Living Will Procedure



1. Introduction

The housing sector has been very robust, but there have been failures. To date all Registered Providers (RPs) that have needed rescuing have been saved by larger, well run organisations with the resources and capacity (both people and financial) to act.

Our residents rely on us continuing to provide safe hoes and services. If an RP suffered a catastrophic shock and found itself at risk of not being able to continue to provide services there would be major implications both for our residents and our creditors. There is also a reputational risk for the sector to manage.

Why create a contingency plan or living will? The aim of establishing such a plan is to reduce the chances of an RP getting in to financial difficulty in the first place. But if it did then there would be a managed and orderly route to rescue.

This publication is intended to provide a guiding set of principles to help RPs draft their own living will. The approach is not intended to be prescriptive, noting the substantial differences in organisational structures, governance arrangements, financing and business models under which RPs operate.

2. Defining a Living Will

A living will can be used to help an RP reduce the risk of business failure so helps Boards and management teams consider how to avoid disaster striking.

It can be defined as a contingency plan to ensure limited interruption and cost if an organisation faces a catastrophic shock. The living will should aim to bring together key organisation information to smooth the management of a potential complete or partial handover to new management.

The living will can help avoid 'disaster' in the form of an RP being unable to:

1. Protect its social housing assets from undue risk
2. Meet its ongoing legal and financial obligations
3. Provide essential services to its residents at an appropriate level
4. Prevent adverse impact to the reputation of the sector.

In managing a disaster, the living will should enable an RP management team or Board to:

1. Provide uninterrupted assurance of financial liquidity, including provision of funding
2. Identify genuinely sellable parts of the business and discretionary non-statutory spend
3. Identify all assets and obligations
4. Identify affected and protected entities.

The living will should be reviewed every 3 years or when structural changes to the organisation or its asset base occur.

3. Avoiding disaster

The following are likely to be the most useful and relevant documents for a Board or management team in order to avoid or reduce the risk of a disaster happening. RPs are likely to have most if not all these in place already:

- Short and long-term financial and business plans
- Comprehensive stress testing, with identified trigger points for taking action and costed mitigation plans
- Treasury management strategy including investment policy
- Short term and long term cashflow forecasts with plans for raising new funding as well as an understanding of discretionary spending, both short term and long term.
- Lender covenants including definitions
- Internally set financial parameters or golden rules.

4. Managing disaster

In the event of substantial stress the following documents / procedures / disciplines would be useful to ensure the ongoing provision of services to residents and the protection of social housing assets:

- Assets and liabilities register
- Business continuity plan (including schedule of key external contacts) / Disaster Recovery Plan
- Key policies & procedures plus processes for critical activities including for example income collection
- IT systems map
- Full staffing structure with key employees identified
- Funding structure – see below for further information.

5. Self-assessment

The following questions can be used to carry out a self-assessment to consider where the gaps might be in documentation. The answers together with the documents referred to will in effect form the living will, which will be a dynamic document which needs to be kept up to date as plans and activities change.

5. 1 Self-assessment

5.1.1 What is the legal group structure of the organisation? Include all subsidiaries, JVs, associates, Joint Arrangement Non Entities, etc. Note the rationale for the group structure, whether there are any planned changes and restrictions that impact the structure. Note for each entity:

- The principal activities Including mix of social housing and other assets and freehold versus leasehold ownership
- The governance arrangements and delegations including control and decision making, board membership, board appointments process
- The % ownership of every entity (including JVs) and by whom – in particular, which Group entity holds the relevant interest? Are there any restrictions/limitations?
- The equity holding for each entity
- Where do the assets sit?
- Is there a contracts register in place and where is it held? Does it cover all entities in the group?
- What is the tax structure of the group?
- To understand the contagion risk, what guarantees have been given? Map out how assets and liabilities would flow between entities should any entity in the group fail.

