed.		

Regulator	Date	Action / event	Comments
	2008		
	May 2008	Joint Venture with a finance company created to fund the growth of CHA's supported housing portfolio.	JV to be funded through off-balance sheet funding.
Tenant Services Authority	**2009**		
	February 2009	CHA Board receives letter from the Regulator.	Letter stated *"CHA meets the expectations set out in the Regulatory Code in terms of financial viability. Our review of the 2008 long-term capacity model submission and other financial returns shows a broadly unchanged financial position."*
	2010		
	August 2010	CHG and Chester and District Housing Trust (CDHT) deicide to progress with merger discussions.	
	October 2010	Some CHG Board members seek advice from Devonshires on the process for merger with CDHT to date.	This identified good governance practice had not been followed.
	December 2010	Regulator notified of intention of CHG and CDHT to merge.	
	2011		
	January 2011	Concerns on issues with governance at CHG raised by the Regulator.	

Regulator	Date	Action / event	Comments
	25th January 2011	CHA began to consider options for its development programme and Affordable Homes Programme (AHP) bid.	
	15th April 2011	CHA Board Away Day to consider and agree AHP 2011 – 15 bid.	
	May 2011	Due diligence on CHG (for CDHT) and on CDHT (for CHG) was completed.	
	3rd May 2011	Bid submitted for AHP 2011 – 15.	
	August 2011	CHA awarded grant funding under the AHP 2011-15.	This included £10m grant funding and £10m recycled capital grant to fund the building of 553 new homes. CHG's total development programme (i.e. grant and non-grant funded) would see 1,152 units built over five years through a programme worth £140m. The non-grant funded part of the programme was due to be funded 100% by third party financing.
	18th October 2011	CHA Board considers finance lease funding arrangement to fund development programme.	
	December 2011	CHG and CDHT merge.	
	2012		
	Early January 2012	Regulator begins to query the proposed finance lease funding deal for CHA's development programme.	

Regulator	Date	Action / event	Comments
	21st March 2012	CHG Board agrees that the finance lease funding deal (to fund the development programme) could be implemented.	Sale of assets under the deal would require formal consent from the Regulator.
Homes and Communities Agency	1st May 2012	CHA Board approve first development scheme under the finance lease funding deal.	CHA began to incur costs on the development programme. Approval and consents from Regulator for the approach were still not in place.
	2nd May 2012	Regulator requests further information from CHG on the finance lease funding deal.	This included information on long term modelling and cost / benefit analysis of the approach against other options.
	22nd May 2012	Regulator begins formal review of the CHG case and issues.	This focused on proposed lease funding deal and lack of available information from CHG.
	May 2012/	Regulator identifies cash flow problems. Funding for the development programme still not in place.	
	2nd July 2012	First liquidity crisis experienced by CHG.	
	10th July 2012	First record of the liquidity problems being formally presented to the CHG Board.	Chief Executive presented a paper titled 'Cosmopolitan Action Plan'.
	16th July 2012	Second liquidity crisis experienced by CHG	
	23rd July 2012	Third liquidity crisis experienced by CHG	
	10th August 2012	Voluntary Undertaking from CHG agreed with the Regulator.	
	6th September	CHG creates a 'Recovery Panel' to deliver action plan and	

Regulator	Date	Action / event	Comments
		voluntary undertaking and first meeting takes place on the same day. Recovery Panel discusses potential issue with some student leases.	
	21st September 2012	Regulator identifies that the requirements of the Voluntary Undertaking are not being met by CHG.	
	26th September 2012	CHG Board notified of identified issues with some student leases. The Board agreed that a merger partner should be sought. CHG's 'Recovery Panel' agreed a process for selecting a merger partner.	The identified issues included: ▪ Identification of guarantees against CHA stock. ▪ Identification that some leases had been wrongly accounted for. This had implications for CHG's loan covenant compliance.
	28th September 2012	Regulator notified by CHG and its advisors that issues had been identified with some student leases.	Combined view was that CHG did not have an independent future and urgently needed to merge with a strong Registered Provider (RP).
	3rd October 2012	Regulator writes to CHG to setting out its expectations of the merger process.	This re-iterated the responsibility of the organisation for its tenants and the need for an urgent solution to be found. The letter also stated need for partner with the capacity to deal with CHG's issues.
	4th October 2012	Regulator began planning for use of its powers through a moratorium, should the search for a suitable merger partner not be successful.	
	5th October 2012	CHG Board accepts the merger proposal from The Riverside Group (TRG).	

Regulator	Date	Action / event	Comments
	11th October 2012	TRG Board agrees to proceed with merger negotiations.	Deadline for the merger initially set as 6th December 2012
	12th October 2012	Sanctuary wrote to the Regulator setting out their willingness to step in, should the deal with TRG fail.	
	13th October 2012	CHG Board met and agreed to enter into a standstill agreement with TRG.	
	October to December 2012	Work on the merger between CHG and TRG continued.	
	2013		
	24th January 2013	TRG withdraw from the merger deal with CHG.	
	25th January 2013	Sanctuary offer is presented and accepted by the CHG Board.	
	26th January 2013	Sanctuary start work with CHG on the merger.	
	27th March 2013	CHG joins Sanctuary Group.	