5.1.2 How does funding flow through the organisation? (include both internal on-lending and external funding)

- What are the covenant limitations (for example Disposals, information, consents, cross default provisions)
- How is compliance with covenants and their limitations monitored?
- What are the options for raising additional external funding?
- What cross guarantees, indemnities and defaults are in place?
- How might an impairment risk flow through the group and how would it impact on covenants, even those applying to organisations not directly affected? Are there any restrictions or limitations that can be placed on this?
- Is the impact of a trading loss in one or several entities on the rest of the Group?
- What are the mark to market exposures? How are they monitored and what security is in place?

5.1.3 How quickly can the RP exit key business streams?

- Which businesses, services or entities could be exited?
- How could it be achieved?
- How quickly could it be done?
- What consents would be required, from whom?
- What is the organisational appetite for exiting?



5.1.4 How is income collection activity organised?

- What are the cash receipt cycles?
- Who are the main debtors?
- Who are the key people in the organisation essential to income collection?
- Where do cash receipts come into the group – entity, bank account?

5.1.5 What are the organisation's major contracts and contractors? This is to help identify reliance on third parties which themselves may face the risk of going bust, and should include but not be restricted to asset management, development, care & support, IT.

5.1.6 What measures have been taken to insulate social housing assets from all other activities?

5.1.7 Is the organisation's complexity intended or a historic construct? Should it be simplified?

5.1.8 Is counter-party risk quantified and monitored across:

- Lenders
- Contractors
- Partners (including JV partners)
- Geographic locations

5.1.9 What is the risk appetite of the Board and how has it been assessed? How often is it reviewed in line with the strategic risks faced by the organisation? How is risk assumed monitored against risk appetite?

5.1.10 Can a subsidiary with "risky" assets be insulated from the rest of the group and allowed to go into administration/allowed to fail?

5.1.11 Does the organisation understand:

- All its governing documents (legal parameters) and governing processes
- Vires limitations
- How to gain assurance that no actions are ultra vires

5.1.12 Where is the Asset and Liability Register held and how does it fit into governing processes?

- How often is it reported on and to whom?
- How well does the organisation understand the key strands of statutory compliance across all assets?

5.1.13 Has the organisation identified its onerous contracts?

- Has the organisation identified contracts with latent cost/ value – e.g. overage? Share of profits on future sale?

5.1.14 Can the organisation ratchet up in margin on loan agreements subject to credit rating?

5.1.15 Is there a comprehensive Business Continuity and Disaster Recovery plan in place?

- Is BCP linked into other corporate plans?
- Does it outline the approach to obtaining emergency funding?
- Does it set out the priorities for critical systems and payments?
- Does it include contact details for key stakeholders e.g.:
- Lenders
- Contractors
- Insurers
- Strategic partners

5.1.16 Is the organisation's approach to stress testing robust?

- What stresses have you run? On what basis?
- How often is stress testing run?
- Are your mitigations real? Are they documented, realistically quantified and time bound?
- Are the right governance arrangements in place to enable mitigations to be actioned?
- What are your triggers and how are they monitored/reported?
- What is the involvement of the board?
- Which assets can be sold quickly to rescue without breaching covenants?

5.1.17 What are the organisation's strongest lending relationships?

- Key contact details?
- Available facilities/restrictions?
- Security requirements/restrictions?

5.1.18 Where relevant, credit rating requirements should be considered.

5. 2 Other best practice which management teams and Board should consider:

5.2.1 When did Board last review board skills?

5.2.2 Is the governance structure fit for purpose? Including appropriate committees / member skills?

5.2.3 Reporting decisions:

- Is Board clear where key decisions should be made?
- Is there an adequate audit trail?

5.2.4 Is the assurance framework in place and documented?

5.2.5 How is data quality assessed, monitored and reported?

5.2.6 Does the organisation have the following processes in place and are they regularly monitored by the Board and Audit and Risk Committee:

- Robust risk management framework and strategic risk register
- Regulatory breach register
- Fraud & whistleblowing register

5.2.7 How and where is covenant compliance reported and to what level of detail (is reporting only done on tightest covenants)? Which contractual reporting, if not completed, could cause a breach? (e.g. social care contracts, KPIs to JV partners) Is a contractual commitments register / contracts register in place? Headroom on all covenants?

5.2.8 Is there a compliance calendar of all regulatory submission deadlines?