Appendix 3 – Explanatory note

Cosmopolitan Housing Group

Cosmopolitan Housing Group (the Group) was registered with the Housing Corporation in 2003. The companies in the Group, before the Chester and District Housing Trust merger, were:

Cosmopolitan Housing Group Limited (CHG)

CHG was a non-asset-holding registered parent, established in 2003. It was a non-charitable company, limited by guarantee. It employed all staff and provided strategic direction and corporate services to other members. The CHG Board had overall control of the Group.

Cosmopolitan Housing Association Limited (CHA)

CHA was the original Registered Provider, initially developing and owning both social housing and student accommodation. It was a charitable Industrial and Provident Society. CHA was a subsidiary of CHG. Its main areas of operation were Merseyside and Cheshire.

The origins of the Group date back to 1969 and the establishment of Liverpool and District Student Housing Association. The organisation underwent several name changes, most notably to Young Persons' Housing Association, before adopting the title Cosmopolitan Housing Association.

Cosmopolitan Student Homes Limited (CSH)

CSH was set up in 2003 as a charitable, unregistered company specialising in newly built student housing. It had schemes in Merseyside, Preston, Bradford, Manchester, Stratford upon Avon and Birmingham. CSH was a subsidiary of CHG.

Cosmopolitan Enterprises Limited (CEL)

CEL was set up in 2003 as an unregistered for-profit company limited by shares. Its purpose was to carry out commercial activities such as build-for-sale and market rent, with all surpluses covenanted back to charitable members of the Group. CEL was a subsidiary of CHG.

Chester & District Housing Trust

Chester & District Housing Trust (CDHT) was registered with the Housing Corporation in 2000. There were two companies in the group before the merger with Cosmopolitan:

Chester & District Housing Trust Limited

CDHT, a Registered Provider, was set up in 1999 as a non-charitable company, limited by guarantee. It took over ownership and management of the stock of Chester City Council, following a vote by tenants to transfer to CDHT.

Chester & District Housing Trust (Property Holdings) Limited

This was a wholly-owned subsidiary of Chester & District Housing Trust. It was a company with an issued share capital. It owned the Trust's Registered Office.

CDHT joined the Cosmopolitan Group in December 2011 as a subsidiary of CHG, the parent company.

The Regulator

Housing Corporation

The Housing Corporation (HC) was the national government agency which funded new affordable housing and regulated housing associations in England. It was established by the Housing Act 1964.

It administered the national Affordable Housing Programme (AHP) which provided funding to build and renovate homes. Its last programme was the 2006-2008 AHP which invested £3.8bn in building 84,000 affordable homes.

Regulatory requirements for housing associations were set out in a Regulatory Code. It took a risk-based approach to regulating housing associations (high, medium or low risk) based on an assessment of likely risk and the impact of things going wrong.

In June 2007, the Cave Review recommended that a new regulator be set up, separating the regulation and investment responsibilities of the Housing Corporation. The recommendations were accepted. The Housing Corporation was abolished on 30 November 2008 and the Tenant Services Authority and the Homes and Communities Agency began operating.

The Tenant Services Authority

The Tenant Services Authority (TSA) took over the regulatory work of the Housing Corporation from 1 December 2008. On 31 March 2012, the TSA transferred its regulatory functions to the HCA.

The Homes and Communities Agency

The Homes and Communities Agency (HCA) took over the investment functions of the Housing Corporation in December 2008, and also the regeneration activities of English Partnerships. In April 2012 it took over the regulation of Registered Providers (i.e. housing associations) from the TSA.

For the period 2012-15, it has a capital investment budget of £4bn and has responsibility for housing and regeneration throughout England with the exception of London, where responsibility lies with the Greater London Authority.

The HCA established a new regulatory framework when it was set up. The focus of HCA regulatory activity is on 'governance, financial viability and financial value for money as the basis for robust economic regulation.'

Appendix 4 – Glossary of Abbreviations

AC	Audit Commission
AHP	Affordable Housing Programme
CDHT	Chester and District Housing Trust
CHA	Cosmopolitan Housing Association
CHG	Cosmopolitan Housing Group
CSH	Cosmopolitan Student Housing
CWAC	Chester West and Chester Council
FFR	Financial Forecast Return
Group	CHG Group, comprising CHG, CHA and CSH pre-merger; with CDHT post-merger
HC	Housing Corporation
HCA	Homes and Communities Agency
JV	Joint Venture
KPI	Key Performance Indicator
Regulator	Social Housing Regulator
RP	Registered Provider
RPI	Retail Price Index
SHR	Scottish Housing Regulator
TRG	The Riverside Group
TSA	Tenant Services Authority
VU	Voluntary Undertaking

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